

UTAH STATE BULLETIN

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

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

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

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Targeted Case Management (TCM) for Individuals with Serious Mental Illness

The Division of Medicaid and Health Financing will amend Attachments 3.1-A and 3.1-B of the Medicaid State Plan to include the Utah Department of Human Services as an entity qualified to provide TCM services for individuals with serious mental illness.

This State Plan Amendment (SPA 15-0003-UT) does not affect total annual expenditures for the Medicaid program.

The SPA is pending approval from the Centers for Medicare and Medicaid Services and the proposed effective date is July 1, 2015.

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

Health Health Care Financing, Coverage and Reimbursement Policy

Reimbursement for Physician and Anesthesia Services

The Division of Medicaid and Health Financing (DMHF) will submit a State Plan Amendment (SPA) to update Attachment 4.19-B of the Medicaid State Plan.

Based on the existing State Plan requirement to annually rebase pricing of physician codes and an increase to the appropriations for these services from the Utah State Legislature, SPA 15-0007-UT Reimbursement for Physician and Anesthesia Services is being submitted. In addition to the rebasing, targeted Evaluation and Management and vaccine procedure codes will be increased effective July 1, 2015.

DMHF anticipates this rate change to result in an increase of approximately \$4,032,100 in total annual expenditures.

The proposed change is pending Centers for Medicare and Medicaid Services approval.

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

Health Health Care Financing, Coverage and Reimbursement Policy

Reimbursement for Dental Services and Dentures

The Division of Medicaid and Health Financing (DMHF) will submit a State Plan Amendment (SPA) to update Attachment 4.19-B of the Medicaid State Plan.

SPECIAL NOTICES

Based on increased funding from the Utah State Legislature, SPA 15-0019-UT Reimbursement for Dental Services and Dentures is being submitted. Rates will be increased effective July 1, 2015.

DMHF anticipates this rate change to result in an increase of approximately \$2,564,500 in total annual expenditures.

The proposed change is pending Centers for Medicare and Medicaid Services approval.

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

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between May 02, 2015, 12:00 a.m., and May 15, 2015, 11:59 p.m. are included in this, the June 01, 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 July 1, 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 September 29, 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 OR A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

Administrative Services, Finance
R25-10
State Entities Posting of Financial
Information to the Utah Public Finance
Website

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39360

FILED: 05/12/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 112 from the 2015 General Session added component units to the definition of "Participating State Entity."

SUMMARY OF THE RULE OR CHANGE: The rule is being changed to require component units as defined by the Governmental Accounting Standard Board (GASB), to be included in the definition of participating state entities in the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-3-401(5)(b)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The cost of extracting and preparing data will vary depending upon the skills and size of component units of the "participating state entities." The resources needed will mainly be staff time to prepare the data for submission.

◆ **LOCAL GOVERNMENTS:** There will not be costs to local governments because the rule only governs state entities, and the component units of the participating state entities.

◆ **SMALL BUSINESSES:** The rule applies only to participating state entities.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The rule applies only to participating state entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule change applies only to component units of participating state entities. The cost of compliance will vary depending on the skills and size of the component units.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed and approve the changes to the rule. There will not be an impact on business. However there may be added expense to component units of "participating state entities" for staff to prepare data for submission. However we cannot determine exactly what the increase will be, as that depends on the amount and size of component units of the participating entities.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Brenda Lee by phone at 801-538-3102, by FAX at 801-538-3244, or by Internet E-mail at brendalee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: John Reidhead, Director

R25. Administrative Services, Finance.

R25-10. State Entities' Posting of Financial Information to the Utah Public Finance Website.

R25-10-1. Purpose.

The purpose of this rule is to establish procedures related to the posting of the participating state entities' financial information to the Utah Public Finance Website (UPFW).

R25-10-2. Authority.

This rule is established pursuant to Subsection 63A-3-404, which authorizes the Division of Finance to make rules governing the posting of financial information for participating state entities on the UPFW after consultation with the Utah Transparency Advisory Board.

R25-10-3. Definitions.

(1) "Utah Public Finance Website" (UPFW) means the website created in UCA 63A-3-402 which is administered by the Division of Finance and which permits Utah taxpayers to view, understand, and track the use of taxpayer dollars by making public financial information available on the internet without paying a fee.

(2) "Participating state entities" means the state of Utah, including its executive, legislative, and judicial branches, its departments, divisions, agencies, boards, commissions, councils, committees, and institutions, including institutions of higher education such as colleges, universities, and the Utah College of Applied Technology[-], and includes all component units of these entities as defined by the Governmental Accounting Standards Board (GASB).

(3) "Division" means the Division of Finance of the Department of Administrative Services.

R25-10-4. Public Financial Information.

(1) Participating state entities shall submit detail revenue and expense transactions from their general ledger accounting system to the UPFW at least quarterly and within one month after the end of the fiscal quarter. The detail transactions for all participating state

entities that are recorded in the central general ledger of the State, FINET, shall be submitted by the Division.

(2) Participating state entities will submit employee compensation detail information on a basis consistent with its fiscal year to the UPFW at least once per year and within three months after the end of the fiscal year. The employee compensation detail information that is recorded in the central payroll system of the State that is operated by the Division will be submitted by the Division.

(a) Employee compensation detail information will, at a minimum, break out the following amounts separately for each employee:

- (i) Total wages or salary
- (ii) Total benefits only, benefit detail is not allowed
- (iii) Incentive awards
- (iv) Reimbursements
- (v) Leave paid, if recorded separately from wages or salary in the participating state entity's payroll system.

(b) In addition, the following information will be submitted for each employee:

- (i) Name
- (ii) Hourly rate
- (iii) Gender
- (iv) Job title

(3) Entities must not submit any data to the UPFW that is classified as private, protected, or controlled by UCA 63G-2, Government Records Management Act. All detail transactions or records are required to be submitted; however, the words "not provided" shall be inserted into any applicable data field in lieu of private, protected, or controlled information.

R25-10-5. UPFW Data Submission Procedures.

(1) Entities must submit data to the UPFW according to the file specifications listed below.

(a) The public financial information required in R25-10-4 will be submitted to the UPFW in a pipe delimited text file. The detail file layout is available from the Division and is posted on the UPFW under the Helps and FAQs tab.

(b) Data will be submitted to the UPFW at the detail transaction level. However, the detailed transactions for compensation information for each employee may be summarized into transactions that represent an entire fiscal year.

(c) Each transaction submitted to the website must contain the information required in the detail file layout including:

(i) Organization - Categorizes transactions within the entity's organization structure. At least 2 levels of organization will be submitted but not more than 10 levels.

(ii) Category - Categorizes transactions and further describes the transaction type. At least 2 levels of category will be submitted but not more than 7 levels.

(iii) Fund - Categorizes transactions by fund types and individuals funds. At least 1 but not more than 4 levels of fund will be submitted.

KEY: Utah Public Financial Website, transparency, state employees, finance

Date of Enactment or Last Substantive Amendment: [December 23, 2009]2015

Notice of Continuation: June 25, 2014

Authorizing, and Implemented or Interpreted Law: 63A-3-404

Administrative Services, Purchasing and General Services

R33-6-109

Only One Bid Received

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39366

FILED: 05/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify procedural rules.

SUMMARY OF THE RULE OR CHANGE: This change adds reference language to clarify procedural rules when only one bid is received.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No anticipated costs or savings. This is simply adding language to clarify a process.
- ◆ **LOCAL GOVERNMENTS:** No anticipated costs or savings. This is simply adding language to clarify a process.
- ◆ **SMALL BUSINESSES:** No anticipated costs or savings. This is simply adding language to clarify a process.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No anticipated costs or savings. This is simply adding language to clarify a process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No anticipated costs or savings. This is simply adding language to clarify a process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No anticipated costs or savings. This is simply adding language to clarify a process.

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

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2015

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-6. Bidding.

R33-6-109. Only One Bid Received.

(1) If only one responsive and responsible bid is received in response to an Invitation for Bids, including multiple stage bidding, an award may be made to the single bidder if the procurement officer determines that the price submitted is fair and reasonable as set forth in R33-12-603 and R33-12-604, and that other prospective bidders had a reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise, the bid may be rejected and:

- (a) a new invitation for bids solicited;
- (b) the procurement canceled; or
- (c) the procurement may be conducted as a sole source under Section 63G-6a-802.

KEY: government purchasing, sealed bidding, multiple stage bidding, reverse auction

Date of Enactment or Last Substantive Amendment: ~~January 28,~~ 2015

Notice of Continuation: July 8, 2014

Authorizing, and Implemented or Interpreted Law: 63G-6a

**Administrative Services, Purchasing
and General Services**

R33-7-702

Only One Proposal Received

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39365

FILED: 05/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify procedural rules.

SUMMARY OF THE RULE OR CHANGE: This change adds language to clarify procedural rules when only one bid is received.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No anticipated costs or savings. This is simply adding language to clarify a process.
- ◆ **LOCAL GOVERNMENTS:** No anticipated costs or savings. This is simply adding language to clarify a process.
- ◆ **SMALL BUSINESSES:** No anticipated costs or savings. This is simply adding language to clarify a process.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No anticipated costs or savings. This is simply adding language to clarify a process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No anticipated costs or savings. This is simply adding language to clarify a process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No anticipated costs or savings. This is simply adding language to clarify a process.

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

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2015

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-7. Request for Proposals.

R33-7-702. Only One Proposal Received.

(1) If only one proposal is received in response to a request for proposals, the evaluation committee shall score the proposal and may: ~~may:~~

- (a) conduct a review to determine if:
 - (i) the proposal meets the minimum requirements;
 - (ii) pricing and terms are reasonable as set forth in R33-12-603 and R33-12-604; and
 - (iii) the proposal is in the best interest of the procurement unit.

(b) if the evaluation committee determines the proposal meets the minimum requirements, pricing and terms are reasonable,

and the proposal is in the best interest of the procurement unit, the procurement unit shall issue a justification statement as set forth in 63G-6a-708 and may make an award.

(c) If an award is not made, the procurement unit may either cancel the procurement or resolicit for the purpose of obtaining additional proposals.

KEY: government purchasing, request for proposals, standard procurement process

Date of Enactment or Last Substantive Amendment: [January 28, 2015]

Authorizing, and Implemented or Interpreted Law: 63G-6a

**Administrative Services, Records
Committee
R35-1
State Records Committee Appeal
Hearing Procedures**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39400

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes to this rule were made in order to comply with S.B. 157 from the 2015 General Session.

SUMMARY OF THE RULE OR CHANGE: The executive secretary shall respond in writing to the notice of appeal within seven business days. This was previously five days.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63G-2-502(2)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs because the changes made to this rule simply comply with S.B. 157 (2015) regarding government records amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated affects that this Rule will have on businesses. The changes made to this rule simply comply with S.B. 157 (2015) regarding government records amendments.

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

ADMINISTRATIVE SERVICES
RECORDS COMMITTEE
ARCHIVES BUILDING
346 S RIO GRANDE
SALT LAKE CITY, UT 84101-1106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

♦ Patricia Smith-Mansfield by phone at 801-531-3850, by FAX at 801-538-3354, or by Internet E-mail at pmansfie@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Patricia Smith-Mansfield, Director

**R35. Administrative Services, Records Committee.
R35-1. State Records Committee Appeal Hearing Procedures.
R35-1-1. Scheduling Committee Meetings.**

(1) The Executive Secretary shall respond in writing to the notice of appeal within [~~five~~seven] business days.

(2) Two weeks prior to the Committee meeting or appeal hearing, the Executive Secretary shall post a notice of the meeting on the Utah Public Notice Website.

(3) One week prior to the Committee meeting or appeal hearing, the Executive Secretary shall post a notice of the meeting, indicating the agenda, date, time, and place of the meeting at the building where the meeting is to be held and at the Utah State Archives.

R35-1-2. Procedures for Appeal Hearings.

(1) The meeting shall be called to order by the Committee Chair.

(2) Opening statements shall be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present their opening statements before the Committee.

(3) Testimony shall be presented by the petitioner and the governmental entity. Each party shall be allowed twenty minutes to

present testimony and evidence, to call witnesses, and to respond to questions from Committee members.

(4) Witnesses providing testimony shall be sworn in by the Committee Chair.

(5) Questioning of the witnesses and parties by Committee members is permitted.

(6) The governmental entity must bring the disputed records to the hearing to allow the Committee to view records in camera if it deems an in camera inspection necessary. If the records withheld are voluminous or the governmental entity contends they have not been identified with reasonable specificity, the governmental entity shall notify the Committee and the adverse party at least two days before the hearing and obtain approval from the Committee Chair to bring a representative sample of the potentially responsive records to the hearing, if it is possible to do so.

(7) Third party presentations may be permitted. Prior to the hearing, the third party shall notify the Executive Secretary of intent to present. Third party presentations shall be limited to five minutes.

(8) Closing arguments may be presented by the petitioner and the governmental entity. Each party shall be allowed five minutes to present a closing argument and make rebuttal statements.

(9) After presentation of the evidence, the Committee shall commence deliberations. A Committee Member shall make a motion to grant or to deny the petitioner's request in whole or in part. Following discussion of the motion, the Committee Chair shall call for the question. The motion shall serve as the basis for the Committee Decision and Order. The Committee shall vote and make public the decision of the Committee during the hearing.

(10) The Committee may adjourn, reschedule, continue, or reopen a hearing on the motion of a member.

(11) Except as expressly authorized by law, there shall be no communication between the parties and the members of the Committee concerning the subject matter of the appeal before the hearing or prior to the issuance of a final Decision And Order. Any other oral or written communication from the parties to the members of the Committee, or from the members of the Committee to the parties, shall be directed to the Executive Secretary for transmittal.

(12) The following provisions govern any meeting at which one or more members of the Committee or a party appears telephonically or electronically, pursuant to Utah Code Section 52-4-207.

(a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. The anchor location, unless otherwise designated in the notice, shall be at the offices of the Division of State Archives, Salt Lake City, Utah.

(b) If one or more Committee members or parties may be participating electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Committee not participating electronically or telephonically will be meeting and where interested persons and the public may attend and monitor the open portions of the meeting.

(c) When notice is given of the possibility of a member of the Committee appearing electronically or telephonically, any member of the Committee may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Committee. At the commencement of the meeting, or at such time as any member of the Committee initially appears

electronically or telephonically, the Committee Chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Committee who are not at the physical location of the meeting shall be confirmed by the Committee Chair.

(13)(a) If the petitioner wishes to postpone the hearing or withdraw the appeal, the petitioner shall notify the Committee and the governmental entity in writing no later than two days prior to the scheduled hearing date.

(b) The Committee Chair has the discretion to grant or deny a petitioner's request to postpone a hearing based upon: (i) the reasons given by the petitioner in his or her request, (ii) the timeliness of the request, (iii) whether petitioner has previously requested and received a postponement, (iv) any other factor determined to protect the equitable interests of the parties.

(c) The Committee will ordinarily deny a governmental entity's request to postpone the hearing, unless the governmental entity has obtained the petitioner's prior consent to reschedule the hearing date.

R35-1-3. Issuing the Committee Decision and Order.

(1) The Decision and Order shall be signed by the Committee Chair and distributed by the Executive Secretary within seven business days after the hearing. Copies of each Decision and Order shall be distributed to the petitioner, the governmental entity and all other interested parties. The original order shall be maintained by the Executive Secretary. A copy of the order shall be made available for public access at the Utah State Archives website.

R35-1-4. Committee Minutes.

(1) Purpose. Utah Code Section 52-4-203 requires any public body to establish and implement procedures for the public body's approval of the written minutes of each meeting. This rule establishes procedures for the State Records Committee to approve the written minutes of each meeting.

(2) Authority. This rule is enacted under the authority of Utah Code Sections 52-4-203, 63G-3-201, and 63A-12-101 et seq.

(3) All meetings of the Committee shall be recorded. The recording of the open meeting shall be made available to the public within three business days. Access to the audio recordings shall be provided by the Executive Secretary on the Utah Public Notice Website.

(4) Approved written minutes shall be the official record of the meetings and appeal hearings and shall be maintained by the Executive Secretary.

(a) Written minutes shall be read by members prior to the next scheduled meeting, including electronic meetings.

(b) Written minutes from meetings shall be made available no later than one week prior to the date of the next regularly scheduled Committee meeting.

(c) When minutes are complete but awaiting official approval, they are a public record and must be marked as "Draft."

(d) At the next meeting, at the direction of the Committee Chair, minutes shall be amended and/or approved with individual votes recorded in the minutes. The minutes shall be then marked as "Approved."

(e) When the minutes are "Approved" they will be so noted in the printed and online versions. A copy of the approved minutes shall be made available for public access on the Utah Public Notice Website.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: [~~September 9, 2014~~2015]

Notice of Continuation: June 3, 2014

Authorizing, and Implemented or Interpreted Law: 63G-2-502(2) (a)

Administrative Services, Records Committee

R35-2

Declining Appeal Hearings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39401

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes to this rule were made in order to comply with S.B. 157 from the 2015 General Session.

SUMMARY OF THE RULE OR CHANGE: Subsection 63G-2-403(4)(b)(ii)(A) was amended to include (A).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63G-2-403(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs because the changes made to this rule simply comply with S.B. 157 (2015) regarding government records amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated affects that this rule will have on businesses. The changes made to this rule simply comply with S.B. 157 (2015) regarding government records amendments.

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or at the Division of Administrative Rules.

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◆ Patricia Smith-Mansfield by phone at 801-531-3850, by FAX at 801-538-3354, or by Internet E-mail at pmansfie@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Patricia Smith-Mansfield, Director

R35. Administrative Services, Records Committee.

R35-2. Declining Appeal Hearings.

R35-2-1. Authority and Purpose.

In accordance with Section 63G-2-502 and Subsection 63G-2-403(4), Utah Code, this rule establishes the procedure declining to schedule hearings by the Executive Secretary of the State Records Committee.

R35-2-2. Declining Requests for Hearings.

(1) In order to decline a request for a hearing under Subsection 63G-2-403(4), the Executive Secretary shall consult with the Committee Chair and at least one other member of the Committee as selected by the Chair.

(2) In any appeal to the Committee of a governmental entity's denial of access to records for the reason that the record is not maintained by the governmental entity, the petitioner shall provide sufficient evidence in the petitioner's statement of facts, reasons, and legal authority in support of the appeal, that the record was maintained by the governmental entity at one time, or that the governmental entity has concealed, or not sufficiently or improperly searched for the record. The Committee Chair shall determine whether or not the petitioner has provided sufficient evidence. If the Committee Chair determines that sufficient evidence has been provided, the Chair shall direct the Executive Secretary to schedule a hearing as otherwise provided in these rules. If the Committee Chair determines that sufficient evidence has not been provided, the Chair shall direct the

Executive Secretary to not schedule a hearing and to inform the petitioner of the determination. Evidence that a governmental entity has disposed of the record according to retention schedules is sufficient basis for the Chair to direct the Executive Secretary to not schedule a hearing.

(3) In order to file an appeal, the petitioner must submit a copy of his or her initial records requests or a statement of the specific records requested if a copy is unavailable to the petitioner, as well as any denial of the records request. The Executive Secretary shall notify the petitioner that a hearing cannot be scheduled until the proper information is submitted.

(4) The Committee Chair and one other member of the Committee must both agree with the Executive Secretary's recommendation to decline to schedule a hearing. Such a decision shall consider the potential for a public interest claim as may be put forward by the petitioner under the provisions of Subsection 63G-2-403(11)(b), Utah Code. A copy of each decision to deny a hearing shall be retained in the file.

(5) The Executive Secretary's notice to the petitioner indicating that the request for a hearing has been denied, as provided for in Subsection 63G-2-403(4)(b)(ii)(A), Utah Code, shall include a copy of the previous order of the Committee holding that the records at issue are appropriately classified.

(6) The Executive Secretary shall report on each of the hearings declined at each regularly scheduled meeting of the Committee in order to provide a public record of the actions taken.

(7) If a Committee member has requested a discussion to reconsider the decision to decline a hearing, the Committee may, after discussion and by a majority vote, choose to reverse the decision and hold a hearing. Any discussion of reconsideration shall be limited to those Committee members then present, and shall be based only on two questions: whether the records being requested were covered by a previous order of the Committee, and/or whether the petitioner has, or is likely to, put forth a public interest claim. Neither the petitioner nor the agency whose records are requested shall be heard at this time. If the Committee votes to hold a hearing, the Executive Secretary shall schedule it on the agenda of the next regularly scheduled Committee meeting.

(8) The Executive Secretary shall compile and include in an annual report to the Committee a complete documented list of all hearings held, withdrawn, and declined.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: [September 16, 2014]2015

Notice of Continuation: June 3, 2014

Authorizing, and Implemented or Interpreted Law: 63G-2-403(4)

**Administrative Services, Records
Committee
R35-4
Compliance with State Records
Committee Decisions and Orders**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39402

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes to this rule were made in order to comply with S.B. 157 from the 2015 General Session.

SUMMARY OF THE RULE OR CHANGE: Section 63G-2-403 was changed to remove Subsection (14) and add Subsection (15)(a), within this rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63G-2-502(2)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs because the changes made to this rule simply comply with S.B. 157 (2015) regarding government records amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated affects that this rule will have on businesses. The changes made to this rule simply comply with S.B. 157 (2015) regarding government records amendments.

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346 S RIO GRANDE
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or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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- ◆ Patricia Smith-Mansfield by phone at 801-531-3850, by FAX at 801-538-3354, or by Internet E-mail at pmansfie@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Patricia Smith-Mansfield, Director

R35. Administrative Services, Records Committee.**R35-4. Compliance with State Records Committee Decisions and Orders.****R35-4-1. Authority and Purpose.**

In accordance with Subsection 63G-2-403(14), Utah Code, this rule intends to establish the procedure for complying with an order of the State Records Committee.

R35-4-2. Notices of Compliance.

(1) The Executive Secretary of the Committee shall send an order of the Committee by certified mail to the petitioner and to the governmental entity ordered to produce records.

(2) Pursuant to Subsection 63G-2-403[(14)](15)(a), Utah Code, each governmental entity ordered by the Committee to produce records, shall file with the Executive Secretary either a notice of compliance, or a copy of the appellant's notice of intent to appeal the Committee order, no later than the thirtieth day following the date of the Committee order.

(3) The notice of compliance shall contain a statement, signed by the head of the governmental entity, that the records ordered to be produced have been delivered to the petitioner, and shall state the method and date of delivery.

(4) In the event a governmental entity fails to file a notice of compliance or a copy of the appellant's notice of intent to appeal the Committee order within the time frame specified, the Committee shall send written notice of the entity's noncompliance to the governor for executive branch agencies, to the Legislative Management Committee for legislative branch entities, to the Judicial Council for judicial branch entities, and to the mayor or chief executive officer of a local government for local or regional governmental entities.

(5) The Committee may also impose a civil penalty of up to \$500 for each day of continuing noncompliance, but only after holding a discussion of the matter at issue, and obtaining a majority vote at a regularly scheduled Committee meeting. The non-complying governmental entity shall be heard at that meeting, with discussion being limited specifically to reasons for the neglectful, willful, or intentional act. Any civil penalty imposed shall be retroactive to the first date of noncompliance.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: [September 16, 2014]2015

Notice of Continuation: June 3, 2014

Authorizing, and Implemented or Interpreted Law: 63G-2-502(2)(a)

**Administrative Services, Records
Committee
R35-5
Subpoenas Issued by the Records
Committee**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39403

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes to this rule were made in order to comply with S.B. 157 from the 2015 General Session.

SUMMARY OF THE RULE OR CHANGE: In order to initiate a request for a subpoena, a party shall file a written request with the Committee Chair at least 16 days prior to a hearing. The rule previously stated 14 days.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63G-2-502(2)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs because the changes made to this rule simply comply with S.B. 157 (2015) regarding government records amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated affects that this rule will have on businesses. The changes made to this rule simply comply with S.B. 157 (2015) regarding government records amendments.

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ADMINISTRATIVE SERVICES
RECORDS COMMITTEE
ARCHIVES BUILDING
346 S RIO GRANDE
SALT LAKE CITY, UT 84101-1106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@utah.gov
◆ Patricia Smith-Mansfield by phone at 801-531-3850, by FAX at 801-538-3354, or by Internet E-mail at pmansfie@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Patricia Smith-Mansfield, Director

R35. Administrative Services, Records Committee.

R35-5. Subpoenas Issued by the Records Committee.

R35-5-1. Authority and Purpose.

In accordance with Subsection 63G-2-403(10), Utah Code, this rule intends to establish the procedures for issuing subpoenas by the State Records Committee.

R35-5-2. Subpoenas.

(1) In order to initiate a request for a subpoena, a party shall file a written request with the Committee Chair at least [~~14~~16] days prior to a hearing. The request shall describe the purpose for which the subpoena is sought, and state specifically why, given that hearsay is available before the Committee, the individual being subpoenaed must be present.

(2) The Committee Chair shall review each subpoena request and grant or deny the request within three business days, based on the following considerations:

(a) a weighing of the proposed witness' testimony as material and necessary; or

(b) a weighing of the burden to the witness against the need to have the witness present.

(3) If the Committee Chair grants the request, the requesting party may obtain a subpoena form, signed, but otherwise blank, from the Executive Secretary. The requesting party shall fill out the subpoena and have it served upon the proposed witness at least seven business days prior to a hearing.

(4) A subpoenaed witness shall be entitled to witness fees and mileage reimbursement to be paid by the requesting party.

Witnesses shall receive the same witness fees and mileage reimbursement allowed by law to witnesses in a state district court.

(5) A subpoenaed witness may file a motion to quash the subpoena with the Executive Secretary at least three business days prior to the hearing at which the witness has been ordered to be present, and shall simultaneously transmit a copy of that motion to the parties. Such motion shall include the reasons for quashing the subpoena, and shall be granted or denied by the Committee Chair based on the same considerations as outlined in Subsection R35-5-2(2). As part of the motion to quash, the witness must indicate whether a hearing on the motion is requested. If a hearing is requested, it shall be granted. All parties to the appeal have a right to be present at the hearing. The hearing must occur prior to the appeal hearing, and shall be heard by the Committee Chair. The hearing may be in person or by telephone, as determined by the Committee Chair. A decision on the motion to quash shall be rendered prior to the appeal hearing.

(6) If the Committee Chair denies the request for subpoena, the denial is final and unreviewable.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: [September 16, 2014]2015

Notice of Continuation: June 3, 2014

Authorizing, and Implemented or Interpreted Law: 63G-2-502(2) (a)

Administrative Services, Records
Committee
R35-6
Expedited Hearing

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39404

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes to this rule were made in order to comply with S.B. 157 from the 2015 General Session.

SUMMARY OF THE RULE OR CHANGE: In Section R35-6-3, the number of days was changed in order to comply with S.B. 157 (2015).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63G-2-502(2)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

♦ SMALL BUSINESSES: There are no anticipated costs or savings that are expected. The changes made to this Rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings that are expected. The changes made to this rule were made in order to comply with S.B. 157 (2015) regarding government records amendments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs because the changes made to this rule simply comply with S.B. 157 (2015) regarding government records amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated affects that this rule will have on businesses. The changes made to this rule simply comply with S.B. 157 (2015) regarding government records amendments.

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Patricia Smith-Mansfield, Director

R35. Administrative Services, Records Committee.

R35-6. Expedited Hearing.

R35-6-1. Authority and Purpose.

In accordance with Subsection 63G-2-403(4)(a)(i), this rule establishes the procedure for requesting and scheduling an Expedited Hearing.

R35-6-2. Requests for an Expedited Hearing.

(1) A party appealing a records classification to the Committee may request that a hearing be scheduled to hear the appeal prior to ten business days after the date the notice of appeal is filed by making a written request to the Executive Secretary. A copy of this request shall also be mailed to the government entity.

(2) A written request shall include the reason(s) the request is being made.

(3) The Executive Secretary shall consult with the Committee Chair to decide whether an Expedited Hearing is warranted.

(4) The standard for granting an Expedited Hearing is "good cause shown." The Committee Chair shall take into account the reason for the request, and balance that against the burden to the Committee and the governmental entity.

R35-6-3. Scheduling the Expedited Hearing.

(1) In the event that an Expedited Hearing is granted, the Executive Secretary shall poll the Committee to determine a date upon which a quorum can be obtained.

(2) After settling on a date no sooner than ~~five~~seven days nor later than ~~14~~16 days after the notice of appeal has been filed, the Executive Secretary shall contact the petitioner and governmental entity and schedule the hearing.

(3) The government entity shall file its response to the appeal with the Executive Secretary, and mail a copy to the petitioner no later than ~~three~~five days prior to the scheduled hearing. The Executive Secretary shall make this response available to the Committee as soon as possible.

R35-6-4. Holding the Expedited Hearing.

With the exception of the time frame for scheduling a hearing and providing responses, all other provisions governing hearings under the Government Records Access and Management Act (GRAMA) shall apply to Expedited Hearings.

KEY: government documents, state records committee, records appeal hearings

Date of Enactment or Last Substantive Amendment: ~~September 16, 2014~~2015

Notice of Continuation: June 3, 2014

Authorizing, and Implemented or Interpreted Law: 63G-2-502(2)

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.: 39364

FILED: 05/12/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: 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. This rule was amended to comply with S.B. 233 from the 2015 General Session which is effective as of 05/12/2015.

SUMMARY OF THE RULE OR CHANGE: This rule is amended to comply with S.B. 233 (2015) which is effective as of 05/12/2015. (DAR NOTE: A corresponding 120-day (emergency) rule that is effective as of 05/12/2015 is under DAR No. 39363 in this issue, June 1, 2015, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-5-33 and Subsection 67-5-32(1)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings that are expected. The changes made to this rule simply comply with S.B. 233 (2015) regarding the attorney general contingent fee contracts.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings that are expected. The changes made to this rule simply comply with S.B. 233 (2015) regarding the attorney general contingent fee contracts.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings that are expected. The changes made to this rule simply comply with S.B. 233 (2015) regarding the attorney general contingent fee contracts.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings that are expected. The changes made to this rule simply comply with S.B. 233 (2015) regarding the attorney general contingent fee contracts.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs or savings that are expected. The changes made to this rule simply comply with S.B. 233 (2015) regarding the attorney general contingent fee contracts.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated affects that this rule will have on businesses. The changes made to this rule simply comply with S.B. 233 (2015) regarding the attorney general contingent fee contracts. Other changes were simply clerical/housekeeping changes.

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 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Brian Tabet, 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-](1) The purpose of this rule is to provide the requirements for procurements that are managed by the Attorney General, including the hiring of [o]Outside [c]Counsel, expert witnesses, litigation support services and procurement items.

[B-](2) 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-](1) "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-](2) "Attorney General" means the Attorney General of the State of Utah, or the Attorney General's designee.

(3) "Contingent fee case" means a legal matter for which legal services are provided under a contingent fee contract.

(4) "Contingent fee contract" means a contract for legal services under which the compensation for legal services is a percentage of the amount recovered in the legal matter for which the legal services are provided.

[C-](5) "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-](6) "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.

(7) "Legal matter" means a legal issue or administrative or judicial proceeding within the scope of the attorney general's authority.

[E-](8) "Litigation Support Services" includes any goods, services, software, or technology.

[F-](9) "Outside [c]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 [c]Counsel" may or may not be designated as "Special Assistant Attorney General", as the Attorney General determines.

[G-](10) "Procurement item" or "Procurement items" means any goods, services, software or technology.

(11) "Securities class action" means an action brought as a class action alleging a violation of federal securities law, including a violation of the Securities Act of 1933, 15 U.S.C. Sec. 77a et seq., or the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78a et seq.

[H-](12) "Small purchase" means a purchase under Rule R105-1-7.

[I-](13) "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-](14) "State" means the State of Utah.

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

[A-](1) This rule applies to the procurement and appointment of [o]Outside [c]Counsel, expert witnesses, litigation support services, litigation related consultants, as well as management software and services by the Attorney General.

[B-](2) In order to properly fulfill the responsibilities of the Office, the procurement of [o]Outside [c]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-](3) The Attorney General may select [o]Outside [c]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 [o]Outside [c]Counsel is responsible for providing the expert witnesses or other litigation goods and services through the selection process for [o]Outside [c]Counsel and pursuant to the contract provisions with the Attorney General.

[D-](4) 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:

[+](a) The Utah Procurement Code; and

[2-](b) 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-](5) 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-](6) The Attorney General may, in a multistate case involving other states as parties aligned with Utah, select [o]Outside [c]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-](7) 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-](8) 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-](9) 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.

(10) The procurement and requirements regarding a Contingency Fee Contract must meet the requirements of this Rule R105-1 and the applicable provisions of the Utah Code.

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. Rules 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-](1) 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-](2) 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-](3) The Request for Proposal, shall contain, in addition to the requirements of Rule R33-7-102, at a minimum, the following information:

[+](a) A description of the project.

[2-](b) Any fee arrangements.

[3-](c) The persons or entities being sought in the procurement, including whether an individual person, firm or association of firms may respond.

[4-](d) The qualification criteria and the relative importance of the criteria. The Attorney General shall request qualifications from outside counsel being considered to provide services under a contingent fee contract unless the Attorney General:

(i) determines that requesting qualifications is not feasible under the circumstances; and

(ii) sets forth the basis for this determination in writing.

(e) Examples of criteria include:

[a-](i) Identification by name and experience of the proposed service provider(s);

[b-](ii) A description of the duties and responsibilities of each person providing the service; and

[e-](iii) 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-](f) The Contractual Requirements, which may be accomplished by including a copy of the contract.

[6-](g) 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-](h) Requirements regarding the date, time, place, form and method concerning the filing of the Response to the Request for Proposals.

[8-](i) A statement that the Attorney General reserves the right to reject late-filed or nonconforming proposals.

[9-](j) 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-](4) Public notice of the Request for Proposals shall be provided in accordance with the Utah Procurement Code.

[E-](5) 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-](6) A record of the procurement shall be made in accordance with the Utah Procurement Code and this Rule, including Rule R105-1-14.

[G-](7) 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-](8) Minimum scores for any of the criteria may be used.

R105-1-7. Small Purchases.

[A-](1) Small purchases shall be conducted in accordance with the requirements set forth in the Utah Procurement Code, Section 63G-6a-408, [Small Purchases shall be conducted in accordance with the Utah Procurement Code and] Rule R33-4-105 with the exception of subsection R33-4-105(3), and R33-4-106 through R33-4-107 [R33-4-104], [except that the] The maximum thresholds for small purchases shall be as described in this Rule R105-1-7. "Small Purchase" means a

procurement conducted by a procurement unit that does not require the use of a standard procurement process.

[B-](2) 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-](3) For the selection of litigation support services that are not covered under Rule R105-1-7([B]2), including but not limited to court reporting, litigation related copying and printing services, the small purchase maximum threshold is \$50,000. For a purchase of litigation support services that are not covered under Rule R105-1-7(2) between \$250 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 litigation support services that are not covered under Rule R105-1-7(2) of \$2500 or less, a direct award may be made.

[D-](4) 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-](5) 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-](1) Sole Source procurement shall be conducted in accordance with the requirements set forth in Section 63G-6a-802 of the Utah Procurement Code.

[B-](2) 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-](1) 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-](2) An emergency procurement is a procurement procedure where the Attorney General does not need to use a standard procurement process.

[C-](3) An emergency procurement may only be used when an emergency exists as defined in this Rule.

[D-](4) Emergency procurements are limited to those procurement items necessary to mitigate the emergency.

[E-](5) 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-](6) 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-](1)~~ Protected Records.

~~[1-](a)~~ 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-](i)~~ Trade Secrets, as defined in Section 13-24-2;

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

~~[e-](iii)~~ Other Protected Records under GRAMA.

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

~~[a-](i)~~ 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-](ii)~~ a concise statement of the reasons supporting each claimed provision of business confidentiality or as a protected record.

~~[e-](iii)~~ Pricing may not be classified as business confidential and will be considered public information.

~~[d-](iv)~~ 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-](v)~~ ~~The term "bid" or "proposal"~~~~[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-](2)~~ Notification.

~~[1-](a)~~ 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-](b)~~ 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-](c)~~ 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-](3)~~ Publicizing Awards.

~~[1-](a)~~ 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-](i)~~ 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-](ii)~~ unsuccessful proposals, except for those portions that are to be non-disclosed under this Rule or State law;

~~[e-](iii)~~ the rankings of the proposals;

~~[d-](iv)~~ the names of the members of any evaluation committee members (reviewing authority);

~~[e-](v)~~ 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-](vi)~~ the written justification statement supporting the selection, except for those portions that are to be non-disclosed under this Rule or State law.

~~[2-](b)~~ 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-](i)~~ the names of individual scorers/evaluators in relation to their individual scores or rankings;

~~[b-](ii)~~ any individual scorer's/evaluator's notes, drafts, and working documents;

~~[e-](iii)~~ non-public financial statements; and

~~[d-](iv)~~ 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-](c)~~ 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-](i)~~ the name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and

~~[b-](ii)~~ 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-](1)~~ The Attorney General shall not enter into a contract for outside counsel unless the ~~[following]~~ requirements of this Rule R105-1-11 are met throughout the contract period and any extensions~~[thereof].~~

~~[1-](2)~~ The Attorney General shall review the proposed fee arrangement to hire outside counsel to ensure that 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-](3) The Attorney General shall retain oversight and control over the course and conduct of the litigation or anticipated litigation.[]

[3-](4) The Attorney General shall designate a member of the Attorney General's Office to personally oversee the litigation.[]

[4-](5) 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-](6) The Attorney General shall be apprised of, attend and/or participate in all settlement offers or conferences.[] and]

[6-](7) 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-](8) Written Determination regarding using a Contingency Fee Contracts. [— 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:] The Attorney General may not enter into a contingent fee contract with outside counsel unless the Attorney General makes a written determination that the contingent fee contract is cost-effective and in the public interest. This written determination shall:

(a) be made before or within a reasonable time after the Attorney General enters into a contingent fee contract; and

(b) include specific findings regarding:

(i) whether sufficient and appropriate legal and financial resources exist in the Attorney General's office to handle the legal matter that is the subject of the contingent fee contract; and

(ii) the nature of the legal matter, unless information conveyed in the findings would violate an ethical responsibility of the Attorney General or a privilege held by the state.

(9) Contingency Fee Limit. The Attorney General may not enter into a contingent fee contract with outside counsel that provides for outside counsel to receive a contingent fee, exclusive of reasonable costs and expenses, that exceeds:

[— 1. 25 percent up to a total of \$25,000,000 recovered;

— 2. 10 percent for any amount in excess of \$25,000,000 recovered; and

— 3. A total maximum contingency fee paid by the State of Utah to not exceed \$50,000,000.

] (a) 25% of the amount recovered, if the amount recovered is no more than \$10,000,000;

(b) 25% of the first \$10,000,000 recovered, plus 20% of the amount recovered that exceeds \$10,000,000, if the amount recovered is over \$10,000,000 but no more than \$15,000,000;

(c) 25% of the first \$10,000,000 recovered, plus 20% of the next \$5,000,000 recovered, plus 15% of the amount recovered that exceeds \$15,000,000, if the amount recovered is over \$15,000,000 but no more than \$20,000,000; and

(d) 25% of the first \$10,000,000 recovered, plus 20% of the next \$5,000,000 recovered, plus 15% of the next \$5,000,000 recovered, plus 10% of the amount recovered that exceeds \$20,000,000, if the amount recovered is over \$20,000,000; or

(e) \$50,000,000.

[C-](10) Opt-out regarding Contingency Fee Contracts.

[+](a) [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.] A provision of a contingent fee contract that is inconsistent with a provision of this section is invalid unless, before the contract is executed, the contingent fee contract provision is approved by a majority of the Attorney General, state treasurer, and state auditor.

[D-](11) Exceptions regarding Contingency Fee Contracts: [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.

] (a) A contingent fee under a contingent fee contract may not be based on the imposition or amount of a penalty or civil fine.

(b) A contingent fee under a contingent fee contract may be paid only on amounts actually recovered by the state.

(c) Throughout the period covered by a contingent fee contract, including any extension of the contingent fee contract:

(i) outside counsel that is a party to the contingent fee contract shall acknowledge that the Attorney General retains complete control over the course and conduct of the contingent fee case for which outside counsel provides legal services under the contingent fee contract;

(ii) the Attorney General with supervisory authority shall oversee any litigation involved in the contingent fee case;

~~(iii) the Attorney General retains final authority over any pleading or other document that outside counsel submits to court;~~

~~(iv) an opposing party in a contingent fee case may contact the Attorney General directly, without having to confer with outside counsel;~~

~~(v) the Attorney General with supervisory authority over the contingent fee case may attend all settlement conferences; and~~

~~(vi) the outside counsel shall acknowledge that final approval regarding settlement of the contingent fee case is reserved exclusively to the discretion of the Attorney General.~~

~~(d) Nothing in Rule R105-1-11(11) may be construed to limit the authority of the client regarding the course, conduct, or settlement of the contingent fee case.~~

~~(12) Website Posting regarding Contingency Fee Contracts. Within five business days after entering into a contingent fee contract, the Attorney General shall post on the Attorney General's website:~~

~~(a) the contingent fee contract;~~

~~(b) the written determination under R105-1-11(8) relating to that contingent fee; and~~

~~(c) if applicable, any written determination made under Rule R105-1-6(3)(d) relating to that contingent fee contract.~~

~~(d) The Attorney General shall keep the contingent fee contract and written determination posted on the Attorney General's website throughout the term of the contingent fee contract.~~

~~(13) Contingency Fee Contract Records. The outside counsel that enters into a contingent fee contract with the Attorney General shall:~~

~~(a) from the time the contingent fee contract is entered into until three years after the contract expires, maintain detailed records relating to the legal services provided by outside counsel attorney under the contingent fee contract, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial that relate to the legal services provided by outside counsel; and~~

~~(b) maintain detailed contemporaneous time records for the outside counsel's attorneys and paralegals working on the contingent fee case and promptly provide the records to the Attorney General upon request.~~

~~(14) Exemption regarding Contingency Fee Contracts. Rule R105-1-11(8) through (13) as well as Rule R105-1-12(3) do not apply to:~~

~~(a) to a contingent fee contract in existence before May 12, 2015, or to any renewal or modification of a contingent fee contract in existence before that date;~~

~~(b) to a contingent fee contract with outside counsel that the Attorney General hires to collect a debt that the Attorney General is authorized by law to collect; and~~

~~(c) with respect to a contingent fee contract with outside counsel in a securities class action in which the state is appointed as lead plaintiff under Section 27(a)(3)(B)(i) of the Securities Act of 1933 or Section 21D(a)(3)(B)(i) of the Securities Exchange Act of 1934 or in which any state is a class representative, or in any other action in which the state is participating with one or more other states:~~

~~(i) apply only with respect to the state's share of any judgment, settlement amount, or common fund; and~~

~~(ii) do not apply to attorney fees awarded to outside counsel for representing other members of a class certified under Rule 23 of the Federal Rules of Civil Procedure or applicable state class action procedural rules.~~

~~[E-](5) 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-](1) 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-](2) Any payment by the Attorney General under a contingency fee contract shall be made available for public inspection in accordance with GRAMA.~~

~~[C-](3) [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 and is adequately assured of confidentiality through a confidentiality agreement or similar document.] After June 30 but on or before September 1 of each year, the Attorney General submit a written report to the president of the Senate and the speaker of the House of Representatives describing the Attorney General's use of contingent fee contracts with outside counsel during the fiscal year that ends the immediately preceding June 30.~~

~~(a) A report under Rule R105-1-12(3) shall identify:~~

~~(i) each contingent fee contract the Attorney General entered into during the fiscal year that ends the immediately preceding June 30; and~~

~~(ii) each contingent fee contract the Attorney General entered into during any earlier fiscal year if the contract remained in effect for any part of the fiscal year that ends the immediately preceding June 30.~~

~~(iii) state the name of the outside counsel that is a party to the contingent fee contract, including the name of the outside counsel's law firm if the outside counsel is an individual;~~

~~(iv) describe the nature of the legal matter that is the subject of the contingent fee contract, unless describing the nature of the legal matter would violate an ethical responsibility of the Attorney General or a privilege held by the state;~~

~~(v) identify the state agency which the outside counsel was engaged to represent or counsel;~~

~~(vi) state the total amount of attorney fees approved by the Attorney General for payment to an outside counsel for legal services under a contingent fee contract during the fiscal year that ends the immediately preceding June 30; and~~

~~(vii) be accompanied by each written determination under R105-1-11(8) and Rule R105-1-6(3)(d) made during the fiscal year that ends the immediately preceding June 30.~~

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-](1)~~ The final procurement documents issued by the Utah Attorney General;

~~[B-](2)~~ The provisions in documents submitted by the provider to the extent such provisions are accepted by the Attorney General;

~~[C-](3)~~ A termination for cause and a termination for convenience clause; and

~~[D-](4)~~ Any terms required by law, whether by the constitutions, statutes, or rules or regulations of the United States or the State of Utah.

(5) Nothing in this Rule regarding contingency fee contracts may be construed to expand the authority of a state department, division, or other agency to enter into a contract if that authority does not otherwise exist.

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

~~[A-](1)~~ 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-](2)~~ 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:

~~[+](a)~~ If applicable, a copy of all written determinations of the Attorney General required by the Utah Procurement Code or this Rule;

~~[2-](b)~~ A copy of the procurement documents and any written documentation related to notification requirements; and

~~[3-](c)~~ All responses to procurements and modifications, in writing, to any procurement if those modifications have been negotiated by the Attorney General.

~~[4-](d)~~ 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: ~~[March 26,] 2015~~

Authorizing, and Implemented or Interpreted Law: Art VII Sec 16; 67-5; 63G-6

Commerce, Occupational and
Professional Licensing
R156-20a
Environmental Health Scientist Act
Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39351

FILED: 05/07/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Environmental Health Scientist Board reviewed the rule and determined the following changes need to be made. Proposed amendments clarify the prelicensing education required for licensure. A new section is added to outline the factors that will be considered in evaluating for licensure an applicant who has criminal history.

SUMMARY OF THE RULE OR CHANGE: Section R156-20a-302 is added to define areas of consideration of good moral character as a qualification for licensure. In Section R156-20a-302a, the proposed amendments update the areas of education requirements which qualify for licensure.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-20a-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

♦ LOCAL GOVERNMENTS: The proposed amendments apply only to licensed environmental health scientists and environmental health scientists-in-training and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.

♦ SMALL BUSINESSES: The proposed amendments apply only to licensed environmental health scientists and environmental health scientists-in-training and applicants for licensure in those classifications. A licensed environmental health scientist is generally employed by a company or government entity rather than in an office owned by a licensee; however expansion of the opportunities for license qualification could positively impact small business. The Division is not able to determine an exact cost or saving impact due to the varying circumstances involving education requirements for licensure.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments apply only to licensed environmental health scientists and environmental health scientists-in-training and applicants for licensure in those classifications. The proposed amendments will expand potential opportunities for licensure to the benefit and safety of the public.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply only to licensed environmental health scientists and environmental health scientists-in-training and applicants for licensure in those classifications. The proposed amendments should have no increased compliance cost or impact for these persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this filing clarifies for prospective licensees the education that must be completed in order to qualify for licensure. In addition, it places prospective licensees on notice that their criminal history will be evaluated and may preclude licensure. Where this rule affects individuals seeking licensure, no fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Maria Skedros (Lohse) by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at mskedros@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 06/10/2015 09:30 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 464, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-20a. Environmental Health Scientist Act Rule.
R156-20a-302. Good Moral Character - Disqualifying Convictions.

(1) When reviewing an application to determine the good moral character of an applicant as set forth in Section 58-20a-302 and whether the applicant has been involved in unprofessional conduct as set forth in Subsection 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

(a) A criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 4 and Chapter 5a, and Title 76, Chapter 10, Part 12 and 13, may disqualify an applicant from becoming licensed.

(b) Other criminal history is relevant, including as to the following:

(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2 and 3;

(ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;

(iii) any offense involving controlled dangerous substances; or

(iv) conspiracy to commit or any attempt to commit any of the above offenses.

(2) An applicant who has a criminal conviction for a felony crime of violence may be considered ineligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(3) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of Section R156-1-302.

(6) A person whose moral character is subject to review under this Section R156-20a-302 is not guaranteed licensure after allowing a specified period of time to pass after conviction.

R156-20a-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-20a-302(1)(d), (2)(d) and (3)(d), an applicant shall satisfy the education requirement as follows:

(1) submit evidence of a bachelor's or master's degree from an environmental health program accredited by the National Environmental Health Science and Protection Accreditation Council (EHAC); or

(2) submit evidence of a bachelor's or master's degree from an accredited program in a college or university with major study in one of the following:

- (a) agronomy;
- (b) biology;
- (c) botany;
- (d) chemistry;
- (e) civil engineering;
- ~~(f) environmental health;~~
- ~~(g) environmental science;~~
- ~~(h) environmental studies;~~
- ~~([f]i) geology;~~
- ~~([g]i) microbiology;~~
- ~~([h]k) physics;~~
- ~~([i]l) physiology;~~
- ~~(j) public health science;~~
- ~~([k]m) sanitary engineering;~~
- ~~(n) science-based public health;~~
- ~~(o) sustainability studies; or~~

(3) submit evidence of a bachelor's or master's degree from an accredited program in a college or university including:

- (a) a college or university level algebra or math course;

and

(b) 30 semester hours or 45 quarter hours from at least three of the areas of study listed in Subsection (2).

KEY: **licensing, environmental health scientist, sanitarian, environmental health scientist-in-training**

Date of Enactment or Last Substantive Amendment: **[September 11, 2012]2015**

Notice of Continuation: **April 27, 2015**

Authorizing, and Implemented or Interpreted Law: **58-1-106(1)(a); 58-1-202(1)(a); 58-20a-101**

Commerce, Occupational and
Professional Licensing
R156-63a
Security Personnel Licensing Act
Contract Security Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39368

FILED: 05/14/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Security Services Licensing Board reviewed the rule and determined amendments need to be made to add provisions of federal code with regards to firearm prohibitions.

SUMMARY OF THE RULE OR CHANGE: In Section R156-63a-302f, the proposed amendments provide that an applicant who is in violation of 18 U.S.C. Chapter 44, 922(g)1-9 will be denied a license in accordance with federal code. In Section R156-63a-502, the proposed amendment adds as unprofessional conduct failing to report a violation of 18 U.S.C. Chapter 44, 922(g)1-9. In Section R156-63a-503, the proposed amendments update the title and add a minimum sanction that shall be imposed if a licensee fails to report a violation of federal code and Utah statutes identified in the rule. In Section R156-63a-607, the proposed amendments require licensees to notify the Division if they are in violation of 18 U.S.C. Chapter 44, 922(g)1-9 or Utah statutes identified in the rule. In Section R156-63a-613, the proposed amendments require licensees to notify their employing contract security company and the Division if they are in violation of 18 U.S.C Chapter 44, 922(g)1-9 or Utah statutes identified in the rule. Division note: It should be noted that the rule text for Section R156-63a-502 in this filing comes from an earlier proposed rule amendment filing also affecting this rule section, see DAR No. 39293.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-63-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

◆ **LOCAL GOVERNMENTS:** The proposed amendments apply only to licensed armed private security officers, contract security companies, and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** A small business that fails to qualify for licensure will be unable to operate with attendant fiscal losses. However, specific amounts cannot be estimated by the Division.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments apply only to licensed armed private security officers, contract security companies, and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply only to licensed armed private security officers, contract security companies, and applicants for licensure in those classifications. To comply, affected persons seeking licensure must ensure that they have the

necessary qualifications. Any associated costs will vary and are outside of the Division's control. Therefore, those costs cannot be estimated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing provides notice that certain criminal convictions and statutory violations preclude licensure of both individuals and business entities. A business that is precluded from licensure will be unable to operate and will therefore experience a fiscal impact. The amount of such impact cannot be estimated or anticipated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 COMMERCE
 OCCUPATIONAL AND PROFESSIONAL
 LICENSING
 HEBER M WELLS BLDG
 160 E 300 S
 SALT LAKE CITY, UT 84111-2316
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Jana Johansen by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at janajohansen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 06/16/2015 11:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 210 (second floor) Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2015

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-63a. Security Personnel Licensing Act Contract Security Rule.

R156-63a-302f. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-63-302(1)(h), (2)(c) and (3)(c), the following is a list of criminal convictions ~~which~~ that may disqualify a person from obtaining or holding an unarmed private security officer license, an armed private security officer license, or a contract security company license:

- (a) crimes against a person as defined in Title 76, Chapter 5, Part 1;
- (b) theft, including retail theft, as defined in Title 76;
- (c) larceny;
- (d) sex offenses as defined in Title 76, Chapter 5, Part 4;
- (e) any offense involving controlled dangerous substances;

- (f) fraud;
- (g) extortion;
- (h) treason;
- (i) forgery;
- (j) arson;
- (k) kidnapping;
- (l) perjury;
- (m) conspiracy to commit any of the offenses listed herein;
- (n) hijacking;
- (o) burglary;
- (p) escape from jail, prison, or custody;
- (q) false or bogus checks;
- (r) terrorist activities;
- (s) desertion;
- (t) pornography;
- (u) two or more convictions for driving under the influence of alcohol within the last three years; and
- (v) any attempt to commit any of the above offenses.

(2) ~~Where not automatically disqualified pursuant to Subsections 58-63-302(1)(a), (2)(c) and (3)(c), applications for licensure or renewal of licensure in which the applicant, or in the case of a contract security company, the officers, directors, and shareholders with 5% or more of the stock of the company, has a criminal background shall be considered on a case by case basis as defined in Section R156-1-302.] An applicant for initial licensure or license renewal as an armed private security officer may not be licensed if the applicant is in violation of:~~

- ~~(a) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;~~
- ~~(b) Utah Code Subsection 76-10-503(1); or~~
- ~~(c) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)(c).~~
- ~~(3)(a) Where the applicant is a contract security company the background of the following individuals shall be considered:~~
 - ~~(i) officers;~~
 - ~~(ii) directors; and~~
 - ~~(iii) shareholders with 5% or more of the stock of the company.~~

~~(b) Criminal history and statutory violations that do not automatically disqualify an applicant under statute or rule shall be considered on a case-by-case basis as defined in Section R156-1-302.~~

~~(4) An armed private security license shall be automatically revoked if the licensee is in violation of:~~

- ~~(a) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;~~
- ~~(b) Utah Code Subsection 76-10-503(1); or~~
- ~~(c) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)(c).~~

R156-63a-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

- (1) making any statement that would reasonably cause another person to believe that a private security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;
- (2) utilizing a vehicle with markings, lighting, and/or signal devices that imply or suggest that the vehicle is an authorized

emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310 and in Title R722, Chapter 340;

(3) utilizing a vehicle with an emergency lighting system that violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;

(4) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the unarmed or armed private security officer is connected with a federal, state, or municipal law enforcement agency;

(5) being incompetent or negligent as an unarmed private security officer, an armed private security officer, or a contract security company, so as to cause injury to a person or create an unreasonable risk that a person might be harmed;

(6) failing as a contract security company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees so as to place the public health and safety at risk;

(7) failing to immediately notify the Division of the cancellation of the contract security company's insurance policy;

(8) failing as a contract security company or an armed or unarmed private security officer to report a criminal offense pursuant to Section R156-63a-613; ~~and~~

(9) pursuant to Subsection R156-63a-612(3), failing as a contract security company or an armed private security officer to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)(c); and

(9)10 wearing a uniform, insignia, or badge, or displaying a license, that would lead a reasonable person to believe that an individual is connected with a contract security company, when not employed as an armed or unarmed private security officer by a contract security company.

R156-63a-503. Mandatory Sanctions - Administrative Penalties.

(1) The license of a contract security company or an armed private security officer shall be suspended for a period of time determined by the Board if the licensee fails to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)(c).

(2) In accordance with Subsection 58-63-503, the following citation fine schedule shall apply to citations issued under Title 58, Chapter 63:

.....

(2)3 Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-63-503(3)(h)(iii).

(3)4 If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4)5 An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5)6 The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-63a-607. Operating Standards - Criminal Status of Officer, Qualifying Agent, Director, Partner, Proprietor, Private Security Officer or Manager of Contract Security Companies.

(1) This subsection applies to any [in the event an] officer, qualifying agent, director, partner, proprietor, private security officer, or any management personnel having direct responsibility for managing operations of [the]a contract security company.[has a conviction entered regarding:]

(2) A person identified in this Subsection (1) may not participate at any level or capacity in the management, operations, sales, ownership, or employment of a contract security company if the person:

(a) has been convicted of:

([a]i) a felony;

([b]ii) a misdemeanor crime of moral turpitude; or

([e]iii) a crime that the Division and Board consider to constitute a risk to the public when considered with the functions and duties of an unarmed or armed private security officer; or [by the Division and Board indicates that the best interests of the public are not served, the company shall within ten days of the conviction or notice reorganize and exclude said individual from participating at any level or capacity in the management, operations, sales, ownership, or employment of that company.]

(b) has violated:

(i) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(ii) Utah Code Subsection 76-10-503(1); or

(iii) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)(c).

(3) A contract security company shall:

(a) within 10 calendar days of occurrence, report to the Division any event contemplated in Subsection (2) that occurs in regard to a person identified in Subsection (1); and

(b) take appropriate steps to ensure that company operations comply with this Subsection (2).

R156-63a-613. Operating Standards - Standards of Conduct.

(1) Licensee employed by a contract security company[?].

(a) ~~[p]~~Pursuant to Title 58, Chapter 63, a licensed armed or unarmed private security officer ~~[arrested, charged, or indicted for a criminal offense above the level of a Class C misdemeanor]~~ shall notify the licensee's employing contract security company within 72 hours of being:

(i) [the]arrested, charged, or [indictment;]indicted for any criminal offense above the level of a Class C misdemeanor; or

(ii) found in violation of:

(A) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(B) Utah Code Subsection 76-10-503(1); or
(C) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)
(c).

(b) [w]Within 72 hours after [such]receiving notification pursuant to this Subsection (1)(a)[by the employee], the employing contract security company shall notify the Division of the arrest, charge, [or]indictment, or violation.[in writing; and]

(c) [t]The written notification required under this Subsection (1)(b) shall include:

- (i) the employee's name[;];
- (ii) the name of the arresting agency, if applicable;
- (iii) the agency case number[;] or similar case identifier;
- (iv) the date of the arrest, charge, indictment, or violation;

and
(v) the nature of the criminal offense or violation.

(2) Licensee not employed by a contract security company[;].

(a) [p]Pursuant to Title 58, Chapter 63, a licensed armed or unarmed private security officer who is not employed by a contract security company shall directly notify the Division in writing within 72 hours of [any]being:

- (i) arrested, charged or [indictment]indicted for any crime above the level of a Class C misdemeanor;[and]or
- (ii) found to be in violation of:

(A) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(B) Utah Code Subsection 76-10-503(1); or
(C) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)
(c).

(b) [t]The written notification required under this Subsection (2)(a) shall meet the requirements of Subsection (1)(c).

KEY: licensing, security guards, private security officers
Date of Enactment or Last Substantive Amendment: 2015
Notice of Continuation: September 9, 2013
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-63-101

Commerce, Occupational and
Professional Licensing
R156-63b
Security Personnel Licensing Act
Armored Car Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 39369
FILED: 05/14/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Security Services Licensing Board reviewed the rule and determined amendments need to be made to add provisions of federal code with regards to firearm prohibitions.

SUMMARY OF THE RULE OR CHANGE: In Section R156-63b-302f, the proposed amendments provide that an applicant who is in violation of 18 U.S.C. Chapter 44, 922(g)1-9 will be denied a license in accordance with federal code. In Section R156-63b-502, the proposed amendment adds as unprofessional conduct failing to report a violation of 18 U.S.C. Chapter 44, 922(g)1-9. In Section R156-63b-503, the proposed amendments update the title and add a minimum sanction that shall be imposed if a licensee fails to report a violation of federal code and Utah statutes identified in the rule. In Section R156-63b-607, the proposed amendments require licensees to notify the Division if they are in violation of 18 U.S.C. Chapter 44, 922(g)1-9 or Utah statutes identified in the rule. In Section R156-63b-612, the proposed amendments require licensees to notify their employing armored car company and the Division if they are in violation of 18 U.S.C Chapter 44, 922(g)1-9 or Utah statutes identified in the rule. Division note: It should be noted that the rule text for Section R156-63b-502 in this filing comes from an earlier proposed rule amendment filing also affecting this rule section, see DAR No. 39294.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-63-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ◆ LOCAL GOVERNMENTS: The proposed amendments apply only to licensed armored car security officers, armored car companies, and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.
- ◆ SMALL BUSINESSES: A small business that fails to qualify for licensure will be unable to operate with attendant fiscal losses. However, specific amounts cannot be estimated by the Division.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments apply only to licensed armored car security officers, armored car companies, and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply only to licensed armored car security officers, armored car companies, and applicants for licensure in those classifications. To comply, affected persons seeking licensure must ensure that they have the necessary qualifications. Any associated costs will vary and are outside of the Division's control. Therefore, those costs cannot be estimated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing provides notice that certain criminal convictions and

statutory violations preclude licensure of both individuals and business entities. A business that is precluded from licensure will be unable to operate and will therefore experience a fiscal impact. The amount of such impact cannot be estimated or anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/15/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 06/16/2015 11:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 210, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/22/2015

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-63b. Security Personnel Licensing Act Armored Car Rule.

R156-63b-302g. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-63-302(1)(h) and (4)(c), the following is a list of criminal convictions ~~[which]~~that may disqualify a person from obtaining or holding an armored car security officer license, or an armored car company license:

- (a) crimes against a person as defined in Title 76, Chapter 5, Part 1;
- (b) theft, including retail theft, as defined in Title 76;
- (c) larceny;
- (d) sex offenses as defined in Title 76, Part 4;
- (e) any offense involving controlled dangerous substances;
- (f) fraud;
- (g) extortion;
- (h) treason;
- (i) forgery;
- (j) arson;
- (k) kidnapping;
- (l) perjury;

herein;

- (m) conspiracy to commit any of the offenses listed herein;
- (n) hijacking;
- (o) burglary;
- (p) escape from jail, prison, or custody;
- (q) false or bogus checks;
- (r) terrorist activities;
- (s) desertion;
- (t) pornography;
- (u) two or more convictions for driving under the influence of alcohol within the last three years; and
- (v) any attempt to commit any of the above offenses.

(2) ~~[Where not automatically disqualified pursuant to Subsections 58-63-302(1)(h) and (4)(c), applications for licensure or renewal of licensure in which the applicant, or in the case of an armored car company, the officers, directors, and shareholders with 5% or more of the stock of the company, has a criminal background shall be considered on a case by case basis as defined in Section R156-1-302.]An applicant for initial licensure or license renewal as an armored car security officer may not be licensed if the applicant is in violation of:~~

- ~~_____ (a) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;~~
- ~~_____ (b) Utah Code Subsection 76-10-503(1); or~~
- ~~_____ (c) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)(c).~~

~~(3)(a) Where the applicant is an armored car company, the background of the following individuals shall be considered:~~

- ~~_____ (i) officers;~~
- ~~_____ (ii) directors; and~~
- ~~_____ (iii) shareholders with 5% or more of the stock of the company.~~

~~_____ (b) Criminal history and statutory violations that do not automatically disqualify an applicant under statute or rule shall be considered on a case-by-case basis as defined in Section R156-1-302.~~

~~_____ (4) An armored car security officer license shall by automatically revoked if the licensee is in violation of:~~

- ~~_____ (a) any provision set forth in 18 U.S.C. chapter 44, 922(g)1-9;~~
- ~~_____ (b) Utah Code Subsection 76-10-503(1); or~~
- ~~_____ (c) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)(c).~~

R156-63b-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that an armored car security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) utilizing a vehicle with markings, lighting, and/or signal devices that imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310 and in Title R722, Chapter 340;

(3) utilizing a vehicle with an emergency lighting system that violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;

(4) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the armored car security officer is connected with a federal, state, or municipal law enforcement agency;

(5) being incompetent or negligent as an armored car security officer or as an armored car company so as to cause injury to a person or create an unreasonable risk that a person might be harmed;

(6) failing as an armored car company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees so as to place the public health and safety at risk;

(7) failing to immediately notify the Division of the cancellation of the armored car company's insurance policy;

(8) failing as an armored car company or an armored car security officer to report a criminal offense pursuant to Section R156-63b-612;

(9) pursuant to Subsection R156-63b-612(3), failing as an armored car company or an armored car security officer to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsection 58-63-302(1)(a), (2)(c), or (3)(c); and

(9)10 wearing a uniform, insignia, or badge, or displaying a license, that would lead a reasonable person to believe that an individual is connected with an armored car company, when not employed as an armored car security officer by an armored car company.

R156-63b-503. Mandatory Sanctions - Administrative Penalties.

(1) The license of an armored car company or an armored car security officer shall be suspended for a period of time determined by the Board if the licensee fails to report to the Division a violation of:

(a) any provision set forth in 18 U.S.C. chapter 44, 922(g)1-9;

(b) Utah Code Subsection 76-10-503(1); or

(c) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)(c).

(2) In accordance with Subsection 58-63-503, the following citation fine schedule shall apply to citations issued under Title 58, Chapter 63:

.....

(2)3 Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-63-503(3)(h)(iii).

(3)4 If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4)5 An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5)6 The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-63b-607. Operating Standards - Criminal Status of Officer, Qualifying Agent, Director, Partner, Proprietor, Armored Car Security Officer or Manager of Armored Car Companies.

(1) This subsection applies to any [In the event an-] officer, qualifying agent, director, partner, proprietor, armored car security officer, or any management personnel having direct responsibility for managing operations of the armored car company, [has a conviction entered regarding]

(2) A person identified in this Subsection (1) may not participate at any level or capacity in the management, operations, sales, ownership, or employment of an armored car security company if the person:

(a) has been convicted of:

(i) a felony;

(b)ii a misdemeanor crime of moral turpitude; or

(e)iii a crime that the Division and Board consider to constitute a risk to the public when considered with the duties and functions of an armored car security company officer; or [by the Division and the Board indicates that the best interests of the public are not served, the company shall within ten days of the conviction or notice reorganize and exclude said individual from participating at any level or capacity in the management, operations, sales, ownership, or employment of that company.]

(b) has violated:

(i) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(ii) Utah Code Subsection 76-10-503(1); or

(iii) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)(c).

(3) An armored car security company shall:

(a) within 10 calendar days of occurrence, report to the Division any event contemplated in Subsection (2) that occurs in regard to a person identified in Subsection (1); and

(b) take appropriate steps to ensure that company operations comply with this Subsection (2).

R156-63b-612. Operating Standards - Notification of Criminal Offense.

(1) Licensee employed by an armored car company[;].
(a) [p]Pursuant to Title 58, Chapter 63, a licensed armored car security officer [arrested, charged, or indicted for a criminal offense above the level of a Class C misdemeanor-] shall notify the licensee's employing [armored car]contract security company within 72 hours of being:

(i) [the-]arrested, charged, or [indictment;]indicted for any criminal offense above the level of a Class C misdemeanor; or

(ii) found in violation of:

(A) any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;

(B) Utah Code Subsection 76-10-503(1); or

(C) Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)(c).

(b) ~~[w]~~ Within 72 hours after ~~[such]~~ receiving notification pursuant to this Subsection (1)(a) ~~[by the employee]~~, the employing armored car company shall notify the Division of the arrest, charge, ~~[or] indictment, or violation, [in writing, and]~~

(c) ~~[t]~~ The written notification required under this Subsection (1)(b) shall include:

- ~~(i)~~ the employee's name~~[-];~~
 - ~~(ii)~~ the name of the arresting agency, if applicable;
 - ~~(iii)~~ the agency case number~~[-];~~ or similar case identifier;
 - ~~(iv)~~ the date of the arrest, charge, indictment, or violation;
- and
- ~~(v)~~ the nature of the criminal offense or violation.

(2) Licensee not employed by an armored car company~~[-];~~

(a) ~~[p]~~ Pursuant to Title 58, Chapter 63, a licensed armored car security officer who is not employed by a ~~[n]~~ ~~[armored car] contract security company~~ shall directly notify the Division in writing within 72 hours of ~~[any]~~ being:

- ~~(i)~~ arrested, charged or ~~[indictment]~~ indicted for any crime above the level of a Class C misdemeanor; [and] or
- ~~(ii)~~ found to be in violation of:
 - ~~(A)~~ any provision set forth in 18 U.S.C. Chapter 44, 922(g)1-9;
 - ~~(B)~~ Utah Code Subsection 76-10-503(1); or
 - ~~(C)~~ Utah Code Subsections 58-63-302(1)(a), (2)(c), or (3)

~~(c).~~

(b) ~~[t]~~ The written notification required under this Subsection (2)(a) shall meet the requirements of Subsection (1)(c).

KEY: licensing, security guards, armored car security officers, armored car company

Date of Enactment or Last Substantive Amendment: 2015

Notice of Continuation: September 9, 2013

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-63-101

Commerce, Occupational and Professional Licensing **R156-72-102** Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39343

FILED: 05/04/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Acupuncture Licensing Board reviewed the rule and determined the term "provision", as used in Subsection 58-72-102(4)(b)(ii), needs to be defined in the rule. Division note: The Division originally filed amendments to this rule section (R156-72-102) in DAR No. 39267 which was published in the May 1, 2015, Utah State Bulletin. However, the Division had inadvertently included the

wrong rule text of Section R156-71-202 in its 04/09/2015 filing and the error was not noticed until the Division reviewed the May 1, 2015, Utah State Bulletin. As a result of this error, a new filing with the correct rule number Section R156-72-102 and the rule text for Section R156-72-102 are now being filed on 05/04/2015.

SUMMARY OF THE RULE OR CHANGE: A new Subsection R156-72-102(7) was added to define "provision" as used in Subsection 58-7-2-102(4)(b)(ii).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-72-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ◆ LOCAL GOVERNMENTS: The proposed amendment applies only to licensed acupuncturists. As a result, the proposed amendments do not apply to local governments.
- ◆ SMALL BUSINESSES: The proposed amendment applies only to licensed acupuncturists. Licensees 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 licensed acupuncturists. The Division anticipates the proposed amendment will not result in additional encumbrances for any party beyond what is currently identified by statute and rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment applies only to licensed acupuncturists. The Division does not anticipate the proposed amendment will result in any increase in costs for those affected.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this filing defines the term "provision" in order to clarify a statutory provision. No fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ April Ellis by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at aprilellis@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 06/16/2015 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 402, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-72. Acupuncture Licensing Act Rule.
R156-72-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 72, as used in this rule:

(1) "Administration", as used in Subsection 58-72-102(4)(b)(ii), means the direct application of an herb, homeopathic, or supplement by ingestion, topical, inhalation, or acupoint injection therapy (AIT), to the body of a patient. Administration does not include: venous injections, immunizations, legend drugs and controlled substances.

(2) "Controlled substance" means a drug or substance as defined in Subsection 58-37-2(1)(f).

(3) "Legend drug" means a prescription drug as defined in Subsections 58-17b-102(30) and (61).

(4) "Insertion of acupuncture needles" means a procedure of acupuncture and oriental medicine which includes but is not limited to trigger point therapy, Ahshi points and dry needling techniques.

(5) "NCCAOM" means the National Commission for the Certification of Acupuncture and Oriental Medicine.

(6) "Modern research" means practicing according to acupuncture and oriental medicine training as recognized through NCCAOM.

(7) "Provision", as used in Subsection 58-72-102(4)(b)(ii), includes procurement of the substances listed in Subsection 58-72-102(4)(b)(ii).

KEY: acupuncture, licensing

Date of Enactment or Last Substantive Amendment: [February 10, 2014]2015

Notice of Continuation: October 20, 2011

Authorizing, and Implemented or Interpreted Law: 58-72-101; 58-1-106(1)(a); 58-1-202(1)(a)

**Commerce, Occupational and
Professional Licensing
R156-79
Hunting Guides and Outfitters
Licensing Act Rule**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39350

FILED: 05/07/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Hunting Guides and Outfitters Licensing Board reviewed the rule and determined the following changes need to be made. Proposed amendments delete the requirement for a high school education for hunting guide and/or outfitter applicants for licensure. Equivalent training requirements are updated for applicants for licensure.

SUMMARY OF THE RULE OR CHANGE: Section R156-79-302b is deleted in its entirety. The high school education requirement is being removed from the rule and the first aid and CPR (cardiopulmonary resuscitation) requirements are being moved to Section R156-79-302e. In Section R156-79-302e, the equivalent training requirements of this section will now include first aid and CPR requirements for licensure that were previously referenced in Section R156-79-302b.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-79-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

♦ **LOCAL GOVERNMENTS:** The proposed amendments apply only to licensed hunting guides and outfitters and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.

♦ **SMALL BUSINESSES:** The proposed amendments apply only to licensed hunting guides and outfitters and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business. An unquantifiable amount may be saved by potential employees receiving licensure more quickly due to not having to provide a high school diploma.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments apply only to licensed hunting guides and outfitters and applicants for licensure in those classifications. The Division does not anticipate any costs or savings for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply only to licensed hunting guides and outfitters and applicants for licensure in those classifications. An unquantifiable amount may be saved by potential employees receiving licensure more quickly due to not having to provide a high school diploma.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this filing reorganizes the rule for increased clarity and deletes existing language that requires an individual seeking licensure to submit a high school diploma as part of the application. Where this rule applies only to individuals seeking licensure, no fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 06/10/2015 09:30 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 464, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing, R156-79. Hunting Guides and Outfitters Licensing Act Rule. ~~[R156-79-302b. Qualifications for Licensure - Education Requirements.~~

~~(1) For the purposes of this rule, to show an applicant has successfully completed the basic education, any hunting guide or outfitter applicant shall provide the following:~~

- ~~(a) documentation of having obtained a high school diploma or its equivalent or a higher education degree; and~~
~~(b) documentation showing the completion of a first aid and CPR course.~~

[R156-79-302e. Qualifications for Licensure - Equivalent Training Requirements.

(1)(a) ~~[For the purposes of this rule, to show an applicant meets the training requirements as a hunting guide, the applicant shall produce the following]~~ An applicant for licensure as a hunting guide shall submit evidence of having successfully completed the following training:

- (i) a first aid and CPR course as required under Subsection R156-79-102(2); and

~~(a)ii(A) [documentation showing certification of completion of]~~ a basic hunting guide training program pursuant to Section R156-79-601; or

~~(b)B) [documentation of]~~ 100 days of on-the-job training that is substantially equivalent to the basic hunting guide training program.

~~(b)~~ No more than 15 days of on-the-job training may be accepted for any single item of training listed in Section R156-79-601.

~~(2)(a) [To show an applicant meets the training requirements as an outfitter, the applicant shall produce the following]~~ An applicant for licensure as an outfitter shall submit evidence of having successfully completed the following training:

- (i) a first aid and CPR course as required under Subsection R156-79-102(2); and

~~(a)ii(A) [documentation showing certification of completion of]~~ a basic outfitter training program pursuant to Section R156-79-602; or

~~(b)B) [documentation of]~~ 100 days of on-the-job training that is substantially equivalent to the basic outfitter training program.

~~(b)~~ No more than 15 days of on-the-job training may be accepted for any single item of training listed in Section R156-79-602.

~~(3) [The documentation required in Subsections (1)(b) and (2)(b) shall include]~~ An applicant shall document on-the-job training through:

(a) an affidavit by [either] a licensed hunting guide or outfitter, as applicable to the license sought, attesting to the on-the-job training [as a hunting guide or an outfitter] claimed by the applicant;

(b) for an outfitter who has been licensed in another state, self-authenticating guarantees of reliability, such as [include, but are not limited to]:

- (i) federal land agency records;
(ii) approved training program records; or
(iii) client affidavits or letters.

(4) Three days of on-the-job training may be waived by the Division in collaboration with the Board for every day of training completed by an applicant who has attended a hunting guide or outfitter school that, as of the date of attendance, has been approved by the Division in collaboration with the Board.

KEY: licensing, hunting guides, outfitters

Date of Enactment or Last Substantive Amendment: ~~[February 8, 2010]~~ 2015

Notice of Continuation: August 5, 2014

Authorizing, and Implemented or Interpreted Law: 58-79-101; 58-1-106(1)(a); 58-1-202(1)(a)

Communications Authority (Utah), 911
Committee (Utah)

R173-1

(Changed to R174-1)

Utah 911 Advisory Committee

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39406

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As of 07/01/2014, the Utah 911 Committee was moved from the Department of Public Safety (DPS) to the newly created Utah Communications Authority (UCA), Title R173. These changes occurred as a result of the enactment of H.B. 155 in the 2014 General Session. Further, as of 07/01/2015, H.B. 343 from the 2015 General Session grants rulemaking authority to the UCA Board. This proposed rule was approved by the UCA Board on 02/24/2015.

SUMMARY OF THE RULE OR CHANGE: The change moves the rule from Title R173 to R174. The purpose of this rule is to outline the operation of the 911 Advisory Committee and procedures whereby the committee shall recommend the award of funds for the establishment and maintenance of a statewide unified E-911 emergency system, as well as to establish the framework to provide grants from the Computer Aided Dispatch (CAD) Restricted Account.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63H-7a-204(11) and Subsection 63H-7a-302(5)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The rule does not have anticipated cost or savings to the state budget, as the change moves the rule to a new title and clarifies the application process for funds from the Computer Aided Dispatch (CAD) Restricted Account.

♦ LOCAL GOVERNMENTS: Committee members representing local governments will not be reimbursed for expenses incurred as a result of serving on the committee and those expenses must be born by their individual sponsoring entities. Local government may benefit through the awarding of grants to their 911 centers.

♦ SMALL BUSINESSES: The rule does not impact businesses with less than 50 employees as it governs only committee procedures.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The rule does not impact persons other than small businesses, businesses, or local government entities as it governs only committee procedures.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Expenses incurred by those serving on the Utah 911 Committee are born by their sponsoring entities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have any fiscal impact on businesses because it merely codifies the current practices used by the Utah 911 Advisory Committee for the application for and

award of grant funding from the Unified Statewide 911 Emergency Service Account and the Computer Aided Dispatch (CAD) Restricted Account established in Subsections 63H-7a-302(5) and 63H-7a-204(11).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMUNICATIONS AUTHORITY (UTAH)
911 COMMITTEE (UTAH)
5360 S RIDGE VILLAGE DRIVE
WEST VALLEY CITY, UT 84118-4100
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Eric Parry by phone at 801-857-5825, by FAX at 801-840-4242, or by Internet E-mail at eparry@uca911.org

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/13/2015

AUTHORIZED BY: Steven Proctor, Executive Director

~~[R173]~~**R174. Communications Authority Board (Utah), ~~911 Committee (Utah)~~ Administration.**

~~[R173]~~**R174-1. Utah 911 Advisory Committee.**

~~[R173]~~**R174-1-1. Purpose.**

The purpose of this rule is to outline the operation of the committee and procedures whereby the committee shall award funds to Public Safety Answering Points (PSAPs) and Dispatch Centers throughout the State of Utah for the establishment and maintenance of a statewide unified E-911 emergency system, and to establish the framework to provide grants from the Computer Aided Dispatch (CAD) Restricted Account.

~~[R173]~~**R174-1-2. Authority.**

This rule is authorized by [~~Subsections~~Section 63H-[7-303][7a-302(5)]], and [~~(6)~~Section 63H-7a-204(11)].

~~[R173]~~**R174-1-3. Definitions.**

(1) Definitions used in the rule are defined in Section 69-2-2.

(2) In addition:

(a) "~~[committee]~~" means the Utah 911 Committee established in Section 63H-7-103; applicant means a Public Safety Answering Point (PSAP) submitting a grant application;

(b) "Authority" means the Utah Communications Authority established in Section 67H-7a-201;

(c) "~~[fund]~~Board" means the [~~Unified Statewide 911 Emergency Service Account~~]Utah Communications Authority Board established in [~~Sections 63H-7-304 and 63-7-310~~]Section 67H-7a-203;

(d) "CAD2CAD Interface" means a component to share CAD data between disparate CAD systems on a statewide or regional basis;

(e) "committee" means the 911 Advisory Committee established in Section 63H-7a-307.

(f) "grant" means an appropriation of funds from the restricted Unified Statewide Emergency Service Account created in Section 63H-7a-304 or the Computer Aided Dispatch Restricted Account created in Section 63H-7a-303;

(g) "PSAP" means a public safety answering point as defined in Section 69-2-2(7).

(h) "Program" means the defined activities funded by the Unified Statewide 911 Emergency Service Account in Section 63H-7a-304(2) or the defined activities funded by the Computer Aided Dispatch Restricted Account in Section 63H-7a-303(2); and

(i) "State" means the state of Utah.

[R173]R174-1-4. Operation of the Committee.

(1)(a) A chairperson shall be elected as provided in Section 63H-7a-307(3)(a) at the first meeting of each calendar year.

(b) The committee shall also elect a vice-chairperson at that time to assist the chairperson with administrative duties.

(2)(a) The committee shall meet monthly unless circumstances otherwise dictate.

(b) Members of the committee may participate in the meeting by electronic means such as internet connection or a phone bridge.

[R173]R174-1-5. Grant Process.

(1)(a) A PSAP seeking a grant from the Unified Statewide 911 Emergency Service Account or the Computer Aided Dispatch Restricted Account shall make application to the committee using the Utah 911 Committee Grant Application [form]forms.

(b) The application shall must include:

(i) a description of all equipment or services that may be purchased with the grant;

(ii) a list of vendors and contractors who may be used to provide equipment or services;

(iii) evidence that the PSAP has used a competitive process when procuring equipment or services;

(iv) a complete narrative justifying the need for the grant;

(v) if applying for a grant from the Computer Aided Dispatch Restricted Account, a description of how the project fulfills the purposes outlined in 63H-7a-303;

(vi) a description of any other funding sources that may be used to pay for the acquisition of equipment, construction of facilities or services;

(vii) additional information as requested by the committee; and

(viii) the signature of the authorized agency official.

(2)(a) Any PSAP intending to apply for a grant shall submit a notice of intent to Agency staff prior to the beginning of the calendar year for consideration in the next budget cycle.

(b) PSAPs that submit a notice of intent may receive priority over PSAPs that do not submit a notice of intent prior to making a grant application.

(3)(a) The committee requires a 30-day review period to consider grant application submissions.

(i) In cases of extenuating circumstances, a PSAP may request that the committee shorten the 30-day review period and consider the application at its next regularly scheduled meeting.

(ii) The request for a shorter review period shall be made in writing, and explain the extenuating circumstances that justify the expedited consideration of the grant application.

(b) Following the 30-day review period, a representative from the PSAP making the application shall be present, in person or by electronic means, at the next regularly scheduled committee meeting to present the grant application.

(4) PSAPs in the third through sixth class counties may apply for grants that enhance 911 emergency services. The committee shall consider these applications on a case-by-case basis.

[R173]R174-1-6. Criteria for Determining Grant Eligibility.

(1) In order to be eligible for a grant, a PSAP shall comply with all of the requirements found in Title 63H Chapter 7a Part 3; Title 53, Chapter 10, Part 6; and Title 69, Chapter 2.

(2)(a) When determining which PSAPS may receive grants, the committee shall give priority to 911 projects that:

(b) enhance public safety by providing a statewide unified 911, unified 911 emergency system;

(c) include a maintenance package that extends the life of the 911 system;

(d) increase the value of the 911 system by ensuring compatibility with emerging technology;

(e) replace equipment [that]which is no longer reliable or functioning; and

(f) include a local share of funding according to the following formula:

(i) [PSAPS]PSAPs in a county of the first class that pay at least 30% of the total cost of the project;

(ii) [PSAPS]PSAPs in a county of the second class that pay at least 20% of the total cost of the project; and

(iii) [PSAPS]PSAPs in a county of the third through sixth class that pay up to 10% of the total cost of the project.

(3) Eligible CAD functional elements - Refer to Section R174-1-8, Attachment A -- Eligible CAD Functional Elements.

(a) In the case of an award from the Computer Aided Dispatch Restricted Account, PSAPs shall pay a grant match of 20% regardless of class.

(4) If a grant application includes equipment that utilizes geographical information systems or geo-positioning systems, the PSAP shall consult with the State Automated Geographic Reference Center (AGRC) in the Division of Integrated Technology of the Department of Technology Services.

(5) When economically feasible and advantageous to the individual PSAPs, the committee may negotiate with vendors on behalf of the PSAPs as a group.

(6) Where applicable, PSAPs shall provide evidence from the Bureau of Emergency Medical Services (BEMS) that they are a Designated Emergency Medical Dispatch Center.

[R173]R174-1-7. Awarding a Grant.

(1) The [decision]recommendation to award a grant shall be made by a majority vote of the committee.

(2) The committee may only [award]recommend grants for the purchase of equipment or the delivery of services in an amount [that]which is equal to, or less than, the amount that would be paid to a State vendor or contractor.

(3)(a) All grant awards shall be memorialized in a contract between the [committee]Authority and the grant recipient.

(b) Each contract shall include the following conditions:

(i) the state or local entity shall agree to participate in the statewide 911 data management system sponsored by the committee;

(ii) the grant may be used only for the purposes specified in the application; and

(iii) the grant shall be de-obligated if the state or local entity breaches the terms of the contract.

(4)(a) Unspent grant funds shall be automatically de-obligated within one year from the approval of the original grant.

(b) A PSAP may request a time extension to spend grant funds in extenuating circumstances.

(i) The request shall be made in writing and explain the extenuating circumstances that justify additional time to spend the grant funds.

(ii) The committee shall ~~approve or deny~~ recommend the ~~approval or denial of the~~ request by a majority vote.

R174-1-8. Attachment A -- Eligible CAD Functional Elements.

(i) Hardware: Servers and other hardware are eligible for full reimbursement when the equipment is required to support the core CAD functionality. New CAD required hardware that also supports associated functions such as Records Management Systems is eligible for reimbursement at the apportioned rate of documented use.

(ii) Software: CAD software fulfilling the core missions of call entry, address verification, unit recommendation, dispatching and tracking of units, and mapping. Eligible items include:

(a) Core System to support CAD (apportioned to actual cost of modules to support CAD)

(b) CAD application

(c) Geo-base address verification

(d) Mapping

(e) Automatic Vehicle Location

(f) Unit Recommendations or Response Plans

(g) E911 copy-over

(h) Interfaces to closely related 3rd party applications (medical/fire/police card system, fire department paging system, or UCJIS)

(i) Premise (apportioned at 50%)

(iii) Professional Services: (installation, configuration, etc.) apportioned for eligible items.

(iv) Maintenance: Ineligible other than CAD2CAD interface.

(v) Database Merging/Conversion: Eligible for CAD data merging/conversion, apportioned at 50% if RMS data is also included in the merge/conversion.

(vi) Ineligible software items include, but are not limited to:

(a) RMS related modules

(b) System dashboards or monitoring

(c) Aerial photography

(d) Equipment tracking

(e) Personnel tracking

(f) Imaging

(g) Pin-mapping or statistics packages

KEY: Utah Communications Authority, Utah 911 Advisory Committee

Date of Enactment or Last Substantive Amendment: ~~[May 6,] 2015~~

Authorizing, and Implemented or Interpreted Law: ~~63H-[7-302]7a-303; 63H-7a-304~~

**Education, Administration
R277-200
Utah Professional Practices Advisory
Commission (UPPAC), Definitions**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39382

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 345, Education Abuse Policy, 2015 General Session, changed the rulemaking authority from the Utah Professional Practices Advisory Commission (UPPAC) to the Utah State Board of Education (Board). Rule R277-200 is created in response to the legislation.

SUMMARY OF THE RULE OR CHANGE: All definitions for all Board rules regarding UPPAC duties and responsibilities are provided in Rule R277-200. The UPPAC rules under Title R686 are being repealed. (DAR NOTE: The proposed repeal of Rule R686-100 under DAR No. 39389, Rule R686-101 under DAR No. 39390, Rule R686-102 under DAR No. 39391, Rule R686-103 under DAR No. 39392, Rule R686-104 under DAR No. 39393, and Rule R686-105 under DAR No. 39394 are in this issue, June 1, 2015, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Section 53A-6-306 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: It is anticipated that there is likely no cost or savings to the state budget. Definitions in this rule are similar to definitions in UPPAC rules (Title R686).

◆ LOCAL GOVERNMENTS: It is anticipated that there is likely no cost or savings to local government. Definitions in this rule are similar to definitions in UPPAC rules (Title R686).

◆ SMALL BUSINESSES: It is anticipated that there is likely no cost or savings to small businesses. Definitions in this rule are similar to definitions in UPPAC rules (Title R686).

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is anticipated that there is likely no cost or savings to persons

other than small businesses, businesses, or local government entities. Definitions in this rule are similar to definitions in UPPAC rules (Title R686).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely no compliance costs for affected persons. Definitions in this rule are similar to definitions in UPPAC rules (Title R686).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

R277. Education, Administration.

R277-200. Utah Professional Practices Advisory Commission (UPPAC), Definitions.

R277-200-1. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish definitions for terms in UPPAC activities.

C. The definitions contained in this rule apply to rules R277-200 through R277-206. Any calculation of time called for by these rules shall be governed by Utah R. Civ. P. 6.

R277-200-2. Definitions.

A(1) "Action" means a disciplinary action taken by the Board adversely affecting an educator's license.

(2) "Action" does not include a disciplinary letter.

(3) "Action" includes:

(a) a letter of reprimand;

(b) probation;

(c) suspension; and

(d) revocation.

B. "Administrative hearing" or "hearing" has the same meaning as that term is defined in Section 53A-6-601.

C. "Alcohol related offense" means:

(1) driving under the influence;

(2) alcohol-related reckless driving or impaired driving;

(3) intoxication;

(4) driving with an open container;

(5) unlawful sale or supply of alcohol;

(6) unlawful permitting of consumption of alcohol by minors;

(7) driving in violation of an alcohol or interlock restriction; and

(8) any offense under the laws of another state that is substantially equivalent to the offenses described in R277-200-2C(1) through (7).

D. "Allegation of misconduct" means a written report alleging that an educator:

(1) has engaged in unprofessional or criminal conduct;

(2) is unfit for duty;

(3) has lost the educator's license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or

(4) has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in R277-515.

E. "Answer" means a written response to a complaint filed by USOE alleging educator misconduct.

F. "Applicant" means a person seeking:

(1) a new license;

(2) reinstatement of an expired, surrendered, suspended, or revoked license; or

(3) clearance of a criminal background review from USOE at any stage of the licensing process.

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

H. "Chair" means the Chair of UPPAC.

I. "Complaint" means a written allegation or charge against an educator filed by USOE against the educator.

J. "Complainant" means the Utah State Office of Education.

K. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file developed by the USOE and maintained on all licensed Utah educators.

L(1) "Conviction" means the final disposition of a judicial action for a criminal offense, except in cases of a dismissal on the merits.

(2) "Conviction" includes:

(a) a finding of guilty by a judge or jury;

(b) a guilty or no contest plea;

(c) a plea in abeyance; and

(d) for purposes of this rule, a conviction that has been expunged.

M. "Criminal Background Review" means the process by which the Executive Secretary, UPPAC, and the Board review information pertinent to:

(1) a charge revealed by a criminal background check;

_____ (2) a charge revealed by a hit as a result of ongoing monitoring; or

_____ (3) an educator or applicant's self-disclosure.

_____ N(1) "Disciplinary letter" means a letter issued to a respondent by the Board as a result of an investigation into an allegation of educator misconduct.

_____ (2) "Disciplinary letter" includes:

_____ (1) a letter of admonishment;

_____ (2) a letter of warning; and

_____ (3) any other action that the Board takes to discipline an educator for educator misconduct that does not rise to the level of an action as defined in this R277-200-2.

_____ O. "Drug" means controlled substance as defined in Section 58-37-2.

_____ P. "Drug related offense" means any criminal offense under:

_____ (1) Title 58, Chapter 37;

_____ (2) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

_____ (3) Title 58, Chapter 37b, Imitation Controlled Substances Act;

_____ (4) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;

_____ (5) Title 58, Chapter 37d, Clandestine Drug Lab Act; and

_____ (6) Title 58, Chapter 37e, Drug Dealer's Liability Act.

_____ Sections 58-37 through 37e.

_____ Q. "Educator" means a person:

_____ (1) who currently holds a license;

_____ (2) who held a license at the time of an alleged offense;

_____ (3) is a person who is student teaching in anticipation of seeking a license;

_____ (4) is an applicant for a license;

_____ (5) is a licensure candidate through the Alternate Route to Licensure, "ARL," program; or

_____ (6) who has applied to the Alternate Route to Licensure, "ARL" program.

_____ R. "Educator Misconduct" means:

_____ (1) unprofessional or criminal conduct;

_____ (2) conduct that renders an educator unfit for duty; or

_____ (3) conduct that is a violation of standards of ethical conduct, performance, or professional competence as provided in R277-515.

_____ S. "Executive Committee" means a subcommittee of UPPAC consisting of the following members:

_____ (1) Executive Secretary;

_____ (2) Chair;

_____ (3) Vice-Chair; and

_____ (4) one member of UPPAC at large.

_____ T. "Executive Secretary" means an employee of USOE who:

_____ (1) is appointed by the State Superintendent of Public Instruction to serve as the UPPAC Director; and

_____ (2) serves as a non-voting member of UPPAC, consistent with Section 53A-6-302.

_____ U. "Expedited Hearing" means an informal hearing aimed at determining an Educator's fitness to remain in the classroom held as soon as possible following an arrest, citation, or charge for a criminal offense requiring mandatory self-reporting under R277-516-3.

_____ V. "Expedited Hearing Panel" means a panel of the following three members:

_____ (1) the Executive Secretary;

_____ (2) a voting member of UPPAC; and

_____ (3) a UPPAC prosecutor.

_____ W. "Final action" means an action by the Board that concludes an investigation of an allegation of misconduct against a licensed educator.

_____ X. "GRAMA" refers to the Government Records Access and Management Act, Title 63G, Chapter 2, Government Records Access and Management Act.

_____ Y. "Hearing officer" means a licensed attorney who:

_____ (1) is experienced in matters relating to administrative procedures;

_____ (2) is appointed by the Executive Secretary to manage the proceedings of a hearing;

_____ (3) is not an acting member of UPPAC;

_____ (4) has authority, subject to the limitations of these rules, to regulate the course of the hearing and dispose of procedural requests; and

_____ (5) does not have a vote as to the recommended disposition of a case.

_____ Z. "Hearing panel" means a panel of three or more individuals designated to:

_____ (1) hear evidence presented at a hearing;

_____ (2) make a recommendation to UPPAC as to disposition; and

_____ (3) collaborate with the hearing officer in preparing a hearing report.

_____ AA. "Hearing report" means a report that:

_____ (1) is prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing; and

_____ (2) includes:

_____ (a) a recommended disposition;

_____ (b) detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent; and

_____ (c) applicable law and rule.

_____ BB. "Informant" means a person who submits information to UPPAC concerning the alleged misconduct of an educator.

_____ CC. "Investigator" means an employee of the USOE, or independent investigator selected by the Board, who:

_____ (1) is assigned to investigate allegations of educator misconduct under UPPAC supervision;

_____ (2) offers recommendations of educator discipline to UPPAC and the Board at the conclusion of the investigation;

_____ (3) provides an independent investigative report for UPPAC and the Board; and

_____ (4) may also be the prosecutor but does not have to be.

_____ DD. "Investigative report" means a written report of an investigation into allegations of educator misconduct, prepared by an Investigator that:

_____ (1) includes a brief summary of the allegations, the investigator's narrative, and a recommendation for UPPAC and the Board;

_____ (2) may include a rationale for the recommendation, and mitigating and aggravating circumstances;

_____ (3) is maintained in the UPPAC Case File; and
_____ (4) is classified as protected under Section 63G-2-305(34).

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

FF. "Letter of admonishment" is a letter sent by the Board to an educator cautioning the educator to avoid or take specific actions in the future.

GG. "Letter of reprimand" is a letter sent by the Board to an educator:

_____ (1) for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting more serious discipline;

_____ (2) that provides specific directives to the educator as a condition for removal of the letter;

_____ (3) appears as a notation on the educator's CACTUS file; and

_____ (4) that an educator can request to be removed from the educator's CACTUS file after two years, or after such other time period as the Board may prescribe in the letter of reprimand.

HH. "Letter of warning" is a letter sent by the Board to an educator:

_____ (1) for misconduct that was inappropriate or unethical; and

_____ (2) that does not warrant longer term or more serious discipline.

II. "License" means a teaching or administrative credential, including an endorsement, which is issued by the Board to signify authorization for the person holding the license to provide professional services in Utah's public schools.

JJ. "Licensed educator" means an individual issued a teaching or administrative credential, including an endorsement, issued by the Board to signify authorization for the individual holding the license to provide professional services in Utah's public schools.

KK. "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for the members of NASDTEC regarding persons whose licenses have been suspended or revoked.

LL. "Notification of Alleged Educator Misconduct" means the official UPPAC form that may be accessed on UPPAC's internet website, and may be submitted by any person, school, or LEA that alleges educator misconduct.

MM. "Party" means a complainant or a respondent.

NN. "Petitioner" means an individual seeking:

_____ (1) an educator license following a denial of a license;

_____ (2) reinstatement following a license suspension; or in the event of compelling circumstances, reinstatement following a license revocation.

OO. "Probation" is an action directed by the Board that:

_____ (1) involves monitoring or supervision for a designated time period, usually accompanied by a disciplinary letter;

_____ (2) may require the educator to be subject to additional monitoring by an identified person or entity;

_____ (3) may require the educator to be asked to satisfy certain conditions in order to have the probation lifted;

_____ (4) may be accompanied by a letter of reprimand, which shall appear as a notation on the educator's CACTUS file; and

_____ (5) unless otherwise specified, lasts at least two years and may be terminated through a formal petition to the Board by the respondent.

PP. "Prosecutor" means an attorney who:

_____ (1) is designated by the Superintendent to represent the complainant and present evidence in support of the complaint; and

_____ (2) may also be the investigator, but does not have to be.

QQ. "Revocation" means a permanent invalidation of a Utah educator license consistent with R277-517.

RR. "Respondent" means an educator against whom:

_____ (1) a complaint is filed; or

_____ (2) an investigation is undertaken.

SS. "Serve" or "service," as used to refer to the provision of notice to a person, means:

_____ (1) delivery of a written document or its contents to the person or persons in question; and

_____ (2) delivery that may be made in person, by mail, by electronic correspondence, or by any other means reasonably calculated, under all of the circumstances, to notify an interested person or persons to the extent reasonably practical or practicable of the information contained in the document.

TT. "Stipulated agreement" means an agreement between a respondent and the Board:

_____ (1) under which disciplinary action is taken against the educator in lieu of a hearing;

_____ (2) that may be negotiated between the parties and becomes binding:

_____ (a) when approved by the Board; and

_____ (b) at any time after an investigative letter has been sent;

_____ (3) is a public document under GRAMA unless it contains specific information that requires redaction or separate classification of the agreement.

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

VV(1) "Suspension" means an invalidation of a Utah educator license.

_____ (2) "Suspension" may:

_____ (a) include specific conditions that an educator must satisfy; and

_____ (b) may identify a minimum time period that must elapse before the educator may request a reinstatement hearing before UPPAC.

WW. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, established in Section 53A-6-301.

XX. "UPPAC Background Check File" means a file maintained securely by UPPAC on a criminal background review that:

_____ (1) contains information obtained from:

_____ (a) BCI; and

(b) letters, police reports, court documents, and other materials as provided by an educator; and

(2) is classified as private under Section 63G-2-302(2).

YY. "UPPAC Case File" means a file:

(1) maintained securely by UPPAC on an investigation into educator misconduct;

(2) opened following UPPAC's direction to investigate alleged misconduct;

(3) that contains the original notification of misconduct with supporting documentation, correspondence with the Executive Secretary, the investigative report, the stipulated agreement, the hearing report, and the final disposition of the case;

(4) that is classified as protected under Section 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

(5) that after a case proceeding is closed, is considered public under GRAMA, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA, in which case the file may be redacted or partially or fully restricted.

ZZ. "UPPAC Evidence File" means a file:

(1) maintained by the attorney assigned by UPPAC to investigate a case containing materials, written or otherwise, obtained by the UPPAC investigator during the course of the attorney's investigation;

(2) that contains correspondence between the Investigator and the educator or the educator's counsel;

(3) that is classified as protected under Section 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

(4) that is considered public under GRAMA after case proceedings are closed, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA.

AAA. "UPPAC investigative letter" means a letter sent by UPPAC to an educator notifying the educator that an allegation of misconduct has been received against him and that UPPAC or the Board has directed that an investigation of the educator's alleged actions take place.

BBB. "UPPAC Prosecutor File" means a file:

(1) that is kept by the attorney assigned by UPPAC to investigate and/or prosecute a case that contains:

(a) the attorney's notes prepared in the course of investigation; and

(b) other documents prepared by the attorney in anticipation of an eventual hearing; and

(2) that is classified as protected pursuant to Section 63G-2-305(18).

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

KEY: professional practices, definitions, educators

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

Education, Administration R277-201

Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39383

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 345, Education Abuse Policy, 2015 General Session, changed the rulemaking authority from the Utah Professional Practices Advisory Commission (UPPAC) to the Utah State Board of Education. Rule R277-201 is created in response to the legislation and because UPPAC rules (Title R686) are being repealed. (DAR NOTE: The proposed repeal of Rule R686-100 under DAR No. 39389, Rule R686-101 under DAR No. 39390, Rule R686-102 under DAR No. 39391, Rule R686-103 under DAR No. 39392, Rule R686-104 under DAR No. 39393, and Rule R686-105 under DAR No. 39394 are in this issue, June 1, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-201 provides procedures regarding notifications of alleged educator misconduct; review of notifications by UPPAC; and procedures regarding complaints, stipulated agreements, and defaults.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Section 53A-6-306 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: It is anticipated that there is likely no cost or savings to the state budget. Procedures in this rule are similar to procedures in Rule R686-100.

♦ LOCAL GOVERNMENTS: It is anticipated that there is likely no cost or savings to local government. Procedures in this rule are similar to procedures in Rule R686-100.

♦ SMALL BUSINESSES: It is anticipated that there is likely no cost or savings to small businesses. Procedures in this rule are similar to procedures in Rule R686-100.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is anticipated that there is likely no cost or savings to persons other than small businesses, businesses, or local government entities. Procedures in this rule are similar to procedures in Rule R686-100.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely no compliance costs for affected persons. Procedures in this rule are similar to procedures in Rule R686-100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

R277. Education, Administration.

R277-201. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.

R277-201-1. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide procedures regarding:

- (1) notifications of alleged educator misconduct;
- (2) review of notifications by UPPAC; and
- (3) complaints, stipulated agreement and defaults.

C. Except as provided in R277-201-1D, the provisions of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d).

D. UPPAC may invoke and use sections or provisions of the Utah Administrative Procedures Act as found in Title 63G, Chapter 4, Utah Administrative Procedures Act, as necessary to adjudicate an issue.

R277-201-2. Initiating Proceedings Against Educators.

A. The Executive Secretary may refer a case to UPPAC to make a determination if an investigation should be opened regarding an educator:

(1) upon receiving a notification of alleged educator misconduct; or

(2) upon the Executive Secretary's own initiative.

B. An informant shall submit an allegation to the Executive Secretary in writing, including the following:

(1) the informant's:

(a) name;

(b) position (such as administrator, teacher, parent, student);

(c) telephone number;

(d) address; and

(e) contact information;

(2) the following information of the educator against whom the allegation is made:

(a) name;

(b) position (such as administrator, teacher, candidate); and

(c) if known, the address and telephone number of the educator against whom the allegation is made;

(d) the facts on which the allegation is based and supporting information; and

(e) signature of the informant and date.

C. If an informant submits a written allegation of misconduct as provided in this rule, the informant may be notified of a final action taken by the Board regarding the allegation.

D(1) Proceedings initiated upon the Executive Secretary's own initiative may be based on information received through a telephone call, letter, newspaper article, media information, notice from another state or by other means.

(2) The Executive Secretary may also recommend an investigation based on an anonymous allegation, notwithstanding the provisions of this rule, if the allegation bears sufficient indicia of reliability.

E. All written allegations, subsequent dismissals, actions, or disciplinary letters related to a case against an educator shall be maintained permanently in UPPAC's paper licensing files.

R277-201-3. Review of Notification of Alleged Educator Misconduct.

A. Initial Review: On reviewing the notification of alleged educator misconduct, the Executive Secretary, the Executive Committee, or both, shall recommend one of the following to UPPAC:

(1) Dismiss: If UPPAC determines that alleged misconduct does not involve an issue that UPPAC should address, UPPAC shall dismiss the matter; or

(2) Initiate an investigation: If UPPAC determines that the alleged misconduct involves an issue which may be appropriately addressed by UPPAC and the Board:

(a) UPPAC shall initiate an investigation; and

(b) the Executive Secretary shall direct a UPPAC investigator to gather evidence relating to the allegations.

B(1) Prior to a UPPAC investigator's initiation of an investigation, the Executive Secretary shall send a letter to the following with information that an investigation has been initiated:

- (a) the educator to be investigated;
- (b) the LEA that currently employs the educator; and
- (c) the LEA where the alleged activity occurred.

(2) A letter described in R277-201-3B(1) shall inform the educator and the LEA(s) that an investigation shall take place and is not evidence of unprofessional conduct.

(3) UPPAC shall place a flag on the educator's CACTUS file after sending the notices as provided in this rule.

C(1) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.

(2) The investigator shall prepare an investigative report of the findings of the investigation and a recommendation for appropriate action or disciplinary letter.

(3) If the investigator discovers additional evidence of unprofessional conduct which could have been included in the original notification of alleged educator misconduct, the investigator may include the additional evidence of misconduct in the investigative report.

(4) The investigative report shall be submitted to the Executive Secretary.

(5) The Executive Secretary shall review the investigative report described in R277-201-3C(4) with UPPAC.

(6) The investigative report described in R277-201-3C(4) shall become part of the UPPAC Case File.

D. Secondary Review: UPPAC shall review the investigative report and take one of the following actions:

(1) Dismiss: If UPPAC determines no further action should be taken, it may recommend that the Board dismiss the case; or

(2) Make an initial recommendation of appropriate Action or disciplinary letter.

E. After receiving an initial recommendation from UPPAC for action, the Executive Secretary shall direct a UPPAC prosecutor to:

- (1) prepare and serve a complaint; or
- (2) negotiate and prepare a stipulated agreement.

F(1) A stipulated agreement shall conform to the requirements set forth in R277-201-6.

(2) An educator may stipulate to any recommended disposition for an action.

G. The Executive Secretary shall forward any stipulated agreement to the Board for approval.

H. Upon receipt of a hearing report as defined in R277-202, UPPAC shall make a final recommendation with appropriate findings and shall direct the Executive Secretary to transmit the recommendation to the Board for consideration.

R277-201-4. Expedited Hearings.

A. In a case involving the report of an arrest, citation, or charge of a licensed educator, which requires self-reporting by the educator under R277-516-3, the Executive Secretary, with the consent of the educator, may schedule the matter for an expedited hearing in lieu of initially referring the matter to UPPAC.

B(1) an expedited hearing shall be held within thirty (30) days of a report of an arrest, citation, or charge, unless otherwise agreed upon by both parties.

(2) An expedited hearing will be conducted by the Executive Secretary or the Executive Secretary's designee with the following additional invited participants:

- (a) the educator;
- (2) the educator's attorney or representative;
- (3) a UPPAC prosecutor;
- (4) a voting member of UPPAC; and
- (5) representative(s) of the educator's LEA.

C. The following matters may be considered at an expedited hearing:

- (1) an educator's oral or written explanation of the events;
- (2) a police report;
- (3) a court docket or transcript;
- (4) an LEA's investigative report or employment file; and
- (5) additional information offered by the educator if the panel deems it probative of the issues at the Expedited Hearing.

D. After reviewing the evidence, the expedited hearing panel shall make written findings and a recommendation to UPPAC to do one of the following:

- (1) close the case;
- (2) close the case upon completion of court requirements;
- (3) recommend issuance of a disciplinary letter to the Board;

(4) open a full investigation; or

(5) recommend action by the Board, subject to an educator's due process rights under these rules.

E. An expedited hearing may be recorded, but the testimony from the expedited hearing is inadmissible during a future UPPAC action related to the allegation.

F. If the Board fails to adopt the recommendation of an expedited hearing panel, UPPAC shall open a full investigation.

R277-201-5. Complaints.

A. Filing a complaint: If UPPAC determines that an allegation is sufficiently supported by evidence discovered in the investigation, UPPAC, through the Executive Secretary, may direct the prosecutor to serve a complaint upon the educator being investigated.

B. Elements of a complaint: At a minimum, a complaint shall include:

(1) a statement of legal authority and jurisdiction under which the action is being taken;

(2) a statement of the facts and allegations upon which the complaint is based;

(3) other information which the investigator believes to be necessary to enable the respondent to understand and address the allegations;

(4) a statement of the potential consequences should an allegation be found to be true or substantially true;

(5) a statement that the respondent shall answer the complaint and request a hearing, if desired, within 30 days of the date the complaint was mailed to the respondent;

(6) a statement that the respondent is required to file a written answer described in R277-201-5B(5) with the Executive Secretary;

(7) a statement advising the respondent that if the respondent fails to respond within 30 days, a default judgment for revocation or a suspension of the educator's license may occur for a term of five years or more;

(8) a statement that, if a hearing is requested, the hearing shall be scheduled no less than 25 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing; and

(9) a statement that the hearing will be governed by these rules, with an internet address where the rules may be accessed.

C. On the Executive Secretary's own motion, the Executive Secretary, or the Executive Secretary's designee, with notice to the parties, may reschedule a hearing date.

D(1) Answer to the complaint: A respondent may file an answer to a complaint by filing a written response signed by the respondent, or the respondent's representative with the Executive Secretary within 30 days after the complaint was mailed.

(2) The answer may include a request for a hearing, and shall include:

(a) the file number of the complaint;

(b) the names of the parties;

(c) a statement of the relief that the respondent seeks; and

(d) if not requesting a hearing, a statement of the reasons that the relief requested should be granted.

E(1) As soon as reasonably practicable after receiving an answer, or no more than 30 days after receipt of an answer at the USOE, the Executive Secretary shall schedule a hearing, if requested, as provided in R277-202.

(2) If the parties can reach an agreement prior to the hearing consistent with the terms of UPPAC's initial recommendation, the prosecutor may negotiate a stipulated agreement with the respondent.

(3) A stipulated agreement described in R277-201-5E(2) shall be submitted to the Board for the Board's final approval.

F(1) Default: If a respondent does not respond to the complaint within 30 days, the Executive Secretary may initiate default proceedings in accordance with the procedures set forth in R277-201-7.

(2) Except as provided in R277-201-7C, if the Executive Secretary enters an order of default, the Executive Secretary shall make a recommendation to the Board for a revocation or a suspension of the educator's license for five years before the educator may request a reinstatement hearing.

(3) If a default results in a suspension, a default may include conditions that an educator shall satisfy before the educator may qualify for a reinstatement hearing.

(4) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Section 53A-6-501(5)(b).

R277-201-6. Stipulated Agreements.

A. At any time after UPPAC has made an initial recommendation, a respondent may accept UPPAC's initial recommendation, rather than request a hearing, by entering into a stipulated agreement.

B. By entering into a stipulated agreement, a respondent waives the respondent's right to a hearing to contest the recommended disposition, contingent on final approval by the Board.

C. Elements of a stipulated agreement: At a minimum, a stipulated agreement shall include:

(1) a summary of the facts, the allegations, and the evidence relied upon by UPPAC in its recommendation;

(2) a statement that the respondent admits the facts recited in the stipulated agreement as true for purposes of the Board administrative action;

(3) a statement that the respondent:

(a) waives the respondent's right to a hearing to contest the allegations that gave rise to the investigation; and

(b) agrees to limitations on the respondent's license or surrenders the respondent's license rather than contest the allegations;

(4) a statement that the respondent agrees to the terms of the stipulated agreement and other provisions applicable to the case, such as remediation, counseling, restitution, rehabilitation, and other conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the letter of reprimand or termination of probation;

(5) if for suspension or revocation of a license, a statement that the respondent:

(a) may not seek or provide professional services in a public school in Utah;

(b) may not seek to obtain or use an educator license in Utah; or

(c) may not work or volunteer in a public K-12 setting in any capacity without express authorization from the UPPAC Executive Secretary, unless or until the respondent:

(i) first obtains a valid educator license or authorization from the Board to obtain such a license; or

(ii) satisfies other provisions provided in the stipulated agreement;

(6) a statement that the action and the stipulated agreement shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;

(7) a statement that respondent waives the respondent's right to contest the facts stated in the stipulated agreement at a subsequent reinstatement hearing, if any;

(8) a statement that all records related to the stipulated agreement shall remain permanently in the UPPAC case file; and

(9) a statement reflecting the stipulated agreement's classification under GRAMA.

D. A violation of the terms of a stipulated agreement may result in additional disciplinary action and may affect the reinstatement process.

E(1) A stipulated agreement shall be forwarded to the Board for approval prior to execution by the respondent.

(2) If the Board fails to approve the stipulated agreement, the Executive Secretary shall notify the parties of the decision and the proceedings shall continue from the point under these procedures at which the stipulated agreement was negotiated, as if the stipulated agreement had not been submitted.

(3) Alternatively, if the Board rejects the stipulated agreement, it may provide alternative terms to the Executive Secretary, which would be satisfactory to the Board.

(4) If accepted by the respondent, the stipulated agreement, as modified, would become a final Board administrative action without further Board consideration.

(5) If the terms approved by the Board are rejected, the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the stipulated agreement had not been submitted.

(6) If the Board approves a stipulated agreement, the approval is a final Board administrative action, effective upon signature by all parties, and the Executive Secretary shall:

(a) notify the parties of the decision; and

(b) direct the appropriate penalties to begin.

F. If, after negotiating a stipulated agreement, a respondent fails to sign or respond to a proffered stipulated agreement within 30 days after the stipulated agreement is mailed, the Executive Secretary shall direct the prosecutor to prepare findings in default consistent with R277-201-7.

R277-201-7. Default Procedures.

A. If a respondent does not respond to a complaint or a stipulated agreement within 30 days from the date the complaint or stipulated agreement is served, the Executive Secretary may issue an order of default against respondent consistent with the following:

(1) the prosecutor shall prepare and serve on the respondent an order of default including:

(a) a statement of the grounds for default; and

(b) a recommended disposition if respondent fails to file a response to a complaint or respond to a proffered stipulated agreement;

(2) ten (10) days following service of the order of default, the prosecutor shall attempt to contact respondent by telephone or electronically;

(3) UPPAC shall maintain documentation of attempts toward written, telephonic or electronic contact;

(4) respondent has 20 days following service of the order of default to respond to UPPAC; and

(5) if UPPAC receives a response from respondent to a default order before the end of the 20 day default period, UPPAC shall allow respondent a final 10 day period to respond to a complaint or stipulated agreement.

B. Except as provided in R277-201-7C, if an order of default is issued, the Executive Secretary may make a recommendation to the Board for revocation or for a suspension of the educator's license for no less than five years.

C. If an order of default is issued, the Executive Secretary shall make a recommendation to the Board for a revocation of the educator's license if the alleged misconduct is conduct identified in 53A-6-501(5)(b).

KEY: teacher licensing, conduct, hearings

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

Education, Administration **R277-202** UPPAC Hearing Procedures and Reports

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39384

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 345, Education Abuse Policy, 2015 General Session, changed the rulemaking authority from the Utah Professional Practices Advisory Commission (UPPAC) to the Utah State Board of Education. Rule R277-202 is created in response to the legislation and because UPPAC rules (Title R686) are being repealed. (DAR NOTE: The proposed repeal of Rule R686-100 under DAR No. 39389, Rule R686-101 under DAR No. 39390, Rule R686-102 under DAR No. 39391, Rule R686-103 under DAR No. 39392, Rule R686-104 under DAR No. 39393, and Rule R686-105 under DAR No. 39394 are in this issue, June 1, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-202 establishes procedures regarding UPPAC hearings and hearing reports.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Section 53A-6-306 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: It is anticipated that there is likely no cost or savings to the state budget. Procedures in this rule are similar to procedures in Rule R686-101.

♦ LOCAL GOVERNMENTS: It is anticipated that there is likely no cost or savings to local government. Procedures in this rule are similar to procedures in Rule R686-101.

♦ SMALL BUSINESSES: It is anticipated that there is likely no cost or savings to small businesses. Procedures in this rule are similar to procedures in Rule R686-101.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is anticipated that there is likely no cost or savings to persons other than small businesses, businesses, or local government entities. Procedures in this rule are similar to procedures in Rule R686-101.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely no compliance costs for affected persons. Procedures in this rule are similar to procedures in Rule R686-101.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

R277. Education, Administration.

R277-202. UPPAC Hearing Procedures and Reports.

R277-202-1. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish procedures regarding UPPAC hearings and hearing reports.

C. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d).

R277-202-2. Scheduling a Hearing.

A(1) Scheduling the hearing: Following receipt of an answer by respondent requesting a hearing:

(a) UPPAC shall select panel members;

(b) the Executive Secretary shall appoint a hearing officer from among a list of hearing officers identified by the state procurement process and approved by UPPAC; and

(c) UPPAC shall schedule the date, time, and place for the hearing.

(2) The Executive Secretary shall schedule a hearing for a date that is not less than 25 days nor more than 180 days from the date the answer is received by the Executive Secretary.

(3) The required scheduling periods may be waived by mutual written consent of the parties or by the Executive Secretary for good cause shown.

B. Change of hearing date:

(1) Any party may request a change of hearing date by submitting a request in writing which shall:

(a) include a statement of the reasons for the request; and

(b) be submitted to the Executive Secretary at least five days prior to the scheduled date of the hearing.

(2) The Executive Secretary shall determine whether the reason stated in the request is sufficient to warrant a change.

(3) If the Executive Secretary finds that the reason for the request for a change of hearing date is sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.

(4) If the Executive Secretary does not find the reason for the request for a change of hearing date to be sufficient, the Executive Secretary shall immediately notify the parties that the request has been denied.

(5) The Executive Secretary and the parties may waive the time period required for requesting a change of hearing date for good cause shown.

C. An educator shall be entitled to a hearing on any matter in which an action is recommended, as defined in R277-200-2A.

D. An educator is not entitled to a hearing on a matter in which a disciplinary letter is recommended, as defined in R277-200-2N.

R277-202-3. Appointment and Duties of the Hearing Officer and Hearing Panel.

A(1) Hearing officer: The Executive Secretary shall appoint a hearing officer to chair the hearing panel and conduct the hearing.

(2) The Executive Secretary shall select a hearing officer on a random basis from a list of available contracted hearing officers, subject to availability and conflict of interest.

(3) The Executive Secretary shall provide such information about the case as necessary to determine whether the hearing officer has a conflict of interest and shall disqualify any hearing officer that cannot serve under the Utah Rules of Professional Conduct.

(4) Duties of a hearing officer. A hearing officer:

(a) may require the parties to submit briefs and lists of witnesses prior to the hearing;

(b) presides at the hearing and regulates the course of the proceedings;

(c) administers an oath to witnesses as follows: "Do you swear or affirm that the testimony you will give is the truth?";

(d) may take testimony, rule on questions of evidence, and ask questions of witnesses to clarify specific issues; and

(e) prepares and submits a hearing report to the Executive Secretary at the conclusion of the proceedings in consultation with panel members and the timelines of this rule.

B(1) UPPAC panel members: UPPAC shall select three or more individuals to serve as members of the hearing panel.

(2) As directed by UPPAC, any licensed educator may be used as a panel member, if needed.

(3) The majority of panel members shall be current UPPAC members.

(4) UPPAC shall select panel members on a rotating basis to the extent practicable.

(5) UPPAC shall accommodate each prospective panel member based on the availability of the panel member.

(6) If the respondent is a teacher, at least one panel member shall be a teacher.

(7) If the respondent is a non-teacher licensed educator, at least one panel member shall be a non-teacher licensed educator.

(8) The requirements of this R277-202-3B may be waived only upon the stipulation of both UPPAC and the respondent.

C(1) A UPPAC panel member shall:

(a) assist a hearing officer by providing information concerning professional standards and practices of educators in the respondent's particular field of practice and in the situations alleged;

(b) ask questions of all witnesses to clarify specific issues;

(c) review all evidence and briefs, if any, presented at the hearing;

(d) make a recommendation to UPPAC as to the suggested disposition of a complaint; and

(e) assist the hearing officer in preparing the hearing report.

(2) A panel member should consider only such evidence as has been approved for admission by the hearing officer.

(3) The Executive Secretary may make an emergency substitution of a panel member for cause with the consent of the parties.

(4) The agreement to substitute a panel member shall be in writing.

(5) Parties may agree to a two-member UPPAC panel in an emergency situation.

(6) If the parties do not agree to a substitution or to having a two-member panel, the hearing shall be rescheduled.

D. Disqualification of a hearing officer shall be governed by the following requirements:

(1) A party may request that a hearing officer be disqualified by submitting a written request for disqualification to the Executive Secretary

(2) A request to disqualify a hearing officer shall be submitted to the Executive Secretary at least 15 days before a scheduled hearing.

(3) The Executive Secretary shall review a request described in this R277-202-3D and supporting evidence to determine whether the reasons for the request are substantial and sufficient.

(4) If the Executive Secretary determines that the hearing officer should be disqualified, the Executive Secretary shall appoint a new hearing officer and, if necessary, reschedule the hearing.

(5) A hearing officer may recuse himself from a hearing if, in the hearing officer's opinion, the hearing officer's participation would violate any of the Utah Rules of Professional Conduct consistent with the Supreme Court Rules of Professional Practice.

(6) If the Executive Secretary denies a request to disqualify a hearing officer, the Executive Secretary shall notify the party within ten days prior to the date of the hearing.

(7) The requesting party may submit a written appeal of the Executive Secretary's denial to the Superintendent no later than five days prior to the hearing date.

(8) If the Superintendent finds that the appeal is justified, the Superintendent shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.

(9) The decision of the Superintendent described in R277-202-3D(8) is final.

(10) If a party fails to file an appeal within the time requirements of R277-202-3D(7), the appeal shall be deemed denied.

(11) If the Executive Secretary fails to meet the time requirements described in R277-202-3D, the request or appeal shall be approved.

E. UPPAC panel members shall be governed by the following requirements:

(1) A UPPAC member shall disqualify himself as a panel member due to any known financial or personal interest, prior relationship, personal and independent knowledge of the persons or issues in the case, or other association that the panel member believes would compromise the panel member's ability to make an impartial decision.

(2) A party may request that a UPPAC panel member be disqualified by submitting a written request to the following:

(a) the hearing officer; or

(b) to the Executive Secretary if there is no hearing officer.

(3) A party shall submit a request described in R277-202-3E(2) no less than 15 days before a scheduled hearing.

(4) The hearing officer, or the Executive Secretary, if there is no hearing officer, shall:

(a) review a request described in R277-202-3E(2) and supporting evidence to determine whether the reasons for the request are substantial and compelling enough to disqualify the panel member; and

(b) if the reasons for the request described in R277-202-3E(2) are substantial and compelling, disqualify the panel member.

(5) If the panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members:

(a) UPPAC shall appoint a replacement; and

(b) the Executive Secretary shall, if necessary, reschedule the hearing.

(6) If a request described in R277-202-3E(2) is denied, the hearing officer or the Executive Secretary if there is no hearing officer, shall notify the party requesting the panel member's disqualification no less than ten days prior to the date of the hearing.

(7) The requesting party may file a written appeal of a denial described in R277-202-3E(6) with the Superintendent no later than five days prior to the hearing date.

(8) If the Superintendent finds that an appeal described in R277-202-3E(7) is justified, the Superintendent shall direct the hearing officer or the Executive Secretary if there is no hearing officer, to replace the panel member.

(9) If a panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members, UPPAC shall agree upon a replacement and the Executive Secretary shall, if necessary, reschedule the hearing.

(10) The decision of the Superintendent described in R277-202-3E(8) is final.

(11) If a party fails to file an appeal within the time requirements of R277-202-3E(7), the appeal shall be deemed denied.

(12) If the hearing officer, or the Executive Secretary if there is no hearing officer, fails to meet the time requirements described in this R277-202-3E, the request or appeal shall be approved.

F. The Executive Secretary may, at the time the Executive Secretary selects a hearing officer or panel member, select an alternative hearing officer or panel member following the process for selecting those individuals.

G. The Executive Secretary may substitute a panel member with an alternative panel member if the Executive Secretary notifies the parties of the substitution.

R277-202-4. Preliminary Instructions to Parties to a Hearing.

A. No later than 25 days before the date of a hearing, the Executive Secretary shall provide the parties with the following information:

(1) date, time, and location of the hearing;

(2) names and LEA affiliations of each panel member, and the name of the hearing officer; and

(3) instructions for accessing these rules.

B. No later than 20 days before the date of the hearing, the respondent and the complainant shall provide the following to the other party and to the hearing officer:

(1) a brief, if requested by the hearing officer containing:

(a) any procedural and evidentiary motions along with the party's position regarding the allegations; and

(b) relevant laws, rules, and precedent;

(2) the name of the person who will represent the party at the hearing;

(3) a list of witnesses expected to be called, including a summary of the testimony which each witness is expected to present;

(4) a summary of documentary evidence that the party intends to submit; and

(5) following receipt of the other party's witness list, a list of anticipated rebuttal witnesses and evidence no later than 10 days prior to the hearing.

C(1) Except as provided in R277-202-4C(1), a party may not present a witness or evidence at the hearing if the witness or evidence has not been disclosed to the other party as required in R277-202-4B.

(2) A party may present a witness or evidence at the hearing even if the witness or hearing has not been disclosed to the other party if:

(a) the parties stipulate to the presentation of the witness or evidence at the hearing; or

(b) the hearing officer makes a determination of good cause to allow it in.

D. If a party fails to comply in good faith with a directive of the hearing officer, including time requirements, the hearing officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances.

E. A party shall provide materials to the hearing officer, panel members, and UPPAC as directed by the hearing officer.

R277-202-5. Hearing Parties' Representation.

A. Complainant: The complainant shall be represented by a USOE prosecutor.

B. Respondent: A respondent may represent himself or be represented, at his own cost, by another person.

C. The informant has no right to:

(1) individual representation at the hearing; or

(2) to be present or heard at the hearing unless called as a witness.

D. A respondent shall notify the Executive Secretary in a timely manner and in writing if the respondent chooses to be represented by anyone other than the respondent.

R277-202-6. Discovery Prior to a Hearing.

A. Discovery is permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the hearing officer.

B. Unduly burdensome legalistic discovery may not be used to delay a hearing.

C. A hearing officer may limit discovery:

(1) at the discretion of the hearing officer; or

(2) upon a motion by either party.

D. A hearing officer rules on all discovery requests and motions.

E. The Executive Secretary shall issue a subpoena or other order to secure the attendance of a witness pursuant to Section 53A-6-306(3)(c)(i) if:

(1) requested by either party; and

(2) notice of intent to call the witness has been timely provided as required by R277-202-4.

F. The Executive Secretary shall issue a subpoena to produce evidence if timely requested by either party.

G(1) A party may not present an expert witness report or expert witness testimony at a hearing unless the requirements of R277-202-10 have been met.

(2) A respondent may not subpoena the UPPAC prosecutor or investigator as an expert witness.

R277-202-7. Burden and Standard of Proof for UPPAC Proceedings.

A. In matters other than those involving applicants for licensing, and excepting the presumptions under R277-202-11J, the Board shall have the burden of proving that an action against the license is appropriate.

B. An applicant for licensing has the burden of proving that licensing is appropriate.

C. Standard of proof: The standard of proof in all UPPAC hearings is a preponderance of the evidence.

D. Evidence: The Utah Rules of Evidence are not applicable to UPPAC proceedings.

E. The criteria to decide evidentiary questions shall be:

(1) reasonable reliability of the offered evidence;

(2) fairness to both parties; and

(3) usefulness to UPPAC in reaching a decision.

F. The hearing officer has the sole responsibility to determine the application of the hearing rules and the admissibility of evidence.

R277-202-8. Department.

A. Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during a hearing, giving due respect to members of the hearing panel and complying with the instructions of the hearing officer.

B. A hearing officer may exclude a person from the hearing room who fails to conduct himself in an appropriate manner and may, in response to extreme instances of noncompliance, disallow the person's testimony.

C. Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process may not harass, intimidate, or pressure witnesses or other hearing participants, nor may they direct others to harass, intimidate, or pressure witnesses or participants.

R277-202-9. Hearing Record.

A. A hearing shall be recorded at UPPAC's expense, and the recording shall become part of the UPPAC case file, unless otherwise agreed upon by all parties.

B. An individual party may, at the party's own expense, make a recording or transcript of the proceedings if the party provides notice to the Executive Secretary.

C. If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.

D. All evidence and statements presented at a hearing shall become part of the UPPAC Case File and may not be removed except by direction of the hearing officer or by order of the Board.

E. A party may review a UPPAC case file upon request of the party if the review of the UPPAC case file is performed:

- (1) under supervision of the Executive Secretary; and
- (2) at the USOE.

R277-202-10. Expert Witnesses in UPPAC Proceedings.

A. A hearing officer may allow testimony by an expert witnesses.

B. A party may call an expert witness at the party's own expense.

C. A party shall provide a hearing officer and the opposing party with the following information at least 15 days prior to the hearing date:

- (1) notice of intent of a party to call an expert witness;
- (2) the identity and qualifications of each expert witness;
- (3) the purpose for which the expert witness is to be called; and
- (4) any prepared expert witness report.

D. Defects in the qualifications of expert witnesses, once a minimum threshold of expertise is established, go to the weight to be given the testimony and not to its admissibility.

E. An expert witness who is a member of the complainant's staff or staff of an LEA may testify and have their testimony considered as part of the record in the same manner as the testimony of any other expert.

R277-202-11. Evidence and Participation in UPPAC Proceedings.

A. A hearing officer may not exclude evidence solely because the evidence is hearsay.

B. Each party has a right to call witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.

C. Testimony presented at the hearing shall be given under oath if the testimony is offered as evidence to be considered in reaching a decision on the merits.

D. If a case involves allegations of child abuse or of a sexual offense against a minor, either party, a member of the hearing panel, or the hearing officer, may request that a minor be allowed to testify outside of the respondent's presence.

E. If the hearing officer determines that a minor would suffer undue emotional or mental harm, or that the minor's testimony in the presence of the respondent would be unreliable, the minor's testimony may be admitted in one of the following ways:

F. An oral statement of a victim or witness younger than 18 years of age which is recorded prior to the filing of a complaint shall be admissible as evidence in a hearing regarding the offense if:

- (1) no attorney for either party is in the minor's presence when the statement is recorded;
- (2) the recording is visual and aural and is recorded;
- (3) the recording equipment is capable of making an accurate recording;
- (4) the operator of the equipment is competent;
- (5) the recording is accurate and has not been altered; and
- (6) each voice in the recording is identified.

G. The testimony of a witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and may be transmitted by closed circuit equipment to another room where it can be viewed by the respondent if the following conditions shall be observed:

- (1) only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the minor may be with the minor during the testimony;
- (2) the respondent may not be present during the minor's testimony;
- (3) the hearing officer shall ensure that the minor cannot hear or see the respondent;
- (4) the respondent shall be permitted to observe and hear, but may not communicate with the minor; and
- (5) only hearing panel members, the hearing officer, and the attorneys may question the minor.

H. If the hearing officer determines that the testimony of a minor may be taken consistent with R277-202-11D through G, the minor may not be required to testify in any proceeding where the recorded testimony is used.

I. On the hearing officer's own motion or upon objection by a party, the hearing officer:

- (1) may exclude evidence that the hearing officer determines to be irrelevant, immaterial, or unduly repetitious;
- (2) shall exclude evidence that is privileged under law applicable to administrative proceedings in Utah unless waived;
- (3) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;
- (4) may take official notice of any facts that could be judicially noticed under judicial or administrative laws of Utah, or from the record of other proceedings before the agency.

J. Presumptions:

(1) A rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor if the person has:

(a) been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor;

(b) failed to defend himself against such a charge when given a reasonable opportunity to do so; or

(c) voluntarily surrendered a license or allowed a license to lapse in the face of a charge of having committed a sexual offense against a minor.

(2) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has been found pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing unfitness for duty, including immoral, unprofessional, or incompetent conduct, or other violation of standards of ethical conduct, performance, or professional competence.

(3) Evidence of behavior described in R277-202-11J(2) may include:

(a) conviction of a felony;

(b) a felony charge and subsequent conviction for a lesser related charge pursuant to a plea bargain or plea in abeyance;

(c) an investigation of an educator's license, certificate, or authorization in another state; or

(d) the expiration, surrender, suspension, revocation, or invalidation of an educator's license for any reason.

R277-202-12. Hearing Report.

A. Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials as permitted by the hearing officer, the hearing officer shall sign and issue a hearing report consistent with the recommendations of the panel that includes:

(1) detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted,

(2) a statement of relevant precedent, if available;

(3) a statement of applicable law and rule;

(4) a recommended disposition of UPPAC panel members which shall be one or an appropriate combination of the following:

(a) dismissal of the complaint;

(b) letter of admonishment;

(c) letter of warning;

(d) letter of reprimand;

(e) probation, to include the following terms and conditions:

(i) it is the respondent's responsibility to petition UPPAC for removal of probation and letter of reprimand from the respondent's CACTUS file;

(ii) a probationary time period or specifically designated indefinite time period;

(iii) conditions that can be monitored;

(iv) if recommended by the panel, a person or entity to monitor a respondent's probation;

(v) a statement providing for costs of probation, if appropriate; and

(vi) whether or not the respondent may work in any capacity in public education during the probationary period;

(f) disciplinary action held in abeyance;

(g) suspension; or

(h) revocation; and

(5) notice that UPPAC's recommendation is subject to approval by the Board and judicial review as may be allowed by law.

B. Findings of fact may not be based solely upon hearsay and conclusions shall be based upon competent evidence.

C. Any of the consequences described in R277-202-12B may be imposed in the form of a disciplinary action held in abeyance.

D. If the respondent's penalty is held in abeyance, the respondent's penalty is stayed subject to the satisfactory completion of probationary conditions.

E. The decision to impose a consequence in the form of a disciplinary action held in abeyance shall provide for appropriate or presumed discipline should the probationary conditions not be fully satisfied;

F. Processing the hearing report:

(1) A hearing officer shall circulate a draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.

(2) Hearing panel members shall notify the hearing officer of any changes to the report:

(a) as soon as possible after receiving the report; and

(b) prior to the 20 day completion deadline of the hearing report.

(3) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with UPPAC.

(4) The Executive Secretary may participate in UPPAC's deliberation as a resource to UPPAC in explaining the hearing report and answering any procedural questions raised by UPPAC members.

(5) The hearing officer may confer with the Executive Secretary or the panel members or both while preparing the hearing report.

(6) The hearing officer may request the Executive Secretary to confer with the hearing officer and panel following the hearing.

(7) The Executive Secretary may return a hearing report to a hearing officer if the report is incomplete, unclear, or unreadable, or missing essential components or information.

(8) UPPAC shall vote to uphold the hearing officer's and panel's report if UPPAC finds that:

(a) there are no significant procedural errors;

(b) the hearing officer's recommendations are based upon a reasonable interpretation of the evidence presented at the hearing; and

(c) that all issues explained in the hearing report are adequately addressed in the conclusions of the report.

(9) The Executive Secretary shall forward a copy of the hearing report to the Board for further action after the UPPAC review described in R277-202-12F(8).

(10) The Executive Secretary shall place a copy of the hearing report in the UPPAC case file.

(11) If UPPAC or the Board determines that:

(a) the hearing process had procedural errors;

(b) the hearing officer's report is not based upon a reasonable interpretation of the evidence presented at the hearing;

(c) that the conclusions and findings of the hearing report do not provide adequate guidance to the educator; or

(d) that the findings or conclusions of the hearing report do not adequately address the evidence as outlined in the hearing report, the Board or UPPAC may:

(i) direct the Executive Secretary to schedule the matter for rehearing before a new hearing officer and a new UPPAC panel; or

(ii) direct the Executive Secretary to amend the hearing report to reflect the decision of UPPAC or the Board.

G. The hearing report is a public document under GRAMA after final action is taken in the case, but may be redacted if it is determined that the hearing report contains particular information, the dissemination of which is otherwise restricted under the law.

H. A respondent's failure to comply with the terms of a final disposition may result in additional discipline against the educator license.

I. If a hearing officer fails to satisfy the hearing officer's responsibilities under this rule, the Executive Secretary may:

(1) notify the Utah State Bar of the failure;

(2) reduce the hearing officer's compensation consistent with the failure;

(3) take timely action to avoid disadvantaging either party; or

(4) preclude the hearing officer from further employment by the Board for UPPAC purposes.

J. The Executive Secretary may waive the deadlines within this R277-202-12 if the Executive Secretary finds good cause.

K. All criteria of letters of warning and reprimand, probation, suspension and revocation shall also apply to the comparable sections of the final hearing reports.

R277-202-13. Default.

A(1) The Executive Secretary may prepare an order of default if:

(a) the respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice; or

(b) the hearing officer recommends default as a sanction as a result of misconduct by the respondent or his representative during the course of the hearing process.

(2) The hearing officer may determine that the respondent has failed to attend a properly scheduled hearing if the respondent has not appeared within 30 minutes of the appointed time for the hearing to begin, unless the respondent shows good cause for failing to appear in a timely manner.

B. The recommendation of default may be executed by the Executive Secretary following all applicable time periods, without further action by UPPAC.

C. An order of default may result in a recommendation to the Board for revocation or for a suspension of no less than five years.

D. An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in 53A-6-501(5)(b).

R277-202-14. Rights of Victims at Hearings.

A. If the allegations that gave rise to the underlying allegations involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to:

(1) advise the alleged victim that a hearing has been scheduled; and

(2) notify the alleged victim of the date, time, and location of the hearing.

B. An alleged victim entitled to notification of a hearing shall be permitted, but is not required, to attend the hearing.

KEY: hearings, reports, educators

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

Education, Administration **R277-203** Request for Licensure Reinstatement and Reinstatement Procedures

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39385

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 345, Education Abuse Policy, 2015 General Session, changed the rulemaking authority from the Utah Professional Practices Advisory Commission (UPPAC) to the Utah State Board of Education. Rule R277-203 is created in response to the legislation and because UPPAC rules (Title R686) are being repealed. (DAR NOTE: The proposed repeal of Rule R686-100 under DAR No. 39389, Rule R686-101 under DAR No. 39390, Rule R686-102 under DAR No. 39391, Rule R686-103 under DAR No. 39392, Rule R686-104 under DAR No. 39393, and Rule R686-105 under DAR No. 39394 are in this issue, June 1, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-203 establishes procedures regarding educator license reinstatement.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Section 53A-6-306 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: It is anticipated that there is likely no cost or savings to the state budget. Procedures in this rule are similar to procedures in Rule R686-102.

♦ LOCAL GOVERNMENTS: It is anticipated that there is likely no cost or savings to local government. Procedures in this rule are similar to procedures in Rule R686-102.

♦ **SMALL BUSINESSES:** It is anticipated that there is likely no cost or savings to small businesses. Procedures in this rule are similar to procedures in Rule R686-102.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is anticipated that there is likely no cost or savings to persons other than small businesses, businesses, or local government entities. Procedures in this rule are similar to procedures in Rule R686-102.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely no compliance costs for affected persons. Procedures in this rule are similar to procedures in Rule R686-102.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

R277. Education, Administration.

R277-203. Request for Licensure Reinstatement and Reinstatement Procedures.

R277-203-1. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish procedures regarding educator license reinstatement.

C. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d).

R277-203-2. Application for Licensing Following Denial or Loss of License.

A(1) An individual who has been denied a license or lost the individual's license through suspension, or through surrender of a license or allowing a license to lapse in the face of an allegation of misconduct, may request a review to consider reinstatement of a license.

(2) A request for review described in R277-203-2A(1) shall:

(a) be in writing;

(b) be transmitted to the UPPAC Executive Secretary; and

(c) have the following information:

(i) name and address of the individual requesting review;

(ii) the action being requested;

(iii) specific evidence and documentation of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations from UPPAC or the Board;

(iv) reason(s) that the individual seeks reinstatement; and

(v) signature of the individual requesting review.

B(1) The Executive Secretary shall review the request with UPPAC.

(2) If UPPAC determines that the request is incomplete or invalid:

(a) the Executive Secretary shall deny the request; and

(b) notify the individual requesting reinstatement of the denial.

(3) If UPPAC determines that the request of an individual described in R277-203-2A is complete, timely, and appropriate, UPPAC shall schedule and hold a hearing as provided under R277-203-3.

C(1) Burden of Persuasion: The burden of persuasion at a reinstatement hearing shall fall on the individual seeking the reinstatement.

(2) An individual requesting reinstatement of a suspended license shall:

(a) show sufficient evidence of compliance with any conditions imposed in the past disciplinary action;

(b) provide sufficient evidence to the reinstatement hearing panel that the educator will not engage in recurrences of the actions that gave rise to the suspension and that reinstatement is appropriate;

(c) undergo a criminal background check consistent with Utah law and R277-517; and

(d) provide materials for review by the hearing panel that demonstrate the individual's compliance with directives from UPPAC or the Board found in petitioner's original stipulated agreement or hearing report.

(3) An individual requesting licensing following a denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable, when requesting reinstatement.

D. An individual whose license has been suspended or revoked in another state shall seek reinstatement of the individual's license in the other state before a request for a reinstatement hearing may be approved.

R277-203-3. Reinstatement Hearing Procedures.

A. A hearing officer shall:

(1) preside over a reinstatement hearing; and
(2) rule on all procedural issues during the reinstatement hearing as they arise.

B. A hearing panel, comprising individuals as set forth in R277-202-3(B), shall:

(1) hear the evidence; and
(2) along with the prosecutor and hearing officer, question the individual seeking reinstatement regarding the appropriateness of reinstatement.

C. An individual seeking reinstatement may:

(a) be represented by counsel; and
(b) may present evidence and witnesses.

D. A party may present evidence and witnesses consistent with R277-202.

E. A hearing officer of a reinstatement hearing shall direct one or both parties to explain the background of a case to panel members at the beginning of the hearing to provide necessary information about the initial misconduct and subsequent UPPAC and Board action.

F. An individual seeking reinstatement shall present documentation or evidence that supports reinstatement.

G. The USOE, represented by the UPPAC prosecutor, shall present any evidence or documentation that explains and supports USOE's recommendation in the matter.

H. Other evidence or witnesses may be presented by either party and shall be presented consistent with R277-202.

I. The individual seeking reinstatement shall:

(1) focus on the individual's actions, rehabilitative efforts, and performance following license denial or suspension;

(2) explain item by item how each condition of the hearing report or stipulated agreement was satisfied;

(3) provide documentation in the form of evaluations, reports, or plans, as directed by the hearing report or stipulated agreement, of satisfaction of all required and outlined conditions;

(4) be prepared to completely and candidly respond to the questions of the UPPAC prosecutor and hearing panel regarding:

(a) the misconduct that caused the license suspension;

(b) subsequent rehabilitation activities;

(c) counseling or therapy received by the individual related to the original misconduct; and

(d) work, professional actions, and behavior between the suspension and reinstatement request;

(5) present witnesses and be prepared to question witnesses (including counselors, current employers, support group members) at the hearing who can provide substantive corroboration of rehabilitation or current professional fitness to be an educator;

(6) provide copies of all reports and documents to the UPPAC prosecutor and hearing officer at least five days before a reinstatement hearing; and

(7) bring eight copies of all documents or materials that an individual seeking reinstatement plans to introduce at the hearing.

J. The UPPAC prosecutor, the hearing panel, and hearing officer shall thoroughly question the individual seeking reinstatement as to the individual's:

(1) underlying misconduct which is the basis of the sanction on the educator's license;

(2) specific and exact compliance with reinstatement requirements;

(3) counseling, if required for reinstatement;

(4) specific plans for avoiding previous misconduct; and

(5) demeanor and changed understanding of petitioner's professional integrity and actions consistent with R277-515.

K. If the individual seeking reinstatement sought counseling as described in R277-203-3J(3), the individual shall state, under oath, that he provided all relevant information and background to his counselor or therapist.

L. A hearing officer shall rule on procedural issues in a reinstatement hearing in a timely manner as they arise.

M. No more than 20 days following a reinstatement hearing, a hearing officer, with the assistance of the hearing panel, shall:

(1) prepare a hearing report in accordance with the requirements set forth in R277-203-5; and

(2) provide the hearing report to the UPPAC Executive Secretary.

N. The Executive Secretary shall submit the hearing report to UPPAC at the next meeting following receipt of the hearing report by the Executive Secretary.

O. UPPAC may do the following upon receipt of the hearing report:

(1) accept the hearing panel's recommendation as prepared in the hearing report;

(2) amend the hearing panel's recommendation with conditions or modifications to the hearing panel's recommendation which shall be:

(a) directed by UPPAC;

(b) prepared by the UPPAC Executive Secretary; and

(c) attached to the hearing report; or

(3) reject the hearing panel's recommendation.

P. After UPPAC makes a recommendation on the hearing panel report, the UPPAC recommendation will be forwarded to the Board for final action on the individual's reinstatement request.

Q. If the Board denies an individual's request for reinstatement, the individual shall wait at least twenty four (24) months prior to filing a request for reinstatement again, unless a different time is provided in the hearing panel recommendation or in the Board's motion to deny.

R277-203-4. Rights of a Victim at a Reinstatement Hearing.

A. If the allegations that gave rise to the underlying suspension involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to notify the victim or the victim's family of the reinstatement request.

B. UPPAC's notification shall:

(1) advise the victim that a reinstatement hearing has been scheduled;

(2) notify the victim of the date, time, and location of the hearing;

(3) advise the victim of the victim's right to be heard at the reinstatement hearing; and

(4) provide the victim with a form upon which the victim can submit a statement for consideration by the hearing panel.

C. A victim entitled to notification of the reinstatement proceedings shall be permitted:

(1) to attend the hearing; and

(2) to offer the victim's position on the educator's reinstatement request, either by testifying in person or by submitting a written statement.

D. A victim choosing to testify at a reinstatement hearing shall be subject to reasonable cross examination in the hearing officer's discretion.

E. A victim choosing not to respond in writing or appear at the reinstatement hearing waives the victim's right to participate in the reinstatement process.

R277-203-5. Reinstatement Hearing Report.

A. A hearing officer shall provide the following in a reinstatement hearing report:

(1) provide a summary of the background of the original disciplinary action;

(2) provide adequate information, including summary statements of evidence presented, documents provided, and petitioner's testimony and demeanor for both UPPAC and the Board to evaluate petitioner's progress and rehabilitation since petitioner's original disciplinary action;

(3) specifically address petitioner's appropriateness and fitness to be a public school educator again; and

(4) provide a statement that the hearing panel's recommendation to UPPAC was unanimous or provide the panel's vote concerning reinstatement.

B(1) The hearing panel report is a public document under GRAMA following the conclusion of the reinstatement process unless specific information or evidence contained therein is protected by a specific provision of GRAMA, or another provision of state or federal law.

(2) The Executive Secretary shall add the hearing panel report to the UPPAC case file.

C. If a license is reinstated, an educator's CACTUS file shall be updated to:

(1) remove the flag;

(2) show that the educator's license was reinstated; and

(3) show the date of formal Board action reinstating the license.

D. The Board decision as to whether to accept the recommendation of the reinstatement hearing report is within the Board's sole discretion.

KEY: licensure, reinstatement, hearings; license reinstatement
Date of Enactment or Last Substantive Amendment: 2015
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

Education, Administration
R277-204
 Utah Professional Practices Advisory
 Commission Criminal Background
 Review

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39386

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 345, Education Abuse Policy, 2015 General Session, changed the rulemaking authority from the Utah Professional Practices Advisory Commission (UPPAC) to the Utah State Board of Education. Rule R277-204 is created in response to the legislation and because UPPAC rules (Title R686) are being repealed. (DAR NOTE: The proposed repeal of Rule R686-100 under DAR No. 39389, Rule R686-101 under DAR No. 39390, Rule R686-102 under DAR No. 39391, Rule R686-103 under DAR No. 39392, Rule R686-104 under DAR No. 39393, and Rule R686-105 under DAR No. 39394 are in this issue, June 1, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-204 establishes procedures for an applicant to proceed toward licensing or be denied to continue toward a license when an application or recommendation for licensing or renewal identifies offenses in the applicant's criminal background check.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Section 53A-6-306 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: It is anticipated that there is likely no cost or savings to the state budget. Procedures in this rule are similar to procedures in Rule R686-103.

♦ LOCAL GOVERNMENTS: It is anticipated that there is likely no cost or savings to local government. Procedures in this rule are similar to procedures in Rule R686-103.

♦ SMALL BUSINESSES: It is anticipated that there is likely no cost or savings to small businesses. Procedures in this rule are similar to procedures in Rule R686-103.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is anticipated that there is likely no cost or savings to persons other than small businesses, businesses, or local government entities. Procedures in this rule are similar to procedures in Rule R686-103.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely no compliance costs for affected persons. Procedures in this rule are similar to procedures in Rule R686-103.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Benjamin Rasmussen by phone at 801-538-7835, by FAX
at 801-538-7768, or by Internet E-mail at benjamin.
rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO
LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

R277. Education, Administration.

**R277-204. Utah Professional Practices Advisory Commission
Criminal Background Review.**

R277-204-1. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish procedures for an applicant to proceed toward licensing or be denied to continue when an application or recommendation for licensing or renewal identifies offenses in the applicant's criminal background check.

C. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d).

R277-204-2. Initial Submission and Evaluation of Information.

A. The Executive Secretary shall review all information received as part of a criminal background review.

B. The Executive Secretary may request any of the following information from an educator in determining how to process a criminal background review:

(1) a letter of explanation for each reported offense that details the circumstances, the final disposition, and any explanation for the offense the applicant may want to provide UPPAC, including any advocacy for approving licensing;

(2) official documentation regarding each offense, including court records and police reports for each offense, or if both court records and police reports are not available, a letter on official police or court stationery from the appropriate court or police department involved, explaining why the records are not available; and

(3) any other information that the Executive Secretary considers relevant under the circumstances in a criminal background review.

C(1) The Executive Secretary may only process a criminal background review after receipt of all letters of explanation and documentation requested in good faith by the Executive Secretary.

(2) The Executive Secretary shall provide timely notice if the information provided by an applicant is incomplete.

D. If an applicant is under court supervision of any kind, including parole, informal or formal probation, or plea in abeyance, the Executive Secretary may not process the background check review until the Executive Secretary receives proof that court supervision has terminated.

E. It is the applicant's sole responsibility to provide any requested material to the Executive Secretary.

F. The Executive Secretary shall process criminal background reviews subject to the following criteria:

(1) the Executive Secretary may clear a criminal background review without further action if the arrest, citation, or charge resulted in a dismissal, unless the dismissal resulted from a plea in abeyance agreement;

(2) the Executive Secretary shall forward a recommendation to clear the following criminal background reviews directly to the Board:

(a) singular offenses committed by an applicant, excluding offenses identified in R277-204-2F(3), if the arrest occurred more than two years prior to the date of submission to UPPAC for review;

(b) more than two offenses committed by the applicant, excluding offenses identified in R277-204-2F(3), if at least one arrest occurred more than five years prior to the date of submission to UPPAC for review; or

(c) more than two offenses committed by the applicant, excluding offenses identified in R277-204-2F(3), if all arrests for the offenses occurred more than 10 years prior to the date of submission to UPPAC for review;

(3) the Executive Secretary shall forward the following criminal background reviews to UPPAC, which shall make a recommendation to the Board for final action:

(a) convictions or pleas in abeyance for any offense where the offense date occurred less than two years prior to the date of submission to UPPAC;

(b) convictions or pleas in abeyance for multiple offenses where all offenses occurred less than five years prior to the date of submission to UPPAC;

(c) convictions or pleas in abeyance for felonies;

(d) arrests, convictions, or pleas in abeyance for sex-related or lewdness offenses;

(e) convictions or pleas in abeyance for alcohol-related offenses or drug-related offenses where the offense date was less than five years prior to the date of submission to UPPAC;

(f) convictions or pleas in abeyance involving children in any way; and

(g) convictions or pleas in abeyance involving any other matter which the Executive Secretary determines, in his discretion, warrants review by UPPAC and the Board; and

(4) If the criminal background review involves a conviction for an offense requiring mandatory revocation under 53A-6-501(5)(b) or meeting the definition of sex offender under 77-41-102(16), the Executive Secretary shall forward a recommendation directly to the Board that clearance be denied.

G. The Executive Secretary shall use reasonable discretion to interpret the information received from the Bureau of Criminal Identification to comply with the provisions of this rule.

H. In Board review of recommendations of the Executive Secretary and UPPAC for criminal background checks, the following shall apply:

(1) the Board may uphold any recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE;

(2) the Board may substitute its own judgment in lieu of the recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE; and

(3) if the Board chooses to substitute its own judgment in a criminal background review, the Board shall adopt findings articulating its reasoning.

I. If a criminal background review arises as a result of conduct that was cleared in a prior criminal background review by the Executive Secretary, UPPAC, or the Board, the prior action shall be deemed final, and the Executive Secretary shall clear the criminal background review.

J. If a criminal background review results in an applicant's denial, the applicant may request to be heard, and to have the matter reconsidered by the Board, consistent with the requirements of Section 53A-15-1506(1)(c).

KEY: educator license, background review, background check
Date of Enactment or Last Substantive Amendment: 2015
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

Education, Administration **R277-205** Alcohol Related Offenses

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39387

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 345, Education Abuse Policy, 2015 General Session, changed the rulemaking authority from the Utah Professional Practices Advisory Commission (UPPAC) to the Utah State Board of Education. Rule R277-205 is created in response to the legislation and because UPPAC rules (Title R686) are being repealed. (DAR NOTE: The proposed repeal of Rule R686-100 under DAR No. 39389, Rule R686-101 under DAR No. 39390, Rule R686-102 under DAR No.

39391, Rule R686-103 under DAR No. 39392, Rule R686-104 under DAR No. 39393, and Rule R686-105 under DAR No. 39394 are in this issue, June 1, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-205 establishes procedures for disciplining educators regarding alcohol-related offenses.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Section 53A-6-306 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: It is anticipated that there is likely no cost or savings to the state budget. Procedures in this rule are similar to procedures in Rule R686-104.

◆ LOCAL GOVERNMENTS: It is anticipated that there is likely no cost or savings to local government. Procedures in this rule are similar to procedures in Rule R686-104.

◆ SMALL BUSINESSES: It is anticipated that there is likely no cost or savings to small businesses. Procedures in this rule are similar to procedures in Rule R686-104.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is anticipated that there is likely no cost or savings to persons other than small businesses, businesses, or local government entities. Procedures in this rule are similar to procedures in Rule R686-104.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely no compliance costs for affected persons. Procedures in this rule are similar to procedures in Rule R686-104.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

R277. Education, Administration.

R277-205. Alcohol Related Offenses.

R277-205-1. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish procedures for disciplining educators regarding alcohol related offenses.

C. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d).

R277-205-2. Action by the Board if a Licensed Educator Has Been Convicted of an Alcohol Related Offense.

A. If as a result of a background check, it is discovered that a licensed educator has been convicted of an alcohol related offense in the previous five years, UPPAC shall adhere to the following minimum conditions:

(1) One conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule;

(2) Two convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical assessment and recommended treatment following the second conviction;

(3) If the most recent conviction was more than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of warning to the educator;

(4) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of reprimand to the educator and a letter to the district, if employed;

(5) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical assessment and recommended treatment, UPPAC or the Board may initiate an investigation of the educator based upon the alcohol offenses;

(6) Three convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical assessment and recommended treatment following the third conviction;

(7) If the most recent conviction was more than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of warning to the educator;

(8) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of reprimand

to the educator and send a copy of the letter of reprimand to the educator's employer; and

(9) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical assessment and recommended treatment, UPPAC shall recommend suspension of the educator's license to the Board, subject to the educator's right to a hearing under R277-202.

B. This rule does not preclude more serious or additional action by the Board against an educator for other related or unrelated offenses.

R277-205-3. Board Action Toward Individuals Who Do Not Hold Licensing.

If as a result of a background check, it is discovered that an individual inquiring about educator licensing, seeking information about educator licensing, or placed in a public school for any purpose requiring a background check, has been convicted of an alcohol related offense within five years of the date of the background check, the following minimum conditions shall apply:

A. one conviction--the individual shall be denied Board clearance for a period of one year from the date of the arrest;

B. two convictions--the individual shall be denied Board clearance for a period of two years from the date of the most recent arrest and the applicant shall present documentation of clinical assessment and recommended treatment before Board clearance shall be considered; and

C. three convictions--the Board may require the applicant to present documentation of clinical assessment and recommended treatment and may deny clearance.

KEY: educators, disciplinary actions, alcohol, background check

Date of Enactment or Last Substantive Amendment: 2015 Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

Education, Administration
R277-206

Drug Related Offenses

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39388

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 345, Education Abuse Policy, 2015 General Session, changed the rulemaking authority from the Utah Professional Practices Advisory Commission (UPPAC) to the Utah State Board of Education. Rule R277-206 is created in response to the legislation and because UPPAC rules (Title R686) are being repealed. (DAR NOTE: The proposed repeal of Rule R686-100 under DAR No. 39389, Rule R686-101 under DAR No. 39390, Rule R686-102 under DAR No.

39391, Rule R686-103 under DAR No. 39392, Rule R686-104 under DAR No. 39393, and Rule R686-105 under DAR No. 39394 are in this issue, June 1, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-206 establishes procedures for disciplining educators regarding drug-related offenses.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Section 53A-6-306 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** It is anticipated that there is likely no cost or savings to the state budget. Procedures in this rule are similar to procedures in Rule R686-105.
- ◆ **LOCAL GOVERNMENTS:** It is anticipated that there is likely no cost or savings to local government. Procedures in this rule are similar to procedures in Rule R686-105.
- ◆ **SMALL BUSINESSES:** It is anticipated that there is likely no cost or savings to small businesses. Procedures in this rule are similar to procedures in Rule R686-105.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is anticipated that there is likely no cost or savings to persons other than small businesses, businesses, or local government entities. Procedures in this rule are similar to procedures in Rule R686-105.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely no compliance costs for affected persons. Procedures in this rule are similar to procedures in Rule R686-105.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

R277. Education, Administration.

R277-206. Drug Related Offenses.

R277-206-1. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-6-306 which directs the Board to adopt rules regarding UPPAC duties and procedures, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish procedures for disciplining educators regarding drug related offenses.

C. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d).

R277-206-2. Action by the Board if a Licensed Educator Has Been Convicted of a Drug Related Offense.

A. If as a result of a background check, it is discovered that a licensed educator has been convicted of a drug related offense in the previous ten years, the following minimum conditions shall apply:

(1) one conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule;

(2) two convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical assessment and recommended treatment following the second conviction;

(3) If the most recent conviction was more than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Board shall send a letter of warning to the educator;

(4) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Board shall send a letter of reprimand to the educator and a letter to the district with notice of treatment;

(5) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical treatment, UPPAC or the Board may initiate an investigation of the educator based upon the drug offenses;

(6) Three convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the third conviction;

(7) If the most recent conviction was more than five years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, the Board shall send a letter of warning to the educator;

(8) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, the Board shall send a letter of reprimand to the educator and send a copy of the letter of reprimand to the educator's employer; and

(9) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical assessment and recommended treatment, UPPAC shall recommend suspension of the educator's license to the Board, subject to the educator's right to a hearing under R277-202.

B. This rule does not preclude more serious or additional action by the Board against an educator if circumstances warrant it.

R277-206-3. Board Action Towards an Individual Who Does Not Hold Licensing.

A. If as a result of a background check, it is discovered that an applicant has been convicted of a drug related offense within ten years of the date of the background check, the following minimum conditions shall apply:

(1) one conviction--the individual shall be denied clearance for a period of one year from the date of the conduct giving rise to the charge;

(2) two convictions--the individual shall be denied clearance for a period of three years from the date of the conduct giving rise to the most recent charge and the applicant shall present documentation of clinical assessment and recommended treatment before clearance shall be considered; and

(3) three convictions--the individual shall be denied clearance for a period of five years from the date of the conduct giving rise to the most recent charge.

B. UPPAC or the Board may require the applicant to present documentation of clinical assessment and recommended treatment and may recommend denial of clearance.

KEY: educators, disciplinary actions, drug offenses, background checks

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)

**Education, Administration
R277-417**

**Prohibiting LEAs and Third Party
Providers from Offering Incentives or
Reimbursements for Enrollment or
Participation**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39372

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to provide standards and procedures for prohibiting local education agencies (LEAs) and third party providers from offering

incentives for student enrollment. Similar procedures in Section R277-419-9, which will be removed, are incorporated into two new rules and one amended rule.

SUMMARY OF THE RULE OR CHANGE: The new rule provides definitions and procedures for LEA and third party provider use of public funds for incentives and reimbursements. (DAR NOTE: The other proposed new rule, R277-418, is under DAR No. 39373. The proposed amendment to Rule R277-419 is under DAR No. 39374, and the proposed amendment to Rule R277-487 is under DAR No. 39375 in this issue, June 1, 2015, of the Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Procedures in Rule R277-417 affect LEAs and third party providers so it is anticipated that there is likely no cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: It is anticipated that there is likely no cost or savings to LEAs because the procedures currently in Section R277-419-9 are merely incorporated into Rule R277-417.

◆ SMALL BUSINESSES: It is anticipated that there is likely no cost or savings to small businesses (third party providers) because the procedures currently in Section R277-419-9 are merely incorporated into Rule R277-417.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Procedures in Rule R277-417 affect LEAs and third party providers so it is anticipated that there is likely no cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely no compliance costs for affected persons because the procedures currently in Section R277-419-9 are merely incorporated into Rule R277-417.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

R277. Education, Administration.

R277-417. Prohibiting LEAs and Third Party Providers from Offering Incentives or Reimbursements for Enrollment or Participation.

R277-417-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Incentive" means one of the following given to a student or to the student's parent or guardian by an LEA or by a third party provider as a condition of the student's enrollment in an LEA or specific program for any length of time, during any school year:
- (1) money greater than \$10; or
 - (2) an item of value greater than \$10.
- C. "Individualized Education Program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Utah Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).
- D. "LEA" or "local education agency" means a school district or charter school.
- E(1) "Reimbursement" means the payment of money or provision of other item of value greater than \$10 offered as payment or compensation to a student or to a parent or guardian for:
- (a) a student's enrollment in an LEA; or
 - (b) a student's participation in an LEA's program.
- (2) "Reimbursement" does not include a reimbursement paid by an LEA to a student, parent or guardian, for an expenditure incurred by the student, parent or guardian on behalf of the LEA if:
- (a) the expenditure is for an item that will be the property of the LEA; and
 - (b) the expenditure was authorized by the LEA.
- F. "Section 504 accommodation plan" required by Section 504 of the Rehabilitation Act of 1973, means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.
- G. "Third party provider" means a third party who provides educational services on behalf of an LEA.

R277-417-2. Authority and Purpose.

- A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to provide standards and procedures for prohibiting LEAs and third party providers from offering incentives for student enrollment.

R277-417-3. LEA and Third Party Provider Use of Public Funds for Incentives and Reimbursements.

- A. Except as provided in R277-417-3B, an LEA or a third party provider may not use public funds, as defined under Section 51-7-3(26), to provide the following to a student, parent or guardian, individual, or group of individuals:
- (1) an incentive for a student's:
 - (a) enrollment in an LEA; or
 - (b) participation in an LEA's program; or
 - (2) a referral bonus for a student's:
 - (a) enrollment in an LEA; or
 - (b) participation in an LEA's program.
- B. An LEA or third party provider may use public funds to provide an incentive to a student or the student's parent or guardian if the incentive is:
- (1) provided to all students enrolled in the LEA; and
 - (2) part of a school uniform used by the LEA.
- C. Except as provided in R277-417-3D, an LEA or third party provider may not use public funds to provide a reimbursement to a student or the student's parent or guardian for:
- (1) curriculum;
 - (2) instruction;
 - (3) private lessons;
 - (4) technology; or
 - (5) other educational expense.
- D. An LEA or third party provider may use public funds to provide a reimbursement to a student or the student's parent or guardian if:
- (1) the reimbursement is required to be paid or provided pursuant to an IEP or Section 504 accommodation plan that is approved by the LEA;
 - (2) for a student in Kindergarten through grade 6, the reimbursement is provided to a student's parent or guardian for internet accessibility; or
 - (3) for a student in grade 7 through grade 12:
 - (a) the reimbursement is provided to a student or student's parent or guardian for internet access in accordance with the fee waiver policy requirements of R277-407-6; and
 - (b) failure to provide the reimbursement described in R277-417-3D(3)(a) will cause economic hardship.
- E. An LEA or third party provider shall ensure that an item purchased, rented, or leased by the LEA or third party provider remains the property of the LEA and is subject to the LEA's asset policies if:
- (1) the LEA or third party provider purchases an item; and
 - (2) provides the item to a student or to the student's parent or guardian.
- F. An LEA shall establish monitoring procedures to ensure that a third party provider who provides educational services to a student on behalf of the LEA complies with the provisions of R277-417.
- G. The Board or the Superintendent may require an LEA to repay public funds to the Superintendent if:
- (1) an LEA or an LEA's third party provider fails to comply with the provisions of this R277-417; and
 - (2) the repayment is made in accordance with the procedures established in R277-114.

KEY: student, enrollment, incentives
Date of Enactment or Last Substantive Amendment: 2015
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3)

Education, Administration
R277-418
Distance, Blended, Online, or
Competency Based Learning Program

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 39373
FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to provide standards and procedures for nontraditional programs. Similar procedures in Section R277-419-9, which will be removed, are incorporated into two new rules and one amended rule.

SUMMARY OF THE RULE OR CHANGE: The new rule provides definitions and procedures for nontraditional programs. (DAR NOTE: The other proposed new rule, R277-417, is under DAR No. 39372. The proposed amendment to Rule R277-419 is under DAR No. 39374, and the proposed amendment to Rule R277-487 is under DAR No. 39375 in this issue, June 1, 2015, of the Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:
♦ **THE STATE BUDGET:** Procedures in Rule R277-418 affect local education agencies (LEAs) and third party providers so it is anticipated that there is likely no cost or savings to the state budget.
♦ **LOCAL GOVERNMENTS:** It is anticipated that there is likely no cost or savings to local government (LEAs) because the procedures currently in Section R277-419-9 are merely incorporated into Rule R277-418.
♦ **SMALL BUSINESSES:** It is anticipated that there is likely no cost or savings to small businesses (third party providers) because the procedures currently in Section R277-419-9 are merely incorporated into Rule R277-418.
♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Procedures in Rule R277-418 affect LEAs and third party providers so it is anticipated that there is likely no cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely no compliance costs because the procedures currently in Section R277-419-9 are merely incorporated into Rule R277-418.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

R277. Education, Administration.
R277-418. Distance, Blended, Online, or Competency Based Learning Program.

- R277-418-1. Definitions.**
A. "Blended learning program" means a program under the direction of an LEA:
(1) where a student learns at least in part:
(a) at a supervised brick and mortar location away from home; and
(b) at least in part through an online delivery; and
(2) that may include some element of student control over time, place, or path, or pace.
B. "Board" means the Utah State Board of Education.
C. "Distance learning program" means a program, under the direction of an LEA, in which the participants are a distance from each other in space.
D. "Enrollment verification data" includes:
(1) a student's birth certificate or other verification of age;
(2) verification of immunization or exemption from immunization form;
(3) proof of Utah public school residency;
(4) family income verification; or
(5) special education program information, including information for:

- _____ (a) an individualized education program;
- _____ (b) a Section 504 accommodation plan; and
- _____ (c) an English learner plan.

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

_____ F. "LEA" or "local education agency" means a school district or charter school.

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

- _____ (1) distance learning program;
- _____ (2) online learning program;
- _____ (3) blended learning program; or
- _____ (4) competency based learning program.

_____ G. "Online learning program" means a program, under the direction of an LEA, where there is an organized offering of courses delivered primarily over the internet.

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

_____ I. "Third party provider" means a third party who provides educational services on behalf of an LEA.

R277-418-2. Authority and Purpose.

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

_____ B. The purpose of this rule is to provide standards and procedures for nontraditional programs.

R277-418-3. Distance, Blended, Online, or Competency Based Learning Program Standards.

_____ A. An LEA offering a nontraditional program shall comply with the following standards:

- _____ (1) student eligibility and membership/enrollment requirements described in R277-419-5, 419-6, and 419-7;
- _____ (2) school and program requirements described in R277-419-3(A);
- _____ (3) minimum school day requirements described in R277-419-4(A)1-2;
- _____ (4) compliance with official record standards and membership audit requirements described in:
 - _____ (a) R277-419-4B(1) and (2); and
 - _____ (b) R277-419-4C and 4D;
- _____ (5) educator licensure requirements described in R277-502;
- _____ (6) fingerprint and background check requirements for educators, employees and volunteers, described in:
 - _____ (a) Title 53A, Chapter 15, Part 15, Background Checks;
 - _____ (b) 53A-1a-512.5;
 - _____ (c) 53A-6-401;
 - _____ (d) R277-516; and
 - _____ (e) R277-520;

_____ (7) integration of the Utah Core Standards in the nontraditional program's student instruction consistent with Section 53A-1-402(1)(a) and R277-700;

_____ (8) compliance with statewide assessment administration requirements by the LEA, as required under:

- _____ (a) Title 53A, Chapter 1, Part 6, Achievement Tests; and
- _____ (b) R277-404; and

_____ (9) compliance with the public school data confidentiality and disclosure requirements described in R277-487.

_____ B. An LEA that contracts with a third party provider to provide educational services on behalf of the LEA for the LEA's nontraditional program shall:

_____ (1) develop a written monitoring plan to supervise the activities and services provided by the third party provider;

_____ (2) ensure the third party provider is complying with:

- _____ (a) federal law;
- _____ (b) state law; and
- _____ (c) Board rules;

_____ (3) monitor and supervise all activities of the third party provider related to services provided by the third party provider to the LEA; and

_____ (4) maintain documentation of the LEA's supervisory activities consistent with the LEA's administrative records retention schedule.

_____ C. An LEA shall:

_____ (1) verify the accuracy and validity of a student's enrollment verification data, prior to enrolling a student in the LEA; and

_____ (2) provide a student and the student's parent or guardian with notification of the student's enrollment in a school or program within the LEA.

_____ D. The Board or the Superintendent may require an LEA to repay public funds to the Superintendent if:

_____ (1) the LEA or the LEA's third party provider fails to comply with the provisions of this R277-418; and

_____ (2) the repayment is made in accordance with the procedures established in R277-114.

_____ E. An LEA offering a nontraditional program shall retain sufficient documentation to demonstrate the nontraditional program's compliance with this R277-418-3.

KEY: student, enrollment, nontraditional learning programs
Date of Enactment or Last Substantive Amendment: 2015
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3)

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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39374

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-419 is amended to provide language to allow a local education agency (LEA) to enroll students in both traditional and nontraditional programs; to clarify that a home school program does not qualify for public funding; to provide high school completion status requirements and procedures; to eliminate Section R277-419-9, which has been incorporated into two new rules and one amended rule; and to provide numerous technical changes throughout the rule.

SUMMARY OF THE RULE OR CHANGE: Amendments to Rule R277-419 include providing new and revised definitions; providing student membership criteria for students in nontraditional learning programs in public schools; providing high school completion status criteria; and removing Section R277-419-9. (DAR NOTE: The proposed new rule, R277-417, is under DAR No. 39372, and the other proposed new rule, R277-418, is under DAR No. 39373. The proposed amendment to Rule R277-487 is under DAR No. 39375 in this issue, June 1, 2015, of the Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The amendments provide language to clarify student enrollment and membership criteria for public education funding purposes. It is anticipated that the amendments will likely not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: The amendments provide language to clarify student enrollment and membership criteria for public education funding purposes. It is anticipated that the amendments will likely not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: The amendments provide language to clarify student enrollment and membership criteria for public education funding purposes. It is anticipated that the amendments will likely not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments provide language to clarify student enrollment and membership for public education funding purposes. It is anticipated that the amendments will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments provide language to clarify student enrollment and membership criteria for public education funding purposes which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

**R277. Education, Administration.
 R277-419. Pupil Accounting.
 R277-419-1. Definitions.**

- A. "Aggregate Membership" means the sum of all days in membership during a school year for ~~the~~eligible students~~[-program, school, LEA, or state]~~ enrolled in a public school.
- B. "Approved CTE course" means a course approved by the Board within the Career and Technical Education (CTE) Pathways in the eight areas of study.
- C. "Blended learning program" means a program under the direction of an LEA:
 - (1) where a student learns at least in part:
 - (a) at a supervised brick and mortar location away from home; and
 - (b) at least in part through an online delivery; and
 - (2) that may include some element of student control over time, place, or path, or pace.
 - [C]D. "Board" means the Utah State Board of Education.
 - E. "Brick and mortar school" means a traditional school or traditional school building.
 - [~~-----~~D. "Charter school" means a school that is authorized and operated under Sections 53A-1a-501.6, 53A-1a-515 and 53A-1a-501.3.
 - F. "Competency based learning program" means a an education program that requires a student to acquire a competency and includes a classroom structure and operation that aid and facilitate the acquisition of specified competencies on an individual

basis wherein a student is allowed to master and demonstrate competencies as fast as the student is able.

[E]G. "Compulsory school age" means:

(1) a person who is at least five years old and no more than 17 years old on or before September 1;

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

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

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

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

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

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

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

M. "Enrollment verification data" includes:

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

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

(3) proof of Utah public school residency;

(4) family income verification; or

(5) special education program information, including information for:

(a) an individualized education program;

(b) a Section 504 accommodation plan; or

(c) an English learner plan.

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

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

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

(2) an online student is:

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

(b) included in accountability measures;

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

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

P. "Home school course" means instruction:

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

(2) not supervised or directed by an LEA.

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

[H]R. "ISI-1" means a student who receives 1 to 59 minutes of YIC related services during a typical school day.

[H]S. "ISI-2" means a student who receives 60 to 179 minutes of YIC related services during a typical school day.

[K]I. "LEA" ~~[means a]~~ "local education agency" [including local school boards/public] means a school district [s and] or charter school [s].

[E]U. "Membership" means a public school student is on the current roll of a public school class or public school as of a given date:

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

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

[M]V. "Minimum School Program (MSP)" means ~~[public school programs for kindergarten, elementary, and secondary schools described]~~ the same as that term is defined in Section 53A-17a-103[(5)].

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

(1) distance learning program;

(2) online learning program;

(3) blended learning program; or

(4) competency based learning program.

X. "Online learning program" means a program:

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

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

[N]Y. "Private school" means an educational institution that:

(1) is not an [charter school but]LEA;

(2) is owned or operated by a private person, firm, association, organization, or corporation [rather than]; and

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

[O]Z. "Program" means a ~~[n institution]~~ program within a ~~[larger education entity]school~~ that is designed to accomplish a predetermined curricular objective or set of objectives.

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

[Q]BB. "Retained senior" means a student beyond the general compulsory education age who is authorized at the

discretion of ~~the~~an LEA to remain in enrollment as a high school senior in the year(s) after the cohort has graduated due to:

- (1) sickness;
- (2) hospitalization;
- (3) pending court investigation or action ~~or both~~; or
- (4) other extenuating circumstances beyond the control of

the student.

~~[R]~~CC. "S1" means the record maintained by the USOE containing individual student demographic and school membership data in a Data Clearinghouse file.

~~[S]~~DD. "S2" means the record maintained by the USOE containing individual student data related to participation in a special education program in a Data Clearinghouse file.

~~[F]~~EE. "S3" means the record maintained by the USOE containing individual student data related to participation in a YIC program in a Data Clearinghouse file.

~~[U]~~EF. "School" means an educational entity governed by an LEA that:

- ~~(1)~~ (1) is supported with public funds~~;~~;
- ~~(2)~~ (2) includes enrolled or prospectively enrolled full-time students~~;~~;
- ~~(3)~~ (3) employs licensed educators as instructors that provide instruction consistent with R277-502-5~~;~~;
- ~~(4)~~ (4) has one or more assigned administrators~~;~~;
- ~~(5)~~ (5) is accredited consistent with R277-410-3~~;~~ and
- ~~(6)~~ (6) administers required statewide assessments to ~~[its]~~the school's students.

~~[V]~~GG. "School day" means:

(1) a minimum of two hours per day per session in kindergarten and a minimum of four hours per day in grades one through twelve, subject to the following constraints described in R277-419-1FF(2).~~;~~

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

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

~~[W]~~HH. "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.

~~[X]~~II. "School of enrollment" means the school;

~~(1)~~ (1) where a student takes a majority of ~~[his]~~the student's classes;~~[the school]~~and

~~(2)~~ (2) designated to receive the student's weighted pupil unit.

~~[Y]~~JJ. "School year" means the 12 month period from July 1 through June 30.

~~[Z]~~KK. "Self-contained" means a public school student with an IEP or YIC, who receives 180 minutes or more of special education or YIC related services during a typical school day.

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

MM. "SEOP/Plan for College and Career Readiness" means a student education occupation plan for College and Career Readiness that is a developmentally organized intervention process that includes:

(1) a written plan, updated annually, for a secondary student's (grades 7-12) education and occupational preparation;

(2) all Board, local school board and local charter school governing board graduation requirements;

(3) evidence of parent or guardian, student, and school representative involvement annually;

(4) attainment of approved workplace skill competencies, including job placement when appropriate; and

(5) identification of post secondary goals and approved sequence of courses.

~~[BB]~~NN. "SSID" means Statewide Student Identifier.

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

~~[CC]~~PP. "UCAT" means any public institution of higher education affiliated with the Utah College of Applied Technology.

~~[DD]~~QQ. "Unexcused absence" means an absence charged to a student when the student was not physically present at school at any of the times attendance checks were made in accordance with Section R277-419-4B(3) and the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53A-11-101.

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

~~[FF~~. "Virtual education" means the use of information and communication technologies to offer educational opportunities to students in a manner that transcends traditional limitations of time and space with respect to their relationships with teachers, peers, and instructional materials.

~~]~~ [GG]SS. "Year End upload" means the Data Clearinghouse file due annually by July 15 from ~~[school districts and charter schools]~~LEAs to the USOE for the prior school year.

~~[HH]~~TT. "Youth in Custody (YIC)" means a person under the age of 21 who is:

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

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

(3) being held in a juvenile detention facility.

R277-419-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the State Board of Education, by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities, Section 53A-1-402(1)(e) which directs the Board to establish rules and standards regarding cost-effectiveness, school budget formats and financial, statistical, and student accounting requirements, and Section 53A-1-404(2) which directs that local school board auditing standards shall include financial accounting and student accounting. This rule is further authorized by Section 53A-1-301(3)(d) which directs the Superintendent to present to the Governor and the Legislature data on the funds allocated to ~~[school districts]~~LEAs, and Section 53A-3-404 which requires annual financial reports from all school districts.

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

R277-419-3. Schools and Programs.

A. Schools

(1) ~~[Each school shall receive]~~The Superintendent shall provide to each school the appropriate accountability reports ~~[from the USOE]~~ and other state-mandated reports for the school type and grade range~~[-and]~~.

(2) All schools shall submit a Clearinghouse report to the Superintendent~~[-and]~~.

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

B. Programs

(1) Students who are enrolled in a program ~~[shall remain]~~are considered members of a public school~~[-and]~~.

(2) The Superintendent may not require ~~[P]~~programs ~~[shall not to]~~ receive separate accountability and other state-mandated reports~~[-from the USOE; and]~~.

(3) Students reported under an LEA's program shall be included in the LEA's WPU and student enrollment calculations of ~~[a]~~the LEA's school of enrollment~~[-and]~~.

(4) Courses taught at programs shall be credited to the appropriate school of enrollment.

C. Private school or program

(1) Private schools or programs ~~[shall]~~may not be required to submit data to the USOE~~[-and]~~.

(2) Private schools or programs ~~[shall]~~may not receive annual accountability reports.

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

A. Minimum standards for school days

(1)(a) Except as provided in R277-419-4(1)(b), an LEA[s] shall conduct school for at least 990 instructional hours and 180 school days each school year~~[-]~~.

(b) an LEA may seek an exception[s] to the number of school days described in R277-419-4A(1)(a) for individual students and schools ~~[are]~~as provided for in R277-419-8.

(2) An LEA may offer ~~[F]~~the required school days and hours ~~[may be offered]~~described in R277-419-4A(1)(a) at any time during the school year, consistent with the law.

(3) Health Department Emergency or Pandemic

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

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

(c) The waiver may be for a designated time period, ~~[and]~~ for specific areas, ~~[school districts, or schools]~~or for a specific LEA in the state, as determined by the health department directive.

(d) The waiver may allow ~~[for school districts]~~an LEA to continue to receive state funds for pupil services and reimbursements.

(e) The waiver by the Board or ~~[State-]~~Superintendent~~[-of Public Instruction]~~ shall direct ~~[school districts]~~an LEA to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

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

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

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

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

B. Official records

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

(a) entry date;

(b) exit date;

(c) exit or high school completion status;

(d) whether or not an absence was excused;

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

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

(2) An LEA shall ensure that:

(a) [E]computerized or manually produced records for CTE programs ~~[shall be]~~are kept by teacher, class, and Classification of Instructional Program (CIP) code~~[-]; and~~

(b) [F]the records ~~[shall]~~described in R277-419-4B(2)(a) clearly and accurately show for each student in a CTE class the:

(i) entry date;

(ii) exit date; and

(iii) excused or unexcused status of absence.

(3) An LEA shall ensure that each school within the LEA completes a minimum of one attendance check~~[-shall be made by each public school]~~ each school day.

C. Due to school activities requiring schedule and program modification during the first days and last days of the school year:

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

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

(3) ~~[S]~~schools shall continue instructional activities throughout required calendared instruction days.

D. Audits

(1) An LEA shall employ an independent auditor~~[-shall be employed]~~, under contract, ~~[by each LEA-]~~to:

(a) annually audit~~[-its]~~ student accounting records ~~[annually]; and~~

(b) report the findings of the audit to:

(i) the LEA board~~[-of education]; and~~

(ii) ~~to~~ the Finance and Statistics Section of the USOE[;].

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

(3) The ~~USOE~~ Superintendent:

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

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

R277-419-5. Student Membership.

A. Eligibility

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

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

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

(c) ~~does not have~~ unexcused absences ~~on all of the prior ten consecutive school days~~ which is determined using one of the continuing enrollment measurements described in R277-419-5A(2);

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

(e) ~~be~~is of compulsory school age or ~~is~~ a retained senior;

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

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

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

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

(~~A~~)I injury, illness, surgery, suspension, pregnancy, pending court investigation or action; or

(~~B~~)II an LEA determination that home instruction is necessary[;];

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

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

(B) being used to meet Board-approved CTE graduation requirements under R277-700-6C(7); and

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

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

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

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

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

~~(2) Students may generate MSP funding by participation in an LEA-sponsored or LEA-supported virtual education program other than the Utah Electronic High School that is consistent with the student's SEOP, has been approved by the student's counselor, and includes regular face-to-face instruction or facilitation by a designated employee of the LEA.~~

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

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

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

(i) adopt a written policy that designates a continuing enrollment measurement to document the continuing membership or enrollment status for each student enrolled in the nontraditional program consistent with R277-419-5A(1)(c);

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

(iii) appropriately adjust and update student membership records in the student information system for students that did not meet the continuing enrollment measurement, consistent with R277-419-5A(1)(c).

(3) The continuing enrollment measurement described in R277-419-5A(2)(b) may include some or all of the following components, in addition to other components, as determined by an LEA:

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

(b) required periodic contact with a licensed educator;

(c) a minimum hourly requirement, per day or week, when students are engaged in course work; or

(d) required timelines for a student to provide or demonstrate completed assignments, coursework or progress toward academic goals.

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

~~(iv)~~5(a) An LEA[s] desiring to generate membership for student enrollment in courses outlined in R277-419-5A(1)(f)(iii), or to seek a waiver from a requirement(s) in R277-419-5A(1)(f)(iii), shall submit an application for course approval by April 1 of the year prior to which the membership will be counted.

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

B. Reporting

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

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

C. Calculations

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

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

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

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

(3) For students in grade 1, an LEA shall adjust the first term of the formula [~~shall be adjusted~~] to use 810 hours as the denominator.

(4) For students in kindergarten, an LEA shall adjust the first term of the formula [~~shall be adjusted~~] to use 450 hours as the denominator.

D. Constraints

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

(2) The sum of regular and resource special education membership days may not exceed 360 days[;].

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

E. Exceptions[

_____]- An LEA[s] may also count a student in membership for the equivalent in hours of up to:

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

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

(b) participating in one or more extracurricular activities under R277-438, but has otherwise been exempted from school attendance under 53A-11-102 for home schooling [~~and participates in one or more extracurricular activities under R277-438~~];

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

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

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

(b) a private school without religious affiliation under a contract initiated by an LEA to provide special education services

which directs that the instruction be paid by public funds [~~-C~~] if the contract[s shall be] with the private school is approved by [the]an LEA board in an open meeting[-];

(c) a foreign exchange student program under 53A-2-206(8)[-];

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

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

(i) the student[s] may only be counted in (S1) membership and [~~shall~~] may not have an S2 record; and

(ii) the S2 record for the[se] student[s ~~shall only be~~] is submitted by the Utah Schools for the Deaf and the Blind.

R277-419-6. High School Completion Status.

A. An LEA shall account for [~~F~~]the final status of all students who enter high school (grades 10-12) [~~shall be accounted for~~], whether they graduate or leave high school for other reasons [~~-LEAs shall use~~], using the following decision rules to indicate the high school completion or exit status of each student who leaves the Utah public education system:

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

(2) [~~O~~]other students are completers who have not satisfied Utah's requirements for graduation but who:

(a) [~~shall be~~] are in membership in twelfth grade on the last day of the school year; and

(b) (i) meet any additional criteria established by [~~the~~] an LEA consistent with its authority under R277-705-4C; [~~or~~]

(c) (ii) meet any criteria established for special education students under Utah State Board of Education Special Education Rules, Revised, August 2007, and available from the USOE, and R277-700-8E; or

(d) (iii) pass a General Educational Development (GED) test with a designated score[-];

(3) [~~C~~]continuing students are students who:

(a) transfer to higher education, without first obtaining a diploma; [~~or~~]

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

(c) age out of special education[-];

(4) [~~D~~]dropouts are students who:

(a) [~~have~~] leave school with no legitimate reason for departure or absence [~~from school or who~~];

(b) (b) withdraw due to a situation so serious that educational services cannot be continued even under the conditions of R277-419-5A(1)(f)(ii); [~~or~~]

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

(d) (d) transfer to adult education[-];

(5) [~~Students~~] an LEA shall [~~be~~] exclude [~~d~~] a student from the cohort calculation if the[~~y~~] student:

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

(b) ~~[are]~~is a U.S. citizen[s] who enroll~~[ed]~~s in another country as a foreign exchange student;~~[-or]~~

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

(d) die~~[d]~~s.

B~~[-]~~(1) An LEA[s] shall report the high school completion status or exit code of each student to the [USOE]Superintendent as specified in Data Clearinghouse documentation.

(2) High School completion status or exit codes for each student are due to the Superintendent by Year End upload for processing and auditing.

(3) Except as provided in R277-419-6B(4), an LEA shall submit any further updates of completion status or exit codes by October 1 following the end of the student's graduating cohort pursuant to R277-484-3, Deadlines for Data Submission.

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

C~~[-]~~(1) The [USOE]Superintendent shall report a graduation rate for each school, LEA, and the state.

(2) The Superintendent shall calculate the graduation rates in accordance with the No Child Left Behind Act of 2001 (NCLB) and the NCLB High School Graduation Rate: Non-Regulatory Guidance.

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

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

(b) if the student does not meet any exclusion rules as stated in R277-419-6A(5).

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

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

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

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

(b) school with the latest exit date;

(c) school with the earliest entry date;

(d) school with the highest total membership;

(e) school of choice;

(f) school with highest attendance; or

(g) school with highest cumulative GPA.

~~[+]~~7 The Superintendent shall report [F]the four-year cohort rate [shall be reported] on the annual state reports.

~~[-]~~2 The three-year cohort graduation rate shall be reported separately for high schools on the official state graduation report.

]

R277-419-7. Student Identification and Tracking.

A~~[-]~~(1) Pursuant to Section 53A-1-603.5, an LEA[s] shall:

~~[(+)]a~~ use the SSID system maintained by the [USOE]Superintendent to assign every student enrolled in a program under the direction of the Board or in a program or a school that is supported by public school funding a unique student identifier~~[-]~~; and

~~[(2)]b~~ display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.

~~(2)~~a The ~~[number]~~unique student identifier shall be assigned to a student upon enrollment into a public school program or a public school-funded program.

b The ~~[number]~~unique student identifier ~~[shall]~~may not be the student's social security number or contain any personally identifiable information about the student.

B~~[(+)]~~ An LEA[s] shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.

~~[(2)]a~~1 A school shall transcribe the [N]names [shall be transcribed] from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53A-11-503;

~~[(b)]2~~ The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and

~~[(e)]3~~ ~~[Schools or school districts]~~ An LEA may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the USOE.

C. The [USOE]Superintendent and LEAs shall track students and maintain data using students' legal names.

D. If there is a compelling need to protect a student by using an alias, ~~[the]~~an LEA should exercise discretion in recording the name of the student.

E. An LEA is responsible to verify the accuracy and validity of enrollment verification data, prior to enrolling students in a the LEA, and provide students and their parents with notification of enrollment in a public school.

F. An LEA shall ensure enrollment verification data is collected, transmitted, and stored consistent with sound data policies, established by the LEA as required in R277-487.

R277-419-8. Variances.

A~~[-]~~(1) An LEA may, at its discretion, make [A]an exception for school attendance for public school students~~[-may be made at the discretion of the local board]~~, in the length of the school day or year, for students with compelling circumstances.

(2) The time an excepted student is required to attend school shall be established by the student's IEP or SEOP/Plan for College and Career Readiness.

B~~[-]~~(1) An LEA shall plan for [E]emergency~~[-]~~ activity~~[-]~~, and weather-related exigency time ~~[shall be planned for in an LEA's]~~in its annual calendaring.

(2) If school is closed for any reason, the school shall make up the instructional time missed [~~shall be made up~~] under the emergency/activity time as part of the minimum required time to qualify for full MSP funding.

C. Staff Planning, Professional Development, Student Assessment Time, and Parent-Teacher and Student Education Plan (SEP) Conferences.

(1) To provide planning and professional development time for staff, an LEA[s] may hold school longer some days of the week and shorter other days so long as minimum school day requirements, as provided for in R277-419-1[~~V~~]EE, are satisfied.

(2) Schools may conduct parent-teacher and [s]Student [e]Education [p]Plan (SEP) conferences during the school day.

(3) [~~Such~~]Parent-teacher and SEP conferences may only be held for a total of the equivalent of three full school days or a maximum of 16.5 hours for the school year.

(4) Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.

([4]5) An LEA[s] may designate no more than 12 instructional days at the beginning of the school year [~~or~~], at the end of the school year, or both for the assessment of students entering or completing kindergarten.

(6) If instruction days are designated for kindergarten assessment:

(a) an LEA shall designate the days [~~shall be designated by the LEA board~~] in an open meeting;

(b) an LEA shall provide adequate notice and explanation [~~shall be provided~~] to kindergarten parents well in advance of the assessment period;

(c) qualified school employees shall conduct the assessment [~~shall be conducted by qualified school employees~~] consistent with Section 53A-3-410; and

(d) assessment time per student shall be adequate to justify the forfeited instruction time.

([5]7) The final decision and approval regarding planning time, parent-teacher and SEP conferences rests with [~~the local board of education~~] an LEA, consistent with Utah law and Board administrative rules.

([6]8) Total instructional time and school calendars shall be approved by [~~local boards~~] an LEA in an open meeting.

D. A school using a modified 45-day 15-day year round schedule initiated prior to July 1, 1995 shall be considered to be in compliance with this rule if [a]the school's schedule includes a minimum of 990 hours of instruction time in a minimum of 172 days.

[R277-419-9. Provisions for Maintaining Student Membership and Enrollment Documentation and Documentation of Student Education Services Provided by Third Party Vendors.

A. R277-419-1 through 8 provide direction for student membership and enrollment and eligibility criteria for both traditional and nontraditional schools and programs.

B. A traditional program is a public school program that consists of eligible enrolled public education students who physically attend school in classrooms.

C. A nontraditional program is a public school program that consists of eligible, enrolled public education students where

students primarily receive instruction either online or through a distance learning program.

D. LEAs may enroll students in both traditional and nontraditional programs.

E. Home school courses do not qualify for public education funding for both traditional and non-traditional programs. Home school courses are those where the curriculum and instructional methods, reporting, or evaluation of student progress or mastery is provided or administered by the parent, guardian, custodian, or other group of individuals, not directly supervised by an LEA.

F. LEA and Third Party Vendor Use of Public Funds for Incentives and Reimbursements

(1) LEAs or their third party vendors shall not use public funds, as defined under Section 51-7-3(26), to provide monetary or other incentives for enrollment or referral bonuses to individuals or groups of individuals.

(2) LEAs or their third party vendors shall not use public funds to provide educational, curriculum, instruction, private lessons, or technology reimbursements to individuals, groups of individuals or third party vendors that are not available to all students enrolled in the LEA or required by an IEP or 504 plan that is approved by the LEA.

(3) LEAs or their third party vendors that purchase items or technology devices and provide them to students shall ensure that these items are the property of the LEAs and are subject to the LEAs asset policies.

(4) LEAs shall establish provisions identified in R277-419-9F(1) through (3) in their contracts with third party vendors and shall monitor compliance with these provisions.

G. LEAs shall ensure school enrollment verification records are collected consistent with sound data collection and storage procedures, established by the LEA, and that these records are transmitted securely. It is the LEAs' responsibility to verify the accuracy and validity of student enrollment records, prior to enrolling students in an LEA, and provide students and their parents with notification of enrollment in a public school. An LEA is the only entity authorized to collect and store public school enrollment verification records including:

(1) birth certificates or other verification of age and identity;

(2) verification of immunization or exemption form;

(3) proof of Utah public school residency;

(4) family income verification; or

(5) special education records, including:

(a) individualized education program;

(b) 504 plan; or

(c) English learner plan.

H. All LEAs that enroll public school students shall maintain documentation of the following:

(1) that the LEA complied with all provisions of R277-419-1 through 8;

(2) that the LEA complied with all educator licensure requirements of R277-502;

(3) that the LEA complied with all fingerprint and background check requirements for educators, employees and volunteers consistent with Section 53A-3-410, 53A-1a-512.5, R277-516, and R277-520;

~~_____ (4) that the LEA established a school schedule consistent with R277-419-4A(1);~~

~~_____ (5) that the LEA only enrolled students who met the eligibility requirements of R277-419-5A(1)(a-c);~~

~~_____ (6) that the LEA directed the instruction of the core curriculum consistent with Section 53A-1-402(1)(a) and R277-700; and~~

~~_____ (7) that the LEA scheduled and administered all statewide assessments, as required under Sections 53A-1-606.6 through 53A-1-611 and R277-404.~~

~~_____ I. In addition to R277-419-9D, LEAs that enroll students in traditional programs shall also satisfy the requirements of R277-419-5A(1)(f).~~

~~_____ J. In addition to R277-419-9D, LEAs that enroll students in nontraditional programs shall also maintain documentation that the LEA satisfied the following:~~

~~_____ (1) adopted a written policy that designates a continuing enrollment measurement to document the continuing membership or enrollment status for individual students consistent with R277-419-5A(1)(e);~~

~~_____ (2) measured and documented each student's continued enrollment using the adopted continuing enrollment measurement at least every ten consecutive school days;~~

~~_____ (3) documented that LEA employees confirmed students' continued enrollment consistent with R277-419-9J(2) and updated student membership records in the student information system; and~~

~~_____ (4) documented that the LEA adjusted the student membership information for students that did not meet the continuing enrollment measurement, consistent with R277-419-5A(1)(e).~~

~~_____ K. The continuing enrollment measurement may include some or all of the following components, in addition to other components, as determined by the LEA:~~

~~_____ (1) a minimum student login or teacher contact requirement;~~

~~_____ (2) required periodic contact with a licensed educator;~~

~~_____ (3) a minimum hourly requirement, per day or week, when students are engaged in course work; or~~

~~_____ (4) required timelines for a student to provide or demonstrate completed assignments, coursework or progress toward academic goals.~~

~~_____ L. LEA Nontraditional Program and Third Party Vendor Compliance~~

~~_____ (1) An LEA offering a nontraditional program that contracts for curricular and instructional services which are administered by third party vendors shall submit documentation of compliance with law and Board rules (as prescribed by the Board) to the Superintendent's office for review prior to the initiation of the program.~~

~~_____ (2) An LEA offering a nontraditional program that contracts for curricular and instructional services from a third party vendor and does not resolve a corrective action item, may not qualify for some or all Minimum School Program funds.~~

~~_____ M. An LEA that contracts with a third party vendor to provide curricular and instructional services to students for nontraditional programs shall monitor and supervise the vendor throughout the administration of the services and ensure compliance, at a minimum, with the following:~~

~~_____ (1) all student eligibility and membership/enrollment requirements of R277-419 are met;~~

~~_____ (2) all educator licensure requirements of R277-502 are satisfied;~~

~~_____ (3) all fingerprint and background check requirements for educators, employees and volunteers, consistent with Section 53A-3-410, 53A-1a-512.5, R277-516, and R277-520, are met;~~

~~_____ (4) the Board directed core standards are used in student instruction, consistent with Section 53A-1-402(1)(a) and R277-700;~~

~~_____ (5) all required statewide assessments are administered by the LEA, as required under Sections 53A-1-606.6 through 53A-1-611 and R277-404;~~

~~_____ (6) the LEA has a written supervision plan for the vendor administration of curricular and instructional services; and~~

~~_____ (7) the LEA maintains documentation of supervisory activities ensuring compliance with the written supervision plan (copy of the agreement, assignment of supervising personnel by title, meeting notes, correspondence with vendor) consistent with the LEA's administrative records retention schedule.~~

~~_____ N. Consistent with R277-114, the Superintendent may withhold funds from traditional or nontraditional public education programs for non-compliance with R277-419. An LEA may appeal the decision of the Superintendent to the Board.~~

**[KEY: education finance, school enrollment, pupil accounting
Date of Enactment or Last Substantive Amendment:
[December 8, 2014]2015**

Notice of Continuation: September 14, 2012

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(e); 53A-1-404(2); 53A-1-301(3)(d); 53A-3-404; 53A-3-410

Education, Administration **R277-487** Public School Data Confidentiality and Disclosure

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 39375
FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-487 is amended to provide procedures and requirements for local education agencies (LEAs) that work with a third party provider; requires a third party provider that works with an LEA to comply with student privacy and data requirements. Similar procedures in Section R277-419-9, which will be removed, are incorporated into two new rules and this amended rule.

SUMMARY OF THE RULE OR CHANGE: Changes to Rule R277-487 include adding and revising definitions,

incorporating language from Section R277-419-9 into Section R277-487-3 and Section R277-487-12, and making numerous technical changes throughout the rule. (DAR NOTE: The proposed new rule, R277-417, is under DAR No. 39372, and the other proposed new rule, R277-418, is under DAR No. 39373. The proposed amendment to Rule R277-419 is under DAR No. 39374 in this issue, June 1, 2015, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Section 53A-1-411 and Subsection 53A-1-401(3) and Subsection 53A-13-301(4) and Subsection 53A-8a-410(4)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Procedures in Rule R277-487 affect LEAs and third party providers so it is anticipated that there is likely no cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: It is anticipated that there is likely no cost or savings to local government (LEAs) because the procedures currently in Section R277-419-9 are merely incorporated into Rule R277-487.
- ◆ SMALL BUSINESSES: It is anticipated that there is likely no cost or savings to small businesses (third party providers) because the procedures currently in Section R277-419-9 are merely incorporated into Rule R277-487.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Procedures in Rule R277-487 affect LEAs and third party providers so it is anticipated that there is likely no cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is likely no compliance costs for affected persons because the procedures currently in Section R277-419-9 are merely incorporated into Rule R277-487.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

R277. Education, Administration.

R277-487. Public School Data Confidentiality and Disclosure.

R277-487-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Chief Privacy Officer" means a USOE employee designated by the Board as primarily responsible to oversee and direct the DGPB to carry out the responsibilities of this rule, direct the development of materials and training about student and public education employee privacy and security standards, including FERPA, for the USOE and LEAs.
- C. "Classroom-level assessment data" means student scores on state-required tests, aggregated in groups of more than 10 students at the classroom level or, if appropriate, at the course level, without individual student identifiers of any kind.
- D. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained and owned by the USOE on all licensed Utah educators. The file includes information such as:
 - (1) personal directory information;
 - (2) educational background;
 - (3) endorsements;
 - (4) employment history; and
 - (5) a record of disciplinary action taken against the educator.
- E. "Data Governance/Policy Board (DGPB)" means a board composed of USOE and LEA employees, as directed by the Board, whose purpose is to resolve public education data and process issues, make policy decisions, review all research requests for public education data, and fill only those requests that are appropriate and comply with the standards in this rule.
- F. "Data security protections" means protections developed and initiated by the Chief Privacy Officer and the DGPB that protect, monitor and secure student, public educator and public education employee data as outlined and identified in FERPA and Sections 63G-2-302 through 63G-2-305.
- G. "Disciplinary action" means any lesser action taken by UPPAC which does not materially affect a licensed educator's license and licensing action taken by the Board for suspension or revocation.
- H. "Enrollment verification data" includes:
 - (1) a student's birth certificate or other verification of age;
 - (2) verification of immunization or exemption from immunization form;
 - (3) proof of Utah public school residency;
 - (4) family income verification; or
 - (5) special education program information, including:
 - (a) an individualized education program;
 - (b) a Section 504 accommodation plan; or
 - (c) an English learner plan.
- [H]I. "FERPA" means the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, a federal law designed to protect the privacy of students' education records. The law is hereby incorporated by reference.

[F]J. "LEA" ~~[means]or~~ "local education agency"~~[-including local school boards/public]~~means a school district[s], charter school[s, and] or, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

[F]K. "Personally identifiable student information" means the student's name; a personal identifier, such as the student's social security number or student number; other indirect identifiers such as the student's date of birth or place of birth; other information that, alone or in combination, is linked or linkable to a specific student and enables a person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonably knows is entitled to the requested information.

[K]L. "Student information" means materials, information, records and knowledge that an LEA possesses or maintains, or both, about individual students. Student information is broader than student records and personally identifiable student information may include information or knowledge that school employees possess or learn in the course of their duties.

[L]M. "Student performance data" means data relating to student performance, including data on state, local and national assessments, course-taking and completion, grade-point average, remediation, retention, degree, diploma, or credential attainment, enrollment, and demographic data.

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

O. "Third party provider" means a third party who provides educational services on behalf of an LEA.

[M]P. "USOE" means the Utah State Office of Education.

R277-487-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities; by Section 53A-13-301(~~3~~)4 ~~[regarding confidentiality and required or appropriate disclosure of personally identifiable student information]~~which directs the Board to make rules to establish standards for public education employees, student aides, and volunteers in public schools regarding the confidentiality of student information and student records; [by Section 53A-1-607(2) regarding disclosure of student performance data to LEAs for assessment and accountability purposes;]by Section 53A-8a-410(4) which directs the Board to make rules to ensure the privacy and protection of individual[~~educator~~] evaluation data; [by Section 53A-3-602.5 regarding a school performance report requiring criterion-referenced or online computer adaptive tests to be aggregated for all students by class;]and by Section 53A-1-411 which directs the Board to establish procedures for administering or making available online surveys to obtain information about public education issues[; and by Section 53A-6-104 which authorizes the Board to issue licenses to educators and maintain licensing information].

B. The purpose of this rule is to:

(1) provide for appropriate review and disclosure of student performance data on state administered assessments as required by law;

(2) provide for adequate and appropriate review of student performance data on state administered assessments to professional education staff and parents of students;

(3) ensure the privacy of student performance data and personally identifiable student information, as directed by law;

(4) provide an online education survey conducted with public funds for Board review and approval; and

(5) provide for appropriate protection and maintenance of educator licensing data.

R277-487-3. Data Privacy and Security Policies.

A. Board Responsibilities:

(1) The ~~[Board]~~Chief Privacy Officer and DGPPB shall develop resource materials for LEAs to train employees, aides, and volunteers of an LEA regarding confidentiality of personally identifiable student information and student performance data, as defined in FERPA.

(2) The ~~[Board]~~Chief Privacy Officer and DGPPB shall make the materials available to each LEA.

B. LEA Responsibilities:

~~(1) An LEA is responsible for the collection, maintenance, and transmission of student data.~~

~~([1]2) An LEA[s] shall establish policies and provide appropriate training for employees regarding the confidentiality of student performance data and personally identifiable student information[-including an overview of all federal, state, and local laws that pertain to the privacy of students, their parents, and their families. The policy should address the specific needs or priorities of the LEA].~~

~~([2]3) [LEAs shall require password protection for all student performance data and personally identifiable student information maintained electronically]An LEA shall provide the policies described in R277-487-3B(2) to parents of students affected by the policies, as well as post the policies for the public on the LEA's website.~~

~~(4) An LEA shall ensure that school enrollment verification data, student performance data, and personally identifiable student information are collected, maintained, and transmitted:~~

~~(a) in a secure manner; and~~

~~(b) consistent with sound data collection and storage procedures, established by the LEA.~~

~~(5) An LEA may contract with a third party provider to collect, maintain, and have access to school enrollment verification data or other student data if:~~

~~(a) the third party provider meets the definition of a school official under 34 CFR 99.31 (a)(1)(i)(B);~~

~~(b) the contract between the LEA and the third party provider includes a provision that the data is the property of the LEA; and~~

~~(c) the LEA monitors and maintains control of the data.~~

~~(6) If an LEA contracts with a third party provider to collect and have access to the LEA's data as described in R277-487-3B(5), the LEA shall notify a student and the student's parent or guardian in writing that the student's data is collected and maintained by the third party provider.~~

~~(7) As required in Section 53A-13-301, an LEA shall notify the parent or guardian of a student if there is a release of the~~

student's personally identifiable student data due to a security breach.

C. Public Education Employee and Volunteer Responsibilities:

(1) All public education employees, aids, and volunteers in public schools shall become familiar with federal, state, and local laws regarding the confidentiality of student performance data and personally identifiable student information.

(2) All public education employees, aids, and volunteers shall maintain appropriate confidentiality pursuant to federal, state, ~~and~~ local laws, and LEA policies created in accordance with this section, with regard to student performance data and personally identifiable student information.

~~_____ (3) An employee, aid, or volunteer shall maintain student performance data and personally identifiable student information in a secure and appropriate place as designated by LEA policies.~~

~~_____ (4) An employee, aid, or volunteer accessing student performance data and personally identifiable student information in electronic format shall comply with LEA policies regarding the procedures for maintaining confidentiality of electronic records.~~

~~_____]~~ ([5]3) An employee, aid, or volunteer ~~shall~~ may not share, disclose, or disseminate passwords for electronic maintenance of:

~~_____ (a) student performance data; ~~and~~ or~~

~~_____ (b) personally identifiable student information.~~

~~_____ (6) All public education employees, aids and volunteers have a responsibility to protect confidential student performance data and personally identifiable student information and access records only as necessary for their assignment(s).~~

~~_____]~~ ([7]4) A ~~[P]~~ public education employee[s] licensed under Section 53A-6-104 ~~shall~~ may access ~~and~~ or use student information and records if the public education employee accesses the student information or records consistent with R277-515, Utah Educator Standards. ~~[Violations may result in licensing discipline.]~~

~~_____ (5) A public education employee may be disciplined in accordance with licensing discipline procedures if the public education employee violates this R277-487.~~

R277-487-4. Transparency.

A. The Chief Privacy Officer working with the DGPB shall recommend USOE policies for Board approval and model policies for LEAs regarding the state's student data systems.

B. The Chief Privacy Officer shall ensure that the ~~[R]~~ rules/policies ~~shall~~ address:

(1) accessibility to parents, students and the public of the student performance data ~~[defined in R277-487-1];~~

(2) authorized purposes, uses, and disclosures of data maintained by the ~~[state]~~ Superintendent and LEAs;

(3) the rights of parents and students regarding their personally identifiable information under state and federal law;

(4) parent, student and public access to information about student data privacy and the security safeguards that protect the data from unauthorized access and use; and

(5) contact information for parents and students to request student and public school information from LEAs consistent with the law.

R277-487-5. Additional Responsibilities of Chief Privacy Officer and DGPB.

A. The Chief Privacy Officer may ~~[pursue]~~ recommend legislation, as approved by the Board, for additional data security protections and the regulation of use of the data.

B. The Chief Privacy Officer shall supervise regular privacy and security compliance audits, following initiation by the Board.

C. The Chief Privacy Officer and the DGPB shall have responsibility for identification of threats to data security protections.

D. The Chief Privacy Officer and the DGPB shall develop and recommend policies for ~~[USOE]~~ the Superintendent and model policies for LEAs for consistent wiping or destruction of devices when devices are discarded by public education entities.

E. The Chief Privacy Officer and the DGPB shall develop USOE and model LEA policies for the training of staff for appropriate responses to suspected or known breaches of data security protections.

R277-487-6. Prohibition of Public Education Data Use for Marketing.

Data maintained by the state, school districts, schools, and other public education agencies or institutions in the state, including data provided by contractors, ~~shall~~ may not be sold or used for marketing purposes (except with regard to authorized uses or directory information not obtained through a contract with an educational agency or institution).

R277-487-7. Public Education Research Data.

A. The ~~[USOE]~~ Superintendent may provide limited or extensive data sets for research and analysis purposes to qualified researchers or organizations.

(1) ~~[A]~~ The Superintendent shall use reasonable methods ~~shall be used~~ to qualify researchers or organizations to receive data, such as evidence that a research proposal has been approved by a federally recognized Institutional Review Board (IRB).

(2) Aggregate de-identified student assessment data ~~are~~ is available through the USOE website. The Superintendent shall ensure that [P] personally identifiable student information is protected.

(3) The ~~[USOE]~~ Superintendent is not obligated to fill every request for data and ~~has~~ shall establish procedures to determine which requests will be filled or to assign priorities to multiple requests. The ~~[USOE/Board understands that it will]~~ Superintendent shall respond in a timely manner to all requests submitted under Section 63G-2-101 et seq., Government Records Access and Management Act. In filling data requests, the Superintendent may give higher priority ~~[may be given]~~ to requests that will help improve instruction in Utah's public schools.

(4) ~~[A fee may be charged]~~ The Superintendent may charge a fee to prepare data or to deliver data, particularly if the preparation requires original work. The ~~[USOE]~~ Superintendent shall comply with Section 63G-2-203 in assessing fees for responses to GRAMA requests.

(5) The researcher or organization shall provide a copy of the report or publication produced using USOE data to the USOE at least 10 business days prior to the public release.

B. Student data and information: Requests for data that disclose student information shall be provided in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; such responses may include:

(1) student data that are de-identified, meaning that a reasonable person in the school community who does not have personal knowledge of the relevant circumstances could not identify student(s) with reasonable certainty;

(2) agreements with recipients of student data where recipients agree not to report or publish data in a manner that discloses students' identities. For example, reporting test scores for a race subgroup that has a count, also known as n-size, of less than 10 could enable someone to identify the actual students and shall not be published;

(3) release of student data, with appropriate binding agreements, for state or federal accountability or for the purpose of improving instruction to specific student subgroups.

C. Licensed educator information:

(1) The ~~[USOE]~~ Superintendent shall provide information about licensed educators maintained in the CACTUS database that is required under Section 63G-2-301(2).

(2) ~~[Additional]~~ The Superintendent may release information/data ~~[may be released by the USOE];~~

~~(a) consistent with the purposes of CACTUS[;];~~

~~(b) if the requester accepts the confidentiality protections [accepted by requester(s)] established by the Superintendent; and~~

~~(c) [the benefit that] if the research may provide a benefit for public education in Utah, as determined by the [USOE] Superintendent.~~

D. Recipients of USOE research data shall sign a USOE-designated confidentiality agreement, if required by the ~~[USOE] Superintendent.~~

E. The Board or the ~~[USOE] Superintendent~~ may commission research or may approve research requests.

R277-487-8. Public Education Survey Data.

A. The Chief Privacy Officer, working with the DGPB, shall approve statewide education surveys administered with public funds through the USOE or through a contract issued by the USOE, as required under Section 53A-1-411.

B. Data obtained from Board statewide surveys administered with public funds are the property of the Board.

C. Data obtained from Board statewide surveys administered with public funds shall be made available as follows:

(1) Survey data made available by the Board shall protect the privacy of students in accordance with FERPA.

(2) ~~The Superintendent shall ensure that[S] survey data about educators [shall be available] is provided to a requester in a manner that protects the privacy of individual educators consistent with State law.~~

R277-487-9. Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS) Data, Confidentiality, and Appropriate Disclosure.

A. CACTUS maintains ~~[public, protected and private] information on licensed Utah educators[. Private or protected~~

~~information includes such items as home address, date of birth, social security number, and any disciplinary action taken against an individual's license.], including information classified as private, controlled, or protected under GRAMA.~~

B. ~~[A CACTUS file shall be opened on]~~ The Superintendent shall open a CACTUS file for a licensed Utah educator when:

(1) the individual initiates a USOE background check, or

(2) the USOE receives a paraprofessional license application from an LEA.

C. The data in CACTUS may only be changed as follows:

(1) Authorized USOE staff or authorized LEA staff may change demographic data.

(2) Authorized USOE staff may update licensing data such as endorsements, degrees, license areas of concentration and licensed work experience.

(3) Authorized employing LEA staff may update data on educator assignments for the current school year only.

D. A licensed individual may view his own personal data. An individual may not change or add data except under the following circumstances:

(1) A licensed individual may change his demographic data when renewing his license.

(2) A licensed individual shall contact his employing LEA for the purpose of correcting demographic or current educator assignment data.

(3) A licensed individual may petition the USOE for the purpose of correcting any errors in his CACTUS file.

E. Individuals currently employed by public or private schools under letters of authorization or as interns are included in CACTUS.

F. Individuals working in LEAs as student teachers are included in CACTUS.

G. Designated individuals have access to CACTUS data:

(1) Training shall be provided to designated individuals prior to granting access.

(2) Authorized USOE staff may view or change CACTUS files on a limited basis with specific authorization.

(3) For employment or assignment purposes only, authorized LEA staff members may access data on individuals employed by their own LEA or data on licensed individuals who do not have a current assignment in CACTUS.

(4) Authorized LEA staff may also view specific limited information on job applicants if the applicant has provided the LEA with a CACTUS identification number.

(5) CACTUS information belongs solely to the USOE. The USOE shall make the final determination of information included in or deleted from CACTUS.

(6) CACTUS data ~~[consistent with Section 63G-2-301(1) under the Government Records Access and Management Act are public information and shall be released by the USOE]~~ may only be released in accordance with the provisions of GRAMA.

R277-487-10. Educator Evaluation Data.

A. The ~~Board~~ Superintendent shall provide classroom-level assessment data to administrators and teachers. School administrators shall share information requested by parents while

ensuring the privacy of individual student information and educator evaluation data.

B. Individual educator evaluation data shall be protected at the school, LEA and state levels and, if applicable, at the USOE.

C. LEAs shall designate employees who may have access to educator evaluation records.

D. LEAs may not release or disclose student assessment information that reveals educator evaluation information or records.

E. LEAs shall train employees in the confidential nature of employee evaluations and the importance of securing evaluations and records.

R277-487-11. Training and Technical Assistance.

A. The Chief Privacy Officer and DGPPB shall develop training for the Board, the USOE and LEAs.

B. The Chief Privacy Officer and DGPPB shall develop model policies, as resources permit.

R277-487-12. Application to Third Party ~~Vendors~~ Providers and Contractors.

A. The USOE and LEAs shall ~~have~~ set policies that ~~expressly limit~~ govern a third party provider or contractor's access to personally identifiable student data and public school enrollment verification data ~~to third party vendors and contractors~~.

B. ~~Personally identifiable student information may only be released consistent with the provisions of 34 CFR Part 99.31(a).~~

~~C. De-identified student data and information may only be released consistent with 34 CFR Part 99.31(b). An LEA may release Student information and public school enrollment verification data to a third party provider if:~~

~~(1) the release is allowed by, and released in accordance with, FERPA and its implementing regulations; and~~

~~(2) if the LEA complies with the requirements of R277-487-3B.~~

~~D. CACTUS or public education employee information may only be released consistent with state law, with express permission of the licensed individual or employee, or with the purposes for which the information was entered into CACTUS or a similar employee database.~~

~~E. Sanctions for violations of authorized use and release of student and employee data:~~

~~(1) All USOE contracts shall include sanctions for contractors or third party ~~vendors~~ providers who violate provisions of state policies regarding unauthorized use and release of student and employee data.~~

~~(2) The ~~USOE~~ Superintendent shall recommend that LEA policies include sanctions for contractors or third party ~~vendors~~ providers who violate provisions of federal or state privacy law and LEA policies regarding unauthorized use and release of student and employee data.~~

R277-487-13. Annual Reports by Chief Privacy Officer and DGPPB.

A. The Chief Privacy Officer ~~shall work with the DGPPB, the USOE, and the Board to prepare an annual report about student data~~, with the assistance of DGPPB, shall submit to the Board an annual report about student data.

B. The public report shall include:

(1) information about the implementation of this rule;

(2) information about research studies begun or planned using student information and data;

(3) ~~the~~ identification of significant threats to student data privacy and security;

(4) a summary of data system audits; and

(5) recommendations for further improvements specific to student data security and the systems that are necessary for accountability in Board rules or legislation:-

~~(1) Board rules;~~

~~(2) legislation; or~~

~~(3) both Board rules and legislation, if appropriate.~~

KEY: students, records, confidentiality

Date of Enactment or Last Substantive Amendment: [January 7, 2015]

Notice of Continuation: November 14, 2014

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-13-301(3); 53A-1-401(3); 53A-1-411; 53A-8a-410(4)

Education, Administration

R277-490

Beverly Taylor Sorenson Elementary Arts Learning Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39376

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 75, Elementary Arts Learning Program Amendments, 2015 General Session, amended state law regarding the Beverly Taylor Sorenson Elementary Arts Learning Program (BTSALP) to allow local education agencies (LEAs) more flexibility in the use of grant money, as well as define roles of the Utah State Office of Education (USOE) and the Beverly Taylor Sorenson endowed universities.

SUMMARY OF THE RULE OR CHANGE: Amendments to Rule R277-490 provide new and revised definitions; revised BTSALP grant criteria; provisions for endowed universities; and add a new Section R277-490-7 regarding LEA cooperation with the USOE.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Section 53A-17a-162 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** It is anticipated that there is likely no cost or savings to the state budget. The BTSALP including the new criteria will be managed by USOE staff as in past years.

- ◆ LOCAL GOVERNMENTS: There may be additional costs resulting from the amendments to this rule. The additional costs to LEAs are speculative and will vary based on the amount of matching funds currently required and a required minimum 20 percent match.
- ◆ SMALL BUSINESSES: It is anticipated that there is likely no cost or savings to small businesses. The BTSALP affects public and higher education and does not affect small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is anticipated that there is likely no cost or savings to persons other than small businesses, businesses, or local government entities. The BTSALP affects public and higher education and does not affect individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely minimal compliance costs for affected persons. In order to receive funding for the BTSALP, an applicant must provide documentation of committed matching funds that equal 20 percent of the grant request.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

R277. Education, Administration.
R277-490. Beverley Taylor Sorenson Elementary Arts Learning Program (BTSALP).
R277-490-1. Definitions.

A. "Arts equipment and supplies" means musical instruments, recording and play-back devices, cameras, projectors, computers to be used in the program, CDs, DVDs, teacher reference books, and art-making supplies. This list is not exhaustive.

B. "Arts Program coordinators (coordinator)" means individuals, employed full-time, who are responsible to coordinate arts programs for the LEA (as defined in R277-490-1G) or consortium, inform arts teachers, organize arts professional development (including organizing arts local learning communities), oversee/guide/organize the gathering of assessment data, represent the LEA or consortium arts program, and provide general leadership for arts education throughout the LEA or consortium.

C. "Beverley Taylor Sorenson Elementary Arts Learning Program model," "BTSALP model," or "Program" means a Program in grades K-6 with the following components:

(1) a qualified arts specialist to work collaboratively with the regular classroom teacher to deliver quality, sequential, and developmental arts instruction in alignment with the state Fine Arts Core Curriculum;~~and~~

(2) regular collaboration between the classroom teacher and arts specialist in planning arts integrated instruction~~[-]; and~~

(3) other activities that may be proposed by an LEA on a grant application and approved by the Board.

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

E. "Endowed university" means an institution of higher education in the state as defined in Section 53A-17a-162(1)(b).

~~[E]~~F. "Highly qualified school arts program specialist (arts specialist)" means:

(1) an educator with a current educator license and a Level 2 or K-12 specialist endorsement in the art form;~~or~~

(2) an elementary classroom teacher with a current educator license who is currently enrolled in a Level 2 specialist endorsement program in the art form~~and who works with a mentor who holds an arts endorsement~~; ~~or~~

(3) a professional artist employed by a public school and accepted into the Board Alternative Routes to License (ARL) program under R277-503 to complete a K-12 endorsement in the art form, which includes the Praxis exam in the case of art, music, or theatre~~[-]; or~~

(4) an individual who qualifies for an educator license under Board rule that qualifies the individual for the position provided that:

(a) an LEA provides an affidavit verifying that a reasonable search was conducted for an individual who would qualify for an educator license through other means; and

(b) the LEA reopens the position and conducts a new search every two years.

~~[(4)5]~~ In addition to required licensure and endorsements, prospective teachers should provide evidence of facilitating elementary Core learning in at least one art form.

~~[-----] F. "Independent evaluator," for purposes of this rule and Program, means an evaluator selected jointly by the Board and the Utah Arts Council through the required procurement process. The evaluator shall have experience and expertise in education programs and in the arts.~~

G. "LEA" or "local education agency" means a ~~local education agency, including local school boards/public~~ school district[s], charter school[s, and] or, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

H. "Matching funds," for purposes of this rule and the Program, means funds that equal 20 percent of the total grant

~~amount received]costs for salary plus benefits incurred by an LEA/consortium to fund an LEA/consortium's arts [coordinator under Section 53A-17a-162(3)(e) and]specialist in Subsection R277-490-5]LE.~~

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

~~J. "Utah Arts Council" is a state and nationally funded government entity that assists with professional development and provides direct matching grants to nonprofit organizations across the state of Utah. The Utah Arts Council also conducts programs which provide outreach services (including financial assistance) to schools, local arts councils and organizations, community centers, performing groups, and individual artists.~~

R277-490-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-162 which directs the Board to establish a grant program for LEAs to hire qualified arts professionals to encourage student participation in the arts in Utah public schools and embrace student learning in Core subject areas.

B. The purpose of this rule is:

(1) to implement the ~~[Beverley Taylor Sorenson Elementary Arts Learning Program]BTSALP~~ model in public schools through LEAs and consortia that submit grant[s] applications to hire arts specialists ~~[who are highly qualified]as defined in R277-490-1F~~ and paid on the licensed teacher salary schedule;

(2) to distribute funds to ~~[-arts specialists through]~~ LEAs to purchase supplies and equipment as provided for in Section 53A-17a-162(4) and (6);

~~[(3) to allow ten Utah school districts/consortia to hire arts coordinators;~~

~~[(4)]3 [to establish partnerships within established networks with Utah higher education institutions]to fund activities at endowed universities as defined in Section 53A-17a-162 to provide pre-service training, professional development, research and leadership for arts educators and arts education in Utah public schools; and~~

~~[(5)]4 to appropriately monitor, evaluate and report programs and [P]program results.~~

R277-490-3. Arts Specialist Grant Program.

A. LEAs or consortia of LEAs may submit grant requests consistent with time lines provided in this rule.

B. LEA consortia:

(1) LEAs may form consortia to employ arts specialists appropriate for the number of students served.

(2) The LEA shall develop its proposal consistent with the ~~[Beverley Taylor Sorenson Elementary Arts Learning Program]BTSALP~~ model outlined under R277-490-1C.

(3) The LEA grant shall explain the necessity or greater efficiency and benefit of an arts specialist serving several elementary schools within a consortium of LEAs.

(4) The LEA grant shall explain a schedule for the specialist(s) to serve the group of schools within several LEAs similarly to an arts specialist in a single school.

(5) A consortium grant shall provide information for a consortium arts specialist's schedule that minimizes the arts specialist's travel and allows the arts specialist to be well integrated into several schools.

C. ~~[Arts specialist]LEA~~ grant requirements:

(1) ~~[Grant programs]An LEA~~ shall ~~[-be]~~ develop~~[ed]~~ and submit~~[ted]~~ a grant program to the Board that is consistent with the [Beverley Taylor Sorenson Elementary Arts Learning Program]BTSALP model described in R277-490-1C.

(2) An LEA's [G]grant application[s] shall include [documents of compliance with the collaboratively developed implementation requirements. These requirements shall be developed in consultation with a committee with representative members of stakeholder groups in the Program]the collaborative development of the application with the partner endowed university and School Community Council if match comes from School LAND Trust Funds.

~~[(3)]D. LEAs shall review grant applications and forward approved applications to the USOE.~~

~~[E]D. [Arts specialist]Program~~ timelines:

(1) ~~[Continuing Beverley Taylor Sorenson schools shall complete assurances as provided by the USOE and submit to school districts by May 1, annually]Program grant applications shall be completed annually. Grant renewals shall receive funding priority.~~

~~[(2)] New Beverley Taylor Sorenson schools shall complete applications as provided by the USOE and submit to school districts by May 1, annually.~~

~~[(3)]2 LEAs shall submit completed applications [requiring]requesting funding to the USOE by May [7]1 annually.~~

~~[(4)]3 The Board[, after close consultation with the Utah Arts Council,] shall designate [schools]LEAs/consortia for funding no later than June 1 annually.~~

~~[F]E. Distribution of funds for arts specialists~~

(1) ~~[Continuing Beverley Taylor Sorenson]Program~~ LEAs shall submit complete information of salaries (including benefits) of all ~~[Beverley Taylor Sorenson]Program~~ specialists employed by the LEA ~~[-, as requested by the USOE] no later than September 30 annually.~~

(2) If a Program LEA provides the matching funds described in R277-490-3E(3), [F]the USOE shall distribute funds to [continuing Beverley Taylor Sorenson]Program LEAs annually [in equal amounts per] equal to 80 percent of the salaries plus benefits for approved hires in this program, consistent with Sections 53A-17a-162(5) and(6)[and (7)]. An individual specialist grant amount may not exceed \$70,000.

~~[(3)] A Program LEA shall provide matching funds for each specialist funded through the Program.~~

~~[(3)] The USOE shall distribute funds designated in Section 53A-17a-162(7) to additional Beverley Taylor Sorenson LEAs.~~

R277-490-4. Distribution of Funds for Arts Specialist Supplies.

A. The Board shall distribute funds for arts specialist supplies to LEAs/consortia as available.

B. LEAs shall distribute funds to participating schools as provided in the approved LEA/consortia grant and consistent with LEA procurement policies.

C. LEAs/consortia shall require arts specialists to provide adequate documentation of arts supplies purchased consistent with the school/consortium plan, this rule and the law.

D. Summary information about effective supplies and equipment shall be provided in the school/consortium evaluation of the Program.

R277-490-5. LEA/Consortia Employment of LEA/Consortia Arts Coordinators.

A. LEAs/consortia may apply for funds to employ[~~full-time~~] arts coordinators in their LEAs/consortium. ~~These are intended as small grants to rural districts to help support arts education and the implementation of BTSALP.~~

B. Applicants shall explain how arts coordinators will be used consistent with the ~~[Beverly Taylor Sorenson Elementary Arts Learning Program]~~BTSALP model, what requirements arts coordinators must meet, and what training will be provided by whom.

C. Applicants shall provide documentation of committed matching funds that equal 20 percent of the grant request~~[from the LEA/consortium]~~.

~~[D. Preference shall be given to applicants that demonstrate in their proposed recruitment and use of coordinators diligent and creative efforts to employ arts coordinators who mirror the minority or unique populations that make up the schools in which coordinators will work.~~

~~E. The Board, following close consultation with the Utah Arts Council, shall select LEAs/consortia to receive funds under this section.~~

~~[F]D. [Funds shall be distributed to designated LEAs/consortia]~~The USOE shall notify an LEA that receives a grant award no later than ~~[July]~~June 1 annually.

R277-490-6. ~~[Arts Program Partnership with Utah Institutions of Higher Education for Pre-service, Professional Development, Research, and Leadership Training]~~Endowed University Participation in the BTSALP.

A. The Board ~~[shall work closely with the Utah Arts Council to identify interested Utah higher education institutions eligible, prepared and geographically and programmatically suited to work with identified arts specialists, arts coordinators and the schools and programs in which specialists/coordinators are employed]~~may consult with endowed chairs and integrated arts advocates regarding program development and guidelines.

~~[B. The Board, in close partnership with the Utah Arts Council, shall determine funding and payment timelines to eligible Utah higher education institutions for designated services as appropriate and necessary.~~

~~B. Endowed university grants:~~

~~(1) Endowed universities may apply for grant funds to fulfill the purposes of this program which include:~~

~~(a) delivery of high quality professional development to participating LEAs;~~

~~(b) the design and completion of research related to the program;~~

~~(c) providing the public with elementary arts education resources; and~~

~~(d) other program related activities as may be included in a grant application and approved by the Board.~~

~~(2) Endowed university grant applications shall include documentation of collaborative development of a plan for delivery of high quality professional development to participating LEAs. The Board shall determine the LEAs assigned to each endowed university.~~

~~(3) The Board may award no more than 10 percent of the total legislative appropriation to grants to endowed universities.~~

~~(4) The USOE shall monitor the activities of the grantees to ensure compliance with grant rules, fulfillment of grant application commitments and appropriate fiscal procedures. Endowed universities shall cooperate with the USOE in the monitoring of their grants.~~

~~(5) Endowed universities that receive grant funds shall consult, as requested by the Board, in the development and presentation of an annual written program report as required in statute.~~

R277-490-7. LEAs Cooperation with USOE for BTSALP.

~~A. USOE BTSALP staff may visit schools receiving grants to observe implementation of the grants.~~

~~B. BTSALP schools shall cooperate with the USOE to allow visits of members of the Board, legislators, and other invested partners to promote elementary arts integration.~~

~~C. LEAs shall accurately report the numbers of students impacted by the Program grant and report on the delivery systems to those students as requested by the USOE.~~

~~D. LEAs found to be out of compliance with the terms of the grant will be notified within 30 days of the discovery of such non-compliance.~~

~~(1) LEAs found to be in non-compliance will be given 30 days to correct the issues.~~

~~(2) If non-compliance is not resolved within that time frame, LEAs are subject to losing the grant funds for the school or schools found to be non-compliant.~~

R277-490-~~[7]~~8. ~~[Beverly Taylor Sorenson Elementary Arts Learning Program Evaluation and]~~Program Reporting.

~~[A. The Board, in consultation with the Utah Arts Council, shall contract annually with an independent qualified evaluator through the state procurement process.~~

~~B. [The Board [and the Utah Arts Council] shall [jointly] report annually to the Education Interim Committee as provided in Section 53A-17a-162([6]8).~~

KEY: arts program, grants, public schools, endowed universities

Date of Enactment or Last Substantive Amendment: ~~[August 7, 2013]~~2015

Notice of Continuation: June 10, 2013

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-17a-162

Education, Administration
R277-502
Educator Licensing and Data Retention

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39378

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-502 is amended to more explicitly link science, technology, engineering, and math (STEM) endorsement courses to local education agency salary schedules.

SUMMARY OF THE RULE OR CHANGE: This rule specifies how a STEM endorsement can count as credit toward an educator's lane change on an LEA salary schedule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Section 53A-6-104 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** It is anticipated that there is likely no cost or savings to the state budget. Changes to the rule provide clarification regarding the STEM endorsement and related LEA salary schedule changes.
- ◆ **LOCAL GOVERNMENTS:** It is anticipated that there is likely no cost or savings to local government. Changes to the rule provide clarification regarding the STEM endorsement and related LEA salary schedule changes.
- ◆ **SMALL BUSINESSES:** It is anticipated that there is likely no cost or savings to small businesses. Changes to the rule provide clarification regarding the STEM endorsement and related LEA salary schedule changes.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is anticipated that there is likely no cost or savings to persons other than small businesses, businesses, or local government entities. Changes to the rule provide clarification regarding the STEM endorsement and related LEA salary schedule changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely no compliance costs for affected persons. Changes to the rule provide clarification regarding the STEM endorsement and related LEA salary schedule changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

R277. Education, Administration.**R277-502. Educator Licensing and Data Retention.****R277-502-1. Definitions.**

A. "Accredited" means a Board-approved educator preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or the Council for Accreditation of Educator Preparation (CAEP).

B. "Accredited school" for purposes of this rule, means a public or private school that meets standards essential for the operation of a quality school program and has received formal approval through a regional accrediting association.

C. "Authorized staff" for purposes of this rule means an individual designated by the USOE or an LEA and approved by the USOE and who has completed CACTUS training.

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

E. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

- (1) personal directory information;
- (2) educational background;
- (3) endorsements;
- (4) employment history; and
- (5) a record of disciplinary action taken against the educator.

F. "ESEA subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA).

G. "LEA" or "local education agency" means a ~~local education agency, including local school boards/public~~ school district[s], charter school[s, and] or, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

H. "Letter of Authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by an LEA.

I. "Level 1 license" means a Utah professional educator license issued upon completion of a Board-approved educator preparation program or an alternative preparation program, or to an applicant that holds an educator license issued by another state or

country that has met all ancillary requirements established by law or rule.

J. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

(1) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;

(3) additional requirements established by law or rule.

K. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school, or holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language hearing Association (ASHA) certification.

L. "License areas of concentration" means designations to licenses obtained by completing a Board-approved educator preparation program or an alternative preparation program in a specific area of educational studies to include the following: Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Middle (still valid, but not issued after 1988, 5-9), Secondary (6-12), Administrative/Supervisory (K-12), Career and Technical Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders, Speech-Language Pathologist, Speech-Language Technician. License areas of concentration may also bear endorsements relating to subjects or specific assignments.

M. "License endorsement (endorsement)" means a specialty field or area earned through completing required course work established by the USOE or through demonstrated competency approved by the USOE; the endorsement shall be listed on the professional educator license indicating the specific qualification(s) of the holder.

N. "Professional learning plan" means a plan developed by an educator in collaboration with the educator's supervisor consistent with R277-500 detailing appropriate professional learning activities for the purpose of renewing the educator's license.

O. "Renewal" means reissuing or extending the length of a license consistent with R277-500.

P. "State Approved Endorsement Program (SAEP)" means a plan in place developed between the USOE and a licensed educator to direct the completion of endorsement requirements by the educator consistent with R277-520-11.

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

R277-502-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public

school system under the Board, by Section 53A-6-104 which gives the Board power to issue licenses, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule specifies the types of license levels and license areas of concentration available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah. The rule provides a process and criteria for educators whose licenses have lapsed and return to the teaching profession. All licensed educators employed in the Utah public schools shall be licensed consistent with this rule in order for the district to receive full funding under Section 53A-17a-107(2).

R277-502-3. Program Approval and Requirements.

A. The Board ~~shall~~ may accept educator license recommendations from educator preparation programs that have applied for Board approval and have met the requirements described in this rule and the Standards for Program Approval established by the Board in R277-504, R277-505, or R277-506 as determined by USOE.

B. The Board, or its designee, ~~shall~~ may establish deadlines and uniform forms and procedures for all aspects of licensing.

C. To be approved for license recommendation the educator preparation program shall:

(1) be accredited by NCATE or TEAC; or

(2) be accredited by CAEP using the CAEP Program Review with National Recognition or CAEP Program Review with feedback options; and

(3) have a physical location in Utah where students attend classes or if the program provides only online instruction:

(a) the program's primary headquarters shall be located in Utah and

(b) the program shall be licensed to do business in Utah through the Utah Department of Commerce;

(4) include coursework designed to ensure that the educator is able to meet the Utah Effective Teaching Standards and Educational Leadership Standards established in R277-530;

(5) in the case of content endorsements, include coursework that is, at minimum, equivalent to the course requirements for the endorsement as established by USOE;

(6) establish entry requirements designed to ensure that only high quality individuals enter the licensure program; requirements shall include the following minimum components, beginning August 1, 2014:

(a) a minimum high school/college GPA of 3.0; and

(b) a USOE-cleared fingerprint background check; and

(c) a passing score on a Board-approved basic skills test;

or

(d) an ACT composite score of 21 with a verbal/English score no less than 20 and a mathematics/quantitative score of no less than 19; or

(e) a combined SAT score of 1000 with neither mathematics nor verbal below 450.

(7) include a student teaching or intern experience that meets the requirements detailed in R277-504, R277-505, and R277-506.

D. An institution may waive any of the entrance requirements provided in R277-502-3C(6) based on program

established guidelines for no more than 10 percent of an entrance cohort.

E. USOE representatives shall be a part of the accrediting team for any Board-approved educator preparation program seeking to maintain or receive program approval. USOE representatives shall be responsible for:

- (1) observing and monitoring the accreditation process;
- (2) reviewing subject specific programs to determine if the program meets state standards for licensure in specific areas;
- (3) reviewing program procedures to ensure that Board requirements for licensure are followed;
- (4) reviewing licensure candidate files to determine if Board requirements for licensure are followed by the program.

F. After completion of the accreditation site visit, a Board-approved educator preparation program, working with the USOE, shall prepare and submit a program approval request for consideration by the Board that includes:

- (1) program summary;
- (2) accreditation findings;
- (3) program areas of distinction;
- (4) program enrollment;
- (5) program goals and direction.

G. If the program approval request is approved by the Board, the program shall be considered Board-approved until the next scheduled accreditation visit unless the program is placed on probation by the USOE for failure to meet program requirements detailed in applicable Board rules and program approval is revoked by the Board under R277-502-30.

H. New educator preparation programs that seek Board approval or previously Board-approved educator preparation programs that seek approval for additional license area preparation and endorsements shall submit applications to USOE including:

- (1) information detailing the exact license areas of concentration and endorsements that the program intends to award;
- (2) detailed course information, including required course lists, course descriptions, and course syllabi for all courses that will be required as part of a program;
- (3) detailed information showing how the required coursework will ensure that the educator satisfies all standards in the Utah Effective Teaching Standards and Educational Leadership Standards established in R277-530 and Professional Educator Standards established in R277-515;
- (4) information about program timelines and anticipated enrollment.

I. Applications for new educator preparation programs shall be approved by the Board.

J. Applications for previously Board-approved educator preparation programs desiring Board approval for additional license areas and endorsements:

- (1) shall be reviewed and approved by USOE;
- (2) may receive preliminary approval pending Utah State Board of Regents approval of the new program if the program is within a public institution.

K. An educator preparation program seeking accreditation may apply to the Board for probationary approval for a maximum of three years contingent on the completion of the accreditation process.

L. A previously Board-approved educator preparation program shall submit an annual report to the USOE by July 1 of

each year. The report shall summarize the institution's annual accreditation report and shall include the following:

- (1) student enrollment counts designated by anticipated license area of concentration and endorsement and disaggregated by gender and ethnicity;
- (2) information explaining any significant changes to course requirements or course content;
- (3) the program's response to USOE-identified areas of concern or areas of focus;
- (4) information regarding any program-determined areas of concern or areas of focus and the program's planned response;
- (5) a summary explanation of students admitted under the waiver identified in R277-502-3D and an explanation of the waiver.

M. The USOE shall provide reporting criteria to Board-approved educator preparation programs regarding the annual report and USOE-designated areas of concern or focus by January 31 annually.

N. Educator preparation programs that submit inadequate or incomplete information to the USOE may be placed on a probationary status by USOE.

O. Board-approved educator preparation programs on probationary status that continue to fail to meet requirements may have their license recommendation status revoked in full or in part by the Board with at least one year notice.

P. An individual that completes a Board-approved educator preparation program may be recommended for licensure within five years of program completion if the individual meets current licensing requirements.

Q. If five years have passed since an individual completed a Board-approved preparation program, the individual may be recommended for licensure following review by the individual program. The preparation program officials shall determine whether any content or pedagogy coursework previously completed meets current program standards and if additional coursework, hours or other activities are necessary. The individual shall complete all work required by the program officials before receiving a license recommendation.

R277-502-4. License Levels, Procedures, and Periods of Validity.

A. Level 1 License Requirements

(1) An initial license, the Level 1 license, is issued to an individual who is recommended by a Board-approved educator preparation program or approved alternative preparation program, or an educator with a professional educator license from another state.

(a) LEAs and Board-approved educator preparation programs shall cooperate in preparing candidates for the educator Level 1 license. The resources of both may be used to assist candidates in preparation for licensing.

(b) The recommendation indicates that the individual has satisfactorily completed the programs of study required for the preparation of educators and has met licensing standards in the license areas of concentration for which the individual is recommended.

(2) The Level 1 license is issued for three years.

(3) A Level 1 license holder shall satisfy all requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

(4) An educator qualified to teach any ESEA subject shall be considered Highly Qualified in at least one ESEA subject prior to moving from Level 1 to Level 2.

(5) A license applicant who has received or completed license preparation activities or coursework inconsistent with this rule may present compelling information and documentation for review and approval by the USOE to satisfy the licensing requirements.

(6) If an educator has taught for three years in a K-12 public education system in Utah, a Level 1 license may only be renewed if:

(a) the employing LEA has requested a one year extension consistent with R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers; or

(b) the individual has continuous experience as a speech language pathologist in a clinical setting.

B. Level 2 License Requirements

(1) A Level 2 license may be issued by the Board to a Level 1 license holder upon satisfaction of all ~~[USOE]Board~~ requirements for the Level 2 license and upon the recommendation of the employing LEA.

(2) The recommendation shall be made following the completion of three years of successful, professional growth and educator experience, satisfaction of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, any additional requirements imposed by the employing LEA, and before the Level 1 license expires.

(3) A Level 2 license shall be issued for five years and shall be valid unless suspended or revoked for cause by the Board.

(4) The Level 2 license may be renewed for successive five year periods consistent with R277-500, Educator Licensing Renewal.

C. Level 3 License Requirements

(1) A Level 3 license may be issued by the Board to a Level 2 license holder who:

(a) has achieved National Board Certification; or

(b) has a doctorate in education in a field related to a content area in a unit of the public education system or an accredited private school; or

(c) holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

(2) A Level 3 license is valid for seven years unless suspended or revoked for cause by the Board.

(3) The Level 3 license may be renewed for successive seven year periods consistent with R277-500.

(4) A Level 3 license shall revert to a Level 2 license if the holder fails to maintain National Board Certification status or fails to maintain a current Certificate of Clinical Competence from the American Speech-Language-Hearing Association.

D. License Renewal Timeline

Licenses expire on June 30 of the year of expiration recorded on CACTUS and may be renewed any time after January of the same year. Responsibility for license renewal rests solely with the holder.

R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.

A. Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the following license areas of concentration, a person shall hold a valid license issued by the Board in the respective license areas of concentration:

- (1) Early Childhood (K-3);
- (2) Elementary (1-8);
- (3) Elementary (K-6);
- (4) Middle (still valid, and issued before 1988, 5-9);
- (5) Secondary (6-12);
- (6) Administrative/Supervisory (K-12);
- (7) Career and Technical Education;
- (8) School Counselor;
- (9) School Psychologist;
- (10) School Social Worker;
- (11) Special Education (K-12);
- (12) Preschool Special Education (Birth-Age 5);
- (13) Communication Disorders;
- (14) Speech-Language Pathologist;
- (15) Speech-Language Technician.

B. Under-qualified educators:

(1) Educators who are licensed and hold the appropriate license area of concentration but who are working out of their endorsement area(s) shall request and prepare an SAEP to complete the requirements of an endorsement with a USOE education specialist; or

(2) LEAs may request Letters of Authorization from the Board for educators employed by LEAs if educators have not completed requirements for areas of concentration or endorsements.

(a) An approved Letter of Authorization is valid for one year.

(b) Educators may be approved for no more than three Letters of Authorization throughout their employment in Utah schools. The State Superintendent of Public Instruction or designee may grant exceptions to the three Letters of Authorization limitation on a case by case basis following specific approval of the request by the LEA governing board. Letters of Authorization approved prior to the 2000-2001 school year shall not be counted in this limit.

(c) If an education employee's Letter of Authorization expires before the individual is approved for licensing, the employee falls into under-qualified status.

C. License areas of concentration may be endorsed to indicate qualification in a subject or content area.

(1) ~~[LEAs shall recognize a STEM endorsement as a component of the LEA's salary scale.]~~ A STEM endorsement shall be recognized as a minimum of 16 semester hours of university credit toward lane change on an LEA salary schedule.

(a) The [USOE]State Superintendent of Public Instruction or designee shall determine the mathematics-, engineering-, science-, and technology-related courses and experiences necessary for [the]STEM endorsements.

(b) The State Superintendent of Public Instruction or designee shall determine which content area endorsements qualify as STEM endorsements.

(2) An endorsement is not valid for employment purposes without a current license and license area of concentration.

R277-502-6. Returning Educator Relicensure.

A. A previously licensed educator with an expired license may renew an expired license upon satisfaction of the following:

(1) Completion of criminal background check including review of any criminal offenses and clearance by the Utah Professional Practices Advisory Commission;

(2) Employment by an LEA;

(3) Completion of a one-year professional learning plan developed jointly by the school principal or charter school director and the returning educator consistent with R277-500 that also considers the following:

(a) previous successful public school teaching experience;

(b) formal educational preparation;

(c) period of time between last public teaching experience and the present;

(d) school goals for student achievement within the employing school and the educator's role in accomplishing those goals;

(e) returning educator's professional abilities, as determined by a formal discussion and observation process completed within the first 30 days of employment; and

(f) completion of additional necessary professional development for the educator, as determined jointly by the principal/school and educator.

(4) Filing of the professional development plan within 30 days of hire;

(5) Successful completion of required Board-approved exams for licensure;

(6) Satisfactory experience as determined by the LEA with a trained mentor; and

(7) Submission to the USOE of the completed and signed Return to Original License Level Application, available on the USOE website prior to June 30 of the school year in which the educator seeks to return.

B. The Professional Learning Plan is independent of the License Renewal Point requirements in R277-500-3C.

C. Returning educators who previously held a Level 2 or Level 3 license shall be issued a Level 1 license during the first year of employment. Upon completion of the requirements listed in R277-502-6A and a satisfactory LEA evaluation, the employing LEA may recommend the educator's return to Level 2 or Level 3 licensure.

D. Returning educators who taught less than three consecutive years in a public or accredited private school shall complete the Early Years Enhancement requirements before moving from Level 1 to Level 2 licensure.

R277-502-7. Professional Educator License Reciprocity.

A. Utah is a member of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201.

B. A Level 1 license may be issued to an individual holding a professional educator license in another state who has completed preparation equivalent to Board-approved standards and who has completed Board-approved testing, as required by R277-503-3.

(1) If the applicant has three or more continuous years of previous educator experience in a public or accredited private school, a Level 2 license may be issued upon the recommendation of the employing Utah LEA after at least one year.

(2) If the applicant has less than three years of previous educator experience in a public or accredited private school, a Level 2 license may be issued following satisfaction of the requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

R277-502-8. Professional Educator License Fees.

A. The Board ~~shall~~ may establish a fee schedule for the issuance and renewal of licenses and endorsements consistent with 53A-6-105. All endorsements to which the applicant is entitled may be issued or renewed with the same expiration date for one licensing fee.

B. A fee may be charged for a valid license to be reprinted or for an endorsement to be added.

C. All costs for testing, evaluation, and course work shall be borne by the applicant unless other arrangements are agreed to in advance by the employing LEA.

D. Costs to review nonresident educator applications may exceed the cost to review resident applications due to the following:

(1) The review is necessary to ensure that nonresident applicants' training satisfies Utah's course and curriculum standards.

(2) The review of nonresident licensing applications is time consuming and potentially labor intensive.

E. Differentiated fees may be set consistent with the time and resources required to adequately review all applicants for educator licenses.

KEY: professional competency, educator licensing

Date of Enactment or Last Substantive Amendment: ~~October 9, 2014~~ 2015

Notice of Continuation: August 14, 2012

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-104; 53A-1-401(3)

Education, Administration
R277-520
Appropriate Licensing and Assignment
of Teachers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39379

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-520 is amended to define licensure requirements for non-teaching positions and provide consistency with other licensure rules.

SUMMARY OF THE RULE OR CHANGE: The changes provide for: new and revised definitions; updated language for educator licensure with areas of concentration and endorsements; new language for licensure of individuals serving in non-teaching positions; and removing Sections R277-520-5, R277-520-7, R277-520-8, and R277-520-9 because the sections are no longer applicable within this rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X Sec 3 and Subsection 53A-1-401(3) and Subsection 53A-6-104(2)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** It is anticipated that there are likely no cost or savings to the state budget. Changes to the rule update and clarify definitions and appropriate licenses.
- ◆ **LOCAL GOVERNMENTS:** It is anticipated that there are likely no cost or savings to local government. Changes to the rule update and clarify definitions and appropriate licenses.
- ◆ **SMALL BUSINESSES:** It is anticipated that there are likely no cost or savings to small businesses. Changes to the rule update and clarify definitions and appropriate licenses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is anticipated that there are likely no cost or savings to persons other than small businesses, businesses, or local government entities. Changes to the rule update and clarify definitions and appropriate licenses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely no compliance costs for affected persons. Changes to the rule update and clarify definitions and appropriate licenses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

**R277. Education, Administration.
R277-520. Appropriate Licensing and Assignment of Teachers.
R277-520-1. Definitions.**

~~A. ["At will employment" means employment that may be terminated for any reason or no reason with minimum notice to the employee consistent with the employer's designated payroll cycle.~~

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

~~[C. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:~~

- ~~(1) personal directory information;~~
- ~~(2) educational background;~~
- ~~(3) endorsements;~~
- ~~(4) employment history;~~
- ~~(5) professional development information; and~~
- ~~(6) a record of disciplinary action taken against the educator.~~

~~D. "Composite major" means credits earned in two or more related subjects, as determined by an accredited higher education institution.~~

~~E.] "Content specialist" means a licensed educator who provides instruction or specialized support for students and teachers in a school setting.~~

~~F.] "Core academic subjects or areas" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).~~

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

~~H.] "Eminence" means distinguished ability in rank, in attainment of superior knowledge and skill in comparison with the generally accepted standards and achievements in the area in which the authorization is sought as provided in R277-520-[6]5.~~

~~I. "Highly qualified" means a teacher has met the specific requirements of ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23).~~

~~J. J-1 Visa means a visa issued by the U.S. Department of State to an international exchange visitor who has qualified by training and experience to work in U.S. schools for a period not to exceed three years. Such international exchange visitors may qualify for "highly qualified" status under NCLB only if assigned within their subject matter competency.~~

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

~~L.] "Letter of authorization" means a designation given to an individual for one year, such as an out-of-state candidate or~~

individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by an ~~[school district]~~ LEA. ~~[A teacher working under a letter of authorization who is not an alternative routes to licensing (ARL) candidate, cannot be designated highly qualified under R277-520-11.]~~

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

[N]L. "Level 2 license" means a Utah professional educator license issued after:

(1) ~~satisfaction of all requirements for a Level 1 license; [as well as completion of Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, as provided in R277-522, a minimum of three years of successful teaching in a public or accredited private school, and completion of all NCLB requirements at the time the applicant is licensed.]~~

(2) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(3) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah; and

(4) satisfaction of additional requirements established by law or rule.

[O]J. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received ~~[, in the educator's field of practice,]~~ National Board certification or a doctorate in education or in a field related to a content area ~~[under R277-501-1M from an accredited institution]~~ in a unit of the public education system or an accredited private school from an accredited institution, or holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

[P]K. "License areas of concentration" ~~[are]~~ means designations to licenses obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies such as Early Childhood (K-3), Elementary (K-6), Elementary 1-8, Middle (still valid, but not issued after 1988, 5-9), Secondary (6-12), Administrative/Supervisory (K-12), [Applied Technology] Career and Technical Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders, Speech-Language Pathologist, and Speech-Language Technician. License areas of concentration may also bear endorsements relating to subjects or specific assignments.

[Q]L. "License endorsement (endorsement)" means a specialty field or area earned through completing required course work [equivalent to at least an academic minor (with-

pedagogy)] established by the USOE or through demonstrated competency approved by the USOE; the endorsement shall be listed on the Professional Educator License indicating the specific qualification(s) of the holder.

~~[R. "Major equivalency" means 30 semester hours of USOE and local board-approved postsecondary education credit or CACTUS-recorded professional development in NCLB core academic subjects as appropriate to satisfy NCLB highly qualified status.]~~

[S]M. "No Child Left Behind Act (NCLB)" means the federal Elementary and Secondary Education Act, P.L. 107-110, Title IX, Part A, Section 9101(11).

[T]N. "Professional staff cost program funds" means funding provided to school districts based on the percentage of a district's professional staff that is appropriately licensed in the areas in which staff members teach.

~~[U. "State qualified" means that an individual has met the Board-approved requirements to teach core or non-core courses in Utah public schools.]~~

[V]O. "SAEP" means State Approved Endorsement Program. This identifies an educator working on a professional development plan to obtain an endorsement.

[W]P. "USOE" means the Utah State Office of Education.

R277-520-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which gives the Board authority to adopt rules in accordance with its responsibilities, and Section 53A-6-104(2)(a) which authorizes the Board to rank, endorse, or classify licenses. This rule is also necessary in response to ESEA NCLB.

B. The purpose of this rule is to provide criteria for local boards to employ educators in appropriate assignments, for the Board to provide state funding to local school boards for appropriately qualified and assigned staff, and for the Board and local boards to satisfy the requirements of ESEA in order for local boards to receive federal funds.

R277-520-3. Required Licensing.

A. All teachers in public schools shall hold a Utah educator license along with appropriate areas of concentration and endorsements.

B. LEAs shall receive assistance from the USOE to the extent of resources available to have all teachers fully licensed.

C. LEAs are expected to hire teachers who are licensed or in the process of becoming fully licensed and endorsed. Failure to ensure that an educator has appropriate licensure ~~[consistent with timelines provided in R277-501-]~~ may result in the USOE withholding all LEA funds related to salary supplements under Section 53A-17a-153 and R277-110 and educator quality under Section 53A-17a-107(2) and R277-486 until teachers are appropriately licensed pursuant to the Board's authority under Section 53A-1-401(3).

R277-520-4. Appropriate Licenses with Areas of Concentration and Endorsements.

A. An ~~[early childhood teacher]~~ educator assigned to teach a class in [{}kindergarten through grade 3{}] shall hold;

~~(1) a [Level 1, 2, or 3 license]current Utah Educator License with an early childhood (k-3) license area of concentration;~~

~~(2) an elementary (k-6) license area of concentration; or~~

~~(3) for an educator assigned to teach a class in grade 1 through grade 3, an elementary (1-8) license area of concentration.~~

~~B. An [elementary teacher]educator assigned to teach a class in [(one)grade 4 through grade 8(3)] in an elementary setting shall hold a [Level 1, 2, or 3 license]current Utah Educator License with an elementary (k-6) or an elementary (1-8) license area of concentration.~~

~~C. An elementary content specialist in Fine Arts or Physical Education shall hold a [Level 1, 2, or 3 license]current Utah Educator License with an elementary [license area of concentration]or [a-]secondary license area of concentration with the appropriate K-12 [subject/]content endorsement.~~

~~D. An elementary content specialist in reading or English as a Second Language shall hold a [Level 1, 2, or 3 license]current Utah Educator License with an elementary [license area of concentration with the appropriate subject/content endorsement] or [a-]secondary license area of concentration with the appropriate subject/content endorsement.[Placing a content specialist in a setting out of the specialist's license area of concentration shall be based on exceptional circumstances and in consultation with the USOE.]~~

~~E. An [secondary teacher]educator assigned to teach a class in [(grade[s] 6[-12])] through grade 8, including [high school,]middle-level, intermediate, and junior high schools, shall hold a [Level 1, 2, or 3 license]current Utah Educator License with an elementary (1-8) or a secondary (6-12) license area of concentration with the appropriate subject/content endorsement[s—in] for all[teaching] assign[ment(s)]ed courses.~~

~~F. [A teacher with a subject-specific assignment in grades 6, 7 or 8 shall hold a secondary license area of concentration with endorsement(s) for the specific teaching assignment(s) or an elementary license area of concentration with the appropriate subject/content endorsement(s).]An educator assigned to teach a class in grade 9 through grade 12 shall hold a current Utah Educator License with a secondary (6-12) or a career and technical education license area of concentration with the appropriate subject/content endorsement for all assigned courses.~~

~~G. An educator assigned to serve or teach a class of students with disabilities shall hold a current Utah Educator License with a special education (k-12) license area of concentration and, if the educator is the teacher of record of secondary mathematics for students with disabilities, shall also hold the appropriate subject/content endorsement.~~

~~[G. An elementary (grades 7-8), a secondary or middle-level teacher may be assigned temporarily in a core or non-core academic area for which the teacher is not endorsed if the local board requests and receives a letter of authorization from the Board and the teacher is placed on an approved SAEP.]~~

~~H. An educator assigned to serve preschool-aged students with disabilities shall hold a current Utah Educator License with a preschool special education (birth-age 5) license area of concentration.~~

~~[H. Secondary educators with special education areas of concentration may add content endorsement(s) to their educator licenses consistent with R277-520-11 (SAEP).]~~

~~I. An educator assigned to provide student support services as defined in R277-506 shall hold a current Utah Educator License with the appropriate support service license area of concentration.~~

~~[I. Educators who have qualified for a J-1 Visa as an international visitor and have provided documentation of holding the equivalent of a bachelors degree, subject content mastery, and appropriate work/graduate training may qualify for a Utah Level 1 license. Such temporary visitors may be exempted, at the employer's discretion, from subject content testing, license renewal requirements, and EYE requirements for the duration of their visa eligibility.]~~

~~J. An educator assigned as a school-based or LEA-based specialist shall hold a current Utah Educator License with the appropriate license area of concentration and endorsement as defined by the LEA.~~

~~K. An educator assigned in an administrative position requiring an educator license, as defined by the district, shall hold a current Utah Educator License and an administrative/supervisory (k-12) license area of concentration.~~

~~(1) A superintendent of a school district may be licensed with a letter of authorization granted by the Board consistent with Section 53A-3-301.~~

~~(2) An educator assigned in an administrative position in a charter schools is exempt from this requirement consistent with Section 53A-1a-511.~~

~~[R277-520-5. Routes to Utah Educator Licensing.~~

~~A. In order to receive a license, an educator shall have completed a bachelors degree at an approved higher education institution and:~~

~~(1) completed an approved institution of higher education teacher preparation program in the desired area of concentration; or~~

~~(2) completed an approved alternative preparation for licensing program, under alternative routes to licensing, consistent with R277-503.~~

~~B. An individual may receive a Utah license with an applied technology area of concentration following successful completion of a USOE-approved professional development program for teacher preparation in applied technology education.~~

~~C. An individual may receive a district-specific, competency-based license under Section 53A-6-104.5 and R277-520-9.~~

~~[R277-520-[6]5. Eminence.~~

~~A. The purpose of an eminence authorization is to allow individuals with exceptional training or expertise, consistent with R277-520-1[G]E, to teach or work in the public schools on a limited basis. Documentation of the exceptional training, skill(s) or expertise may be required by the USOE prior to the approval of the eminence authorization.~~

~~B. Teachers with an eminence authorization may teach no more than 37 percent of the regular instructional load except as provided in R277-520-[6]5C.~~

~~C. In identified circumstances, teachers with an eminence authorization may teach more than 37 percent of the regular instructional load. An eminence authorization may be approved by the Board if:~~

(1) the LEA can find no other qualified individual to fill the position, then:

(a) the LEA shall submit the following documented information to the USOE annually:

- (i) description;
- (ii) recruitment efforts;
- (iii) the qualifications of all applicants; and
- (iv) the LEA's rationale for hiring the individual.

(b) the USOE shall review the information within 15 days of receipt.

(c) the USOE shall notify the individual and the LEA if the USOE approves the documented information.

(d) the LEA shall submit a request for a Letter of Authorization to the Board for the individual through normal administrative procedures; or

(2) An individual has exceptional skills, expertise, and experience that make him the primary candidate for the position, then:

(a) the LEA shall submit the following documented information to the USOE annually:

- (i) information about the position;
- (ii) the individual's expertise, and experience; and
- (iii) the LEA's rationale for hiring the individual.

(b) the USOE shall review the information within 15 days of receipt.

(c) the USOE shall notify the individual and the LEA if the USOE approves the documented information.

(d) the LEA shall submit a request for a Letter of Authorization to the Board for the individual through normal administrative procedures.

D. LEAs shall require an individual teaching with an eminence authorization to have a criminal background check consistent with Section 53A-3-410(1) prior to employment by the LEA.

E. The LEA that employs the teacher with an eminence authorization shall determine the amount and type of professional development required of the teacher.

F. An LEA that employs teachers with eminence authorizations shall apply for renewal of the authorization(s) annually.

G. Eminence authorizations may apply to individuals without teaching licenses or to unusual and infrequent teacher situations where a license-holder is needed to teach in a subject area for which he is not endorsed, but in which he may be eminently qualified.

~~R277-520-7. State Qualified Teachers.~~

~~A. A teacher has a Utah Level 1, 2 or 3 license or a district-specific competency-based license.~~

~~B. A teacher has an appropriate area of concentration.~~

~~C. A teacher in grades 6-12 has the required endorsement for the course(s) the teacher is teaching by means of:~~

~~(1) an academic teaching major from an accredited postsecondary institution, or a passing score on content test(s) and pedagogy test(s), if available, or USOE-approved pedagogy courses; or~~

~~(2) an academic major or minor from an accredited postsecondary institution; or~~

~~(3) completion of a personal development plan under an SAEP in the appropriate subject area(s) as explained under R277-520-11 with approval from the USOE specialist(s) in the endorsement subject areas.~~

~~D. On an annual basis, local boards/charter school boards shall request letters of authorization for teachers who are teaching classes for which they are not endorsed.~~

~~R277-520-8. Highly Qualified Teachers.~~

~~A. A secondary teacher (7-12) is considered highly qualified if the teacher meets the requirements of R277-501-4.~~

~~B. An elementary/early childhood teacher (grades K-8) is considered highly qualified if the teacher meets the requirements of R277-501-5.~~

~~R277-520-9. School District/Charter School Specific Competency-based Licensed Teachers.~~

~~A. The following procedures and timelines apply to the employment of educators who have not completed the traditional licensing process under R277-520-5A, B, or C:~~

~~(1) A local board/charter school board may apply to the Board for a school district/charter school specific competency-based license to fill a position in the district.~~

~~(2) The employing school district shall request a school district/charter school specific competency-based license no later than 60 days after the date of the individual's first day of employment.~~

~~(3) The application for the school district/charter school specific competency-based license for an individual to teach one or more core academic subjects shall provide documentation of:~~

~~(a) the individual's bachelors degree; and~~

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

~~(c) for the teacher in grades 7-12, demonstration of a high Level of competency in each of the core academic subjects in which the teacher teaches by completion of an academic major, a graduate degree, course work equivalent to an undergraduate academic major, advanced certification or credentialing, results or scores of a rigorous state core academic subject test in each of the core academic subjects in which the teacher teaches.~~

~~(4) The application for the school district/charter school specific competency-based license for non-core teachers in grades K-12 shall provide documentation of:~~

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

~~(b) skills, talents or abilities specific to the teaching assignment, as determined by the local board/charter school board.~~

~~(5) Following receipt of documentation, the USOE shall approve a district/charter school specific competency-based license.~~

~~(6) If an individual employed under a school district/charter school specific competency-based license leaves the district before the end of the employment period, the district shall notify the USOE Licensing Section regarding the end-of-employment date.~~

~~(7) The school district/charter school specific competency-based license for an individual's district/charter school~~

~~specific competency-based license shall be valid only in the district/charter school that originally requested the school district/charter school specific competency-based license and for the individual originally employed under the school district/charter school specific competency-based license.~~

~~B. The written copy of the state-issued district-specific competency-based license shall prominently state the name of the school district/charter school followed by DISTRICT/CHARTER-SCHOOL-SPECIFIC-COMPETENCY-BASED-LICENSE.~~

~~C. A school district/charter school may change the assignment of a school district/charter school specific competency-based license holder but notice to USOE shall be required and additional competency-based documentation may be required for the teacher to remain qualified or highly qualified.~~

~~D. School district/charter school specific competency-based license holders are at-will employees consistent with Section 53A-8-106(5).~~

R277-520-[10]6. Routes to Appropriate Endorsements for Teachers.

~~Teachers shall be appropriately endorsed for their teaching assignment(s). To be highly qualified:~~

~~A. teachers may obtain the required endorsement(s) with a major or composite major or major equivalency consistent with their teaching assignment(s), including appropriate pedagogical competencies; or~~

~~B. teachers who have satisfactorily completed a minimum of nine semester hours of USOE-approved university-level courses may complete a professional development plan under an SAEP in the appropriate subject area(s) with approval from USOE Curriculum specialists; or~~

A. An educator may add an endorsement to an existing license area of concentration by completing the endorsement requirements established by the USOE.

B. Endorsement requirements in core academic subject areas shall include passage of the Board-approved content knowledge assessment.

C. Teachers may demonstrate competency in the subject area(s) of their teaching assignment(s) as approved by the USOE content area specialist to meet specific endorsement requirements except the Board-approved content knowledge assessment. In order to be endorsed through demonstrated competency, the educator shall pass designated Board-approved content knowledge and pedagogical knowledge assessments as they become available.

D. Educators shall be properly endorsed consistent with R277-520-[4]3 or have USOE-approved SAEPs. Otherwise, the Board may withhold professional staff cost program funds pursuant to the Board's authority under Section 53A-1-401(3).

R277-520-[11]7. Board-Approved Endorsement Program (SAEP).

~~Teachers in any educational program who are assigned to teach out of their area(s) of endorsement]~~An educator assigned to teach in a subject for which he does not hold the appropriate endorsement and who has successfully completed at least nine semester credit hours of [USOE-approved university-level courses]the endorsement requirements shall [participate in]be

~~placed on an SAEP[and make satisfactory progress within the period of the SAEP] as determined by USOE specialists.~~

~~B. The employing school district shall identify teachers who do not meet the state-qualified definition and provide a written justification to the USOE.~~

~~[C]B. Individuals participating in SAEPs shall demonstrate progress toward completion of the required endorsement(s) annually, as determined jointly by the school district/charter school and the USOE.~~

~~[D]C. An SAEP may be granted for one two-year period and may be [renewed]extended by the USOE[upon written justification from the school district,] for [one]up to two additional [two-year period]years if the individual has made progress towards completing the SAEP.~~

D. An individual currently participating in an SAEP is considered to hold the endorsement for the purposes of meeting the requirements of R277-520-4.

R277-520-[12]8. Background Check Requirement and Withholding of State Funds for Non-Compliance.

A. Educators qualified under any provision of this rule shall also satisfy the criminal background requirement of Section 53A-3-410 prior to unsupervised access to students.

B. If LEAs do not appropriately employ and assign teachers consistent with this rule, they may have state appropriated professional staff cost program funds withheld pursuant to R277-486, Professional Staff Cost Formula pursuant to the Board's authority under Section 53A-1-401(3).

~~C. Local boards/charter school boards shall report highly qualified educators in core academic subjects and educators who do not meet the requirements of highly qualified educators in core academic subjects beginning July 1, 2003.~~

KEY: educators, licenses, assignments
Date of Enactment or Last Substantive Amendment: [June 7, 2012]2015

Notice of Continuation: May 15, 2015
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-6-104(2)(a)

Environmental Quality, Air Quality
R307-101-3
General Requirements. Version of
Code of Federal Regulations
Incorporated by Reference

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 39352
 FILED: 05/07/2015

RULE ANALYSIS
 PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R307-101-3 incorporates by reference the

version of the Code of Federal Regulations (CFR) used in the majority of rules adopted by the Air Quality Board. This allows rules that reference Section R307-101-3 to update the incorporation date with only one rule amendment. The most current version of the CFR for environmental regulations has been updated from 07/01/2013 to 07/01/2014; therefore, it is necessary to amend Section R307-101-3.

SUMMARY OF THE RULE OR CHANGE: The following is a list of changes to 40 CFR from July 1, 2013 to July 1, 2014 that affect rules which reference Section R307-101-3: August 28, 2013 -- Vol. 78, No. 167, Pg. 53029-53033 [EPA--HQ--OAR--2012--0393; FRL--9844-3]--The Environmental Protection Agency (EPA) took final action to revise the regulatory definition of volatile organic compounds (VOCs) for purposes of preparing state implementation plans (SIPs) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA). This final action added trans 1-chloro-3,3,3- trifluoroprop-1-ene (also known as SolsticeTM1233zd(E)) to the list of compounds excluded from the regulatory definition of VOCs on the basis that this compound makes a negligible contribution to tropospheric ozone formation. March 27, 2014 -- Vol. 79, No. 59, Pg. 7037-17043 [EPA--HQ--OAR--2013--0775; FRL--9906-73--OAR]--The EPA took direct final action to revise the regulatory definition of VOCs under the Clean Air Act (CAA). This direct final action added 2-amino-2- methyl-1-propanol (also known as AMP; CAS number 124-68-5) to the list of compounds excluded from the regulatory definition of VOCs on the basis that this compound makes a negligible contribution to tropospheric ozone formation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-10(1)(a)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 40 CFR, published by Government Printing Office, July 1, 2014

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Because the revisions do not create new requirements, no change in costs or savings is expected for the state budget.
- ◆ **LOCAL GOVERNMENTS:** Because this revision does not create new requirements, no change in costs or savings is expected for local governments.
- ◆ **SMALL BUSINESSES:** Because this revision does not create new requirements, no change in costs or savings is expected for small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because this revision does not create new requirements, no change in costs or savings is expected for persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this revision does not create new requirements, no change in costs is expected for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment does not create new requirements; therefore, there is no anticipated fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 AIR QUALITY
 FOURTH FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/06/2015

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.

R307-101. General Requirements.

R307-101-3. Version of Code of Federal Regulations Incorporated by Reference.

Except as specifically identified in an individual rule, the version of the Code of Federal Regulations (CFR) incorporated throughout R307 is dated July 1, [2013]2014.

KEY: air pollution, definitions

Date of Enactment or Last Substantive Amendment: [~~August 7, 2014~~]2015

Notice of Continuation: May 8, 2014

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

Environmental Quality, Air Quality
R307-121
General Requirements: Clean Air and
Efficient Vehicle Tax Credit

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39353

FILED: 05/07/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2015 General Session, the legislature passed S.B. 156, revising the statute governing the state's Clean Fuel Tax Credit. The bill provided for a new tax credit for qualifying electric motorcycles. Because Rule R307-121 is the air quality rule that establishes criteria used to determine eligibility for a tax credit for qualifying vehicles, it needs to be revised to meet the requirements of S.B. 156.

SUMMARY OF THE RULE OR CHANGE: A definition for "qualifying electric motorcycle" is added; requirements to demonstrate proof of purchase and lease for qualifying electric motorcycles is added; and other technical changes to clarify requirements and help administer the Clean Fuel Tax Credit are added.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-1-402 and Section 19-2-104 and Section 59-10-1009 and Section 59-7-605

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The legislature considered cost when it approved qualifying electric motorcycles to be eligible for the tax credit. It is possible that the amendments to this rule could result in additional costs to the state as it changes what vehicles are eligible for the credit; however, those costs should be minimal, as there is little demand for qualifying electric motorcycles.

♦ **LOCAL GOVERNMENTS:** No costs or savings are anticipated for local government budgets because local governments do not pay taxes.

♦ **SMALL BUSINESSES:** Because this amendment adds qualifying electric motorcycles as eligible for the tax credit, small businesses that take advantage of the tax credit could see increased savings. The agency is unable to determine the exact savings as there is little data on the interest small businesses might have in applying for the credit for electric motorcycles.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because this amendment changes which vehicles are eligible for the tax credit, persons other than small businesses, businesses, or local government entities that take advantage of the tax credit could see increased savings. The agency is unable to determine the exact savings as there is little data on consumer demand.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs are anticipated for individuals applying for the tax credit, as the cost to apply for the credit is nominal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is a potential that businesses could see some savings if they purchase qualifying vehicles and apply for and receive the credit. However, it is difficult to determine the exact amount of these savings due to data limitations.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/06/2015

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.**R307-121. General Requirements: Clean Air and Efficient Vehicle Tax Credit.****R307-121-1. Authorization and Purpose.**

(1) This rule is authorized by Sections 59-7-605 and 59-10-1009. These statutes establish criteria and definitions used to determine eligibility for an income tax credit.

(2) R307-121 establishes procedures to provide proof of purchase or lease, in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), to the director for an OEM vehicle, qualifying electric motorcycle, or the conversion of a motor vehicle or special mobile equipment for which an income tax credit is allowed under Sections 59-7-605 or 59-10-1009.

R307-121-2. Definitions.

The following additional definitions apply to R307-121.

"Air quality standards" means air quality standards as defined in Subsection 59-7-605(1)(a) and 59-10-1009(1)(a).

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean fuel vehicle" means clean fuel vehicle as defined in Subsection 19-1-402(2).

"Conversion equipment" means a package that may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or special mobile equipment to make that motor vehicle or equipment eligible for the tax credit.

"Motor Vehicle" means a motor vehicle as defined in 41-1a-102.

"Original equipment manufacturer(OEM) vehicle" means original equipment manufacturer(OEM) as defined in Subsection 19-1-402(8).

"Original purchase" means original purchase as defined in Subsection 59-7-605(1)(g) and 59-10-1009(1)(g).

"Qualifying electric motorcycle" means qualifying electric motorcycle as defined in 59-7-605(1)(h) or 59-10-1009(1)(h).

"Qualifying electric vehicle" means qualifying electric vehicle as defined in 59-7-605(1)([h]i) or 59-10-1009(1)([h]i).

"Qualifying plug-in hybrid vehicle" means qualifying plug-in hybrid vehicle as defined in 59-7-605(1)([i]j) or 59-10-1009(1)([i]j).

"Window Sticker" means the label required by United States Code Title 15 Sections 1231 and 1232, as effective January 3, 2012.

R307-121-3. Proof of Purchase to Demonstrate Eligibility for New OEM Natural Gas, Propane, Qualifying Electric or Qualifying Plug-in Hybrid Vehicles.

To demonstrate that an OEM natural gas, propane, qualifying electric, or qualifying plug-in hybrid motor vehicle is eligible for the tax credit, proof of purchase shall be made in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), by submitting the following documents to the director:

(1)(a) a copy of the motor vehicle's window sticker, which includes its Vehicle Identification Number (VIN), or equivalent manufacturer's documentation showing that the motor vehicle is an OEM natural gas, propane, qualifying electric or qualifying plug-in hybrid vehicle, or

(b) a signed statement by either an Automotive Service Excellence (ASE)-certified technician or Canadian Standards Association (CSA) America CNG Fuel System Inspector that includes the VIN, the technician's ASE or CSA America certification number, and states that the motor vehicle is an OEM natural gas, propane, qualifying electric or qualifying plug-in hybrid vehicle;

(2) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit, the name of the seller of the motor vehicle, the VIN, purchase date, and price of the motor vehicle;

(3) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit;

(4) an original or copy of the odometer disclosure statement required in Utah Code Annotated Title 41 Chapter 1a Section 902 for the motor vehicle that was acquired as an original purchase; and

(5) the underhood identification number or engine group of the motor vehicle.

R307-121-4. Proof of Purchase to Demonstrate Eligibility for New Qualifying Electric Motorcycle.

To demonstrate that a qualifying electric motorcycle is eligible for the tax credit, proof of purchase shall be made in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), by submitting the following documents to the director:

(1)(a) a copy of the Manufacturer's Statement of Origin (MSO) or equivalent manufacturer's documentation showing that the motor vehicle is a qualifying electric motorcycle, or

(b) a signed statement by an Automotive Service Excellence (ASE)-certified technician that includes the VIN, the technician's ASE certification number, and states that the motorcycle is a qualifying electric motorcycle;

(2) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit, the name of the seller of the motor vehicle, the VIN, purchase date, and price of the motor vehicle;

(3) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit; and

(4) an original or copy of the odometer disclosure statement required in Utah Code Annotated Title 41 Chapter 1a Section 902 for the motor vehicle that was acquired as an original purchase.

R307-121-4]5. Proof of Lease to Demonstrate Eligibility for New OEM Natural Gas, Propane, Qualifying Electric or Qualifying Plug-in Hybrid Vehicles.

To demonstrate that an OEM natural gas, propane, qualifying electric or qualifying plug-in hybrid vehicle is eligible for the tax credit, proof of lease shall be made in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), by submitting the following documents to the director:

(1)(a) a copy of the motor vehicle's window sticker, which includes its Vehicle Identification Number (VIN), or equivalent manufacturer's documentation showing that the motor vehicle is an OEM natural gas, propane, qualifying electric or qualifying plug-in hybrid vehicle; or

(b) a signed statement by either an Automotive Service Excellence (ASE)-certified technician or Canadian Standards Association (CSA) America CNG Fuel System Inspector that includes the VIN, the technician's ASE or CSA America certification number, and states that the motor vehicle is an OEM natural gas, propane, qualifying electric or qualifying plug-in hybrid vehicle;

(2) an original or copy of the lease agreement that includes the name of the taxpayer seeking the credit, the name of the lessor of the vehicle, the VIN, the beginning date of the lease, the value of the vehicle at the beginning of the lease, and the value of the vehicle at the end of the lease;

(3) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit;

(4) an original or copy of the odometer disclosure statement required in Utah Code Annotated Title 41 Chapter 1a Section 902 for the motor vehicle that was acquired as an original purchase; and

(5) the underhood identification number or engine group of the motor vehicle.

R307-121-6. Proof of Lease to Demonstrate Eligibility for Qualifying Electric Motorcycle.

To demonstrate that a qualifying electric motorcycle is eligible for the tax credit, proof of lease shall be made in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), by submitting the following documents to the director:

(1)(a) a copy of the Manufacturer's Statement of Origin (MSO) or equivalent manufacturer's documentation showing that the motor vehicle is a qualifying electric motorcycle, or

(b) a signed statement by an Automotive Service Excellence (ASE)-certified technician that includes the VIN, the technician's ASE certification number, and states that the motorcycle is a qualifying electric motorcycle;

(2) an original or copy of the lease agreement that includes the name of the taxpayer seeking the credit, the name of the lessor of the vehicle, the VIN, the beginning date of the lease, the value of the vehicle at the beginning of the lease, and the value of the vehicle at the end of the lease;

(3) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit; and

(4) an original or copy of the odometer disclosure statement required in Utah Code Annotated Title 41 Chapter 1a Section 902 for the motor vehicle that was acquired as an original purchase.

R307-121-[5]7. Proof of Purchase to Demonstrate Eligibility for Motor Vehicles Converted to a Clean Fuel.

To demonstrate that a conversion of a motor vehicle to be fueled by a clean fuel is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), by submitting the following documentation to the director:

(1) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit; the name, address, and phone number of the person that converted the motor vehicle to run on a clean fuel; the VIN; the date of conversion; and the price of the conversion equipment installed on the motor vehicle; ~~and~~

(2) a copy of the current Utah vehicle registration in the name of the taxpayer seeking the credit ~~[-]; and~~

(3) a signed statement by the person who converted the motor vehicle certifying that the conversion does not tamper with, circumvent, or otherwise affect the vehicle's on-board diagnostic system, in accordance with 19-1-406(2).

R307-121-[6]8. Proof of Purchase to Demonstrate Eligibility for Special Mobile Equipment Converted to Clean Fuels.

To demonstrate that a conversion of special mobile equipment to be fueled by clean fuel is eligible for the tax credit, proof of purchase shall be made, in accordance with 59-7-605(3)(b) or 59-10-1009(3)(b), by submitting the following documentation to the director:

(1) a description, including serial number, of the special mobile equipment for which credit is to be claimed; and

(2) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the taxpayer seeking the credit, the serial number, the date of conversion, and the price of the conversion equipment installed on the special mobile equipment.

KEY: air pollution, alternative fuels, tax credits, motor vehicles

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

Notice of Continuation: January 23, 2012

Authorizing, and Implemented or Interpreted Law: 19-2-104; 19-1-402; 59-7-605; 59-10-1009

Environmental Quality, Air Quality
R307-122
 General Requirements: Heavy Duty
 Vehicle Tax Credit

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39354

FILED: 05/07/2015

RULE AN ALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 406, which provides an income tax credit for the purchase of a natural gas heavy duty vehicle, was passed during the 2015 General Session. H.B. 406 gives authority to the Air Quality Board to make rules specifying the requirements and procedures for the tax credit. This proposed new rule, R307-122, is the air quality rule that would do this.

SUMMARY OF THE RULE OR CHANGE: This new rule, R307-122, outlines the process for reserving and qualifying for the heavy duty vehicle tax credit.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-1-402 and Section 19-2-104 and Section 59-7-618 and Subsection 59-10-1033(2)(b)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The legislature considered cost when it passed H.B. 406 (2015) and put a limit on the amount of tax credit that can be awarded at \$500,000 a year. This rule does not add any additional costs to what was already included in the bill's fiscal note.

♦ **LOCAL GOVERNMENTS:** No costs or savings are anticipated for local government because local governments do not pay taxes.

♦ **SMALL BUSINESSES:** Because this new rule provides for a new tax credit for the purchase of a natural gas heavy duty vehicle, small businesses who choose to apply for the credit will see some savings. The amount of savings is unknown as it is not a requirement to apply for the credit and it is unknown how many small businesses will do so. However, the amount of tax credit that can be awarded is limited to \$500,000 a year.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because this new rule provides for a new tax credit for the purchase of a natural gas heavy duty vehicle, persons other than small businesses, businesses, or local governments who choose to apply for the credit will see some savings. The amount of savings is unknown as it is not a requirement to apply for the credit and it is unknown how many tax credit applicants there will be. However, the amount of tax credit that can be awarded is limited to \$500,000 a year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This is an optional tax credit, and there is no requirement for anyone to apply; therefore, there are no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses who choose to apply for the new tax credit will see some savings; however, because we do not know how many businesses will apply for the credit, the fiscal impact is unknown. The limit of tax credit that can be awarded in a year is \$500,000.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO
LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/06/2015

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.

R307-122. General Requirements: Heavy Duty Vehicle Tax Credit.

R307-122-1. Authorization and Purpose.

(1) This rule is authorized by Sections 59-7-618 and 59-10-1033. These statutes establish criteria and definitions used to determine eligibility for an income tax credit.

(2) R307-122 establishes procedures to provide proof of a qualified purchase, in accordance with 59-7-618(6)(a) or 59-10-1033(6)(a), to the director for a qualified heavy duty vehicle for which an income tax credit is allowed under Sections 59-7-618 or 59-10-1033.

R307-122-2. Definitions.

The following additional definitions apply to R307-122.

"Heavy duty vehicle" means heavy duty vehicle as defined in Subsection 59-7-618(1)(b) and 59-10-1033(1)(b).

"Original equipment manufacturer(OEM) vehicle" means original equipment manufacturer(OEM) as defined in Subsection 19-1-402(8).

"Qualified heavy duty vehicle" means qualified heavy duty vehicle as defined in 59-7-618(1)(d) and 59-10-1033(1)(d).

"Qualified purchase" means qualified purchase as defined in 59-7-618(1)(e) and 59-10-1033(1)(e).

"Qualified taxpayer" means qualified taxpayer as defined in 59-7-618(1)(f) and 59-10-1033(1)(f).

R307-122-3. Reservation of a Qualified Heavy Duty Vehicle Tax Credit.

(1) A qualified taxpayer shall reserve a qualified heavy duty vehicle tax credit before submitting proof of qualified purchase to obtain approval from the division for the heavy duty vehicle tax credit. A qualified taxpayer shall apply to reserve the tax credit on forms provided by the division, which will include the following:

(a) the name of the qualified taxpayer and the qualified taxpayers registered name with the United States Department of Transportation (USDOT),

(b) the last four digits of the qualified taxpayer's social security number(SSN) or employer identification number (EIN),

(c) the qualified taxpayer's address, and

(d) the qualified taxpayer's USDOT number.

(2) The tax credit shall be reserved for the qualified taxpayer for up to 180 calendar days from the division's approval of the request to reserve the credit.

(3) If the qualified taxpayer does not meet all of the requirements of R307-122-4 before 181 calendar days after the division's approval of the request to reserve the tax credit, the tax credit will no longer be reserved for the qualified taxpayer.

R307-122-4. Proof of Qualified Purchase for a Qualified Heavy Duty Vehicles.

To demonstrate that a heavy duty vehicle is eligible for the tax credit, proof of qualified purchase shall be made in accordance with 59-7-605(6)(a) or 59-10-1009(6)(a), by submitting the following documents to the director:

(1)(a) a copy of the motor vehicle's window sticker, which includes its Vehicle Identification Number (VIN), or equivalent manufacturer's documentation showing that the heavy duty vehicle is an OEM natural gas vehicle; or

(b) a signed statement by either an Automotive Service Excellence (ASE)-certified technician or Canadian Standards Association (CSA) America CNG Fuel System Inspector that includes the VIN, the technician's ASE or CSA America certification number, and states that the heavy duty vehicle is an OEM natural gas vehicle;

(2) an original or copy of the purchase order, customer invoice, or receipt that includes the name of the qualified taxpayer seeking the credit, the name of the seller of the heavy duty vehicle, the VIN, purchase date, and price of the heavy duty vehicle;

(3) a copy of the current Utah vehicle registration in the name of the qualified taxpayer seeking the credit; and

(4) the certification required under Subsection 59-7-618(2)(b) and 59-10-1033(2)(b).

KEY: air pollution, alternative fuels, tax credits, heavy duty vehicles

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 19-2-104; 19-1-402; 59-7-618; 59-10-1033

Environmental Quality, Air Quality
R307-230
NOx Emission Limits for Natural Gas-
Fired Water Heaters

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39355

FILED: 05/07/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On 02/04/2015, Envision Utah petitioned the Air

Quality Board to propose a rule that would require ultra-low NOx water heaters throughout the state. The NOx limits they proposed came from a Bay Area Air Quality Management District rule. Their proposal claimed to reduce NOx emissions from water heaters 65% to 75%. This is significant as NOx is a precursor to the formation of PM2.5. The Air Quality Board then directed the Division of Air Quality (DAQ) staff to evaluate Envision Utah's proposal and to make a recommendation at a future Board meeting. This proposed new rule is a result of that review and of continued stakeholder work between DAQ, Envision Utah and the governor's Clean Air Action Team.

SUMMARY OF THE RULE OR CHANGE: The rule establishes a statewide implementation schedule by which ultra-low NOx water heaters are required to be sold and installed throughout the state. As proposed, the rule will be implemented in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber counties beginning 01/01/2017; in Washington, Duchesne, and Uintah counties beginning 01/01/2018; and the rest of the state beginning 01/01/2019. Emission limits established in the rule are as follows: most residential water heaters are limited to 10 ng/Joule; larger commercial units are limited to 14 ng/Joule; and mobile homes and pools are limited to 40 ng/Joule. Ultra-low NOx water heaters are already readily available in California, and a limited number of residential units are available to Utah consumers through on-line purchases at prices comparable to similar units that do not meet the ultra-low NOx limits. The Division of Air Quality has requested additional cost information from residential and commercial builders, major box stores, and plumbing supply houses located in Utah, and has not received any additional information yet. Consequently, the agency is asking for additional cost and supply information during this public comment period.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-101 and Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** After the rule is implemented, any water heater that the state needs to install will need to meet the ultra-low NOx levels of the rule. Because suppliers and installers will have adequate time to build their supply and because ultra-low NOx water heaters are already available in California at prices comparable to water heaters that don't meet the ultra-low NOx levels, there should be no additional costs to the state budget.
- ◆ **LOCAL GOVERNMENTS:** After the rule is implemented, any water heater that local governments need to install will need to meet the ultra-low NOx levels of the rule. Because suppliers and installers will have adequate time to build their supply and because ultra-low NOx water heaters are already available in California at prices comparable to water heaters that don't meet the ultra-low NOx levels, there should be no additional costs.
- ◆ **SMALL BUSINESSES:** After the rule is implemented, any water heater that small businesses need to install will need to meet the ultra-low NOx levels of the rule. Because suppliers

and installers will have adequate time to build their supply and because ultra-low NOx water heaters are already available in California at prices comparable to water heaters that don't meet the ultra-low NOx levels, there should be no additional costs.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** After the rule is implemented, any water heater that persons other than small businesses, businesses, or local government entities need to install will need to meet the ultra-low NOx levels of the rule. Because suppliers and installers will have adequate time to build their supply and because ultra-low NOx water heaters are already available in California at prices comparable to water heaters that don't meet the ultra-low NOx levels, there should be no additional costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because installers and vendors have a phase-in period in which to cycle through their current inventories and build up their ultra-low NOx inventories and because prices of the ultra-low NOx heaters are comparable to other water heaters, there is no anticipated compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because installers and vendors have a phase-in period in which to cycle through their current inventories and build up their ultra-low NOx inventories and because prices of the ultra-low NOx heaters are comparable to other water heaters, there is no anticipated fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 AIR QUALITY
 FOURTH FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/06/2015

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.
R307-230. NO_x Emission Limits for Natural Gas-Fired Water Heaters.
R307-230-1. Purpose.
The purpose of R307-230 is to reduce emissions of nitrogen oxides (NO_x) from natural gas-fired water heaters.

R307-230-2. Applicability.

R307-230 applies to the sale and installation of natural gas-fired water heaters on the implementation schedule as outlined in Table 1:

Table 1
Statewide Implementation Schedule of R307-230

Location	Rule Implementation Date
Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber Counties	January 1, 2017
Washington, Duchesne and Uintah Counties	January 1, 2018
Remaining portions of Utah	January 1, 2019

R307-230-3. Exemptions.

The requirements of R307-230 shall not apply to:

- (1) units using a fuel other than natural gas;
- (2) units used in recreational vehicles; and
- (3) units manufactured in Utah for shipment and use outside of Utah.

R307-230-4. Definitions.

The following additional definitions apply to R307-370:

"Heat output" means the enthalpy of the working fluid output of the unit.

"Heat input" means the heat of combustion released by fuels burned in a unit based on the higher heating value of fuel. This does not include the enthalpy of incoming combustion air.

"Recreational vehicle" means a motor home, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational, emergency, or other occupancy.

"Natural gas-fired water heater" means a device that heats water by the combustion of natural gas to a thermostatically-controlled temperature not exceeding 210 degrees F (99 degrees C) for use external to the vessel at pressures not exceeding 160 psig.

R307-230-5. Standards.

(1) Beginning on the rule implementation date specified in Table 1 for each area of the state, no person shall sell or install any natural gas-fired water heater with an emission rate exceeding the limit in Table 2. The NO_x limits are expressed in nanograms of nitrogen oxides (calculated as NO₂) per Joule of heat output.

TABLE 2
NO_x Emission Rate for Natural Gas-Fired Water Heaters

Category	Limits (ng/Joule)
Water heater up to 75,000 BTU/hr, excluding those installed in mobile homes	10
Water heater 75,001- 2,000,000 BTU/hr	14
Any tank with power assist	10
Mobile home water heater	40
Pool/spa heater less than 400,000 BTU/hr	40
Pool/spa heater 400,001-2,000,000 BTU/hr	14

(2) The water heater manufacturer shall display the model number and the NO_x emission rate of a water heater complying with

this rule on the shipping carton and on the permanent rating plate of each unit.

KEY: water heaters, natural gas, NO_x, air quality

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 19-2-101; 19-2-104

Environmental Quality, Drinking Water
R309-510
Facility Design and Operation:
Minimum Sizing Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39399

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division of Drinking Water was tasked to review the Drinking Water R309-500 series rules for revisions, clarifications, corrections, updates, etc. Additionally, in December of 2014, the Office of the Legislative Auditor General, submitted a report entitled "A Review of the Division of Drinking Water's Minimum Source Sizing Requirements" to the Utah State Legislature. The report commented directly upon the source size requirements included in Rule R309-510. The report recommended that DDW reevaluate the minimum source sizing requirements and clarify the regulatory process for requesting a reduction in the minimum size of a source needed. The proposed amendment clarifies the regulatory process for requesting a reduction in the minimum sizing requirements.

SUMMARY OF THE RULE OR CHANGE: The proposed amendments to R309-510 include the following: 1) revise Section R309-510-4 to clarify that water system-specific sizing criteria may be used if a reduction is granted by the director, and add language to state that in addition to meeting the state's minimum sizing requirements, the design of drinking water source and storage capacities may be required to be based on specific requirements imposed by local authorities; 2) revise Section R309-510-5 to clarify the process to obtain a reduction of sizing requirements. Also clarify the requirements for granting a reduction on the basis of limited water use development; 3) revise Subsections R309-510-7(2) and (3) to clearly state that indoor water use and irrigation water use shall be based on the minimums provided by the rule unless a reduction in sizing has been granted by the director; 4) clarify, define, and correct the term "Recreational Home Development" as used in Tables 510-1 and 510-4; 5) clarify irrigation demands in Subsection R309-510-7(3) by adding a statement to take into consideration water losses associated with evaporation, delivery method,

pipe leaks, etc., when irrigation demand is included in the design; and 6) allow for the use of Appendix B of the 2015 International Fire Code in determining fire flow when local fire code officials do not provide requirements, including a minimum flow of 1,000 gpm for 60 minutes. Note: This change is based on input from various fire marshals.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-4-104(1)(a)(ii)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Proposed amendments to Rule R309-510 are not expected to result in a change in the workload of the Division of Drinking Water and should have no effect on the state budget.

◆ LOCAL GOVERNMENTS: Local governments that own and operate public water systems will be affected by the proposed amendments to Rule R309-510. However, the proposed amendments are not expected to result in increased costs or savings for local governments.

◆ SMALL BUSINESSES: Small businesses that own and operate public water systems will be affected by the proposed amendments to Rule R309-510. However, the proposed amendments are not expected to result in increased costs or savings for small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Owners, operators, and customers of public water systems are persons directly or indirectly affected by R309-510. Because the proposed amendments to R309-510 are not expected to result in increased costs or savings for public water systems, there should be no new costs or savings for any of these persons because of the proposed amendments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Facility design and operation requirements are not expected to change because of the proposed amendments to Rule R309-510. Therefore, compliance costs should be unaltered as a result of the proposed amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule amendment will have no negative fiscal impact on businesses because the amendments will not have a significant effect on public water systems.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bernie Clark by phone at 801-536-0092, or by Internet E-mail at bernieclark@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Ken Bousfield, Director

R309. Environmental Quality, Drinking Water.

R309-510. Facility Design and Operation: Minimum Sizing Requirements.

R309-510-1. Purpose.

This rule specifies the minimum requirements for the sizing of public drinking water facilities such as sources (~~along with~~ and their associated treatment facilities), storage tanks, and pipelines. It is intended to be applied in conjunction with R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-510-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

R309-510-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-510-4. General.

(1) ~~This rule provides [estimates of] minimum quantities and flow rates [which] that shall be used in the design of new systems and in the evaluation of water source, storage facility, and pipeline capacities, [or if] unless a public water system has obtained a capacity reduction per R309-510-5. Water demand may vary significantly depending on water system size, type, land use, urbanization, location, precipitation, etc. Therefore, public water systems may submit system-specific water use data to justify alternative sizing requirements in accordance with R309-510-5. [there is an absence of data collected by the public water system meeting the required confidence level for a reduction mentioned below, when evaluating water sources, storage facilities and pipelines. Within each of these three broad categories, the designer shall ascertain the contributions on demand from the indoor use of water, the outdoor use of water, and fire suppression activities (if required by local authorities). These components must be added together to determine the total demand on a given facility.]~~

(2) ~~When designing a public water system, the sizing requirements for indoor water use, irrigation, and fire suppression (as required by the local fire code official) shall be included as appropriate.~~

(3) ~~Local authorities may impose more stringent design requirements on public water systems than the minimum sizing requirements of this rule.~~

(4) Public water systems shall consider daily, weekly, monthly, seasonal, and yearly variations of source capacity and system demand and shall verify that the capacities of drinking water facilities are sufficiently sized.

(5) The Director may modify the sizing requirements based on the unique nature and use of a water system.

R309-510-5. Reduction of Sizing Requirements.

~~_____ If acceptable data are presented, certain number of days of peak day demand to establish minimum source capacity; certain number of years of annual demand to establish minimum water right requirements; and certain number of readings of peak hourly demand to establish minimum peak instantaneous demand; showing that the requirements made herein are excessive for a given project, the requirements may be appropriately reduced to the 90th percentile of readings, on a case by case basis by the Director. In the case of Recreational Home Developments, in order to qualify for a quantity reduction, not only must the actual water consumption be less than quantities required by rule but enforceable policy restrictions must have been approved which prevent the use of such dwellings as a permanent domicile and these restrictions shall have been consistently enforced. The Director may re-consider any reduced minimums if the nature and use of the system changes.~~

(1) Water systems that want to use system-specific design criteria that are below the state's minimum sizing requirements may submit a request for a reduction to the Director. Each request shall include supporting information justifying the reduction in source, storage, or pipeline sizing.

(2) Depending on the reduction being sought, the supporting information may include actual water use data representing peak day demand, average day demand for indoor and irrigation uses, fire flow requirements established by the local fire code official, etc. Each reduction request and supporting information will be reviewed on a case-by-case basis because of the wide variety of factors to be considered, such as water system configuration and size, built-in redundancy, water user type, safety factors, method and quality of data collected, water losses, reliability of the source, etc.

(3) Prior to collecting or compiling water use data for a reduction request, a public water system shall consult with the Division of Drinking Water to identify the information needed for a reduction request and to establish a data collection protocol.

(4) The data submitted for a source reduction request shall be sufficient to account for daily, seasonal, and yearly variations in source and demand.

(5) If data justifying a reduction are accepted by the Director, the sizing requirements may be reduced. The requirements shall not be less than the 90th percentile of acceptable readings.

(6) If a reduction is granted on the basis of limited water use, enforceable water use restrictions must be in place, shall be consistently enforced by the water system or local authority, and shall be accepted by the Director.

(7) The Director may re-evaluate any reduction if the nature or use of the water system changes.

R309-510-6. Water Conservation.

Drinking water systems shall use the water resources of the state efficiently. The minimum sizing requirements of this rule [is]are based [up]on typical [current]water consumption patterns in the State of Utah. [They may be excessive in certain settings w]Where legally[

]-enforceable water conservation measures exist[-], [~~In these cases-~~] the sizing requirements [~~made-~~]in this [section]rule may be reduced on a case-by-case basis by the Director.

R309-510-7. Source Sizing.

(1) Peak Day Demand and Average Yearly Demand.

Sources shall legally and physically meet water demands under two [separate]conditions[-]:

(a) [First, they]The water system's source capacity shall be able to meet the anticipated water demand on the day of highest water consumption[-], [~~This is referred to as the] which is the peak day demand.~~

(b) [Second, they]The water system's source capacity shall also be able to provide one year's supply of water, which is the average yearly demand.

(2) [Estimated]Indoor Water Use.

[In the absence of firm water use data,-]Tables 510-1 and 510-2 shall be used [to estimate-]as the minimum sizing requirements for peak day demand and average yearly demand for indoor water use unless a public water system has obtained a reduction per R309-510-5.

TABLE 510-1
Source Demand for Indoor Use

Type of Connection	Peak Day Demand	Average Yearly Demand
Year-round use		
Residential	800 gpd/conn	146,000 gal./conn
Equivalent Residential Connection (ERC)	800 gpd/ERC	146,000 gal./ERC
Seasonal/Non-residential use		
Modern Recreation Camp	60 gpd/person	([§]See [¶]Note 1)
Semi-Developed Camp		
a. with pit privies	5 gpd/person	([§]See [¶]Note 1)
b. with flush toilets	20 gpd/person	([§]See [¶]Note 1)
Hotel, Motel, and Resort	150 gpd/unit	([§]See [¶]Note 1)
Labor Camp	50 gpd/person	([§]See [¶]Note 1)
Recreational Vehicle		
Park	100 gpd/pad	([§]See [¶]Note 1)
Roadway Rest Stop	7 gpd/vehicle	([§]See [¶]Note 1)
Recreational Home Development (i.e., developments with limited water use) (See Note 2)	400 gpd/conn	([§]See [¶]Note 1)

NOTES FOR TABLE 510-1:

Note 1. A [annual]verage yearly demand shall be [based on]calculated by multiplying the number of days [the system will be open during the year times-]in the designated water system operating period by the peak day demand unless a reduction has been granted in accordance with R309-510-5[data acceptable to the Director, with a confidence level of 90% or greater showing a lesser annual consumption, can be presented].

Note 2. To be considered a Recreational Home Development (i.e., developments with limited water use) as listed in Table 510-1, dwellings shall not have more than 8 plumbing fixture units, in accordance with the state-adopted plumbing code, and shall not be larger than 1,000 square feet. For a new not-yet-constructed development to be considered as a development with limited water use, it must have enforceable restrictions in place that are enforced by the water system or local authority and are accepted by the Director.

TABLE 510-2

Source Demand for Indoor Use - Individual Establishments⁽⁴⁺⁾ (Note 1)
~~[(Indoor Use)]~~

Type of Establishment	Peak Day Demand (gpd) (Notes 2 and 3)
Airports	
a. per passenger	3
b. per employee	15
Boarding Houses	
a. for each resident boarder and employee	50
b. for each nonresident boarders	10
Bowling Alleys, per alley	
a. with snack bar	100
b. with no snack bar	85
Churches, per person	5
Country Clubs	
a. per resident member	100
b. per nonresident member present	25
c. per employee	15
Dentist's Office	
a. per chair	200
b. per staff member	35
Doctor's Office	
a. per patient	10
b. per staff member	35
Fairgrounds, per person	1
Fire Stations, per person	
a. with full-time employees and food prep.	70
b. with no full-time employees and no food prep.	5
Gyms	
a. per participant	25
b. per spectator	4
Hairdresser	
a. per chair	50
b. per operator	35
Hospitals, per bed space	250
Industrial Buildings, per 8 hour shift, per employee (exclusive of industrial waste)	
a. with showers	35
b. with no showers	15
Launderette, per washer	580
Movie Theaters	
a. auditorium, per seat	5
b. drive-in, per car space	10
Nursing Homes, per bed space	280
Office Buildings and Business Establishments, per shift, per employee (sanitary wastes only)	
a. with cafeteria	25
b. with no cafeteria	15
Picnic Parks, per person (toilet wastes only)	5
Restaurants	
a. ordinary restaurants (not 24 hour service)	35 per seat
b. 24 hour service	50 per seat
c. single service customer utensils only	2 per customer
d. or, per customer served (includes toilet and kitchen wastes)	10
Rooming House, per person	40
Schools, per person	
a. boarding	75
b. day, without cafeteria, gym or showers	15
c. day, with cafeteria, but no gym or showers	20
d. day, with cafeteria, gym and showers	25
Service Stations ⁽⁴⁺⁾	
a. per vehicle served, or	10
b. per gas pump	250
Skating Rink, Dance Halls, etc., per person	
a. no kitchen wastes	10
b. Additional for kitchen wastes	3
Ski Areas, per person (no kitchen wastes)	10

Stores	
a. per public toilet room	500
b. per employee	11
Swimming Pools and Bathhouses ⁽⁴⁺⁾ , per person (Note 4)	10
Taverns, Bars, Cocktail Lounges, per seat	20
Visitor Centers, per visitor	5

NOTES FOR TABLE 510-2:

Note 1. When more than one use will occur, the multiple uses shall be considered in determining total demand. Small industrial plants maintaining a cafeteria or showers and club houses or motels maintaining swimming pools or laundries are typical examples of multiple uses. Uses other than those listed above shall be considered in relation to established demands from known or similar installations.

[1] Note 2. Source capacity must at least equal the peak day demand of the system. [Estimate] Determine this by assuming the facility is used to its maximum, e.g., the physical capacity of the facility.

[2] Note 3. [Generally, storage volume must at least equal one average day's demand] To determine the average day demand for establishments listed in Table 510-2, divide the peak day demand by 2, unless alternative data are accepted by the Director.

[3. Peak instantaneous demands may be estimated by fixture unit analysis as per Appendix E of the 2006 International Plumbing Code.

(a) When more than one use will occur, the multiple use shall be considered in determining total demand. Small industrial plants maintaining a cafeteria and/or showers and club houses or motels maintaining swimming pools and/or laundries are typical examples of multiple uses. Uses other than those listed above shall be considered in relation to established demands from known or similar installations.

(b) or 250 gpd per pump,

(c) $20 \times (\text{Water Area (ft}^2) / 30) + \text{Deck Area (ft}^2)$

Note 4.

Or Peak Day Demand = $20 \times (\text{Water Area (ft}^2) / 30) + \text{Deck Area (ft}^2)$

(3) ~~[Estimated Outdoor]~~ Irrigation Use.

~~[In the absence of firm water use data,]~~ If a water system provides water for irrigation, Table 510-3 shall be used to ~~[estimate]~~ determine the peak day demand and average yearly demand for ~~[outdoor]~~ irrigation water use. The following procedure shall be used:

(a) Determine the location of the water system on the map entitled Irrigated Crop Consumptive Use Zones and Normal Annual Effective Precipitation, Utah as prepared by the Soil Conservation Service (available from the Division). Find the numbered zone, one through six, in which the water system is located (if located in an area described "non-arable" find nearest numbered zone).

(b) Determine the net number of acres which may be irrigated. ~~[This is generally done by starting with the gross acreage; then subtract out any area of roadway, driveway, sidewalk or patio pavements along with housing foundation footprints that can be reasonably expected for lots within a new subdivision or which is representative of existing lots. Before any other land area which may be considered "non-irrigated" (e.g. steep slopes, wooded areas, etc.) is subtracted from the gross area, the Director shall be consulted and agree that the land in question will not be irrigated.]~~

(c) Refer to Table 510-3, which assumes direct application of water to vegetation, to determine peak day demand and average yearly demand for ~~[outdoor]~~ irrigation use.

(d) ~~[The results of the indoor use and outdoor use tables shall be added together and source(s) shall be legally and physically capable of meeting this combined demand.] Consider water losses due to factors such as evaporation, irrigation delivery method,~~

overwatering, pipe leaks, etc. Apply a safety factor to the irrigation demand in the design accordingly.

TABLE 510-3
Source Demand for Irrigation
[~~(Outdoor Use)~~]

Map Zone	Peak Day Demand (gpm/irrigated acre)	Average Yearly Demand (AF/irrigated acre) <u>(Note 1)</u>
1	2.26	1.17
2	2.80	1.23
3	3.39	1.66
4	3.96	1.87
5	4.52	2.69
6	4.90	3.26

NOTE FOR TABLE 510-3:

Note 1. The average yearly demand for irrigation water use (in acre-feet per irrigated acre) is based on 213 days of irrigation, e.g., April 1 to October 31.

~~(4) [Accounting for] Variations in Source Yield. [The design engineer shall consider whether flow from the source(s) may vary. Where flow varies, as is the case for most springs, the minimum flow rate shall be used in determining the number of connections which may be supported by the source(s). Where historical records are sufficient, and where peak flows from the source(s) correspond with peak demand periods, the Director may grant an exception to this requirement.]~~

(a) Water systems shall consider that flow from sources may vary seasonally and yearly. Where flow varies, the number of service connections supported by a source shall be based on the minimum seasonal flow rate compared to the corresponding seasonal demand.

(b) Where source capacity is limited by the capacity of treatment facilities, the maximum number of service connections shall be determined using the treatment plant design capacity instead of the source capacity.

R309-510-8. Storage Sizing.

(1) General.

Each public water system, or storage facility serving connections within a specific area, shall provide:

(a) equalization storage volume, to satisfy average day demands for water for indoor use ~~[as well as outdoor] and irrigation use,~~

(b) fire ~~[suppression] flow storage~~ volume, if the water system is equipped with fire hydrants ~~[and] intended to provide fire suppression water or as required by the local fire code official,~~ and

(c) emergency storage, if deemed appropriate by the water supplier or the Director ~~[, to meet demands in the event of an unexpected emergency situation such as a line break or a treatment plant failures].~~

(2) Equalization Storage.

(a) All public drinking water systems shall ~~[be] provide [d with] equalization storage. The amount of equalization storage [which must be provided] varies with the nature of the water system, the extent of [outdoor] irrigation use, and the location and configuration of the water system.~~

(b) Table 510-4 lists [R]required equalization storage for indoor use [is provided in Table 510-4]. Storage requirements for non-community systems not listed in this table shall be determined by

calculating the average day demands from the information given in Table 510-2.

TABLE 510-4
Storage Volume for Indoor Use

Type	Volume Required (gallons)
Community Systems	
Residential; per single resident service connection	400
Non-Residential; per Equivalent Residential Connection (ERC)	400
Non-Community Systems	
Modern Recreation Camp; per person	30
Semi-Developed Camp; per person	
a. with Pit Privies	2.5
b. with Flush Toilets	10
Hotel, Motel and Resort; per unit	75
Labor Camp; per unit	25
Recreational Vehicle Park; per pad	50
Roadway Rest Stop; per vehicle	3.5
Recreational Home Development <u>(i.e., developments with limited water use);</u> per connection <u>(See Note 2 in Table 510-1)</u>	400

(c) Where ~~[the] a~~ drinking water system provides water for ~~[outdoor] irrigation use, [such as the irrigation of lawns and gardens];~~ Table 510-5 shall be used to determine the minimum equalization storage volumes for irrigation [estimated in Table 510-5 shall be added to the indoor volumes estimated in Table 510-4]. The procedure for determining the map zone and irrigated acreage for using Table 510-5 is outlined in ~~[Section] R309-510-7(3).~~

TABLE 510-5
Storage Volume for ~~(Outdoor) Irrigation Use~~

Map Zone	Volume Required (gallons/irrigated acre)
1	1,782
2	1,873
3	2,528
4	2,848
5	4,081
6	4,964

(3) Fire ~~[Suppression] Flow Storage.~~

~~[Fire suppression storage shall be required if the water system is intended to provide fire fighting water as evidenced by fire hydrants connected to the piping. The design engineer shall consult with the local fire suppression authority regarding needed fire flows in the area under consideration. This information shall be provided to the Division. Where no local fire suppression authority exists, needed fire suppression storage shall be assumed to be 120,000 gallons (1000 gpm for 2 hours).]~~

(a) Fire flow storage shall be provided if fire flow is required by the local fire code official or if fire hydrants intended for fire flow are installed.

(b) Water systems shall consult with the local fire code official regarding needed fire flows in the area under consideration. The fire flow information shall be provided to the Division during the plan review process.

(c) When direction from the local fire code official is not available, the water system shall use Appendix B of the International Fire Code, 2015 edition, for guidance. Unless otherwise approved by

the local fire code official, the fire flow and fire flow duration shall not be less than 1,000 gallons per minute for 60 minutes.

(4) Emergency Storage.

Emergency storage shall be considered during the design process. The amount of emergency storage shall be based upon an assessment of risk and the desired degree of system dependability. The Director may require emergency storage when it is warranted to protect public health and welfare.

R309-510-9. Distribution System Sizing.

(1) General Requirements.

The distribution system shall be designed to ~~insure~~ensure adequate flow and that minimum water pressures as required in R309-105-9 exist at all points within the distribution system. ~~—If the distribution system is equipped with fire hydrants, the Division will require a letter from the local fire authority stating the fire flow and duration required of the area to insure the system shall be designed to provide minimum pressures as required in R309-105-9 to exist at all points within the system when needed fire flows are imposed upon the peak day demand flows of the system.~~

(2) ~~Indoor Use, Estimated~~ Peak Instantaneous Demand for Indoor Water Use.

(a) Large or complex water systems may determine peak instantaneous demand using hydraulic modeling. The hydraulic model must either apply an instantaneous peaking factor to account for peak instantaneous demand or use actual peak instantaneous water flow data.

~~(a) For community water systems and large non-community systems~~ Alternatively, the peak instantaneous demand for ~~each~~ a single pipeline shall be ~~assumed~~ calculated for indoor use ~~as~~ using the following equation:

$$Q = 10.8 \times N^{0.64}$$

where N equals the total number of ERC's, and Q equals the total flow (gpm) delivered to the total connections served by that pipeline.

(c) For Recreational Vehicle Parks, the peak instantaneous flow for indoor use shall be based on the following:

TABLE 510-6

Peak Instantaneous Demand for Indoor Water Use for Recreational Vehicle Parks

Number of Connections	Formula
0 to 59	Q = 4N
60 to 239	Q = 80 + 20N ^{0.5}
240 or greater	Q = 1.6N

NOTES FOR TABLE 510-6:

Q is total peak instantaneous demand (gpm). ~~and~~ N is the maximum number of connections. However, if the only water use is via service buildings, the peak instantaneous demand shall be calculated for the number of plumbing fixture units as presented in ~~Appendix E of the 2006 International Plumbing Code~~ the state-adopted plumbing code.

~~(b) For small non-community water systems,~~ (b)d) For small non-community water systems, the peak instantaneous demand ~~to be estimated~~ for indoor water use shall be calculated on a per-building basis for the number of plumbing fixture units as presented in ~~Appendix E of the 2006 International Plumbing Code~~ the state-adopted plumbing code.

(3) ~~Outdoor Use, Estimated~~ Peak Instantaneous Demand for Irrigation Use.

Peak instantaneous demand ~~to be estimated~~ for ~~outdoor~~ irrigation use is given in Table 510-7. The procedure for determining the map zone and irrigated acreage for using Table 510-7 is outlined in ~~Section~~ R309-510-7(3).

TABLE 510-7

Peak Instantaneous Demand for ~~Outdoor~~ Irrigation Use

Map Zone	Peak Instantaneous Demand (gpm/irrigated acre)
1	4.52
2	5.60
3	6.78
4	7.92
5	9.04
6	9.80

(4) Fire Flow[s].

~~(a) Distribution systems shall be designed to deliver needed fire flows if fire hydrants are provided. The design engineer shall consult with the local fire suppression authority regarding needed fire flows in the area under consideration. This information shall be provided to the Division. Where no local fire suppression authority exists, needed fire flows shall be assumed to be 1000 gpm unless the local planning commission provides a letter indicating that the system will not be required to provide any fire flows, in which case fire hydrants will not be allowed to be installed on any mains.~~

~~(b) If a distribution system is equipped with fire hydrants, the system shall be designed to insure that minimum pressures required by R309-105-9 exist at all points within the system when fire flows are added to the peak day demand of the system. Refer to Section R309-510-7 for information on determining the peak day demand of the system.~~

(a) Distribution systems shall be designed to deliver needed fire flow if fire flow is required by the local fire code official or if fire hydrants intended for fire flow are provided. The distribution system shall be sized to provide minimum pressures as required by R309-105-9 to all points in the distribution system when needed fire flows are imposed during peak day demand in the distribution system.

(b) The water system shall consult with the local fire code official regarding needed fire flow in the area under consideration. The fire flow information shall be provided to the Division during the plan review process.

(c) If direction from the local fire code official is not available, the water system shall use Appendix B of the International Fire Code, 2015 edition, for guidance. Unless otherwise approved by the local fire code official, the fire flow and fire flow duration shall not be less than 1,000 gallons per minute for 60 minutes.

KEY: drinking water, minimum sizing, water conservation
Date of Enactment or Last Substantive Amendment: [August 28, 2013]2015
Notice of Continuation: March 13, 2015
Authorizing, and Implemented or Interpreted Law: 19-4-104

Environmental Quality, Water Quality R317-2 Standards of Quality for Waters of the State

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39397

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection R317-2-7(7.1) was revised so that the Division can avoid listing a water as impaired because natural background concentrations of a pollutant are higher than the statewide standard. Section R317-2-14, Table 2.14.1, Footnote 4 was revised with a site-specific total dissolved solids criteria for Blue Creek, Box Elder County because natural background total dissolved solids concentrations exceed the statewide criterion of 1,200 mg/l. In Section R317-2-14, Table 2.14.2, the aquatic life criteria for gross alpha were revised to be indicators to be consistent with Footnote 10 and gross beta. Criteria result in impairment determinations when the criteria are exceeded. The gross alpha concentrations were intended to be interpreted as indicators which would result in further investigation and analyses before concluding impairment. In Section R317-2-14, Table 2.14.2, Footnote 13 the formula for calculating hydrogen sulfide could not be verified and produces erroneous results at low pH. In Section R317-2-14, Table 2.14.3b, the acute aquatic life criteria for nickel, silver, and zinc were missing parentheses in the formulas.

SUMMARY OF THE RULE OR CHANGE: In Subsection R317-2-7(7.1), an explicit condition was added that when background concentration of a pollutant is higher than the applicable water quality criterion, the criterion will be the background concentration. This change is per USEPA Guidance and is intended to allow Utah to delist or not list waters where the exceedance of criteria is determined to be caused by natural conditions. Subsection R317-2-7(7.1) was reformatted into three subsections. This revision affects all waters of the state. In Section R317-2-14, Table 2.14.1, Footnote 4, the site-specific total dissolved solids criteria for Blue Creek, Box Elder County, were revised. The existing site-specific criteria are too low and based on historical total dissolved solids data would likely result in erroneously concluding that Blue Creek was impaired because ambient total dissolved solids concentrations exceed the state-wide 1,200 mg/l criterion. The proposed criteria are recalculated into two seasonal criteria, each having both maximum and average criteria. Comparison values for assessing against the average criteria are also included. The location of Blue Creek is corrected from Gunnison to Bear River Bay. In Section R317-2-14, Table 2.14.2, the aquatic life criteria for gross alpha were changed from criteria to indicators. The

existing gross alpha criteria include a reference to Footnote 10, the same as all other indicators including gross beta demonstrating the intent that gross alpha should be interpreted as an indicator. USEPA has not promulgated aquatic life use criteria for gross alpha or beta. The result is that gross alpha will be an indicator for Class 3 aquatic life uses but remains as criteria for Class 1C and Class 4 waters. This revision affects all waters of the state. In Section R317-2-14, Table 2.14.2, Footnote 13 was deleted because the formula for calculating hydrogen sulfide could not be verified in either USEPA or Standard Methods and produces erroneous results at low pH. Absent the footnote, hydrogen sulfide concentrations will be determined in accordance with approved analytical methods. This revision affects all Waters of the State. In Section R317-2-14, Table 2.14.3b, missing parentheses were added to correct formulas for calculating acute aquatic life criteria for nickel, silver, and zinc. These corrections affect all waters of the state.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: FWPCA, 33 U.S.C, Sec. 1311 through 1317 and FWPCA, 33 U.S.C, Sec. 1329 and FWPCA, 33 U.S.C. Sec. 1251 and Section 19-5-105 and Section 19-5-110

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The cost savings for proposed revisions to Subsection R317-2-7(7.1), Section R317-2-14, and Tables 2.14.1 and 2.14.2 are uncertain because they are based on how many erroneous impairment listings are avoided. Based on past experience the cost savings are anticipated to range from \$0 to \$15,000 per year on average based on an average of 40 hours of staff time per listing avoided. The proposed revisions to Section R317-2-14, Table 2.14.2, Footnote 13, will not affect the state budget because the only result will be that a different equation will be used to calculate hydrogen sulfide concentrations. The proposed revisions to Section R317-2-14, Table 2.14.3b, will not affect the state budget because these were housekeeping changes.

◆ **LOCAL GOVERNMENTS:** No cost increase or savings are anticipated for local governments because the proposed revisions to Subsection R317-2-7(7.1), Section R317-2-14, and Tables 2.14.1 and Table 2.14.2 will not change the ultimate outcome where site-specific standards are promulgated when ambient background concentrations exceed the statewide criteria. The revisions will result in eliminating unnecessary intermediate steps that affect state resources but not local governments. The proposed revisions to Section R317-2-14, Table 2.14.2, Footnote 13 will not affect the local government's budgets because the only result will be that a different equation will be used to calculate hydrogen sulfide concentrations. The proposed revisions to Section R317-2-14, Table 2.14.3b will not affect local government's budgets because these were housekeeping changes.

◆ **SMALL BUSINESSES:** No cost increase or savings are anticipated for small businesses because the proposed revisions to Subsection R317-2-7(7.1), Section R317-2-14, and Tables 2.14.1 and 2.14.2 will not change the ultimate outcome where site-specific standards are promulgated when ambient background concentrations exceed the statewide

criteria. The revisions will result in eliminating unnecessary intermediate steps that affect state resources but not small businesses. The proposed revisions to Section R317-2-14, Table 2.14.2, Footnote 13 will not affect the small businesses' budgets because the only result will be that a different equation will be used to calculate hydrogen sulfide concentrations. The proposed revisions to Section R317-2-14, Table 2.14.3b will not affect businesses' budgets because these were housekeeping changes.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No cost increase or savings are anticipated for persons because the proposed revisions to Subsection R317-2-7(7.1), Section R317-2-14, and Tables 2.14.1 and 2.14.2 will not change the ultimate outcome where site-specific standards are promulgated when ambient background concentrations exceed the statewide criteria. The revisions will result in eliminating unnecessary intermediate steps that affect state resources but not for individual persons. The proposed revisions to Section R317-2-14, Table 2.14.2, Footnote 13 will not affect individual persons because the only result will be that a different equation will be used to calculate hydrogen sulfide concentrations. The proposed revisions to Section R317-2-14, Table 2.14.3b will not affect individual persons because these were housekeeping changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The revision to Section R317-2-14, Table 2.14.1 is anticipated to save \$350,000 in capital costs for a permittee on Blue Creek by avoiding the need to install a treatment system to remove total dissolved solids from the effluent to meet the currently applicable statewide criteria of 1,200 mg/l. The revision to gross alpha in Section R317-2-14, Table 2.14.2 will not affect compliance costs because currently, no permitted discharges have effluent limits based on these criteria. The other revisions will not affect compliance costs because the changes will not change the ultimate outcome where site-specific standards are promulgated when ambient background concentrations exceed the statewide criteria. The revisions will result in eliminating unnecessary intermediate steps that affect state resources but not for individual persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to the Blue Creek total dissolved solids criterion will appropriately decrease costs on affected businesses. Under the existing rule, affected businesses are required to remove total dissolved solids from their effluent to concentrations that are lower than naturally occur in the creek. The other revisions are not anticipated to affect business costs.

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 07/06/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
◆ 06/29/2015 06:00 PM, Brigham City Library, 26 E. Forest St, Conference Room, Brigham City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/15/2015

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.
R317-2. Standards of Quality for Waters of the State.

.....

R317-2-7. Water Quality Standards.

7.1 Application of Standards

a. The numeric criteria listed in R317-2-14 shall apply to each of the classes assigned to waters of the State as specified in R317-2-6. It shall be unlawful and a violation of these rules for any person to discharge or place any wastes or other substances in such manner as may interfere with designated uses protected by assigned classes or to cause any of the applicable standards to be violated, except as provided in R317-1-3.1.

b. At a minimum, assessment of the beneficial use support for waters of the state will be conducted biennially and available for a 30-day period of public comment and review. Monitoring locations and target indicators of water quality standards shall be prioritized and published yearly. For water quality assessment purposes, up to 10 percent of the representative samples may exceed the minimum or maximum criteria for dissolved oxygen, pH, E. coli, total dissolved solids, and temperature, including situations where such criteria have been adopted on a site-specific basis.

c. Site-specific standards may be adopted by rulemaking where biomonitoring data, bioassays, or other scientific analyses indicate that the statewide criterion is over or under protective of the designated uses or where natural or un-alterable conditions or other factors as defined in 40 CFR 131.10(g) prevent the attainment of the statewide criteria as prescribed in Subsections R317-2-7.2, and R317-2-7.3, and Section R317-2-14. When it is determined that natural background level of a pollutant is less stringent than the otherwise applicable criterion, the water quality criterion will be equal to the natural background concentration.

7.2 Narrative Standards

It shall be unlawful, and a violation of these rules, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or

taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures; or determined by biological assessments in Subsection R317-2-7.3.

7.3 Biological Water Quality Assessment and Criteria

Waters of the State shall be free from human-induced stressors which will degrade the beneficial uses as prescribed by the biological assessment processes and biological criteria set forth below:

a. Quantitative biological assessments may be used to assess whether the purposes and designated uses identified in R317-2-6 are supported.

b. The results of the quantitative biological assessments may be used for purposes of water quality assessment, including, but not limited to, those assessments required by 303(d) and 305(b) of the federal Clean Water Act (33 U.S.C. 1313(d) and 1315(b)).

c. Quantitative biological assessments shall use documented methods that have been subject to technical review and produce consistent, objective and repeatable results that account for methodological uncertainty and natural environmental variability.

d. If biological assessments reveal a biologically degraded water body, specific pollutants responsible for the degradation will not be formally published (i.e., Biennial Integrated Report, TMDL) until a thorough evaluation of potential causes, including nonchemical stressors (e.g., habitat degradation or hydrological modification or criteria described in 40 CFR 131.10 (g)(1 - 6) as defined by the Use Attainability Analysis process), has been conducted.

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R317-2-14. Numeric Criteria.

TABLE 2.14.1
NUMERIC CRITERIA FOR DOMESTIC,
RECREATION, AND AGRICULTURAL USES

Parameter	Domestic			
	Source	Recreation and Aesthetics		Agri-culture
	1C	2A	2B	4
BACTERIOLOGICAL				
(30-DAY GEOMETRIC MEAN) (NO.)/100 ML (7)				
E. coli	206	126	206	
MAXIMUM				
(NO.)/100 ML (7)				
E. coli	668	409	668	
PHYSICAL				
pH (RANGE)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)		10	10	
METALS (DISSOLVED, MAXIMUM MG/L) (2)				
Arsenic	0.01			0.1
Barium	1.0			
Beryllium	<0.004			
Cadmium	0.01			0.01
Chromium	0.05			0.10
Copper				0.2
Lead	0.015			0.1

Mercury	0.002		
Selenium	0.05		0.05
Silver	0.05		
INORGANICS			
(MAXIMUM MG/L)			
Bromate	0.01		
Boron			0.75
Chlorite	<1.0		
Fluoride (3)	1.4-2.4		
Nitrates as N	10		
Total Dissolved Solids (4)			1200
RADIOLOGICAL			
(MAXIMUM pCi/L)			
Gross Alpha	15		15
Gross Beta (Combined)	4 mrem/yr		Radium 226, 228
Strontium 90	5		
Tritium	8		
Uranium	20000		
	30		
ORGANICS			
(MAXIMUM UG/L)			
Chlorophenoxy Herbicides			
2,4-D	70		
2,4,5-TP	10	Methoxychlor	40
POLLUTION INDICATORS (5)			
BOD (MG/L)		5	5 5
Nitrate as N (MG/L)		4	4
Total Phosphorus as P (MG/L) (6)		0.05	0.05

FOOTNOTES:

- (1) Reserved
- (2) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by approved laboratory methods for the required detection levels.
- (3) Maximum concentration varies according to the daily maximum mean air temperature.

TEMP (C) MG/L

12.0	2.4
12.1-14.6	2.2
14.7-17.6	2.0
17.7-21.4	1.8
21.5-26.2	1.6
26.3-32.5	1.4

(4) SITE SPECIFIC STANDARDS FOR TOTAL DISSOLVED SOLIDS (TDS)

Blue Creek and tributaries, Box Elder County, from ~~[Gunnison]~~ Bear River Bay, ~~[Great Salt Lake]~~ to Blue Creek Reservoir: ~~[maximum 6,300 mg/l and an average of 3,900 mg/l]~~ March through October daily maximum 7,200 mg/l and an average of 3,800 mg/l; November through February daily maximum 7,500 mg/l and an average of 4,700 mg/l. Assessments will be based on TDS concentrations measured at the location of STORET 4960740. At least 10 samples are required to assess compliance with the average criterion. If the sample average for samples collected from March through October is equal to or less than 4,100 mg/l and the sample average for samples collected from November through February is equal to or less than 5,300 mg/l, the average criteria are met. Alternative scientifically defensible assessment methods may be applied for assessing the average criteria.

Blue Creek Reservoir and tributaries, Box Elder County, maximum 2,200 mg/l

Castle Creek from confluence with the Colorado River to Seventh Day Adventist Diversion: 1,800 mg/l;

Cottonwood Creek from the confluence with Huntington Creek to I-57: 3,500 mg/l;

Ferron Creek from the confluence with San Rafael River to Highway 10: 3,500 mg/l;

Huntington Creek and tributaries from the confluence with Cottonwood Creek to U-10: 4,800 mg/l;

Ivie Creek and its tributaries from the confluence with Muddy Creek to the confluence with Quitchupah Creek: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Ivie Creek and its tributaries from the confluence with Quitchupah Creek to U10: 2,600 mg/l;

Lost Creek from the confluence with Sevier River to U.S. Forest Service Boundary: 4,600 mg/l;

Muddy Creek and tributaries from the confluence with Ivie Creek to U-10: 2,600 mg/l;

Muddy Creek from confluence with Fremont River to confluence with Ivie Creek: 5,800 mg/l;

North Creek from the confluence with Virgin River to headwaters: 2,035 mg/l;

Onion Creek from the confluence with Colorado River to road crossing above Stinking Springs: 3000 mg/l;

Brine Creek-Petersen Creek, from the confluence with the Sevier River to U-119 Crossing: 9,700 mg/l;

Price River and tributaries from confluence with Green River to confluence with Soldier Creek: 3,000 mg/l;

Price River and tributaries from the confluence with Soldier Creek to Carbon Canal Diversion: 1,700 mg/l

Quitchupah Creek from the confluence with Ivie Creek to U-10: 3,800 mg/l provided that total sulfate not exceed 2,000 mg/l to protect the livestock watering agricultural existing use;

Rock Canyon Creek from the confluence with Cottonwood Creek to headwaters: 3,500 mg/l;

San Pitch River from below Gunnison Reservoir to the Sevier River: 2,400 mg/l;

San Rafael River from the confluence with the Green River to Buckhorn Crossing: 4,100 mg/l;

San Rafael River from the Buckhorn Crossing to the confluence with Huntington Creek and Cottonwood Creek: 3,500 mg/l;

Sevier River between Gunnison Bend Reservoir and DMAD Reservoir: 1,725 mg/l;

Sevier River from Gunnison Bend Reservoir to Clear Lake: 3,370 mg/l;

South Fork Spring Creek from confluence with Pelican Pond Slough Stream to US 89
 1,450 mg/l (Apr.-Sept.)
 1,950 mg/l (Oct.-March)

Virgin River from the Utah/Arizona border to Pah Tempe Springs: 2,360 mg/l

(5) Investigations should be conducted to develop more information where these pollution indicator levels are exceeded.

(6) Total Phosphorus as P (mg/l) indicator for lakes and reservoirs shall be 0.025.

(7) Where the criteria are exceeded and there is a reasonable basis for concluding that the indicator bacteria E. coli are primarily from natural sources (wildlife), e.g., in National Wildlife Refuges and State Waterfowl Management Areas, the criteria may be considered attained provided the density attributable to non-wildlife sources is less than the criteria. Exceedences of E. coli from nonhuman nonpoint sources will generally be addressed through appropriate Federal, State, and local nonpoint source programs.

Measurement of E. coli using the "Quanti-Tray 2000" procedure is approved as a field analysis. Other EPA approved methods may also be used.

For water quality assessment purposes, up to 10% of representative samples may exceed the 668 per 100 ml criterion (for 1C and 2B waters) and 409 per 100 ml (for 2A waters). For small datasets, where exceedences of these criteria are observed, follow-up ambient monitoring should be conducted to better characterize water quality.

TABLE 2.14.2
 NUMERIC CRITERIA FOR AQUATIC WILDLIFE(8)

Parameter	Aquatic Wildlife				5
	3A	3B	3C	3D	
PHYSICAL					
Total Dissolved Gases	(1)	(1)			
Minimum Dissolved Oxygen (MG/L) (2) (2a)					
30 Day Average	6.5	5.5	5.0	5.0	
7 Day Average	9.5/5.0	6.0/4.0			
Minimum	8.0/4.0	5.0/3.0	3.0	3.0	
Max. Temperature(C) (3)	20	27	27		
Max. Temperature Change (C) (3)	2	4	4		
pH (Range) (2a)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0	
Turbidity Increase (NTU)	10	10	15	15	
METALS (4) (DISSOLVED, UG/L) (5)					
Aluminum					
4 Day Average (6)	87	87	87	87	
1 Hour Average	750	750	750	750	
Arsenic (Trivalent)					
4 Day Average	150	150	150	150	
1 Hour Average	340	340	340	340	
Cadmium (7)					
4 Day Average	0.25	0.25	0.25	0.25	
1 Hour Average	2.0	2.0	2.0	2.0	
Chromium (Hexavalent)					
4 Day Average	11	11	11	11	
1 Hour Average	16	16	16	16	
Chromium (Trivalent) (7)					
4 Day Average	74	74	74	74	
1 Hour Average	570	570	570	570	
Copper (7)					

4 Day Average	9	9	9	9	4,4' -DDT				
1 Hour Average	13	13	13	13	4 Day Average	0.0010	0.0010	0.0010	0.0010
Cyanide (Free)					1 Hour Average	0.55	0.55	0.55	0.55
4 Day Average	5.2	5.2	5.2		Diazinon				
1 Hour Average	22	22	22	22	4 Day Average	0.17	0.17	0.17	0.17
Iron (Maximum)	1000	1000	1000	1000	1 Hour Average	0.17	0.17	0.17	0.17
Lead (7)					Dieldrin				
4 Day Average	2.5	2.5	2.5	2.5	4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	65	65	65	65	1 Hour Average	0.24	0.24	0.24	0.24
Mercury					Alpha-Endosulfan				
4 Day Average	0.012	0.012	0.012	0.012	4 Day Average	0.056	0.056	0.056	0.056
Nickel (7)					1 Hour Average	0.11	0.11	0.11	0.11
4 Day Average	52	52	52	52	beta-Endosulfan				
1 Hour Average	468	468	468	468	4 Day Average	0.056	0.056	0.056	0.056
Selenium					1 Day Average	0.11	0.11	0.11	0.11
4 Day Average	4.6	4.6	4.6	4.6	Endrin				
1 Hour Average	18.4	18.4	18.4	18.4	4 Day Average	0.036	0.036	0.036	0.036
Selenium (14)					1 Hour Average	0.086	0.086	0.086	0.086
Gilbert Bay (Class 5A)					Heptachlor				
Great Salt Lake					4 Day Average	0.0038	0.0038	0.0038	0.0038
Geometric Mean over					1 Hour Average	0.26	0.26	0.26	0.26
Nesting Season (mg/kg dry wt)			12.5		Heptachlor epoxide				
Silver					4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average (7)	1.6	1.6	1.6	1.6	1 Hour Average	0.26	0.26	0.26	0.26
Tributyltin					Hexachlorocyclohexane				
4 Day Average	0.072	0.072	0.072	0.072	(Lindane)				
1 Hour Average	0.46	0.46	0.46	0.46	4 Day Average	0.08	0.08	0.08	0.08
Zinc (7)					1 Hour Average	1.0	1.0	1.0	1.0
4 Day Average	120	120	120	120	Methoxychlor				
1 Hour Average	120	120	120	120	(Maximum)	0.03	0.03	0.03	0.03
INORGANICS					Mirex (Maximum)	0.001	0.001	0.001	0.001
(MG/L) (4)					Nonylphenol				
Total Ammonia as N (9)					4 Day Average	6.6	6.6	6.6	6.6
30 Day Average	(9a)	(9a)	(9a)	(9a)	1 Hour Average	28.0	28.0	28.0	28.0
1 Hour Average	(9b)	(9b)	(9b)	(9b)	Parathion				
Chlorine (Total Residual)					4 Day Average	0.013	0.013	0.013	0.013
4 Day Average	0.011	0.011	0.011	0.011	1 Hour Average	0.066	0.066	0.066	0.066
1 Hour Average	0.019	0.019	0.019	0.019	PCB's				
Hydrogen Sulfide [[13]]					4 Day Average	0.014	0.014	0.014	0.014
(Undissociated, Max. UG/L)	2.0	2.0	2.0	2.0	Pentachlorophenol (11)				
Phenol (Maximum)	0.01	0.01	0.01	0.01	4 Day Average	15	15	15	15
RADIOLOGICAL (MAXIMUM pCi/L)					1 Hour Average	19	19	19	19
[Gross Alpha (10)	15	15	15	15	Toxaphene				
ORGANICS (UG/L) (4)					4 Day Average	0.0002	0.0002	0.0002	0.0002
Acrolein					1 Hour Average	0.73	0.73	0.73	0.73
4 Day Average	3.0	3.0	3.0	3.0	POLLUTION				
1 Hour Average	3.0	3.0	3.0	3.0	INDICATORS [[11]] 10				
Aldrin					Gross Alpha (pCi/L)	15	15	15	15
1 Hour Average	1.5	1.5	1.5	1.5	Gross Beta (pCi/L)	50	50	50	50
Chlordane					BOD (MG/L)	5	5	5	5
4 Day Average	0.0043	0.0043	0.0043	0.0043	Nitrate as N (MG/L)	4	4	4	
1 Hour Average	1.2	1.2	1.2	1.2	Total Phosphorus as P (MG/L) (12)	0.05	0.05		
Chlorpyrifos									
4 Day Average	0.041	0.041	0.041	0.041					
1 Hour Average	0.083	0.083	0.083	0.083					

FOOTNOTES:
 (1) Not to exceed 110% of saturation.
 (2) These limits are not applicable to lower water levels in deep impoundments. First number in column is for when early life stages are present, second number is for when all other life stages present.

(2a) These criteria are not applicable to Great Salt Lake impounded wetlands. Surface water in these wetlands shall be protected from changes in pH and dissolved oxygen that create significant adverse impacts to the existing beneficial uses. To ensure protection of uses, the Director shall develop reasonable protocols and guidelines that quantify the physical, chemical, and biological integrity of these waters. These protocols and guidelines will include input from local governments, the regulated community, and the general public. The Director will inform the Water Quality Board of any protocols or guidelines that are developed.

(3) Site Specific Standards for Temperature
Ken's Lake: From June 1st - September 20th, 27 degrees C.

(4) Where criteria are listed as 4-day average and 1-hour average concentrations, these concentrations should not be exceeded more often than once every three years on the average.

(5) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by EPA approved laboratory methods for the required detection levels.

(6) The criterion for aluminum will be implemented as follows:

Where the pH is equal to or greater than 7.0 and the hardness is equal to or greater than 50 ppm as CaCO3 in the receiving water after mixing, the 87 ug/l chronic criterion (expressed as total recoverable) will not apply, and aluminum will be regulated based on compliance with the 750 ug/l acute aluminum criterion (expressed as total recoverable).

(7) Hardness dependent criteria. 100 mg/l used. Conversion factors for ratio of total recoverable metals to dissolved metals must also be applied. In waters with a hardness greater than 400 mg/l as CaCO3, calculations will assume a hardness of 400 mg/l as CaCO3. See Table 2.14.3 for complete equations for hardness and conversion factors.

(8) Reserved

(9) The following equations are used to calculate Ammonia concentrations:

(9a) The thirty-day average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average, the chronic criterion calculated using the following equations.

Fish Early Life Stages are Present:

$$\text{mg/l as N (Chronic)} = ((0.0577/(1+10^{7.688-\text{pH}})) + (2.487/(1+10^{\text{pH}-7.688}))) * \text{MIN}(2.85, 1.45*10^{0.028*(25-1)})$$

Fish Early Life Stages are Absent:

$$\text{mg/l as N (Chronic)} = ((0.0577/(1+10^{7.688-\text{pH}})) + (2.487/(1+10^{\text{pH}-7.688}))) * 1.45*10^{0.028*(25-\text{MAX}(1,7))}$$

(9b) The one-hour average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average the acute criterion calculated using the following equations.

Class 3A:

$$\text{mg/l as N (Acute)} = (0.275/(1+10^{7.204-\text{pH}})) + (39.0/(1+10^{\text{pH}-7.204}))$$

Class 3B, 3C, 3D:

$$\text{mg/l as N (Acute)} = 0.411/(1+10^{7.204-\text{pH}}) + (58.4/(1+10^{\text{pH}-7.204}))$$

In addition, the highest four-day average within the 30-day period should not exceed 2.5 times the chronic criterion.

The "Fish Early Life Stages are Present" 30-day average total ammonia criterion will be applied by default unless it is determined by the Director, on a site-specific basis, that it is appropriate to apply the "Fish Early Life Stages are Absent" 30-day average criterion for all or some portion of the year. At a minimum, the "Fish Early Life Stages are Present" criterion will apply from the beginning of spawning through the end of the early life stages. Early life stages include the pre-hatch embryonic stage, the post-hatch free embryo or yolk-sac fry stage, and the larval stage for the species of fish expected to occur at the site. The Director will consult with the Division of Wildlife Resources in making such determinations. The Division will maintain information regarding the waterbodies and time periods where application

of the "Early Life Stages are Absent" criterion is determined to be appropriate.

(10) Investigation should be conducted to develop more information where these levels are exceeded.

(11) pH dependent criteria. pH 7.8 used in table. See Table 2.14.4 for equation.

(12) Total Phosphorus as P (mg/l) as a pollution indicator for lakes and reservoirs shall be 0.025.

(13) ~~Reserved [Formula to convert dissolved sulfide to undissociated hydrogen sulfide is: $\text{H}_2\text{S} = \text{Dissolved Sulfide} * e^{-(1.92 + \text{pH} - 12.05)}$]~~

(14) The selenium water quality standard of 12.5 (mg/kg dry weight) for Gilbert Bay is a tissue based standard using the complete egg/embryo of aquatic dependent birds using Gilbert Bay based upon a minimum of five samples over the nesting season. Assessment procedures are incorporated as a part of this standard as follows:

Egg Concentration Triggers: DWQ Responses

Below 5.0 mg/kg: Routine monitoring with sufficient intensity to determine if selenium concentrations within the Great Salt Lake ecosystem are increasing.

5.0 mg/kg: Increased monitoring to address data gaps, loadings, and areas of uncertainty identified from initial Great Salt Lake selenium studies.

6.4 mg/kg: Initiation of a Level II Antidegradation review by the State for all discharge permit renewals or new discharge permits to Great Salt Lake. The Level II Antidegradation review may include an analysis of loading reductions.

9.8 mg/kg: Initiation of preliminary TMDL studies to evaluate selenium loading sources.

12.5 mg/kg and above: Declare impairment. Formalize and implement TMDL.

Antidegradation

Level II Review procedures associated with this standard are referenced at R317-2-3.5.C.

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TABLE 2.14.3b

EQUATIONS TO CONVERT TOTAL RECOVERABLE METALS STANDARD WITH HARDNESS (1) DEPENDENCE TO DISSOLVED METALS STANDARD BY APPLICATION OF A CONVERSION FACTOR (CF).

Parameter	1-Hour Average (Acute) Concentration (UG/L)
CADMIUM	$\text{CF} * e^{(1.0166(\ln(\text{hardness}))-3.924)}$ $\text{CF} = 1.136672 - \ln(\text{hardness})(0.041838)$
CHROMIUM (III)	$\text{CF} * e^{(0.8190(\ln(\text{hardness})) + 3.7256)}$ $\text{CF} = 0.316$
COPPER	$\text{CF} * e^{(0.9422(\ln(\text{hardness}))-1.700)}$ $\text{CF} = 0.960$
LEAD	$\text{CF} * e^{(1.273(\ln(\text{hardness}))-1.460)}$ $\text{CF} = 1.46203 - \ln(\text{hardness})(0.145712)$
NICKEL	$\text{CF} * e^{(0.8460(\ln(\text{hardness})) + 2.255)}$ $\text{CF} = 0.998$
SILVER	$\text{CF} * e^{(1.72(\ln(\text{hardness}))- 6.59)}$ $\text{CF} = 0.85$

ZINC $CF * e^{(0.8473(\ln(\text{hardness})) + 0.884)}$
 CF = 0.978

FOOTNOTE:
 (1) Hardness as mg/l CaCO₃.

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KEY: water pollution, water quality standards
Date of Enactment or Last Substantive Amendment: ~~July 2, 2014~~ **2015**
Notice of Continuation: October 2, 2012
Authorizing, and Implemented or Interpreted Law: 19-5,
FWPCA 33 U.S.C. Sec. 1251, 1311-1317, 1329

Financial Institutions, Administration
R331-14
Rule Governing Parties Who Engage in
the Business of Issuing and Selling
Money Orders, Traveler's Checks, and
Other Instruments for the Purpose of
Effecting Third-Party Payments

NOTICE OF PROPOSED RULE
 (Repeal)
 DAR FILE NO.: 39370
 FILED: 05/14/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: With the passage of S.B. 24, during the 2015 General Session, the provisions of Rule R331-14 are now found in Chapter 25 of Title 7. Therefore, the rule is no longer needed.

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

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 7-25-101

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Any anticipated cost will be to those parties that needed to be licensed under Rule R331-14 and will now be licensed under Title 7, Chapter 25, not the state.
- ◆ **LOCAL GOVERNMENTS:** Local governments are not involved in the regulation of money transmitters.
- ◆ **SMALL BUSINESSES:** Those parties that needed to be licensed under Rule R331-14 will be licensed under Title 7, Chapter 25. The costs for conducting business as a money

transmitter, for those who have not previously registered with the nationwide database, will increase. Money transmitters that register with the nationwide database for the first time will have to pay any fees that are required by the nationwide database.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Those parties that needed to be licensed under Rule R331-14 will be licensed under Title 7, Chapter 25. The costs for conducting business as a money transmitter, for those who have not previously registered with the nationwide database, will increase. Money transmitters that register with the nationwide database for the first time will have to pay any fees that are required by the nationwide database.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Those parties that needed to be licensed under Rule R331-14 will be licensed under Title 7, Chapter 25. The costs for conducting business as a money transmitter, for those who have not previously registered with the nationwide database, will increase. Money transmitters that register with the nationwide database for the first time will have to pay any fees that are required by the nationwide database.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Those parties that needed to be licensed under Rule R331-14 will be licensed under Title 7, Chapter 25. The costs for conducting business as a money transmitter, for those who have not previously registered with the nationwide database, will increase. Money transmitters that register with the nationwide database for the first time will have to pay any fees that are required by the nationwide database.

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

FINANCIAL INSTITUTIONS
 ADMINISTRATION
 ROOM 201
 324 S STATE ST
 SALT LAKE CITY, UT 84111-2393
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Edward Leary, Commissioner

R331. Financial Institutions, Administration.**[R331-14. Rule Governing Parties Who Engage in the Business of Issuing and Selling Money Orders, Traveler's Checks, and Other Instruments for the Purpose of Effecting Third-Party Payments.****R331-14-1. Authority, Scope, and Purpose.**

(1) This rule is issued pursuant to Section 7-1-301, 7-1-501(2)(h)(iii) and 7-1-505.

(2) This rule applies to any individual or other party who issues, sells or offers to sell within the state any instrument for the purpose of effecting payments to third parties, including, but not limited to, money orders, traveler's checks, and the wire transmission of money. Excluded from this rule are:

(a) any party chartered and regulated by the United States or the state as a depository institution which is currently operating as a depository institution, and

(b) the U.S. Post Office.

(3) The purpose of this rule is to require licensing and prescribe standards with regard to the financial condition and capability of all parties who issue instruments payable to third parties, such as money orders and traveler's checks, for the benefit and protection of the purchasers of such instruments.

R331-14-2. Definitions.

(1) "Department" means the Department of Financial Institutions.

(2) "Payment instrument" means a check, money order, traveler's check, draft, or other instrument for the transmission or payment of money to third parties.

(3) "Party" means an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any form of business entity.

R331-14-3. License Required.

No party subject to this rule shall issue any kind of payment instrument to be offered for sale or sold in the state unless the issuer first obtains a license to do so from the department. No party subject to this rule may offer for sale or sell payment instruments of any kind in the state which are issued by any party not holding a current license to issue payment instruments in accordance with this rule, unless the issuer is exempt from the requirement to hold such a license.

R331-14-4. Requirements for a License.

To qualify for a license to issue payment instruments for sale in Utah, an applicant shall provide or pay to the department:

(1)(a) Proof satisfactory to the department that the applicant is a depository institution chartered and regulated by a state in the United States other than Utah and is currently operating as a depository institution; or

(b) A certified financial statement satisfactory to the department for the most recent fiscal year showing the applicant has a net worth of at least one million dollars (\$1,000,000).

(B) A surety bond satisfactory to the department in the minimum sum of \$50,000 to reimburse the state for any expenses of any kind or nature that it may incur in connection with any administrative or judicial proceedings against a licensee, former licensee or seller relating to the issuance and/or sale of payment instruments in Utah.

(3) Additional information as may be specified by the department.

(4) A non-refundable filing fee in the sum of \$100.00.

R331-14-5. Renewal.

Unless previously revoked by the department, each license shall expire on July 31 of each year if before that date the licensee fails to deliver or pay to the department:

(1) Proof that the party continues to operate as a regulated depository institution or a certified financial statement for the licensee's last fiscal year showing that it continues to have a net worth of at least \$1,000,000, proof of renewal of the surety bond described in part 4B hereof, and any other information the department may request, all in a form acceptable to the department.

(2) A non-refundable renewal fee in the sum of \$100.00.

R331-14-6. Revocation of License.

The department, with or without a hearing, may for cause revoke or suspend a license to issue payment instruments at any time. If the department revokes a license, it shall not be obligated to refund any portion of the licensee's filing or renewal fee for the remainder of the period for which the fee was paid.

R331-14-7. Required Deposits.

If the department finds any reasonable cause to believe that a licensee is in an unsafe or unsound condition or is unwilling or unable to pay its payment instruments when they come due, it may require the licensee to deposit funds in a financial institution(s) acceptable to the department in such amounts, for such period, and upon such conditions as the department may specify, and may prohibit the licensee from issuing payment instruments for sale in Utah in an aggregate unpaid amount exceeding the amount of any such required deposit or the amount actually deposited pursuant to such a requirement, whichever is less.

R331-14-8. Instruments to Bear Name of Licensee.

Every payment instrument issued by a licensee for sale in Utah, or which is sold in Utah, shall state on its face the name of the licensee issuer.

KEY: financial institutions

Date of Enactment or Last Substantive Amendment: October 3, 1997

Notice of Continuation: July 20, 2012

Authorizing, and Implemented or Interpreted Law: 7-1-301; 7-1-501(8)(c); 7-1-505]

Governor, Economic Development

R357-10

Small Business Jobs Act or Utah New
Market Tax Credit

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39346

FILED: 05/06/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to define and clarify the standards required to apply for and receive a non-refundable tax credit under the Small Business Jobs Act.

SUMMARY OF THE RULE OR CHANGE: The purpose of this rule is to define and clarify the standards required to apply for and receive a non-refundable tax credit under the Small Business Jobs Act, including how to apply and qualify for the tax credit, calculation of time, designation of a qualified equity investment, what constitutes a lapse, how tax credits are recaptured in the event of a lapse, and additional explanations on how to decertify.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-1-3503(10)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This rule will not create any additional costs or savings to the state because any cost is already handled through legislation via a dedicated credit funded by the qualified community development entities. The rule does not add or take away from that statutory requirement and would be implemented by administrative costs already being provided for by the state.

♦ **LOCAL GOVERNMENTS:** This rule will not affect local governments because local governments are not eligible for tax credits. This rule does not create any responsibilities or programs that local governments would be allowed or required to take part in. Thus, there is no effect on local governments.

♦ **SMALL BUSINESSES:** Small businesses will not be affected by this rule because it does not require already existing businesses to do anything nor does it prohibit any activity. This rule will affect potential new businesses looking for alternative sources of funding to be invested in their operations. However, this rule does not affect those businesses ability to receive or not receive such funding. All requirements for the small businesses that may receive this funding are delineated by statute.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The qualified community development entities, as defined by statute, are the only persons affected by this rule. The summary of this rule lists all the areas where these entities will likely see an impact that will govern their ability to participate and how they must perform in the program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost because this program is self-funded by fees as provided for in statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses except to add an possible source of alternative funding.

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 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Val Hale, Executive Director

R357. Governor, Economic Development.**R357-10. Small Business Jobs Act or Utah New Market Tax Credit.****R357-10-1. Purpose.**

(1) The purpose of this Rule is to define and clarify the standards required to apply for and receive a non-refundable tax credit under the Utah Small Business Jobs Act

R357-10-2. Authority.

(1) Rulemaking authority is provided in Utah Code Section 63M-1-3503(10).

R357-10-3. Definitions.

(1) All terms used in this rule shall be defined as provided for in Utah Code Section 63M-1-3502

(2) Any term defined differently in this rule or not provided for in Utah Code Section 63M-1-3502 shall be defined throughout this rule.

R357-10-4. Calculation of Time.

(1) For the purposes of the Utah Small Business Jobs Act and this Rule, time will be calculated beginning the business day after the initial or triggering event.

(2) If the time within which an act is to be performed is sixty (60) days or less, the calculation of time will include business days and will not include weekends and holidays, unless otherwise indicated.

(3) If the time which an act is to be performed is sixty-one (61) days or more, weekends or holidays are included.

(a) If the ending day or due date occurs on a weekend day or a Utah state or federal holiday, the due date shall be 11:59 pm on the next business day following the weekend day or holiday.

R357-10-5. Applications.

(1) Receipt of Applications: All applications received on or before 11:59 pm on September 2, 2014 shall be considered received on September 2, 2014.

(a) Receipt of Refundable Performance Deposit: The refundable performance deposit, provided for in 63M-1-3506, must be received before the application is considered complete.

(b) For the purposes of the evidence required to qualify under section 63M-1-3503(1)(i), applicant must show at least 10 individual qualified low-income community investments, of \$4,000,000 or less, that collectively total \$40,000,000 in qualified low-income community investments under the Federal New Market Tax Credit Program and/or any other states new market tax credit program.

(2) Denial of Application: All applications that are deemed incomplete or inadequate will be denied and given the statutory 15 day cure period that must be completed within or directly after the 30 day review period. If an application is cured after the 30 day review period but within the 15 day cure period, the application will be prioritized as it would have been with the other applications.

(3) Priority of Applications for Certification: For all applications received on the same day,

(a) Applications by applicants that agree to designate qualified equity investments as federal quality equity investments will be certified first, with the federal quality equity investments receiving priority on a pro rata basis as set forth in Utah Code Section 63M-1-3503(5)(a).

(b) If there is additional funding to certify after considering the priority applications, referenced in section (a) then those applications will be considered on a pro rata basis as set forth in Section 63M-1-3503(5)(b).

(c) If there is no additional funding to certify after considering the priority applications, then the applicants who were not considered priority applicants will be notified and their refundable deposits returned within 60 days.

(4) Non-Priority Applications: If there is no additional funding to certify after considering the priority applications set forth in Utah Code Section 63M-1-3503(5), then the applicants who were not considered priority applicants will be notified and their refundable deposits returned within sixty days.

(5) Notice of Certification Notice of Certification shall be delivered through electronic mail and be considered received at the time stamp within the electronic mail notice, not at the time it is read.

(6) Additional Allocation: If, after a certification is made, an applicant withdraws its request for certification, the amount that was certified to the withdrawing applicant will be redistributed to the other previously certified applicants, using the same priority as set forth in Utah Code Section 63M-1-3503(5).

(a) Certified applicants will be notified of an additional certification amount in writing. The applicant will have ten (10) days to either accept the additional certification or decline the additional certification. Failure to accept in writing will be deemed declination of additional allocation.

(b) If the additional certification is declined, the amount will be redistributed to the remaining previously certified applicants, using the same priority set forth in Utah Code Section 63M-1-3503(5).

(c) If all currently certified applicants decline the additional amount, any applicants who applied but did not receive any allocation will then be considered as set forth in Utah Code Section 63M-1-3503(5).

(d) If all applicants as set forth in (a), (b) and (c) decline the allocation, a new solicitation for the remaining and/or declined allocation may be pursued by the office and shall follow all procedures and processes as set forth in statute and this rule.

(e) Timing of issuance of additional certification: Any additional amounts received by applicants who have already received a certified allocation amount shall have a new independent timeline from the original certified allocation amount unless the qualified community development entity requests to aggregate the timelines as set forth below:

(i) An applicant receiving additional certified allocation may request to have the additional amount aggregated with the initial certified allocation by making such a request on official letter head to the office and by agreeing to waive the independent timeline of the additional certified allocation amount;

(ii) If aggregation of an original certified allocation amount with an additional certification amount may occur without violating the Utah Small Business Jobs Act or this Rule, the Office will approve the request to aggregate the allocations; and

(iii) If the allocations are aggregated, all allocation shall be subject to the deadline for the original certified allocation.

(7) Notification of Maximum Funding Allocation: Once the maximum amount of funding has been allocated, applicants will be notified that there is no other allocation amount available for the fiscal year unless or until: an applicant's certification lapses, an applicant withdraws its request, or if funding is recaptured.

(a) If the applicant has submitted a refundable deposit and elects to withdraw its application, the refundable deposit will be returned within 60 days.

(b) If the applicant withdraws and later applies for any remaining funds that have become available after following the procedures outlined in subsection (4) above, a new refundable deposit must be provided along with the application and follow all statutory requirements that the original application is subject to.

R357-10-6. Annual Fees.

(1) Recalculations: Each applicant will be notified of any recalculation of any annual fee at least ten (10) days before each annual reporting date. If no notice of recalculation is received, then the annual fee will be the same amount as it was the previous year and will be due along with the annual report as set forth in this rule and in Utah Code Section 63M-1-3510.

R357-10-7. Designation of Qualified Equity Investments.

(1) A notice of receipt of cash investment and designation of qualified equity investment pursuant to Utah Code Section 63M-1-3503(8)(b) shall be provided on a notice form supplied by the office. The form shall also include at least one of the following attachments to show that the qualified equity investment was issued, including:

(a) Bank statements, credit instruments, and all other supporting documentation to show qualified equity investment was issued; or

(b) A "screen shot" that shows that the required amount of qualified equity investment was designated as a federal qualified equity investment.

(2) A notice of transfer of a certified qualified equity investment made pursuant to Utah Code Section 63M-1-3503(8)(b) shall be made on official letterhead, indicate satisfaction of the

federal match, and be signed by an authorized agent of the qualified community development entity initiating the transfer. Such notice may be sent as a PDF file via electronic mail to the office.

(3) If the qualified community development entity or transferee fails to issue a qualified equity investment within forty-five (45) days of notice of certification, the office shall notify the applicant that its certification has lapsed by issuing a Notice of Agency Action for Lapsed Certification.

(a) The applicant will have ten (10) business days to submit to the Executive Director a challenge to a Notice of Agency Action for Lapsed Certification.

(i) Any challenge to a Notice of Agency Action for Lapsed Certification shall provide documentation that the requirements of Utah Code Section 63M-1-3503(8) were met within forty-five (45) days of notice of certification.

(ii) The executive director shall issue a final determination within 5 business days of receipt of such challenge.

R357-10-8. Form and Notice for Tax Credits.

(1) A qualified community development entity (or transferee subsidiary or controlling entity) that has issued its qualified equity investments and has provided the evidence required in Utah Code Section 63M-1-3503(8)(b) shall notify the office annually of the entities that are eligible to use tax credits as follows:

(a) By submitting the form "Notification of Qualified Equity Investment for Small Business Jobs Act Tax Credits" to the office; or, if applicable,

(b) By submitting the form "Notification of Change in Allocation of Tax Credits" to the office.

(i) A form "Notification of Change in Allocation of Tax Credits" may only be used in cases where there has been a change or amendment to an agreement among the partners, shareholders or members of a partnership, limited liability company or S-Corporation.

(c) Each notice shall be accompanied by documentation of the qualified equity investment made in the qualified community development entity with respect to the entity claiming a tax credit.

(d) Each notice shall be accompanied by the documents required in Utah Code Section 63M-1-3503(12)(a).

(e) Each notice shall be accompanied by a completed "Acknowledgement and Acceptance of Tax Credit Recapture" form provided by the office.

(f) For tax credits allowed to a partnership, limited liability company or S-corporation, the notice shall be accompanied by any and all necessary documentation or agreements to demonstrate how the credits will be used by the partners, members or shareholders.

(2) Each tax credit certificate shall contain the following contingencies:

(a) A certification provision requiring the entity receiving the tax credit to certify:

(i) it is subject to the recapture provisions set forth in Section 63M-1-3504;

(ii) it will not sell the tax credit on the open market;

(iii) it will provide notice of any Federal recapture to the Office within 10 days of receiving notification of the recapture.

(b) Be available for use annually in accordance with the Applicable Percentages to the entity receiving the tax credit after

receipt and acceptance of the qualified community development entity's annual report to the Office.

(i) Any event of recapture outlined by the Utah Small Business Jobs Act or this Rule shall prevent the use of an annual tax credit certificate to the entity receiving the tax credit.

R357-10-9. Revenue Impact Assessments.

(1) A REMI (Regional Economic Models, Inc.) or IMPLAN model shall qualify as "national recognized economic development model" for purposes of the revenue impact assessment required by Utah Code Section 63M-1-3511. A qualified community development entity may submit to the executive director a request to use a different revenue impact assessment, and the executive director or its designee shall approve or deny such request within 5 business days.

(2) If a qualified community economic development entity is notified pursuant to Utah Code Section 63M-1-3511(2) that a qualified low-income business investment does not have a revenue positive impact the qualified community development entity will have 5 business days to submit a request for waiver of such requirement.

(a) Any request for waiver shall demonstrate how the qualified low-income community investment will further economic development and shall include at least the following components:

(i) The reason the qualified community development entity is seeking the waiver;

(ii) Documentation supporting the reason the office should grant the waiver;

(iii) Documentation showing the positive economic impacts that will be derived from the qualified equity investment for which the waiver is sought; and

(iv) Documentation to demonstrate the anticipated economic development over a 7-year period.

(b) Within ten (10) days, the office shall provide notice to the requesting qualified community development entity of:

(i) An approval of the request for waiver;

(ii) A denial of the request for waiver; or

(iii) A request for additional information. If additional information is requested, the application shall be approved or denied within ten (10) days of receipt of all additional information.

(3) No investment shall meet the requirements of Utah Code Section 63M-1-3504(1)(c) unless, for such investment, (i) the revenue impact model has been accepted or (ii) the office has granted a waiver pursuant to subsection (2) above.

(4) In connection with any qualified low-income community investment other than those made in satisfaction of the requirement in Utah Code Section 63M-1-3504(1)(c)(i) with respect to investment of 85% of the purchase price of the qualified equity investment in qualified low-income community investments in Utah within 12 months of the issuance of the qualified equity investment, a qualified community development entity shall submit a new revenue impact model prior to making such qualified low-income community investment and such revenue impact model shall be deemed consistent with and include the revenue impact projected in the revenue impact model submitted with respect to the original qualified low-income community investment that was repaid or redeemed and triggered the reinvestment requirement.

R357-10-10. Reporting.

(1) The initial annual report required by Utah Code Section 63M-1-3510(1) shall include:

(a) Reporting of Transaction Costs: A qualified community development entity shall report on the transactional costs of all qualified low-income community investments made utilizing this program. The report shall contain the same information and be in the same format as required by the Transactional Level Report under the Federal New Market Tax Credit Program and shall contain the same information and format.

(2) Any report required by Utah Code Section 63M-1-3510 shall include, if applicable:

(a) Reinvestment Reporting: If an initial investment is sold or repaid, and the qualified community development entity reinvests an amount equal to the amount of capital returned or recovered by the qualified community development entity from the original investment, the qualified community development entity shall provide sufficient documentation such as bank statements and mapping to show it is in compliance with Utah Code Section 63M-1-3504(1)(c):

R357-10-11. Recapture.

(1) If the office determines recapture is necessary pursuant to Utah Code Section 63M-1-3504, the office shall issue a Provisional Notice of Agency Action for Recapture to both the qualified community development entity and the taxpayer that claimed the tax credit allowed under Utah Code Section 59-9-107. Such notice shall be delivered to the qualified community development entity by (i) electronic mail and (ii) certified mail, and shall state under which provision of Utah Code Section 63M-1-3504 the recapture is sought.

(2) The six-month cure period provided for in Utah Code Section 63M-1-3505 begins on the day following receipt of the Provisional Notice of Agency Action for Recapture. If the action or omission upon which the recapture is based is cured during the six month cure period, the office shall issue a notice of cure to the qualified community development entity. If the action or omission upon which the recapture is based is not cured within the six-month cure period, the office shall issue a final Notice of Agency Action for Recapture to the qualified community development entity, the taxpayer that claimed the tax credit, and the Utah Tax Commission.

(3) For the purposes of Recapture, the Office interprets the requirement to invest 85% of the purchase price of the qualified equity investment as follows:

(a) If the qualified community development entity does not transfer or assign any of its certification, then the qualified community development entity must invest and maintain invested an amount equal to 85% or more of the original amount of the qualified equity investment certified by the Office and for which cash was received within 45 days.

(b) If the qualified community development entity transfers all or a portion of its certified qualified equity investment authority to a controlling entity or subsidiary, then:

(i) The qualified community development entity (the transferor) must invest and maintain invested an amount equal to or greater than 85% of the portion of the certified qualified equity investment authority it retained, and for which it received cash investment within 45 days, AND

(ii) The controlling entity or subsidiary (the transferee) must invest and maintain invested an amount equal to or greater than 85% of the portion of the certified qualified equity investment authority it received, and for which it received cash investment within 45 days.

(c) The 85% investment requirement shall be defined in a manner consistent with the "Substantially-All" standard set forth in IRC Section 45D and the rules and regulations promulgated thereunder. The Department shall be notified of any transaction fees paid by the qualified active low-income community business that are in excess of a total of \$50,000 for the entire time period of the investment, up to seven years.

(i) Notice of transaction fees that are in excess of \$50,000 to be paid by the qualified active low-income community business must be requested in writing within 15 days of closing the investment with the qualified active low-income community business and must include an explanation for the necessity of the excess fees including highlighting the impact to the state and how the fees and impact for the particular deal compares to the customary industry practice across both the Federal New Market Tax Credit program and other States' New Market Tax Credit programs.

(4) If after the six month cure period, the action or omission upon which the recapture is based is not cured, the Office shall issue a final notice of Agency Action for Recapture.

(a) The Final Notice of Agency Action for Recapture shall also be sent to the Utah Tax Commission.

R357-10-12. Decertification.

(1) Qualified equity investments shall be decertified upon proof of compliance with all provisions of Utah Code Section 63M-1-3507(2).

(2) A qualified community development entity shall file a "Request to Decertify a Qualified Equity Investment"

(3) For the purposes of this section, the requirement that reinvestments exceed 150 % of a qualified equity investment shall be considered provided:

(a) Investments made with the profits on returned or redeemed qualified low-income community investments shall count towards the 150% requirement; and

(b) Investments made with returned or redeemed qualified low-income community investments shall count towards the 150% requirement provided such qualified low-income community investment is made in a different qualified active low-income community business than the qualified active low-income community business that returned or redeemed the qualified low-income community investment and the qualified active low-income community business receiving the, to be counted toward the 150% requirement, is located in Utah.

(c) CDE shall provide documentation, such as bank statements and tax returns to demonstrate compliance with the 150% investment requirement.

(d)(i) Example 1: CDE invests \$1,000,000 in QALICB A. QALICB A repays \$1,000,000 plus \$200,000 in interest. If CDE reinvested another \$1,200,000 in QALICB A, only \$1,200,000 would count towards 150% requirement (\$1,000,000 initially invested plus \$200,000 in profits).

(ii) Example 2: Same facts as Example 1 but CDE, instead, reinvests the \$1,200,000 repaid by QALICB A into QALICB B. Then \$2,200,000 would count towards 150% requirement. (\$1,000,000 initial investment in QALICB A, plus \$1,000,000 return of capital invested in QALICB B, plus \$200,000 profit in QALICB B). Alternatively, CDE could also count \$2,200,000 towards 150% requirement if \$200,000 profit was reinvested in QALICB A and \$1,000,000 was invested in QALICB B.

(4) Upon receipt of a Request to Decertify a Qualified Equity Investment, the Office shall issue a Decertification Certificate if all of the conditions for decertification are met.

(5) If the Office determines that the conditions for decertification have not been met, the Office shall issue a Notice of Agency Action, Failure to Decertify.

(a) Each Notice of Agency Action, Failure to Decertify shall identify which provision of Section 63M-1-3504 has not been met.

(b) Upon receipt of the Notice of Agency Action, the qualified community development entity may submit a request for reconsideration to the Executive Director of the Office within 10 days.

(i) The request for reconsideration shall contain all exhibits or evidence that the qualified community development entity wishes the Director to consider regarding compliance.

(c) The Executive Director of the Office shall have 30 days to consider and issue a decision on reconsideration.

(6) Further proceedings: If the issue of certification is not resolved by reconsideration, as set forth in Section 5, either party may request an informal administrative hearing, as set forth in the Utah Administrative Procedures Act.

(7) The costs of hiring an Administrative Law Judge to rule on the informal administrative hearing shall be borne by the losing party.

KEY: new market tax credit, Small Business Jobs Act, tax credit

**Date of Enactment or Last Substantive Amendment: 2015
Authorizing, and Implemented or Interpreted Law: 63M-1-3503(10)**

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-52
Optometry Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39356

FILED: 05/07/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to consolidate the scope of optometry services to the Medicaid provider manual.

SUMMARY OF THE RULE OR CHANGE: This amendment removes all provisions in the rule text and defers to the scope of services found in the Vision Care Services Utah Medicaid Provider Manual and in the Medicaid State Plan.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 440.120 and Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no impact to the state budget because services provided to Medicaid recipients remain unaffected by this change.

◆ **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 services provided to Medicaid recipients remain unaffected by this change.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because services provided to Medicaid recipients remain unaffected by this change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because services provided remain unaffected by this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment does not impact business because it does not change the services currently provided to Medicaid recipients.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the 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 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-52. Optometry Services.

R414-52-1. Introduction.

~~The Optometry Services Program provides a scope of services for Medicaid recipients in accordance with the Vision Care Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.~~

[R414-52-1. Introduction and Authority.

~~The Optometry Program provides optometry services to meet the optometry needs of Medicaid clients. This rule is authorized under Utah Code 26-18-3 and governs the services allowed under 42 CFR 440.60.~~

R414-52-2. Definitions.

~~The definitions in the Utah Optometry Practice Act, Title 58, Chapter 16a, apply to this rule.~~

R414-52-3. Client Eligibility Requirements.

~~Optometry services are available to categorically and medically needy individuals, except that the provision of eyeglasses is available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.~~

R414-52-4. Service Coverage.

~~(1) Optometry services include examination, evaluation, diagnosis and treatment of visual deficiency, removal of a foreign body, and the provision of eyeglasses. In addition, Medicaid medical services performed by physicians may also be performed by optometrists under the Utah Optometry Practice Act.~~

~~(2) The optometrist must document in the patient record that the eye examination is medically necessary.~~

R414-52-5. Reimbursement.

~~(1) Fees for services for which the Department will pay optometrists are established from the physician's fees for CPT codes as described in the State Plan, Attachment 4.19-B, Section D Physicians. Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.~~

~~(2) The Department pays the lower of the amount billed and the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.~~

KEY: Medicaid, optometry

Date of Enactment or Last Substantive Amendment: [February 24, 2009]2015

Notice of Continuation: May 1, 2013

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

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-53
Eyeglasses Services**

**NOTICE OF PROPOSED RULE
(Amendment)**

**DAR FILE NO.: 39357
FILED: 05/07/2015**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to consolidate the scope of eyeglasses services to the Medicaid provider manual.

SUMMARY OF THE RULE OR CHANGE: This amendment removes all provisions in the rule text and defers to the scope of services found in the Vision Care Services Utah Medicaid Provider Manual and in the Medicaid State Plan.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 440.120 and Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because services provided to Medicaid recipients remain unaffected by this change.
- ◆ **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 services provided to Medicaid recipients remain unaffected by this change.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because services provided to Medicaid recipients remain unaffected by this change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because services provided remain unaffected by this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment does not impact business because it does not change the services currently provided to Medicaid recipients.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the 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 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-53. Eyeglasses Services.

R414-53-1. Introduction.

The Eyeglasses Services Program provides a scope of services for Medicaid recipients in accordance with the Vision Care Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

[R414-53-1. Introduction and Authority.

The Eyeglasses Program provides eyeglasses services to meet the basic vision care needs of Medicaid recipients. This rule is authorized under Utah Code 26-18-3 and governs the services allowed under 42 CFR 440.120(d).

R414-53-2. Definitions.

"Eyeglasses" means lenses, including frames, contact lenses, and other aids to vision that are prescribed by a physician skilled in diseases of the eye or by an optometrist.

R414-53-3. Client Eligibility Requirements.

Eyeglasses are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

R414-53-4. Service Coverage.

(1) Corrective lenses and frames may be provided based on medical need. Medical need includes a change in prescription or replacement as a result of normal lens or frame wear. Frames must be those in which lenses can be replaced readily without having to provide a new frame. Corrective lenses must be suitable for indoor and outdoor use and for day and night use.

(2) Single vision, bifocal, or trifocal lenses, with or without slab-off prism, in clear glass or plastic, may be provided.

(3) Only the least expensive frame practicable for use, either plastic or metal, may be provided.

(4) Replacements for existing lenses or frames may be provided if the prescribing physician or optometrist documents that they are medically necessary. Eyeglasses may not be replaced more often than every two years unless the prescribing physician or optometrist documents that an earlier replacement is medically necessary. Circumstances that warrant providing new eyeglasses or contact lenses are a diopter change of .75 or more, or disease or damage to the eye. Eyeglasses or contact lenses may not be replaced if they are damaged through client negligence or abuse.

(5) The audiologist or hearing aid provider may provide frames that have hearing aids placed in the earpieces. The prescribing physician or optometrist must dispense the lenses for these frames.

(6) The following services may be provided if the prescribing physician or optometrist documents that they are medically necessary:

(a) Contact lenses;

(b) Soft contact lenses;

(c) Gas permeable contact lenses;

(d) Tints for eyeglasses or contact lenses where diseases or conditions are present that render the client unusually light-sensitive;

(e) Low vision aids.

(7) The following services are not provided:

(a) Additional eyeglasses such as reading glasses, distance glasses, or a "spare";

(b) Extended wear contact lenses or disposable contact lenses.

R414-53-5. Reimbursement.

(1) The Department pays for lenses and standard frames on a fee-for-service basis, based on CPT codes as described in the State Plan, Attachment 4.19-B.

(2) The Department pays the lower of the amount billed or the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.

(3) Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

]

KEY: Medicaid, eyeglasses

Date of Enactment or Last Substantive Amendment: [February 24, 2009]2015

Notice of Continuation: May 3, 2013

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

Health, Center for Health Data, Health
Care Statistics
R428-2
Health Data Authority Standards for
Health Data

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39405

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to incorporate new fine policy for late submissions by data suppliers; specify pharmacy benefit managers are subject to the rule; clarify definitions; and make minor grammatical edits.

SUMMARY OF THE RULE OR CHANGE: Codify amended fine policy which applies to all data suppliers required to report under Title R428. Incorporates nonsubstantive edits where needed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 33a

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Utah Department of Health determines enactment of the amended version will not create any cost or savings impact to the state budget or UDOH's budget, since the change will not increase workload and can be carried out with existing budget.

♦ **LOCAL GOVERNMENTS:** This filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule; nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

♦ **SMALL BUSINESSES:** None--Small businesses are not impacted by this rule change, with all potentially impacted having more than 50 employees. As a result, the rule will have no effect on small business budgets for costs or savings.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Changes to the fine policy will only apply to non-compliant, required data submitters subject to requirements in Title R428. These changes will not create any cost or savings to businesses, individuals, local governments or persons that are not small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Changes to the fine policy will only apply to non-compliant, required data submitters subject to requirements in Title R428. Although there are several modifications within this amendment, they simply reflect current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposal amends/clarifies existing definitions and specifies that pharmacy benefits managers are also subject to this rule. It also specifies fine amounts and time frames for any data suppliers who fail to comply with the rule requirements. These amendments will financially impact business that fail to comply with the rule through the imposition of fines.

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

HEALTH

CENTER FOR HEALTH DATA,

HEALTH CARE STATISTICS

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:

♦ Norman Thurston by phone at 801-538-7052, by FAX at 801-237-0787, or by Internet E-mail at nthurston@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

R428. Health, Center for Health Data, Health Care Statistics.**R428-2. Health Data Authority Standards for Health Data.****R428-2-1. Legal Authority.**

This rule is promulgated under authority granted by Title 26, Chapter 33a.

R428-2-2. Purpose.

This rule establishes definitions, requirements, and general guidelines relating to the collection, control, use and release of data pursuant to Title 26, Chapter 33a.

R428-2-3. Definitions.

(1) The terms used in this rule are defined in Section 26-33a-102.

(2) In addition, the following definitions apply to all of Title R428:

(a) "Adjudicated claim" means a claim submitted to a carrier for payment where the carrier has made a determination whether the services provided fall under the carrier's benefit.

(b) "Ambulatory surgery data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a surgical or diagnostic procedure treatment in an outpatient setting into a data record.

(c) "Ambulatory surgical facility" is defined in Section 26-21-2.

(d) "Carrier" means any of the following Third Party Payors as defined in 26-33a-102(16):

(i) an insurer engaged in the business of health care or dental insurance in the state of Utah, as defined in Section 31A-1-301;

(ii) a business under an administrative services organization or administrative services contract arrangement;

(iii) a third party administrator, as defined in Section 31A-1-301, licensed by the state of Utah that collects premiums or settles claims of residents of the state, for health care insurance policies or health benefit plans, as defined in Section 31A-1-301;

(iv) a governmental plan, as defined in Section 414 (d), Internal Revenue Code, that provides health care benefits;

(v) a program funded or administered by Utah for the provision of health care services, including Medicaid, the Utah Children's Health Insurance Program created under Section 26-40-103, and the medical assistance programs described in Title 26, Chapter 18 or any entity under a contract with the Utah Department of Health to serve clients under such a program;

(vi) a non-electing church plan, as described in Section 410 (d), Internal Revenue Code, that provides health care benefits;

(vii) a licensed professional employer organization as defined in Section 31a-40-102 acting as an administrator of a health care insurance plan;

(viii) a health benefit plan funded by a self-insurance arrangement;

(ix) the Public Employees' Benefit and Insurance Program created in Section 49-20-103;

(x) a pharmacy benefit manager, defined to be a person that provides pharmacy benefit management services as defined in Section 49-20-502 on behalf of any other carrier defined in subsection R428-2-3.

(e) "Claim" means a request or demand on a carrier for payment of a benefit.

(f) "Covered period" means the calendar year on which the data used for calculation of HEDIS measures is based.

(g) "Data element" means the specific information collected and recorded for the purpose of health care and health service delivery. Data elements include information to identify the individual, health care provider, data supplier, service provided, charge for service, payer source, medical diagnosis, and medical treatment.

(h) "Discharge data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a single inpatient hospital stay into a discharge data record.

(i) "Electronic media" means a compact disc, digital video disc, external hard drive, or other media where data is stored in digital form.

(j) "Electronic transaction" means to submit data directly via electronic connection from a hospital or ambulatory surgery facility to the Office according to Electronic Data Interchange standards established by the American National Standards Institute's Accredited Standards Committee, known as the Health Care Transaction Set (837) ASC X 12N.

(k) "Eligible Enrollee" means an enrollee who meets the criteria outlined in the NCQA survey specifications.

(l) "Enrollee" means any individual who has entered into a contract with a carrier for health care or on whose behalf such an arrangement has been made.

(m) "Health care claims data" means information consisting of, or derived directly from, member enrollment, medical claims, and pharmacy claims that this rule requires a carrier to report.

(n) "Health Insurance" has the same meaning as found in Section 31A-1-301.

(o) "HEDIS" means the Healthcare Effectiveness Data and Information Set, a set of standardized performance measures developed by the NCQA.

(p) "HEDIS data" means the complete set of HEDIS measures calculated by the carriers according to NCQA specifications,

including a set of required measures and voluntary measures defined by the department, in consultation with the carriers.

(q) "Hospital" means a ~~facility~~ general acute hospital or specialty hospital as defined in Section 21-21-2 that is licensed under Rule R432~~[-100]~~.

(r) "Level 1 data element" means a required reportable data element.

(s) "Level 2 data element" means a data element that is reported when the information is available from the patient's hospital record.

(t) "NCQA" means the National Committee for Quality Assurance, a not-for-profit organization committed to evaluating and reporting on the quality of managed care plans.

(u) "Office" means the Office of Health Care Statistics within the Utah Department of Health.

(v) "Order" means an action of the committee that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

(w) "Patient Social Security number" is the social security number of a person receiving health care.

(x) "Performance Measure" means the quantitative, numerical measure of an aspect of the carrier, or its membership in part or in its entirety, or qualitative, descriptive information on the carrier in its entirety as described in HEDIS.

(y) "Public Use Data Set" means a data extract or a subset of a database that is deemed by the Office to not include identifiable data or where the probability of identifying individuals is minimal.

(z) "Report" means a disclosure of data or information collected or produced by the committee or Office, including but not limited to a compilation, study, or analysis designed to meet the needs of specific audiences.

(aa) "Research Data Set" means a data extract or subset of a database intended for use by investigators or researchers for bona fide research purposes that may include identifiable information or where there is more than a minimal probability that the data could be used to identify individuals.

(bb) "Record linkage number" is an irreversible, unique, encrypted number that will replace patient social security number.

(cc) "Sample file" means the data file containing records of selected eligible enrollees drawn by the survey agency from the carrier's sampling frame.

(dd) "Sampling Frame" means the carrier enrollment file as described criteria outlined by the NCQA survey specifications.

(ee) "Submission year" means the year immediately following the covered period.

(ff) "Survey agency" means an independent contractor on contract with the Office of Health Care Statistics.

(gg) "Utah Health Care Performance Measurement Plan" means the plan for data collection and public reporting of health-related measures, adopted by the Utah Health Data Committee to establish a statewide health performance reporting system.

(hh) "Uniform billing form" means the uniform billing form recommended for use by the National Uniform Billing Committee.

(ii) "Submittal Manual for Inpatient Data" means the document referenced in Subsection R428-1-4(1).

(jj) "Submittal Manual for Ambulatory Surgery Data" means the document referenced in Subection R428-1-4(2).

(kk) "NCQA Survey Specifications" means the document referenced in Subsection R428-1-4(3)

(ll) "NCQA HEDIS Specifications" means the document referenced in Subsection R428-1-4(4)

(mm) "Data Submission Guide for Claims Data" means the document referenced in Subsection R428-1-4(5) for data submissions required from May 15, 2014 to March 31, 2015 and the document referenced in Subsection R428-1-4(6) for data submissions beginning April 1, 2015.

R428-2-4. Technical Assistance.

The Office may provide technical assistance or consultation to a data supplier upon request and resource availability. The consultation shall be to enable a data supplier to submit required data according to Title R428.

R428-2-5. Data Classification and Access.

(1) Data collected by the committee are not public, and as such are exempt from the classification and release requirements specified in Title 63g, Chapter 2, Government Records Access and Management Act.

(2) Any person having access to data collected or produced by the committee or the Office under Title 26, Chapter 33a shall not:

- (a) take any action that might provide information to any unauthorized individual or agency;
- (b) scan, copy, remove, or review any information to which specific authorization has not been granted;
- (c) discuss information with unauthorized persons which could lead to identification of individuals;
- (d) give access to any information by sharing passwords or file access codes.

(3) Any person having access to data collected or produced by the committee or the Office under Title 26, Chapter 33a shall:

- (a) maintain the data in a safe manner which restricts unauthorized access;
- (b) limit use of the data to the purposes for which access is authorized;
- (c) report immediately any unauthorized access to the Office or its designated security officer.

(4) A failure to report known violations by others is subject to the same punishment as a personal violation.

(5) The Office shall deny a person access to the facilities, services and data as a consequence of any violation of the responsibilities specified in this section.

R428-2-6. Editing and Validation.

(1) Each data supplier shall review each required record prior to submission. The review shall consist of checks for accuracy, consistency, completeness, and conformity.

(2) The Office may subject submitted data to edit checks. The Office may require the data supplier to correct data failing an edit check as follows:

- (a) The Office may, by first class U.S. mail or email, inform the submitting data supplier of any data failing an edit check.
- (b) The submitting data supplier shall make necessary corrections and resubmit all corrected data to the Office within 10 business days of the date the Office notified the supplier.

R428-2-7. Error Rates.

The committee may establish and order reporting quality standards based on non-reporting or edit failure rates.

R428-2-8. Data Disclosure.

(1) The committee may disclose data received from data suppliers or data or information derived from this data as specified in Title 26, Chapter 33a.

(2) The Office may prepare reports relating to health care cost, quality, access, health promotion programs, or public health. These actions may be to meet legislative intent or upon request from individuals, government agencies, or private organizations. The Office may create reports in a variety of formats including print or electronic documents, searchable databases, web-sites, or other user-oriented methods for displaying information.

(3) Unless otherwise specified by the committee, the time period for data suppliers and health care providers to prepare a response as required in Subsections 26-33a-107(1) and 26-33a-107(3) shall be 15 business days. If a data supplier fails to respond in the specified time frame, the committee may conclude that the information is correct and suitable for release.

(4) The committee may note in a report that accurate appraisal of a certain category or entity cannot be presented because of a failure to comply with the committee's request for data, edit corrections, or data validation.

(5) The Office may release to the data supplier or its designee any data elements provided by the supplier without notification when a data supplier requests the data be so supplied.

(6) The committee may disclose data in computer readable formats.

(7) The Director of the Office may approve the disclosure of a public use data set upon receipt of a written request that includes the following:

- (a) the name, address, e-mail and telephone number of the requester;
- (b) a statement of the purpose for which the data will be used;
- (c) agreement to other terms and conditions as deemed necessary by the Office.

(8) The committee may approve the release of a research data set to an institution, association or organization for bona fide research of health care cost, quality, access, health promotion programs, or public health issues. The requester must provide:

- (a) the name, address, e-mail and telephone number of the requester and for each person who will have access to the research data set;
- (b) a statement of the purpose for which the research data set will be used;
- (c) the starting and ending dates for which the research data set is requested;
- (d) an explanation of why a public use data set could not be used for to accomplish the stated research purposes, including a separate justification for each element containing identified data requested;
- (e) evidence of the integrity and ability to safeguard the data from any breach of confidentiality;
- (f) evidence of competency to effectively use the data in the manner proposed;

(g) a satisfactory review from an Office-approved institutional review board;

(h) a guarantee that no further disclosure will occur without prior approval of the Office;

(i) a signed agreement to comply with other terms and conditions as stipulated by the committee.

R428-2-9. Penalties.

(1) The Office ~~[in cooperation with the committee,]~~ may apply civil penalties or subject violators to legal prosecution.

(2) Sections 26-23-6 and 26-33a-110 specify civil and criminal penalties for failure to comply with the requirements of Title R428 or Title 26, Chapter 33a.

(3) Notwithstanding Subsection R428-2-9(2), any person that violates any provision of Title R428 may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

(4) Notwithstanding Subsection R428-2-9(2) and R428-2-9(3), a ~~carrier~~ data supplier that violates any provision of Title R428 may be assessed an administrative civil money penalty for each day of non-compliance. Fines may be imposed as follows:

(a) Not to exceed the sum of \$10,000 per violation

(b) Each day of violation is a separate violation

(c) Deadlines established in separate sections of Title R428 are considered as separate provisions.

(5) The Office may impose a fine on any data supplier that misses a deadline to submit data required in Title R428 as follows:

(a) A fine of \$250 per violation shall be imposed until the data has been supplied as required

(b) The fines shall increase to \$500 per violation for each violation when any data supplier that is currently in violation misses another deadline

(c) After forty-five consecutive calendar days of violation, the Office may adjust the per day penalty subject to the limits in (4)(a) taking into account the following aggravating and mitigating circumstances:

(i) Prior violation history and history of compliance

(ii) Good faith efforts to prevent violations

(iii) The size and financial capability of the data supplier.

R428-2-10. Exemptions and Extensions.

(1) The committee may grant exemptions or extensions from reporting requirements in Title R428 to data suppliers under certain circumstances.

(2) The committee may grant an exemption to a data supplier when the supplier demonstrates that compliance imposes an unreasonable cost.

(a) A data supplier may request an exemption from any particular requirement or set of requirements of Title R428. The data supplier must submit a request for exemption no less than 30 calendar days before the date the supplier would have to comply with the requirement.

(b) The committee may grant an exemption for a maximum of one calendar year. A data supplier wishing an additional exemption must submit an additional, separate request.

(3) The committee may grant an extension to a data supplier when the supplier demonstrates that technical or unforeseen difficulties prevent compliance.

(a) A data supplier may request an extension for any deadline required in Title R428. For each deadline for which the ~~carrier~~ data supplier requests an extension, the ~~carrier~~ data supplier must submit its request no less than ~~[+5]~~ seven calendar days before the deadline in question.

(b) The committee may grant an extension for a maximum of 30 calendar days. A data supplier wishing an additional extension must submit an additional, separate request.

(4) The supplier requesting an extension or exemption shall include:

(a) The data supplier's name, mailing address, telephone number, and contact person;

(b) the dates the exemption or extension is to start and end;

(c) a description of the relief sought, including reference to specific sections or language of the requirement;

(d) a statement of facts, reasons, or legal authority in support of the request; and

(e) a proposed alternative to the requirement or deadline.

(5) A carrier that covers fewer than 2,500 individual Utah residents as of January 1 of a given year is exempt from all requirements of this title except that once a carrier has covered a cumulative total of 2,500 such individuals during a calendar year, they are no longer considered exempt for the remainder of that year.

R428-2-11. Contractor Liability.

(1) A data supplier may contract with another entity to submit required data elements on their behalf under Title R428. In such cases, the data supplier must notify the Office of the identity and contact information of the contractor.

(2) Regardless of the existence of a contractor, the responsibility for complying with all requirements of Title R428 remains solely with the data supplier.

KEY: health, health policy, health planning

Date of Enactment or Last Substantive Amendment: ~~December 8, 2014~~ 2015

Notice of Continuation: November 30, 2011

Authorizing, and Implemented or Interpreted Law: 26-33a-104

Human Services, Administration **R495-861** Requirements for Local Discretionary Social Services Block Grant Funds

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39361

FILED: 05/12/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify award allocation process. The process has changed.

SUMMARY OF THE RULE OR CHANGE: This change removes the legislature component of the process, and changes specific wording to clarify the process.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62-A-1-111 and Section 62-A-1-114

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This will not impact the state budget because it is all federal funds which are passed through to local governments. All funding will remain pass through.
- ◆ **LOCAL GOVERNMENTS:** All the funding will still pass through to local governments in the same allocation process, the wording is being clarified.
- ◆ **SMALL BUSINESSES:** Allocations will remain the same. No businesses will be impacted.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Allocations will remain the same. No persons will be impacted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no additional compliance costs due to the changes. This is all federal funding that will still pass through to local governments in its entirety.

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

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

HUMAN SERVICES
 ADMINISTRATION
 DHS ADMINISTRATIVE OFFICE
 MULTI STATE OFFICE BUILDING
 195 N 1950 W
 SALT LAKE CITY, UT 84116
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Janell Hall by phone at 801-538-4143, by FAX at 801-538-4317, or by Internet E-mail at janellhall@utah.gov
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonessrobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Ann Williamson, Executive Director

R495. Human Services, Administration.

R495-861. Requirements for Local Discretionary Social Services Block Grant Funds.

R495-861-1. Authority and Purpose.

A. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111.

B. The purpose of this rule is to specify the allocation of the Local Discretionary Social Services Block Grant Funds.

R495-861-2. Requirements for Local Discretionary Social Services Block Grant Funds.

A. Social Services Block Grant funds allocated to local governments ~~[by the Legislature are contracted]~~ are distributed to either counties or associations of government. These funds must be used ~~[to provide services to eligible persons as described in the Utah State]~~ as allowed by the Social Services Block Grant[Plan]. The following agencies receive local discretionary social services block grant funds: Bear River Association of Governments, Weber/Morgan Counties, Davis County, Salt Lake County, Tooele County, Mountainlands Association of Governments, Six County Association of Governments, Five County Association of Governments, Uintah Basin Association of Governments, Southeastern Utah Association of Governments, and San Juan County.

B. Social Services Block Grant funds identified for local discretionary use by the Department of Human Services shall be allocated annually to local governments based on the following formula:

1. Each area with less than 15,000 population will receive a base of \$54,000.00.
2. Each area with less than 150,000 population will receive a base of \$34,000.00.
3. The remainder of the money will be allocated based on the percentage each area[s'] population is ~~[of]~~ to the state population.

C. Each local government shall ~~[be required to]~~ provide non-federal local government funds of at least [a]25 percent of their award[match for Discretionary Social Services Block Grant funds]. The additional 25 percent must be used for Social Services Block Grant Purposes.

KEY: social services, match requirements

Date of Enactment or Last Substantive Amendment: ~~[January 30, 2008]~~ **2015**

Notice of Continuation: November 6, 2012

Authorizing, and Implemented or Interpreted Law: 62A-1-114

**Labor Commission, Adjudication
 R602-2-4
 Attorney Fees**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39380

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this proposed rule change is to update the maximum attorney fees awarded at the different stages of the workers' compensation legal process. The update is due to the rise of the average weekly wage of workers in Utah and the benefits calculated from that average.

SUMMARY OF THE RULE OR CHANGE: This rule change raises the maximum fee for legal services rendered through final commission action from \$18,101 to \$18,590, and for legal services rendered before the Court of Appeals from \$26,114 to \$26,819, and for legal services rendered before the Supreme Court from \$32,048 to \$32,913.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-301 et seq. and Section 63G-4-102 et seq.

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There should be no cost or savings to the state budget because attorney fees are paid from the benefits owed to injured workers.
- ◆ **LOCAL GOVERNMENTS:** There should be no cost or saving to local governments because attorney fees are paid from the benefits owed to injured workers.
- ◆ **SMALL BUSINESSES:** There should be no cost or saving to small businesses because attorney fees are paid from the benefits owed to injured workers.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There should be no cost or savings to persons other than small businesses, businesses, or local government entities because attorney fees are paid from the benefits owed to injured workers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no compliance costs for affected persons as attorney fees are paid out of the benefits owed to injured workers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There should be no fiscal impact from this rule on businesses as attorney fees are paid out of the benefits owed to injured workers.

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

LABOR COMMISSION
ADJUDICATION
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:

◆ Heather Gunnarson by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at hgunnarson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R602. Labor Commission, Adjudication.**R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.****R602-2-4. Attorney Fees.**

A. Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants in workers' compensation or occupational illness claims.

1. This rule applies to all fees awarded after July 1, 2014⁵.
2. Fees awarded prior to the effective date of this rule are determined according to the prior version of this rule in effect on the date of the award.

B. Upon written agreement, when an attorney's services are limited to consultation, document preparation, document review, or review of settlement proposals, the attorney may charge the applicant an hourly fee of not more than \$125 for time actually spent in providing such services, up to a maximum of four hours.

1. Commission approval is not required for attorneys fees charged under this subsection B. It is the applicant's responsibility to pay attorneys fees permitted by this subsection B.

2. In all other cases involving payment of applicants' attorneys fees which are not covered by this subsection B., the entire amount of such attorneys fees are subject to subsection C. or D. of this rule.

C. Except for legal services compensated under subsection B. of this rule, all legal services provided to applicants shall be compensated on a contingent fee basis.

1. For purposes of this subsection C., the following definitions and limitations apply:

a. The term "benefits" includes only death or disability compensation and interest accrued thereon.

b. Benefits are "generated" when paid as a result of legal services rendered after Adjudication Form 152 Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the applicant's attorney.

c. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

2. Fees and costs authorized by this subsection shall be deducted from the applicant's benefits and paid directly to the attorney on order of the Commission. A retainer in advance of a Commission approved fee is not allowed.

3. Attorney fees for benefits generated by the attorney's services shall be computed as follows:

a. For all legal services rendered through final Commission action, the fee shall be 25% of weekly benefits generated for the first \$25,000, plus 20% of the weekly benefits generated in excess of \$25,000 but not exceeding \$50,000, plus 10% of the weekly benefits generated in excess of \$50,000, to a maximum of \$~~[18,101]~~18,590.

b. For legal services rendered in prosecuting or defending an appeal before the Utah Court of Appeals, an attorney's fee shall be awarded amounting to 30% of the benefits in dispute before the Court of Appeals. This amount shall be added to any attorney's fee awarded under subsection C.3.a. for benefits not in dispute before the Court of Appeals. The total amount of fees awarded under subsection C.3.a. and this subsection C.3.b. shall not exceed \$~~[26,114]~~26,819;

c. For legal services rendered in prosecuting or defending an appeal before the Utah Supreme Court, an attorney's fee shall be awarded amounting to 35% of the benefits in dispute before the Supreme Court. This amount shall be added to any attorney's fee awarded under subsection C.3.a. and subsection C.3.b. for benefits not in dispute before the Supreme Court. The total amount of fees awarded under subsection C.3.a, subsection C.3.b. and this subsection C.3.c shall not exceed \$~~[32,048]~~32,913.

D. The following expenses, fees and costs shall be presumed to be reasonable and necessary and therefore reimbursable in a workers' compensation claim:

1. Medical records and opinion costs;
2. Deposition transcription costs;
3. Vocational and Medical Expert Witness fees;
4. Hearing transcription costs;
5. Appellate filing fees; and
6. Appellate briefing expenses.

F. Other reasonable expenses, fees and costs may be awarded as reimbursable as the Commission may in its discretion decide in a particular workers compensation claim.

E. In "medical only" cases in which awards of attorneys' fees are authorized by Subsection 34A-1-309(4), the amount of such fees and costs shall be computed according to the provisions of subsection C and D.

KEY: workers' compensation, administrative procedures, hearings, settlements
Date of Enactment or Last Substantive Amendment: ~~[July 22, 2014]~~2015
Notice of Continuation: June 19, 2012
Authorizing, and Implemented or Interpreted Law: 34A-1-301 et seq.; 63G-4-102 et seq.

**Labor Commission, Occupational
 Safety and Health
 R614-1-7
 Inspections, Citations, and Proposed
 Penalties**

**NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 39381
 FILED: 05/15/2015**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In 2014, the Utah Supreme Court invalidated Utah OSHA's authority to enforce the multi-employer worksite doctrine in the State of Utah. The relevant statute was modified during the 2015 General Session under S.B. 111 to allow for enforcement of the doctrine. This rule outlines how the doctrine will be implemented and enforced in the State of Utah.

SUMMARY OF THE RULE OR CHANGE: The rule defines the categories of employers typically found on a multi-employer worksite and outlines the obligations each employer has in regards to providing a safe worksite for its employees and other employees on the worksite. The rule also defines the conditions under which an employer may be cited for exposing its own or other employees to a hazard on a multi-employer site. The rule also defines the duty an employer must meet in such situations in order to avoid a citation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 34A, Chapter 6

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. Prior to the court's decision in January 2014, Utah OSHA routinely enforced the multi-employer doctrine. This rule defines and describes Utah OSHA's statutory authority to resume enforcement of the doctrine.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings for local governments.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. Prior to the court's decision in January 2014, Utah OSHA routinely enforced the multi-employer doctrine. This rule defines and describes Utah OSHA's statutory authority to resume enforcement of the doctrine. This rule changes does not impose an additional obligation for employers on multi-employer sites. Such employers are not expected to comply with new or additional safety standards but only to ensure they do not create or expose their employees, or the employees of other employers on the site, to a hazard.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. Prior to the court's decision in January 2014, Utah OSHA routinely enforced the multi-employer doctrine. This rule defines and describes Utah OSHA's statutory authority to resume enforcement of the doctrine. This rule changes does not impose an additional obligation for employers on multi-employer sites. Such employers are not expected to comply with new or additional safety standards but only to ensure they do not create or expose their employees, or the employees of other employers on the site, to a hazard.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated compliance cost for affected persons.

Employers on multi-employer sites are not expected to comply with new or additional safety standards but are expected to ensure they do not create or expose their employees, or the employees of other employers on the site, to a hazard. While employers may be cited for a violation of this rule, there should be no additional cost for compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Commission does not anticipate that this rule will have a fiscal impact on businesses. Prior to January 2014, Utah OSHA enforced the multi-employer doctrine on multi-employer worksites throughout the state. This rule, and the underlying statutory change, merely restore the Commission's authority to do so. While employers may be cited for a violation of this rule, there should be no additional cost for compliance.

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

LABOR COMMISSION
OCCUPATIONAL SAFETY AND HEALTH
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:

♦ Christopher Hill by phone at 801-530-6898, by FAX at 801-530-7606, or by Internet E-mail at chill@utah.gov
♦ Jaceson Maughan by phone at 801-530-6036, by FAX at 801-530-6390, or by Internet E-mail at jacesonmaughan@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R614. Labor Commission, Occupational Safety and Health.

R614-1. General Provisions.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in

connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable

times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer

shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.1.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be

eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials

and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be

received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

U. Multi-Employer worksites.

1. Pursuant to Section 34A-6-201 of the Act, violation of an applicable standard adopted under Section 34A-6-202 of the Act at a multi-employer worksite may result in a citation issued to more than one employer.

2. An employer on a multi-employer worksite may be considered a creating, exposing, correcting, or controlling employer. An employer may be cited should:

_____ a. It meet the definition of a creating employer and be found to have failed to exercise the duty of care required by this Rule for a creating employer; or

_____ b. It meet the definition of an exposing, correcting, or controlling employer and be found to have failed to exercise the duty of care required by this Rule for that category of employer.

_____ c. Even if an employer meets its duty of reasonable care applicable to one category of employer, it may still be cited should it meet the definition of another category of employer and be found to have failed to exercise the duty of care required by this Rule for that category of employer. No employer will be cited for the same violation under multiple categories of employers.

_____ 3. Creating Employer. A creating employer is one that created a hazardous condition on the worksite. A creating employer may be cited if:

_____ a. Its own employees are exposed or if the employees of another employer at the site are exposed to this hazard; and

_____ b. The employer did not exercise reasonable care by taking prompt and effective steps to alert employees of other employers of the hazard and to correct or remove the hazard or, if the creating employer does not have the ability or authority to correct or remove the hazard, to notify the controlling or correcting employer of the hazard,

_____ 4. Exposing Employer. An exposing employer is one that exposed its own employees to a hazard. If the exposing employer created the hazard, it is citable as the creating employer, not the exposing employer.

_____ a. If the exposing employer did not create the hazard, it may be cited as the exposing employer if:

_____ i. It knew of the hazard or failed to exercise reasonable care to discover the hazard; and

_____ ii. Upon obtaining knowledge of the hazard, it failed to take prompt and reasonable precautions, consistent with its authority on the worksite, to protect its employees.

_____ b. An exposing employer will be deemed to have exercised reasonable care to discover a hazard if it demonstrates that it has regularly and diligently inspected the worksite.

_____ c. If the exposing employer has the authority to correct or remove the hazard, it must correct or remove the hazard with reasonable diligence. If the exposing employer lacks such authority, it may still be cited if:

_____ i. It failed to make a good faith effort to ask the creating and/or controlling employer to correct the hazard;

_____ ii. It failed to inform its employees of the hazard; and

_____ iii. It failed to take reasonable alternative measures, consistent with its authority on the worksite, to protect its employees.

_____ 5. Correcting Employer. A correcting employer is one responsible for correcting a hazardous condition, such as installing or maintaining safety and health devices or equipment, or implementing appropriate health and safety procedures. A correcting employer must exercise reasonable care in preventing and discovering hazards and ensure such hazards are corrected in a prompt manner, which shall be determined in light of the scale, nature and pace of the work, and the amount of activity of the worksite.

_____ 6. Controlling Employer. A controlling employer is one with general supervisory authority over a worksite. This authority may be established either through contract or practice and includes the authority to correct safety and health violations or require others to do so, but it is separate from the responsibilities and care to be exercised by a correcting employer.

_____ a. A controlling employer will not be cited if it has exercised reasonable care to prevent and detect violations on the worksite. The extent of the measures used by a controlling employer to satisfy this duty, however, is less than the extent required of an employer when protecting its own employees. A controlling employer is not required to inspect for hazards or violations as frequently or to demonstrate the same knowledge of applicable standards or specific trade expertise as the employer under its control.

_____ b. When determining the duty of reasonable care applicable to a controlling employer on a multi-employer worksite, the factors that may be considered include, but are not limited to:

_____ i. The nature of the worksite and industry in which the work is being performed;

_____ ii. The scale, nature and pace of the work, including the pace and frequency at which the worksite hazards change as the work progresses;

_____ iii. The amount of activity at the worksite, including the number of employers under its control and the number of employees working on the worksite;

_____ iv. The implementation and monitoring of safety and health precautions for the entire worksite requiring that other employers on the worksite comply with their respective obligations and standards of care for the safety of employees, a graduated system of discipline for non-compliant employees and/or employers, regular worksite safety meetings, and when appropriate for atypical hazards, the providing of adequate safety training by employers for atypical hazards present on the worksite; and

_____ v. The frequency of worksite inspections, particularly at the commencement of a project or the commencement of work on the project by other employers that come under its control. As work progresses, the frequency and sufficiency of such inspections shall be determined in relation to other employers' compliance with their respective obligations and standards of care as required by this Rule.

_____ c. When evaluating whether a controlling employer has demonstrated reasonable care in preventing and discovering violations, the following factors, though not inclusive, shall be considered:

_____ i. Whether the controlling employer conducted worksite inspections with sufficient frequency as contemplated by subsection 6(b);

_____ ii. The controlling employer's implementation and monitoring of an effective system for identifying a hazardous condition and promptly notifying employers under its control of the hazard so as to ensure compliance with their respective duties of care under this Rule;

_____ iii. Whether the controlling employer implements a graduated system of discipline for non-compliant employees and/or employers with their respective safety and health requirements;

_____ iv. Whether the controlling employer performs follow-up inspections to ensure hazards are corrected; and

_____ v. Other actions demonstrating the implementation and monitoring of safety and health precautions for the entire worksite.

_____ 7. In accordance with Section 34A-6-110, nothing in this Rule shall:

_____ a. be deemed to limit or repeal requirements imposed by statute or otherwise recognized by law; or

_____ b. be construed or held to supersede or in any manner affect workers' compensation or enlarge or diminish or affect the common-law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, occupational or

other diseases, or death of employees arising out of, or in the course of employment.

KEY: safety

Date of Enactment or Last Substantive Amendment: ~~July 23, 2012~~ 2015

Notice of Continuation: October 22, 2012

Authorizing, and Implemented or Interpreted Law: 34A-6

**Money Management Council,
Administration
R628-15
Certification as an Investment Adviser**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39396

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish a uniform standard to evaluate the financial condition and the standing of an investment adviser to determine if investment transactions with public treasurers by investment advisers would expose public funds to undue risk.

SUMMARY OF THE RULE OR CHANGE: This rule requires that an investment adviser who intends to provide investment advisory services to a public treasurer become certified. It provides for an application process and requests information from an adviser to become certified. The rule requires that investment advisers renew their certification annually and contains post certification requirements. The rule also provides grounds and procedures for denial, suspension, and termination of status as a certified investment adviser. (DAR NOTE: A corresponding 120-day (emergency) rule that is effective as of 05/06/2015 is under DAR No. 39348 in this issue, June 1, 2015, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 51-7-11(2)(b) and Subsection 51-7-18(2)(vi)(vii) and Subsection 51-7-3(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The fee is \$500 per each firm. As this rule has been ongoing, it will not effect any change the state budget.
- ◆ **LOCAL GOVERNMENTS:** Currently those public entities that have chosen to utilize certified investment advisers to manage their money pay fees that are offset by earnings on those funds under management.
- ◆ **SMALL BUSINESSES:** Currently these firms pay an annual fee of \$500 to be certified and these fees are offset by the potential income from managing public funds.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Currently these firms pay an annual fee of \$500 to be certified and these fees are offset by the potential income from managing public funds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It costs an investment firm \$500 annually to become certified and if they need additional insurance to meet the requirement in the rule, it is estimated that it costs 1% of the amount of the bond on errors and omissions insurance and the same on fidelity insurance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Investment advisers seeking certification must pay a \$500 annual certification fee established by Section 51-7-18.4. Compliance with this rule requires certified investment advisers to provide copies of certain documents and to give notices which may result in nominal, incremental costs for duplication and delivery. Federal covered investment advisers may incur additional legal fees and other administrative and registration costs as a result of the requirement for licensing in Utah.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Mark Watkins, Chair, Money Management Council

R628. Money Management Council, Administration.

R628-15. Certification as an Investment Adviser.

R628-15-1. Authority.

This rule is issued pursuant to Sections 51-7-3(3), 51-7-18(2)(b)(vi) and (vii), and 51-7-11.5.

R628-15-2. Scope.

This rule establishes the criteria applicable to all investment advisers and investment adviser representatives for certification by the Director as eligible to provide advisory services to public treasurers under the State Money Management Act (the "Act"). It further

establishes the application contents and procedures, and the criteria and the procedures for denial, suspension, termination and reinstatement of certification.

R628-15-3. Purpose.

This rule establishes a uniform standard to evaluate the financial condition and the standing of an investment adviser to determine if investment of public funds by investment advisers would expose said public funds to undue risk.

R628-15-4. Definitions.

A. The following terms are defined in Section 51-7-3 of the Act, and when used in this rule, have the same meaning as in the Act:

1. "Certified investment adviser";
2. "Council";
3. "Director";
4. "Public treasurer";
5. "Investment adviser representative"; and
6. "Certified dealer".

B. For purposes of this rule the following terms are defined:

1. "Investment adviser" means either a federal covered adviser as defined in Section 61-1-13 or an investment adviser as defined in Section 61-1-13.

2. "Realized rate of return" means yield calculated by combining interest earned, discounts accreted and premiums amortized, plus any gains or losses realized during the month, less all fees, divided by the average daily balance during the reporting period. The realized return should then be annualized.

3. "Soft dollar" means the value of research services and other benefits, whether tangible or intangible, provided to a certified investment adviser in exchange for the certified investment adviser's business.

R628-15-5. General Rule.

Before an investment adviser or investment adviser representative provides investment advisory services to any public treasurer, the investment adviser or investment adviser representative must submit and receive approval of an application to the Division, pay to the Division a non-refundable fee as described in Section 51-7-18.4(2), and become a Certified investment adviser or Investment adviser representative under the Act.

R628-15-6. Criteria for Certification of an Investment Adviser.

To be certified by the Director as a Certified investment adviser or Investment adviser representative under the Act, an investment adviser or investment adviser representative shall:

A. Submit an application to the Division on Form 628-15 clearly designating:

- (1) the investment adviser;
- (2) its designated official as defined in R164-4-2 of the Division; and
- (3) any investment adviser representative who provides investment advisory services to public treasurers in the state.

B. Provide written evidence of insurance coverage as follows:

- (1) fidelity coverage based on the following schedule:

TABLE

Utah Public funds under management	Percent for Bond
\$0 to	10% but not less than
\$25,000,000	\$1,000,000
\$25,000,001 to	8% but not less than
\$50,000,000	\$2,500,000
\$50,000,001 to	7% but not less than
\$100,000,000	\$4,000,000
\$100,000,001 to	5% but not less than
\$500,000,000	\$7,000,000
\$500,000,001 to	4% but not less than
\$1.250 billion	\$25,000,000
\$1,250,000,001 and higher	Not less than \$50,000,000

(2) errors and omissions coverage equal to five percent (5%) of Utah public funds under management, but not less than \$1,000,000 nor more than \$10,000,000 per occurrence.

C. Provide to the Division at the time of application or renewal of application, its most recent annual audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles in accordance with R628-15-8A.

D. Pay to the Division the non-refundable fee described in Section 51-7-18.4(2).

E. Have a current Certificate of Good Standing dated within 30 days of application from the state in which the applicant is incorporated or organized.

F. Have net worth as of its most recent fiscal year-end of not less than \$150,000 documented by the financial statements audited according to Subsection R628-15-6(C).

G. Allow the public treasurer to select the forum and method for dispute resolution, whether that forum be arbitration, mediation or litigation in any state or federal court. No agreement, contract, or other document that the applicant requires or intends to require to be signed by the public treasurer to establish an investment advisory relationship shall require or propose to require that any dispute between the applicant and the public treasurer must be submitted to arbitration.

H. Agree to the jurisdiction of the Courts of the State of Utah and applicability of Utah law, where relevant, for litigation of any dispute arising out of transactions between the applicant and the public treasurer.

I. All Investment adviser representatives who have any contact with a public treasurer or its account, must sign and have notarized a statement that the representative:

- (1) is familiar with the authorized investments as set forth in the Act and the rules of the Council;
- (2) is familiar with the investment objectives of the public treasurer, as set forth in Section 51-7-17(2);
- (3) acknowledges, understands, and agrees that all investment transactions conducted for the benefit of the public

treasurer must fully comply with all requirements set forth in Section 51-7-7 and that the Certified investment adviser and any Investment adviser representative is prohibited from receiving custody of any public funds or investment securities at any time.

R628-15-7. Certification.

A. The initial application for certification must be received on or before the last day of the month for approval at the following month's Council meeting.

B. All certifications shall be effective upon acceptance by the Council.

C. All certifications not otherwise terminated shall expire on June 30 of each year, unless renewed.

R628-15-8. Renewal of Application.

A. Certified investment advisers shall apply annually, on or before April 30 of each year, for certification to be effective July 1 of each year.

B. The application must contain all of the documents and meet all of the requirements as set forth above with respect to initial applications.

C. The application must be accompanied by an annual certification fee as described in Section 51-7-18.4(2).

D. A Certified investment adviser whose certification has expired as of June 30 may not function as a Certified investment adviser until the investment adviser's certification is renewed.

R628-15-9. Post Certification Requirements.

A. Certified investment advisers shall notify the Division of any changes to any items or information contained in the original application within 30 calendar days of the change. The notification shall provide copies, where necessary, of relevant documents.

B. Certified investment advisers shall maintain a current application on Form 628-15 with the Division throughout the term of any agreement or contract with any public treasurer. Federal covered advisers shall maintain registration as an investment adviser under the Investment Advisers Act of 1940 throughout the term of any agreement or contract with any public treasurer.

C. Certified investment advisers shall provide and maintain written evidence of insurance coverage as described in R628-15-6(B).

D. Certified investment advisers shall provide to the public treasurer the SEC Form ADV Part II prior to contract execution.

E. Certified investment advisers shall file annual audited financial statements with all public treasurers with whom they are doing business.

F. Certified investment advisers shall fully disclose all conflicts of interest and all economic interests in certified dealers and other affiliates, consultants and experts used by the Investment adviser in providing investment advisory services.

G. Certified investment advisers shall act with the degree of care, skill, prudence, and diligence that a person having special skills or expertise acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

H. Certified investment advisers shall exercise good faith in allocating transactions to certified dealers in the best interest of the account and in overseeing the completion of transactions and performance of certified dealers used by the Investment adviser in connection with investment advisory services.

I. Certified investment advisers shall fully disclose to the public treasurer any self-dealing with subsidiaries, affiliates or partners of the Investment adviser and any soft dollar benefits to the Investment adviser for transactions placed on behalf of the public treasurer.

J. Certified investment advisers shall fully and completely disclose to all public treasurers with whom they do business the basis for calculation of fees, whether and how fees may be adjusted during the term of any agreement, and any other costs chargeable to the account. If performance-based fees are proposed, the disclosure shall include a clear explanation of the amount of the fee at specific levels of performance and how prior losses are handled in calculation of the performance-based fee.

K. Certified investment advisers shall not assign any contract or agreement with a public treasurer without the written consent of the public treasurer.

L. Certified investment advisers shall provide immediate written notification to any public treasurer to whom advisory services are provided and to the Division upon conviction of any crime involving breach of trust or fiduciary duty or securities law violations.

M. Not less than once each calendar quarter and as often as requested by the public treasurer, Certified investment advisers shall timely deliver to the public treasurer:

(1) copies of all trade confirmations for transactions in the account;

(2) a summary of all transactions completed during the reporting period;

(3) a listing of all securities in the portfolio at the end of each reporting period, the market value and cost of each security, and the credit rating of each security;

(4) performance reports for each reporting period showing the total return on the portfolio as well as the realized rate of return, when applicable, and the net return after calculation of all fees and charges permitted by the agreement; and

(5) a statistical analysis showing the portfolio's weighted average maturity and duration, if applicable, as of the end of each reporting period.

R628-15-10. Notification of Certification.

The Director shall provide a list of Certified investment advisers and Investment adviser representatives to the Council at least semiannually. The Council shall mail this list to each public treasurer.

R628-15-11. Grounds for Denial, Suspension or Termination of Status as a Certified Investment Adviser.

Any of the following constitutes grounds for denial, suspension, or termination of status as a Certified investment adviser:

A. Denial, suspension or termination of the Certified investment adviser's license by the Division.

B. Failure to maintain a license with the Division by the firm or any of its Investment adviser representatives conducting investment transactions with a public treasurer.

C. Failure to maintain the required minimum net worth and the required bond.

D. Requiring the public treasurer to sign any documents, contracts, or agreements which require that disputes be submitted to mandatory arbitration.

E. Failure to pay the annual certification fee.

F. Making any false statement or filing any false report with the Division.

G. Failure to comply with any requirement of section R628-15-9.

H. Engaging in any material act in negligent or willful violation of the Act or Rules of the Council.

I. Failure to respond to requests for information from the Division or the Council within 15 days after receipt of a request for information.

J. Engaging in a dishonest or unethical practice. "Dishonest or unethical practice" includes but is not limited to those acts and practices enumerated in Rule R164-6-1g.

K. Being the subject of:

(1) an adjudication or determination, within the past five years by a securities or commodities agency or administrator of another state, Canadian province or territory, or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state;
or

(2) an order entered within the past five years by the securities administrator of any state or Canadian province or territory or by the Securities and Exchange Commission denying or revoking license as an investment adviser, or investment adviser representative or the substantial equivalent of those terms or is the subject of an order of the Securities and Exchange Commission suspending or expelling the person from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order.

R628-15-12. Procedures for Denial, Suspension, or Termination and Reinstatement of Status.

A. Where it appears to the Division or to the Council that grounds may exist to deny, suspend, or terminate status as a Certified investment adviser, the Council shall proceed under the Utah Administrative Procedures Act, Chapter 4, Title 63G ("UAPA").

B. All proceedings to suspend a Certified investment adviser or to terminate status as a certified investment adviser are designated as informal proceedings under ("UAPA").

C. In any hearings held, the Chair of the Council shall be the presiding officer, and that person may act as the hearing officer, or may designate another person from the Council or the Division to be the hearing officer. After the close of the hearing, other members of the Council may make recommendations to the hearing officer.

D. The Notice of Agency Action as set forth under UAPA, or any petition filed in connection with it, shall include a statement of the grounds for suspension or termination, and the remedies required to cure the violation.

E. A Certified investment adviser and its Investment adviser representative who has received a Notice of Agency Action alleging violations of the Act or these rules, may continue, in the discretion of the public treasurer, to conduct investment transactions with the public treasurer until the violations asserted by the Money Management Council in the Notice of Agency Action becomes subject to a written order of the Council or Agency against the adviser or adviser representative, or until the Council enters an emergency order indicating that public funds will be jeopardized by continuing investment transactions with the adviser or adviser representative.

F. The Council may issue an emergency order to cease and desist operations or specified actions with respect to public treasurers

or public funds. Further, the Council may issue an emergency suspension of certification if the Council determines that public funds will be jeopardized by continuing investment transactions or other specified actions with the adviser or adviser representative.

G. Within ten business days after the conclusion of a hearing on an emergency order, the Council shall lift this prohibition upon a finding that the Certified investment adviser and its investment adviser representative may maintain certification.

KEY: cash management, public investments, securities regulation, investment advisers

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 51-7-3(3); 51-7-18(2)(b)(vi); 51-7-18(2)(b)(vii); 51-7-11.5(2)(b); 51-7-11.5(2)(c)

Natural Resources, Wildlife Resources R657-41 Conservation and Sportsman Permits

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 39362

FILED: 05/12/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to conservation and sportsman permits.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to this rule add clarity and consistency to DWR and the Division of State Parks for mule deer and bighorn sheep permits on Antelope Island State Park. A cooperative agreement between DWR and State Parks will be entered into for the purpose of setting season dates and permit numbers, outlining hunt regulations on the island, establishing protocols for issuing permits and conducting antlerless deer hunts if needed, and defining procedures and conditions of transferring revenue derived from conservation permits valid on Antelope Island. Additionally, this rule change outlines requirements that organizations must abide by to participate in the conservation permit program. Specifically, participants must be a 501(c)(3) non-profit chartered organization that promotes the protection and preservation of one or more conservation permit species.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This rule amendment adds clarity to regulations already in place. DWR determines that these amendments do not create a cost or savings impact to the

state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ LOCAL GOVERNMENTS: Since the amendment only adds clarity and consistency to a program that is already established this filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ SMALL BUSINESSES: This amendment simply creates more consistency and clarity to an already established program, therefore, the amendments do not have the potential to generate a cost or savings impact to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment simply creates more consistency and clarity to an already established program, therefore, the amendments do not have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will not create additional costs for residents and nonresidents wishing to hunt in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Gregory Sheehan, Director

**R657. Natural Resources, Wildlife Resources.
R657-41. Conservation and Sportsman Permits.
R657-41-1. Purpose and Authority.**

(1) Under the authority of Section 23-14-18 and 23-14-19, this rule provides the standards and procedures for issuing:

(a) conservation permits to conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities; ~~and~~

(b) sportsman permits;

(c) Special Antelope Island State Park Conservation Permits to a conservation organization for marketing and sale at the annual wildlife exposition held pursuant to R657-55; and

(d) Special Antelope Island State Park Limited Entry Permits to successful applicants through a general drawing conducted by the Division.

(2) The division and conservation organizations shall use all revenue derived from conservation permits under Subsections R657-41-9(4) and R657-41-9(5)(b) for the benefit of ~~the~~ species for which ~~the permit is~~ conservation permits are issued, unless the division and conservation organization mutually agree in writing that there is a higher priority use for other species of protected wildlife.

R657-41-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2. (2) In addition:

(a) "Area Conservation Permit" means a permit issued for a specific unit or hunt area for a conservation permit species, and may include an extended season, or legal weapon choice, or both, beyond the season except area turkey permits are valid during any season option and are valid in any open area during general season hunt.

(i) Area Conservation permits issued for limited entry units are not valid on cooperative wildlife management units.

(b) "Conservation Organization" means a nonprofit chartered institution, foundation, or association founded for the purpose of promoting ~~wildlife~~ the protection and preservation of one or more conservation permit species and has established tax exempt status under Internal Revenue Code, Section 501C-3 as amended.

(c) "Conservation Permit" means any harvest permit authorized by the Wildlife

Board and issued by the division for purposes identified in Section R657-41-1.

(d) "Conservation Permit Species" means the species for which conservation permits may be issued and includes deer, elk, pronghorn, moose, bison, Rocky Mountain goat, Rocky Mountain bighorn sheep, desert bighorn sheep, wild turkey, cougar, and black bear.

(e) "Multi-Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-7 for three consecutive years to sell, market or otherwise use as an aid in wildlife related fund raising activities.

(f) "Retained Revenue" means 60% of the revenue raised by a conservation organizations from the sale of conservation permits that the organization retains for eligible projects, excluding interest earned thereon.

(g) "Special Antelope Island State Park Conservation Permit" means a permit authorized by the Wildlife Board to hunt bighorn sheep or mule deer on Antelope Island State Park which is issued pursuant to R657-41-12(3).

(h) "Special Antelope Island State Park Limited Entry Permit" means a permit authorized by the Wildlife Board to hunt bighorn sheep or mule deer on Antelope Island State Park which is issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

(i) "Sportsman Permit" means a permit which allows a permittee to hunt during the applicable season dates specified in Subsection ([j]k), and which is authorized by the Wildlife Board and issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

([i]j) "Single Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-6 for one year to sell, market or otherwise use as an aid in wildlife related fund raising activities.

([j]k) "Statewide Conservation Permit" means a permit issued for a conservation permit species that allows a permittee to hunt:

(i) big game species on any open unit with archery equipment during the general archery season published in the big game proclamation for the unit beginning before September 1, and with any weapon from September 1 through December 31, except pronghorn and moose from September 1 through November 15 and deer and elk from September 1 through January 15;

(ii) two turkeys on any open unit from April 1 through May 31;

(iii) bear on any open unit during the season authorized by the Wildlife Board for that unit;

(iv) cougar on any open unit during the season authorized by the Wildlife Board for that unit and during the season dates authorized by the Wildlife Board on any harvest objective unit that has been closed by meeting its objective;

(v) Antelope Island is not an open unit for hunting any species of wildlife authorized by a conservation or sportsman permit, except for the Special Antelope Island State Park Conservation ~~Permit~~Permits and the Special Antelope Island State Park Limited Entry Permits; and

(vi) Central Mountain/Nebo/Wasatch West sheep unit is open to the Sportsmen permit holder on even number years and open to the Statewide Conservation permit holder on odd number years.

R657-41-9. Conservation Permit Funds and Reporting.

(1) All permits must be marketed by September 1, annually.

(2) Within 30 days of the last event, but no later than September 1 annually, the conservation organization must submit to the division:

- (a) a final report on the distribution of permits;
- (b) the total funds raised on each permit;
- (c) the funds due to the division; and
- (d) a report on the status of each project funded in whole or in part with retained conservation permit revenue.

(3)(a) Permits shall not be issued until the permit fees are paid to the division.

(b) If the conservation organization is paying the permit fees for the permit recipient, the fees must be paid from the 10%

retained by the conservation organization as provided in Subsection (5)(a).

(4)(a) Conservation organizations shall remit to the division by September 1 of each year 30% of the total revenue generated by conservation permit sales in that year.

(b) The permit revenue payable to the division under Subsection (4)(a), excluding accrued interest, is the property of the division and may not be used by conservation organizations for projects or any other purpose.

(c) The permit revenue must be placed in a federally insured account promptly upon receipt and remain in the account until remitted to the division on or before September 1 of each year.

(d) The permit revenue payable to the division under this subsection shall not be used by the conservation organization as collateral or commingled in the same account with the organization's operation and administration funds, so that the separate identity of the permit revenue is not lost.

(e) Failure to remit 30% of the total permit revenue to the Division by the September 1 deadline may result in criminal prosecution under Title 76, Chapter 6, Part 4 of the Utah Code, and may further disqualify the conservation organization from obtaining any future conservation permits.

(5) A conservation organization may retain 70% of the revenue generated from the sale of conservation permits as follows:

(a) 10% of the revenue may be withheld and used by the conservation organization for administrative expenses.

(b) 60% of the revenue may be retained and used by the conservation organization only for eligible projects as provided in subsections (i) through (ix).

(i) eligible projects include habitat improvement, habitat acquisition, transplants, targeted education efforts and other projects providing a substantial benefit to species of wildlife for which conservation permits are issued, unless the division and conservation organization mutually agree in writing that there is a higher priority use for other species of protected wildlife.

(ii) retained revenue shall not be committed to or expended on any eligible project without first obtaining the division director's written concurrence.

(iii) retained revenue shall not be used on any project that does not provide a substantial and direct benefit to conservation permit species or other protected wildlife located in Utah.

(iv) cash donations to the Wildlife Habitat Account created under Section 23-19-43, Division Species Enhancement Funds, or the Conservation Permit Fund shall be considered an eligible project and do not require the division director's approval, provided the donation is made with instructions that it be used for species of wildlife for which conservation permits are issued.

(v) funds committed to approved projects will be transferred to the division within 90 days of being committed

(A) if the project to which funds are committed is completed under the projected budget or is canceled, funds committed to the project that are not used will be kept by the division and credited back to the conservation organization and will be made available for the group to use on other approved projects during the current or subsequent year.

(vi) retained revenue shall not be used on any project that is inconsistent with division policy, including feeding programs, depredation management, or predator control.

(vii) retained revenue under this subsection must be placed in a federally insured account. All interest revenue earned thereon may be retained and used by the conservation organization for administrative expenses.

(viii) retained revenue shall not be used by the conservation organization as collateral or commingled in the same account with the organization's operation and administration funds, so that the separate identity of the retained revenue is not lost.

(ix) retained revenue must be completely expended on or committed to approved eligible projects by September 1, two years following the year in which the relevant conservation permits are awarded to the conservation organization by the Wildlife Board. Failure to commit or expend the retained revenue by the September 1 deadline will disqualify the conservation organization from obtaining any future conservation permits until the unspent retained revenue is committed to an approved eligible project.

(x) all records and receipts for projects under this subsection must be retained by the conservation organization for a period not less than five years, and shall be produced to the division for inspection upon request.

(6)(a) Conservation organizations accepting permits shall be subject to annual audits on project expenditures and conservation permit accounts.

(b) The division shall perform annual audits on project expenditures and conservation permit accounts.

R657-41-12. Special Antelope Island State Park ~~[Conservation Permit]~~Hunting Permits.

(1)(a) ~~[If the]~~The Wildlife Board ~~[authorizes]~~may authorize a hunt for bighorn sheep ~~[or]~~and buck mule deer on Antelope Island State Park, with one ~~[permit for each species will be made available as a]~~or more permits for each species made available as Special Antelope Island State Park Conservation Permits and an equal number of permits for each species made available as Special Antelope Island State Park Limited Entry Permits.

(b) The Division of Wildlife Resources and the Division of Parks and Recreation, through their respective policy boards, will enter into a cooperative agreement for the purpose of establishing:

(i) the number of permits issued annually for bighorn sheep and buck mule deer hunts on Antelope Island;

(ii) season dates for each hunt;

(iii) procedures and regulations applicable to hunting on Antelope Island;

(iv) protocols for issuing permits and conducting hunts for antlerless deer on Antelope Island when populations require management; and

(v) procedures and conditions for transferring Special Antelope Island State Park Conservation Permit revenue to the Division of Parks and Recreation.

(c) The cooperative agreement governing bighorn sheep and mule deer hunting on Antelope Island and any subsequent amendment thereto shall be presented to the Wildlife Board and the Parks Board for approval prior to holding a drawing or issuing hunting permits.

(2)(a) Special Antelope Island State Park ~~[Conservation]~~Limited Entry Permits will be issued ~~[for one year.]~~by the Division through its annual bucks, bulls, and once-in-a-lifetime drawing.

~~[(3) Special Antelope Island State Park Conservation Permits will be issued under this section and will not be limited by the requirements of R657-41-3 through R657-41-8.]~~

~~(i) The mule deer Special Antelope Island State Park Limited Entry Permit is a premium limited entry buck deer permit and subject to the regulations governing such permits, as provided in this rule, R657-5, and R657-62.~~

~~(ii) The bighorn sheep Special Antelope Island State Park Limited Entry Permit is a once-in-a-lifetime Rocky Mountain bighorn sheep permit and subject to the regulations governing such permits, as provided in this rule, R657-5, and R657-62.~~

~~(b) To apply for a Special Antelope Island State Park Limited Entry Permit, the applicant must:~~

~~(i) pay the prescribed application handling fee;~~

~~(ii) possess a current Utah hunting license or combination license;~~

~~(iii) not be subject to a waiting period under R657-62 for the species of wildlife applied for; and~~

~~(iv) otherwise be eligible to hunt the species of wildlife designated on the application;~~

~~(c) A person that obtains a Special Antelope Island State Park Limited Entry Permit:~~

~~(i) must pay the applicable permit fee;~~

~~(ii) may take only one animal of the species and gender designated on the permit;~~

~~(iii) may hunt only with the weapon and during the season prescribed on the permit;~~

~~(iv) may hunt the specified species within the areas of Antelope Island designated open by the Wildlife Board and the rules and regulations of the Division of Parks and Recreation; and~~

~~(v) is subject to the:~~

~~(A) provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife; and~~

~~(B) statutes, rules, and regulations of the Division of Parks and Recreation for hunting on Antelope Island.~~

~~(d) Bonus points are awarded and utilized in applying for and obtaining a Special Antelope Island State Park Limited Entry Permit.~~

~~(e) A person who has obtained a Special Antelope Island State Park Limited Entry Permit is subject to all waiting periods applicable to the particular species, as provided in R657-62.~~

~~(f) A person cannot obtain a Special Antelope Island State Park Limited Entry Permit for a bighorn sheep or mule deer and any other permit for a male animal of the same species in the same year.~~

~~[(4)3] Special Antelope Island State Park Conservation Permits will be provided to the conservation group awarded the wildlife expo permit series, as provided in R657-~~[55]~~55, for marketing at the wildlife exposition ~~[where the wildlife expo permits are awarded].~~~~

([5]a) The division and conservation organization receiving Special Antelope Island State Park Conservation Permits shall enter into a contract.

([6]b) The conservation organization receiving Special Antelope Island State Park Conservation Permits must insure that the permits are marketed and distributed by lawful means.

([7]c) The conservation organization must:

([a]i) obtain the name of the proposed permit recipient at the event where the permit recipient is selected; and

([b]ii) notify the division of the proposed permit recipient within 10 days of the recipient selection or the permit may be forfeited.

([8]d) If a person is selected by a qualified organization to receive a Special Antelope Island State Park Conservation Permit and is also successful in obtaining a permit for the same species in the same year through a division drawing, that person may designate another person to receive the Special Antelope Island State Park Conservation Permit, provided the permit has not been issued by the division to the first selected person.

([9]e) If a person is selected by a qualified organization to receive a Special Antelope Island State Park Conservation Permit, but is unable to use the permit, the conservation organization may designate another person to receive the permit provided:

([a]i) the conservation organization selects the new recipient of the permit;

([b]ii) the amount of money received by the division for the permit is not decreased;

([c]iii) the conservation organization relinquishes to the division and otherwise uses all proceeds generated from the re-designated permit, pursuant to the requirements provided below:

([i]A) the conservation organization and the initial designated recipient of the permit, sign an affidavit indicating the initial designated recipient is not profiting from transferring the right to the permit; and

([ii]B) the permit has not been issued by the division to the first designated person.

~~[(10) Except as otherwise provided under Subsections (8) and (9), a person designated by a conservation organization as a recipient of a Special Antelope Island State Park Conservation Permit, may not sell or transfer the rights to that designation to any other person. This does not preclude a person from bidding or otherwise lawfully acquiring a permit from a conservation organization on behalf of another person who will be identified as the original designated recipient.~~

~~[(11) A person cannot obtain a Special Antelope Island State Park Conservation Permit for a bighorn sheep or mule deer and any other permit for a male animal of the same species in the same year.~~

~~[(12) The person designated to receive a Special Antelope Island State Park Conservation Permit must possess or obtain a current Utah hunting or combination license before being issued the permit.~~

[(13]f) Within 30 days of the [wildlife-]exposition, but no later than May 1 annually, the conservation organization must submit to the division:

([a]i) a final report on the distribution of the Special Antelope Island State Park Conservation Permits;

([b]ii) the total funds raised on each permit; and

([c]iii) the funds due to the division.

([14]g)([a]i) Permits shall not be issued until the permit fees are paid to the division.

([b]ii) If the conservation organization is paying the permit fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization as provided in R657-41-9(5)(a).

([15]h)([a]i) Conservation organizations shall remit to the division 90% of the total revenue generated by the Special Antelope Island State Park Conservation Permit sales in that year.

([b]ii) Failure to remit 90% of the total permit revenue to the division by the September 1 deadline may result in criminal prosecution under Title 76, Chapter 6, Part 4 of the Utah Code.

([16]i) A conservation organization may retain 10% of the revenue generated by the permits for administrative expenses.

(j) Special Antelope Island State Park Conservation Permits will be issued under this section and will not be limited by the requirements of R657-41-3 through R657-41-8.

([17]k) Upon receipt of the permit revenue from the conservation organization, the division will transfer [the-]revenue [in its entirety-] to the Division of Parks and Recreation, as provided in [a]the cooperative agreement under Subsection (1)(b) between the two divisions.

(4)(a) Except as otherwise provided under Subsections (3)(d) and (3)(e), a person designated by a conservation organization as a recipient of a Special Antelope Island State Park Conservation Permit, may not sell or transfer the rights to that designation to any other person. This does not preclude a person from bidding or otherwise lawfully acquiring a permit from a conservation organization on behalf of another person who will be identified as the original designated recipient.

(b) A person cannot obtain a Special Antelope Island State Park Conservation Permit for a bighorn sheep or mule deer and any other permit for a male animal of the same species in the same year.

(c) The person designated to receive a Special Antelope Island State Park Conservation Permit must possess or obtain a current Utah hunting or combination license before being issued the permit.

R657-41-13. Failure to Comply.

Any conservation organization administratively or criminally found in violation of this rule or the Wildlife Resources Code may be suspended from participation in the conservation permit program and required to surrender all conservation permit vouchers.

KEY: wildlife, wildlife permits

Date of Enactment or Last Substantive Change: [March 16,-] 2015

Notice of Continuation: November 1, 2010

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

**Professional Practices Advisory
Commission, Administration
R686-100**

**Utah Professional Practices Advisory
Commission (UPPAC), Rules of
Procedure: Notification to Educators,
Complaints and Final Disciplinary
Actions**

**NOTICE OF PROPOSED RULE
(Repeal)**

DAR FILE NO.: 39389
FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 345, Education Abuse Policy, 2015 General Session, changed rulemaking authority from UPPAC to the Utah State Board of Education (Board). This rule is repealed in response to the legislation.

SUMMARY OF THE RULE OR CHANGE: Rule R686-100 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-6-306(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: It is anticipated that there is likely no cost or savings to the state budget. Rule R686-100 is repealed and will be replaced with a new Board rule under Title R277. (DAR NOTE: The proposed new rules are Rule R277-200 under DAR No. 39382, Rule R277-201 under DAR No. 39383, Rule R277-202 under DAR No. 39384, Rule R277-203 under DAR No. 39385, Rule R277-204 under DAR No. 39386, Rule R277-205 under DAR No. 39387, and Rule R277-206 under DAR No. 39388 in this issue, June 1, 2015, of the Bulletin.)

◆ LOCAL GOVERNMENTS: It is anticipated that there is likely no cost or savings to local government. Rule R686-100 is repealed and will be replaced with a new Board rule under Title R277.

◆ SMALL BUSINESSES: It is anticipated that there is likely no cost or savings to small businesses. Rule R686-100 is repealed and will be replaced with a new Board rule under Title R277.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is anticipated that there is likely no cost or savings to persons other than small businesses, businesses, or local government entities. Rule R686-100 is repealed and will be replaced with a new Board rule under Title R277.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is likely no compliance costs for affected persons. Rule R686-100 is repealed and will be replaced with a new Board rule under Title R277.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and believe that there is likely no fiscal impact on businesses.

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

PROFESSIONAL PRACTICES ADVISORY
COMMISSION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

~~[R686. Professional Practices Advisory Commission, Administration.~~

~~R686-100. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.~~

~~R686-100-1. Definitions.~~

~~A. "Action" as used in 53A-6-306 and as applied in this rule means a disciplinary action taken by UPPAC or the Board adversely affecting an educator's license, and which, pursuant to 53A-6-306, may not be taken without giving the educator an opportunity for a fair hearing to contest the allegations upon which the action would be based. Actions include:~~

- ~~(1) probation
(2) suspension
(3) revocation.~~

~~B. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional or criminal conduct; is unfit for duty; has lost his license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in R277-515.~~

C. "Applicant for a license" means a person seeking a new license or seeking reinstatement of an expired, surrendered, suspended, or revoked license.

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

E. "Chair" means the Chair of UPPAC.

F. "Complaint" means a written allegation or charge against an educator filed by USOE against the educator.

G. "Complainant" means the Utah State Office of Education.

H. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file developed by the USOE and maintained on all licensed Utah educators. The file includes information such as:

- (1) personal contact information;
- (2) education background;
- (3) professional endorsements;
- (4) employment history; and
- (5) a record of disciplinary action taken against the educator's license.

I. "Days": in calculating any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included; the last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Saturdays, Sundays and legal holidays shall not be included in calculating the period of time if the period prescribed or allowed is less than seven days, but shall be included in calculating periods of seven or more days.

J. "Disciplinary letter " means a letter issued to respondent by UPPAC as a result of an investigation into allegations of educator misconduct. Disciplinary letters include:

- (1) letters of admonishment;
- (2) letters of warning;
- (3) letters of reprimand; and
- (4) any other action that UPPAC or the Board takes to discipline an educator for educator misconduct that does not rise to the level of an action as defined in 686-100-1A.

K. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.

L. "Educator Misconduct" means unprofessional or criminal conduct; conduct that renders the educator unfit for duty; or conduct that is a violation of standards of ethical conduct, performance, or professional competence as provided in R277-515.

M. "Educator paper licensing file" means the file maintained securely by UPPAC on an educator. The file is opened following UPPAC's direction to investigate alleged misconduct. The file contains the original notification of misconduct, subsequent correspondence, the investigative report, and the final disposition of the case.

N. "Executive Committee" means a subcommittee of UPPAC consisting of the Executive Secretary, Chair, Vice-Chair, and one member of UPPAC at large. All Executive Committee members, excluding the Executive Secretary, shall be selected by UPPAC. Substitutes may be appointed from within UPPAC by the Executive Secretary as needed.

O. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State

Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of UPPAC.

P. "Final action" means any action by UPPAC or the Board which concludes an investigation of an allegation of misconduct against a licensed educator.

Q. "Hearing" means an administrative proceeding held pursuant to Section 53A-6-601, is a formal adjudication in which allegations made in a complaint are examined before a hearing officer and UPPAC hearing panel, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing, the hearing officer, after consulting with members of the UPPAC hearing panel, prepares a hearing report and submits it to the Executive Secretary.

R. "Informant" means a person who submits information to UPPAC concerning alleged misconduct of an educator.

S. "Investigator" means an employee of the USOE who is assigned by UPPAC to investigate allegations of educator misconduct and to offer recommendations of educator discipline to UPPAC at the conclusion of the investigation. The investigator works independently of the Executive Secretary and provides an investigative report for UPPAC. The investigator may also be the prosecutor but does not have to be. The investigator may be called on by the prosecutor, if not the same person, to testify at a hearing about the investigator's findings during the course of an investigation.

T. "Investigative report" means a written report of an investigation into allegations of educator misconduct, prepared by a UPPAC investigator. The report includes a brief summary of the allegations, a recommendation for UPPAC, and a summary of witness interviews conducted during the course of the investigation. The investigative report may include a rationale for the recommendation, and mitigating and aggravating circumstances, but does not have to. The investigative report is maintained in the educator's licensing file.

U. "Jurisdiction" means the legal authority to hear and rule on a complaint.

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

W. "License" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the license to provide professional services in the state's public schools.

X. "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for its members regarding persons whose licenses have been suspended or revoked.

Y. "Notification of Alleged Educator Misconduct" means the official UPPAC form that can be accessed on UPPAC's internet website, and can be submitted by any person, school, or district that alleges educator misconduct.

Z. "Party" means the complainant or the respondent.

AA. "Prosecutor" means the attorney designated by the USOE to represent the complainant and present evidence in support of the complaint. The prosecutor may also be the investigator, but does not have to be.

BB. "Recommended disposition" means a recommendation provided by a UPPAC investigator for resolution of an allegation.

CC. "Revocation" means a permanent invalidation of a Utah educator license consistent with R277-517.

DD. "Respondent" means the party against whom a complaint is filed or an investigation is undertaken.

EE. "Serve" or "service," as used to refer to the provision of notice to a person, means delivery of a written document or its contents to the person or persons in question. Delivery may be made in person, by mail, electronic correspondence, or by other means reasonably calculated, under all of the circumstances, to notify the interested person or persons to the extent reasonably practical or practicable of the information contained in the document.

FF. "Stipulated agreement" means an agreement between a respondent/educator and the USOE/Board or between a respondent/educator and UPPAC under which disciplinary action against an educator's license status shall be taken, in lieu of a hearing. At any time after an investigative letter has been sent, a stipulated agreement may be negotiated between the parties and becomes binding when approved by the Board, if necessary, or UPPAC if Board approval is not necessary.

GG. "Suspension" means an invalidation of a Utah educator license. A suspension may include specific conditions that an educator shall satisfy and may identify a minimum time period that shall elapse before the educator can request a reinstatement hearing before UPPAC.

HH. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.

II. "UPPAC investigative letter" means a letter sent by UPPAC to an educator notifying the educator that an allegation of misconduct has been received against him and UPPAC has directed that an investigation of the educator's alleged actions take place.

JJ. "UPPAC disciplinary letters or action" means letters sent or action taken by UPPAC informing the educator of licensing disciplinary action not rising to the level of license suspension. Disciplinary letters and action include the following:

(1) Letter of admonishment is a letter sent by UPPAC to the educator cautioning the educator to avoid or take specific actions in the future;

(2) Letter of warning is a letter sent by UPPAC to an educator for misconduct that was inappropriate or unethical that does not warrant longer term or more serious discipline;

(3) Letter of reprimand is a letter sent by UPPAC to an educator for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting more serious discipline; a letter of reprimand may provide specific directives to the educator as a condition for removal of the letter, and shall appear as a notation on the educator's CACTUS file;

(4) Probation is an action directed by UPPAC that involves some monitoring or supervision for an indefinite or designated time period usually accompanied by a disciplinary letter. In this time period, the educator may be subject to additional

monitoring by an identified person or entity and the educator may be asked to satisfy certain conditions in order to have the probation lifted. This discipline usually, but not always, is accompanied by a letter of warning or a letter of reprimand and shall appear as a notation on the educator's CACTUS file. Unless otherwise specified, the probationary period is at least two years and must be terminated through a formal petition by respondent.

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

LL. "USOE administrative action" means an administrative investigation into allegations of educator misconduct, opened under the authority of 53A-3-306.

R686-100-2. Authority and Purpose.

A. This rule is authorized by Section 53A-6-306(1)(a) directing UPPAC to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to provide procedures regarding:

- (1) notification of alleged educator misconduct;
- (2) review of notification by UPPAC; and
- (3) complaints, stipulated agreement and defaults.

The provisions of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d). UPPAC may invoke and use sections or provisions of the Utah Administrative Procedures Act as found in Section 63G-4 as necessary to adjudicate an issue.

R686-100-3. Initiating Proceedings Against Educators.

A. The Executive Secretary may initiate proceedings against an educator upon receiving a notification of alleged educator misconduct or upon the Executive Secretary's own initiative:

(1) An informant may be asked to submit information in writing, including the following:

- (a) name, position (such as administrator, teacher, parent, student), telephone number, address, and contact information of the informant;
- (b) name, position (such as administrator, teacher, candidate), and if known, the address and telephone number of the educator against whom the allegations are made;
- (c) the facts on which the allegations are based and supporting information;
- (d) signature of the informant and date.

(2) If an informant submits a written allegation of misconduct as provided in Section R686-100-3A(1), the informant may be told of final actions taken by UPPAC or the Board regarding the allegations.

(3) Proceedings initiated upon the Executive Secretary's own initiative are based on information received through telephone calls, letters, newspaper articles, media information, notices from other states or other means; UPPAC shall not investigate anonymous allegations.

B. All notifications of alleged educator misconduct shall be directed to UPPAC for initial review.

C. All written allegations, subsequent dismissals, or action or disciplinary letter of a case against an educator shall be maintained permanently in UPPAC's paper licensing files.

R686-100-4. Review of Notification of Alleged Educator Misconduct.

A. Initial Review: On reviewing the notification of alleged educator misconduct, the Executive Secretary or the Executive Committee or both shall recommend one of the following to UPPAC:

(1) Dismiss: If UPPAC determines that UPPAC lacks jurisdiction or that the request for agency action does not state a cause of action that UPPAC should address, UPPAC shall dismiss the request.

(2) Initiate an investigation: If UPPAC determines that UPPAC has jurisdiction and that the notification states a cause of action which may be appropriately addressed by UPPAC or the Board, the Executive Secretary shall direct a UPPAC investigator to gather evidence relating to the allegations:

(a) Prior to a UPPAC investigator's initiation of any investigation, the Executive Secretary shall send a letter to the educator to be investigated, to the LEA of current employment, and to the LEA where the alleged activity occurred, with information that an investigation has been initiated. The letter shall inform the educator and the LEA(s) that an investigation shall take place and is not evidence of unprofessional conduct. UPPAC may also notify an LEA that formerly employed the educator or the LEA that currently employs the educator or both, as appropriate.

(b) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations:

(c) The investigator shall prepare an investigative report of the findings of the investigation and a recommendation for appropriate action or disciplinary letter.

(d) If the investigator discovers additional evidence of unprofessional conduct which could have been included in the original notification of alleged educator misconduct, it may be included in the investigative report.

(e) The report shall be submitted to the Executive Secretary, who shall review the report with UPPAC.

(f) The investigative report shall become part of the permanent case file.

B. Secondary Review: UPPAC shall review the investigative report and, based on the recommendation by the investigator, shall direct one of the following:

(1) Dismiss: If UPPAC determines no further action should be taken, it shall dismiss the case as provided in Section R686-100-4A(1), above; or

(2) Prepare and serve complaint: If the investigator determines that allegations are sufficiently supported by evidence discovered in the investigation, UPPAC, through the Executive Secretary, shall direct the prosecutor to prepare and serve a complaint and a copy of these rules upon the respondent pursuant to R686-100-5; or

(3) Approve a Stipulated Agreement: At any time after UPPAC has directed that a case be investigated, an educator may accept the recommendation of the UPPAC investigator, rather than request a hearing, by entering into a stipulated agreement.

(a) The stipulated agreement shall conform to the requirements set forth in R686-100-6.

(b) Pursuant to 686-100-6B, an educator may stipulate to any recommended disposition for an action as defined in R686-100-1A:

(4) Upon receipt of an investigative report, including a stipulated agreement, or a hearing report as defined in R686-101, UPPAC may direct the Executive Secretary to carry out the recommendation or recommend suspension or revocation to the Board for consideration.

(5) If so directed by UPPAC, documentation of the disciplinary letter or action shall be sent to the respondent's employing LEA or to an LEA where the respondent finds employment.

(6) UPPAC may direct an additional investigation or other action as appropriate.

R686-100-5. Complaints.

A. Filing a complaint: If UPPAC determines that the allegations are sufficiently supported by evidence discovered in the investigation, UPPAC, through the Executive Secretary, may direct the prosecutor to serve a complaint upon the educator being investigated, along with a copy of these rules.

B. Elements of a complaint: At a minimum, the complaint shall include:

(1) a statement of legal authority and jurisdiction under which the action is being taken;

(2) a statement of the facts and allegations upon which the complaint is based;

(3) other information which the investigator believes to be necessary to enable respondent to understand and address the allegations;

(4) a statement of the potential consequences should the allegations be found to be true or substantially true;

(5) a statement that the respondent shall answer the complaint, request a hearing, or discuss a stipulated agreement, within 30 days of the date the complaint was mailed to the respondent, by filing a written answer addressed to the Executive Secretary, at the mailing address for the Office. The statement shall advise the respondent that if he fails to respond in 30 days, a default judgment for a suspension term of not less than five years shall be entered;

(6) a statement that, if a hearing is requested, the hearing shall be scheduled not less than 25 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing. On his own motion, the Executive Secretary, or designee with notice to the parties, may reschedule a hearing date.

C. Answer to the complaint: An answer to the complaint shall be made by filing a written response signed by the respondent or his representative with the Executive Secretary within 30 days after the complaint was mailed. The answer shall include a request for a hearing or a stipulated agreement, and shall include:

(1) the file number of the complaint;

(2) the names of the parties;

(3) a statement of the relief that the respondent seeks, which may include a request for a hearing or a stipulated agreement; and

(4) if not requesting a hearing or a stipulated agreement, a statement of the reasons that the relief requested should be granted.

D. Response to answer: As soon as reasonably practicable after receiving the answer, or no more than 30 days after receipt of the answer at the USOE, the Executive Secretary shall do one of the following:

~~_____ (1) Dismiss the complaint: If the Executive Secretary and the Executive Committee determines upon review of respondent's answer that there are insufficient grounds to proceed with the complaint, the Executive Committee shall recommend to UPPAC that the complaint be dismissed. If UPPAC votes to uphold the dismissal, the informant and the respondent shall each be served with notice of the dismissal. If UPPAC does not uphold the dismissal, the complaint shall proceed in accordance with the rules set forth in R686-100.~~

~~_____ (2) Schedule a hearing: If the respondent requests a hearing, UPPAC shall direct the Executive Secretary to schedule a hearing as provided in R686-101.~~

~~_____ (3) Direct investigator to negotiate a stipulated agreement: If the respondent requests a stipulated agreement, the Executive Secretary shall direct the investigator to negotiate a stipulated agreement with respondent.~~

~~_____ E. Default: If respondent does not respond to the complaint within 30 days, the Executive Secretary may issue a default in accordance with the procedures set forth in R686-100-7.~~

~~_____ (1) Except as provided in R686-100-5E(2), a default judgment shall result in a recommendation to the Board for a suspension of five years before the educator may request a reinstatement hearing; a default may include conditions that an educator shall satisfy to have any possibility for a reinstatement hearing.~~

~~_____ (2) A default judgment shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Section 53A-6-501(2).~~

R686-100-6. Stipulated Agreements.

~~_____ A. Pursuant to R686-100-4B(3), at any time after UPPAC has directed that a case be investigated, a respondent may accept the recommendation of the UPPAC investigator, rather than request a hearing, by entering into a stipulated agreement.~~

~~_____ B. By entering into a stipulated agreement, a respondent waives his right to a hearing to contest the recommended disposition. A respondent has a right to a hearing for any action as defined in R686-100-1A that adversely affects the respondent's license, including:~~

- ~~_____ (1) revocations;~~
- ~~_____ (2) suspensions; and~~
- ~~_____ (3) probations.~~

~~_____ C. A respondent may request a hearing to contest a recommended disposition for a letter of reprimand or deny respondent a hearing, but UPPAC has discretion to grant a hearing or deny respondent a hearing because letters of reprimand do not adversely affect an educator's license.~~

~~_____ D. A respondent shall not have a right to a hearing for recommended dispositions that are lesser disciplinary actions, such as letters of warning and letters of admonishment.~~

~~_____ E. Elements of a stipulated agreement: At minimum, a stipulated agreement shall include:~~

- ~~_____ (1) a summary of the facts, the allegations, the evidence relied upon by UPPAC in its recommendation, and a summary of the respondent's response, if any;~~
- ~~_____ (2) a statement that the respondent accepts the facts recited in the stipulated agreement as true for purposes of the USOE administrative action;~~

~~_____ (3) a statement that the respondent waives his right to a hearing to contest the allegations that gave rise to the investigation, and agrees to limitations on his license or surrenders his license rather than contest the allegations;~~

~~_____ (4) a statement that the respondent agrees to the terms of the stipulated agreement and other provisions applicable to the case, such as remediation, counseling, restitution, rehabilitation, and conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the letter of reprimand or termination of probation;~~

~~_____ (5) if for suspension, a statement that the respondent:~~

~~_____ (a) shall not seek or provide professional services in a public school in Utah; or~~

~~_____ (b) otherwise seek to obtain or use a license in Utah; or~~

~~_____ (c) work or volunteer in a public K-12 setting in any capacity without express authorization from UPPAC Executive Secretary, unless or until the respondent:~~

~~_____ (i) first obtains a valid educator license or authorization from the Board to obtain such a license; or~~

~~_____ (ii) satisfies other provisions provided in the stipulated agreement.~~

~~_____ (6) a statement that the action and the stipulated agreement shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;~~

~~_____ (7) a statement that respondent waives any right to contest the facts stated in the stipulated agreement at a subsequent reinstatement hearing, if any;~~

~~_____ (8) a statement that all records related to the stipulated agreement shall remain permanently in the educator's licensing file at the USOE.~~

~~_____ F. Violations of the terms of a valid stipulated agreement may result in an additional disciplinary action.~~

~~_____ G. The stipulated agreement shall be forwarded to UPPAC for consideration.~~

~~_____ (1) If UPPAC rejects the stipulated agreement, the respondent shall be informed of the decision, which shall be final, and the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the agreement had not been submitted.~~

~~_____ (2) If UPPAC accepts a stipulated agreement for probation or a letter of reprimand, this is a final USOE administrative action, and UPPAC Executive Secretary shall notify the parties of the decision and shall direct the letter of reprimand to be sent or probation to begin.~~

~~_____ (3) If UPPAC accepts a stipulated agreement for suspension or revocation of an educator's license, the agreement shall be forwarded to the Board for consideration.~~

~~_____ (4) If the Board rejects the agreement, the Executive Secretary shall notify the parties of the decision and the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the agreement had not been submitted.~~

~~_____ E. If, after negotiating a stipulated agreement, a respondent fails to sign or respond to a proffered agreement within 30 days after the agreement is mailed, UPPAC or the Executive Secretary shall direct the prosecutor to prepare findings in default consistent with Section R686-100-7.~~

~~F. The terms and conditions of a stipulated agreement are protected under Section 63G-2-304(9) and (24), unless waived by the educator. The disposition (such as suspension for a minimum of two years, revocation, probation) of the stipulated agreement is public information, upon request consistent with Section 63G-2-204.~~

R686-100-7. Default Procedures.

~~A. If a respondent does not respond to a complaint or a stipulated agreement within 30 days from the date the complaint or stipulated agreement was served, the Executive Secretary may issue an order of default against respondent consistent with the following:~~

~~(1) The prosecutor shall prepare and serve on respondent an order of default including a statement of the grounds for default, and a recommended disposition if respondent fails to file a response to a complaint or respond to a proffered stipulated agreement.~~

~~(2) Ten (10) days following service of the order of default, the prosecutor shall attempt to contact respondent by telephone or electronically. UPPAC shall maintain documentation of attempts toward written, telephonic or electronic contact.~~

~~(3) Respondent has 20 days following service of the order of default to respond to UPPAC. If UPPAC receives a response from respondent to a default order before the end of the 20 day default period, UPPAC shall allow respondent a final 10 day period to respond to a complaint or stipulated agreement.~~

~~C. Except as provided in R686-100-7D, a default judgment may result in a recommendation to the Board for revocation or for a suspension of no less than five years.~~

~~D. A default judgment shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in 53A-6-501(2).~~

~~KEY: teacher licensing, conduct, hearings~~

~~Date of Enactment or Last Substantive Amendment: May 8, 2015~~

~~Notice of Continuation: February 1, 2013~~

~~Authorizing, and Implemented or Interpreted Law: 53A-6-306(1)(a)]~~

**Professional Practices Advisory
Commission, Administration
R686-101**

**UPPAC Hearing Procedures and
Reports**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 39390

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 345, Education Abuse Policy, 2015 General Session, changed rulemaking authority from UPPAC to the

Utah State Board of Education (Board). This rule is repealed in response to the legislation.

SUMMARY OF THE RULE OR CHANGE: Rule R686-101 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-6-306(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: It is anticipated that there is likely no cost or savings to the state budget. Rule R686-101 is repealed and will be replaced with a new Board rule under Title R277. (DAR NOTE: The proposed new rules are Rule R277-200 under DAR No. 39382, Rule R277-201 under DAR No. 39383, Rule R277-202 under DAR No. 39384, Rule R277-203 under DAR No. 39385, Rule R277-204 under DAR No. 39386, Rule R277-205 under DAR No. 39387, and Rule R277-206 under DAR No. 39388 in this issue, June 1, 2015, of the Bulletin.)

◆ LOCAL GOVERNMENTS: It is anticipated that there is likely no cost or savings to local government. Rule R686-101 is repealed and will be replaced with a new Board rule under Title R277.

◆ SMALL BUSINESSES: It is anticipated that there is likely no cost or savings to small businesses. Rule R686-101 is repealed and will be replaced with a new Board rule under Title R277.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is anticipated that there is likely no cost or savings to persons other than small businesses, businesses, or local government entities. Rule R686-101 is repealed and will be replaced with a new Board rule under Title R277.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely no compliance costs for affected persons. Rule R686-101 is repealed and will be replaced with a new Board rule under Title R277.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

PROFESSIONAL PRACTICES ADVISORY
COMMISSION

ADMINISTRATION

250 E 500 S

SALT LAKE CITY, UT 84111

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

~~[R686. Professional Practices Advisory Commission, Administration.~~

~~R686-101. UPPAC Hearing Procedures and Reports.~~

~~R686-101-1. Definitions.~~

~~A. "Administrative hearing" means a formal adjudicative proceeding consistent with 53A-6-601. The Utah State Board of Education and Utah State Office of Education licensing process is not governed by the Utah Administrative Procedures Act, Title 63G, Chapter 4.~~

~~B. "Answer" means a written response to a complaint filed by USOE alleging educator misconduct. An answer must be filed within 30 days of receipt of a complaint. Failure to file an answer to a complaint shall result in a default, consistent with R686-100-5E.~~

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

~~D. "Complaint" means a written allegation or charge against an educator filed by USOE against the educator.~~

~~E. "Complainant" means the Utah State Office of Education.~~

~~F. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file owned and maintained on all licensed Utah educators. The file includes information such as:~~

- ~~(1) personal directory information;~~
- ~~(2) educational background;~~
- ~~(3) endorsements;~~
- ~~(4) employment history; and~~
- ~~(5) a record of disciplinary action taken against the educator's license.~~

~~G. "Days": in calculating any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included; the last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. Saturdays, Sundays and legal holidays shall not be included in calculating the period of time if the period prescribed or allowed is less than seven days, but shall be included in calculating periods of seven or more days.~~

~~H. "Educator" means a person who currently holds a license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.~~

~~I. "Educator paper licensing file" means the file maintained securely by UPPAC on an educator. The file is opened following UPPAC's direction to investigate alleged misconduct. The file contains the original notification of misconduct, subsequent correspondence, the investigative report, and the final disposition of the case.~~

~~J. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of UPPAC.~~

~~K. "Final action" means any action by UPPAC or the Board which concludes an investigation of an allegation of misconduct against a licensed educator.~~

~~L. "Hearing" means an administrative proceeding held pursuant to Section 53A-6-601, is a formal adjudication in which allegations made in a complaint are examined before a hearing officer and UPPAC hearing panel, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing, the hearing officer, after consulting with members of the UPPAC hearing panel, prepares a hearing report and submits it to the Executive Secretary.~~

~~M. "Hearing officer" means a person who is experienced in matters relating to administrative procedures, education and education law and is either a member of the Utah State Bar Association or a person not a member of the bar who has received specialized training in conducting administrative hearings, and is appointed by the Executive Secretary at the request of UPPAC to manage the proceedings of a hearing. The hearing officer may not be an acting member of UPPAC. The hearing officer has broad authority to regulate the course of the hearing and dispose of procedural requests but shall not have a vote as to the recommended disposition of a case.~~

~~N. "Hearing panel" means a hearing officer and three or more members of UPPAC agreed upon by UPPAC to assist the hearing officer in conjunction with the hearing panel in conducting a hearing and preparing a hearing report.~~

~~O. "Hearing report" means a report prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing. The report includes a recommended disposition, detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent, and applicable law and rule.~~

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

~~Q. "License" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the license to provide professional services in the state's public schools.~~

~~R. "Party" means the complainant or the respondent.~~

~~S. "Prosecutor" means the attorney designated by the USOE to represent the complainant and present evidence in support of the complaint. The prosecutor may also be the investigator, but does not have to be.~~

~~T. "Recommended disposition" means a recommendation provided by a UPPAC investigator for resolution of an allegation.~~

~~U. "Revocation" means a permanent invalidation of a Utah educator license consistent with R277-517.~~

~~V. "Respondent" means the party against whom a complaint is filed or an investigation is undertaken.~~

~~W. "Stipulated agreement" means an agreement between a respondent/educator and the USOE/Board or between a respondent/educator and UPPAC under which disciplinary action~~

against an educator's license status shall be taken, in lieu of a hearing. At any time after an investigative letter has been sent, a stipulated agreement may be negotiated between the parties and becomes binding when approved by the Board, if necessary, or UPPAC if Board approval is not necessary.

X. "Suspension" means an invalidation of a Utah educator license. A suspension may include specific conditions that an educator shall satisfy and may identify a minimum time period that shall elapse before the educator can request a reinstatement hearing before UPPAC.

Y. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.

Z. "UPPAC disciplinary letters or action" means letters sent or action taken by UPPAC informing the educator of licensing disciplinary action not rising to the level of license suspension. Disciplinary letters and action include the following:

(1) Letter of admonishment is a letter sent by UPPAC to the educator cautioning the educator to avoid or take specific actions in the future;

(2) Letter of warning is a letter sent by UPPAC to an educator for misconduct that was inappropriate or unethical that does not warrant longer term or more serious discipline;

(3) Letter of reprimand is a letter sent by UPPAC to an educator for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting more serious discipline; a letter of reprimand may provide specific directives to the educator as a condition for removal of the letter, and shall appear as a notation on the educator's CACTUS file;

(4) Probation is an action directed by UPPAC that involves some monitoring or supervision for an indefinite or designated time period usually accompanied by a disciplinary letter. In this time period, the educator may be subject to additional monitoring by an identified person or entity and the educator may be asked to satisfy certain conditions in order to have the probation lifted. This discipline usually, but not always, is accompanied by a letter of warning or a letter of reprimand and shall appear as a notation on the educator's CACTUS file. Unless otherwise specified, the probationary period is at least two years and must be terminated through a formal petition by respondent.

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

R686-101-2. Authority and Purpose.

A. This rule is authorized by Section 53A-6-306(1)(a) which directs UPPAC to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures regarding UPPAC hearings and hearing reports.

R686-101-3. Scheduling a Hearing.

A. Scheduling the hearing: Following receipt of an answer by respondent requesting a hearing:

(1) UPPAC shall select panel members.

(2) The Executive Secretary shall appoint a hearing officer from among a list of hearing officers identified by the state procurement process and approved by UPPAC.

(3) UPPAC shall schedule the date, time, and place for the hearing.

(4) The date for the hearing shall be scheduled not less than 25 days nor more than 180 days from the date the answer is received by the Executive Secretary. The required scheduling periods may be waived by mutual written consent of the parties or by UPPAC for good cause shown.

B. Change of hearing date:

(1) A request for change of hearing date by any party shall be submitted in writing, include a statement of the reasons for the request, and be received by the Executive Secretary at least five days prior to the scheduled date of the hearing.

(2) The Executive Secretary shall determine whether the cause stated in the request is sufficient to warrant a change.

(a) If the cause is found to be sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.

(b) If the cause is found to be insufficient, the Executive Secretary shall immediately notify the parties that the request has been denied.

(c) The Executive Secretary and the parties may waive the time period required for requesting a change of hearing date for compelling circumstances.

R686-101-4. Appointment and Duties of the Hearing Officer and Hearing Panel.

A. Hearing officer: The Executive Secretary shall appoint a hearing officer at the request of UPPAC to chair the hearing panel and conduct the hearing:

(1) The selection of hearing officers shall be on a rotating basis, to the extent practicable, from the list of available hearing officers.

(2) The selection of a hearing officer shall be made based on availability of individual hearing officers and whether any financial or personal interest or prior relationship with parties might affect the hearing officer's impartiality or otherwise constitute a conflict of interest.

(3) The Executive Secretary shall provide such information about the case as necessary to determine whether the hearing officer has a conflict of interest and shall disqualify any hearing officer that cannot serve under the Utah Rules of Professional Conduct.

(4) Duties of a hearing officer. A hearing officer:

(a) may require the parties to submit briefs and lists of witnesses prior to the hearing;

(b) presides at the hearing and regulates the course of the proceedings;

(c) administers oaths to witnesses as follows: "Do you swear or affirm that the testimony you will give is the truth?";

(d) may take testimony, rule on questions of evidence, and ask questions of witnesses to clarify specific issues;

(e) prepares and submits a hearing report at the conclusion of the proceedings in consultation with panel members and the timelines of this rule.

B. UPPAC panel members: UPPAC shall agree upon three or more UPPAC members to serve as members of the hearing panel. As directed by UPPAC, former UPPAC members who have served on UPPAC within the three years prior to the date set for the

hearing may be used as panel members. The majority of panel members shall be current UPPAC members.

(1) The selection of panel members shall be on a rotating basis to the extent practicable. However, the selection shall also accommodate the availability of panel members.

(2) If the respondent is a teacher, at least one panel member shall be a teacher. If the respondent is a non-teacher educator, at least one panel member shall be a non-teacher educator unless the respondent accepts a different configuration.

(3) Duties of UPPAC panel members include:

(a) assisting the hearing officer by providing information concerning professional standards and practices of educators in the respondent's particular field of practice and in the situations alleged;

(b) asking questions of all witnesses to clarify specific issues;

(c) reviewing all evidence and briefs, if any, presented at the hearing;

(d) assisting the hearing officer in preparing the hearing report.

(4) The panel members may receive documents or information no more than 30 minutes prior to the hearing, including the complaint and response, and a list of witnesses who shall participate in the hearing, other materials as directed by the hearing officer, or additional materials agreed to by the parties.

(5) The Executive Secretary may make an emergency substitution of a panel member for cause with the consent of the parties. The agreement should be in writing. Parties may agree to a two-member UPPAC panel in an emergency situation. If parties do not agree, the hearing shall be rescheduled.

C. Disqualification of the hearing officer or a panel member:

(1) Hearing officer:

(a) A party may seek disqualification of a hearing officer by submitting a written request for disqualification to the Executive Secretary, which request must be received not less than 15 days before a scheduled hearing. The Executive Secretary shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and sufficient, shall appoint a new hearing officer and, if necessary, reschedule the hearing. A hearing officer may recuse himself from a hearing if, in the hearing officer's opinion, his participation would violate any of the Utah Rules of Professional Conduct consistent with the Supreme Court Rules of Professional Practice.

(b) If the Executive Secretary denies the request, the party requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may submit a written appeal of the denial to the State Superintendent, which request must be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, the State Superintendent shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.

(c) The decision of the State Superintendent is final.

(d) Failure of a party to meet the time requirements of R686-101-4C(1)(b) shall result in denial of the request or appeal; if the Executive Secretary fails to meet the time requirements, the request or appeal shall be approved.

(2) UPPAC panel member:

(a) A UPPAC member shall disqualify himself as a panel member due to any known financial or personal interest, prior relationship, personal and independent knowledge of the persons or issues in the case, or other association that the panel member believes would compromise the panel member's ability to make an impartial decision.

(b) A party may seek disqualification of a UPPAC panel member by submitting a written request for disqualification to the hearing officer, or the Executive Secretary if there is no hearing officer; the request shall be received not less than 15 days before a scheduled hearing. The hearing officer, or the Executive Secretary, if there is no hearing officer, shall review the request and supporting evidence and, upon a finding that the reasons for the request are substantial and compelling, shall disqualify the panel member. If the disqualification leaves the hearing panel with fewer than three UPPAC panel members, UPPAC shall appoint a replacement and the Executive Secretary shall, if necessary, reschedule the hearing.

(c) If the request is denied, the party requesting the disqualification shall be notified not less than ten days prior to the date of the hearing. The requesting party may file a written appeal of the denial to the State Superintendent, which request shall be received not less than five days prior to the hearing date. If the State Superintendent finds that the appeal is justified, he shall direct the hearing officer, or the Executive Secretary if there is no hearing officer, to replace the panel member.

(d) If a disqualification leaves the hearing panel with fewer than three UPPAC panel members, UPPAC shall agree upon a replacement and the Executive Secretary shall, if necessary, reschedule the hearing.

(e) The decision of the State Superintendent is final.

(f) Failure of a party to meet the time requirements of R686-101-4C(2)(e) shall result in denial of the request or appeal; if the hearing officer fails to meet the time requirements, the request or appeal shall be approved.

D. The Executive Secretary may, at the time he selects the hearing officer or panel members, select alternative hearing officers or panel members following the process for selecting those individuals. Substitution of alternative panel members requires only notice to both parties.

R686-101-5. Preliminary Instructions to Parties to a Hearing.

A. Not less than 25 days before the date of a hearing the Executive Secretary shall provide the parties with the following information:

(1) Date, time, and location of the hearing;

(2) Names and LEA affiliations of the panel members, and the name of the hearing officer;

(3) Procedures for objecting to any member of the hearing panel; and

(4) Procedures for requesting a change in the hearing date.

B. Not less than 20 days before the date of the hearing, the respondent and the complainant shall provide the following to the other party and to the hearing officer:

(1) A brief, if requested by the hearing officer, containing any procedural and evidentiary motions along with that party's position regarding the allegations. Submitted briefs shall include relevant laws, rules, and precedent;

(2) The name of the person who shall represent the party at the hearing, a list of witnesses expected to be called, a summary of the testimony which each witness is expected to present, and a summary of documentary evidence which shall be submitted.

(3) Following receipt of each party's witness list, each party may provide a list of anticipated rebuttal witnesses and evidence no later than 10 days prior to the hearing.

(4) No witness or evidence may be presented at the hearing if the opposing party has requested to be notified of such information and has not been fairly apprised at least 20 days prior to the hearing, or 10 days prior to the hearing if the witness or evidence is to be used for rebuttal purposes. The timeliness requirement may be waived by agreement of the parties or by the hearing officer upon a showing of good cause or by the hearing officer's determination that no prejudice has occurred to the opposing party. This restriction shall not apply to rebuttal witnesses whose testimony cannot reasonably be anticipated before the time of the hearing.

C. Not less than 10 days before the date of the hearing, the respondent and the complainant shall provide to the other party and the hearing officer the documents referenced on the summary of documentary evidence previously provided, to be entered as evidence in the hearing.

D. If a party fails to comply in good faith with a directive of the hearing officer, including time requirements, the hearing officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances including, in extreme cases of noncompliance, entry of a default against the offending party. Nothing in this Section prevents the use of rebuttal witnesses.

E. Parties shall provide materials to the hearing officer, panel members and UPPAC as directed by the hearing officer.

R686-101-6. Hearing Parties' Representation.

A. Complainant: The complainant shall be represented by a person appointed by the USOE prosecutor.

B. Respondent: A respondent may represent himself or be represented, at his own cost, by another person.

C. The informant has no right to individual representation at the hearing or to be present or heard at the hearing unless called as a witness.

D. The Executive Secretary shall receive timely notice in writing of representation by anyone other than the respondent.

R686-101-7. Discovery Prior to a Hearing.

A. Discovery is permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the appointed hearing officer.

B. Discovery, especially burdensome or unduly legalistic discovery, may not be used to delay a hearing.

C. Discovery may be limited by the hearing officer at his discretion or upon a motion by either party. The hearing officer rules on all discovery requests and motions.

D. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence shall be issued pursuant to Section 53A-6-306(2)(c) if requested by either party at least five working days prior to the hearing.

E. No expert witness report or testimony may be presented at the hearing unless the requirements of R686-101-11 have been met.

R686-101-8. Burden and Standard of Proof for UPPAC Proceedings.

A. In matters other than those involving applicants for licensing, and excepting the presumptions under R686-101-12F, the complainant shall have the burden of proving that action against the license is appropriate.

B. An applicant for licensing has the burden of proving that licensing is appropriate.

C. Standard of proof: The standard of proof in all UPPAC hearings is a preponderance of the evidence.

D. Evidence: The Utah Rules of Evidence are not applicable to UPPAC proceedings. The criteria to decide evidentiary questions shall be:

(1) reasonable reliability of the offered evidence;

(2) fairness to both parties; and

(3) usefulness to UPPAC in reaching a decision.

E. The hearing officer has the sole responsibility to determine the application of the hearing rules and the admissibility of evidence.

R686-101-9. Deportment.

A. Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during hearings, giving due respect to members of the hearing panel and complying with the instructions of the hearing officer. The hearing officer may exclude persons from the hearing room who fail to conduct themselves in an appropriate manner and may, in response to extreme instances of noncompliance, disallow testimony or declare an offending party to be in default.

B. Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process shall not harass, intimidate or pressure witnesses or other hearing participants, nor shall they direct others to harass, intimidate or pressure witnesses or participants.

R686-101-10. Hearing Record.

A. The hearing shall be recorded at UPPAC's expense, and the recording shall become part of the permanent case record, unless otherwise agreed upon by all parties.

B. Individual parties may, at their own expense, make recordings or transcripts of the proceedings with notice to the Executive Secretary.

C. If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.

D. All evidence and statements presented at a hearing shall become part of the permanent case file and shall not be removed except by direction of the hearing officer or order of the Board.

E. The USOE record of the proceedings may be reviewed upon request of a party under supervision of the Executive Secretary and only at the USOE.

R686-101-11. Expert Witnesses in UPPAC Proceedings.

~~_____ A. A party may call an expert witness at its own expense. Notice of intent of a party to call an expert witness, the identity and qualifications of such expert witness and the purpose for which the expert witness is to be called shall be provided to the hearing officer and the opposing party at least 15 days prior to the hearing date.~~

~~_____ B. The hearing officer may appoint any expert witness agreed upon by the parties or of the hearing officer's own selection. An expert so appointed shall be informed of his duties by the hearing officer in writing, a copy of which shall become part of the permanent case file. The expert shall advise the hearing panel and the parties of his findings and may thereafter be called to testify by the hearing panel or by any party. He may be examined by each party or by any of the hearing panel members.~~

~~_____ C. Defects in the qualifications of expert witnesses, once a minimum threshold of expertise is established, go to the weight to be given the testimony and not to its admissibility.~~

~~_____ D. Experts who are members of the complainant's staff or an LEA staff may testify and have their testimony considered as part of the record along with that of any other expert.~~

~~_____ E. Any report of an expert witness which a party intends to introduce into evidence shall be provided to the opposing party at least 15 days prior to the hearing date.~~

~~_____ F. The hearing officer may allow testimony by expert witnesses by mutual agreement of the parties or if the hearing officer allows the testimony.~~

R686-101-12. Evidence and Participation in UPPAC Proceedings.

~~_____ A. The hearing officer may not exclude evidence solely because it is hearsay.~~

~~_____ B. Each party has the right to call witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.~~

~~_____ C. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.~~

~~_____ D. If a case involves allegations of child abuse or of a sexual offense against a child, either party or a member of the hearing panel, the hearing officer may request that a minor be allowed to testify outside of the respondent's presence. If the hearing officer determines that the minor would suffer serious emotional or mental harm or that the minor's testimony in the presence of the respondent would be unreliable, the minor's testimony may be admitted in one of the following ways:~~

~~_____ (1) An oral statement of a victim or witness younger than 18 years of age which is recorded prior to the filing of a complaint shall be admissible as evidence in a hearing regarding the offense if:~~

~~_____ (a) No attorney for either party is in the minor's presence when the statement is recorded;~~

~~_____ (b) The recording is visual and aural and is recorded;~~

~~_____ (c) The recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered; and~~

~~_____ (d) Each voice in the recording is identified.~~

~~_____ (2) The testimony of any witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and be transmitted by closed circuit equipment to another room~~

~~where it can be viewed by the respondent. All of the following conditions shall be observed:~~

~~_____ (a) Only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the minor may be with the minor during the testimony.~~

~~_____ (b) The respondent may not be present during the minor's testimony;~~

~~_____ (c) The hearing officer shall ensure that the minor cannot hear or see the respondent;~~

~~_____ (d) The respondent shall be permitted to observe and hear, but not communicate with the minor; and~~

~~_____ (e) Only hearing panel members, the hearing officer and the attorneys may question the minor.~~

~~_____ (3) If the hearing officer determines that the testimony of a minor shall be taken consistent with R686-101-12D, the child may not be required to testify in any proceeding where the recorded testimony is used.~~

~~_____ E. On his own motion or upon objection by a party, the hearing officer:~~

~~_____ (1) May exclude evidence that the hearing officer determines to be irrelevant, immaterial, or unduly repetitious;~~

~~_____ (2) Shall exclude evidence that is privileged under law applicable to administrative proceedings in Utah unless waived;~~

~~_____ (3) May receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;~~

~~_____ (4) May take official notice of any facts that could be judicially noticed under judicial or administrative laws of Utah, or from the record of other proceedings before the agency.~~

~~_____ F. Presumptions:~~

~~_____ (1) A rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor if the person has:~~

~~_____ (a) Been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor;~~

~~_____ (b) Failed to defend himself against such a charge when given a reasonable opportunity to do so; or~~

~~_____ (c) Voluntarily surrendered a license or allowed a license to lapse in the face of a charge of having committed a sexual offense against a minor.~~

~~_____ (2) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has been found pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing unfitness for duty, including immoral, unprofessional, or incompetent conduct, or other violation of standards of ethical conduct, performance, or professional competence. Evidence of such behavior may include:~~

~~_____ (a) conviction of a felony;~~

~~_____ (b) a felony charge and subsequent conviction for a lesser related charge pursuant to a plea bargain or plea in abeyance;~~

~~_____ (c) an investigation of an educator's license, certificate or authorization in another state; or~~

~~_____ (d) the expiration, surrender, suspension, revocation, or invalidation for any reasons of an educator license.~~

R686-101-13. Hearing Report.

~~_____ A. Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials permitted by the hearing officer, the hearing officer shall sign and issue a hearing report consistent with the recommendations of the panel that includes:~~

~~_____ (1) A detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted. Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence;~~

~~_____ (2) A statement of relevant precedent, if available;~~

~~_____ (3) A statement of applicable law and rule;~~

~~_____ (4) A recommended disposition of UPPAC panel members which shall be one or an appropriate combination of the following:~~

~~_____ (a) Dismissal of the complaint: The hearing report shall indicate that the complaint should be dismissed and that no further action should be taken.~~

~~_____ (b) Letter of admonishment: the hearing report shall indicate that respondent's conduct is of concern and shall direct the Executive Secretary to write a letter of admonishment, consistent with R277-517, to the respondent.~~

~~_____ (c) Letter of warning: the hearing report shall indicate that respondent's conduct is deemed unprofessional and shall direct the Executive Secretary to write a letter of warning, consistent with R277-517, to the respondent.~~

~~_____ (d) Letter of reprimand: the hearing report shall indicate that respondent's conduct is deemed unprofessional and shall direct the Executive Secretary to write a letter of reprimand, consistent with R277-517, to the respondent.~~

~~_____ (e) Probation: The hearing report shall determine whether the respondent's conduct was unprofessional, that the respondent shall not lose his license, but that a probationary period is appropriate. If the report recommends probation, the report shall designate:~~

~~_____ (i) it is the respondent's responsibility to petition UPPAC for removal of probation and letter of reprimand from the respondent's active licensing and CACTUS files;~~

~~_____ (ii) a probationary time period or specifically designate an indefinite period;~~

~~_____ (iii) conditions that can be monitored;~~

~~_____ (iv) if recommended by the panel, a person or entity to monitor a respondent's probation;~~

~~_____ (v) a statement providing for costs of probation;~~

~~_____ (vi) whether or not the respondent may work in any capacity in public education during the probationary period.~~

~~_____ (vii) a probation may be imposed substantially in the form of a plea in abeyance. The respondent's penalty is stayed subject to the satisfactory completion of probationary conditions. The decision shall provide for appropriate or presumed discipline should the probationary conditions not be fully satisfied.~~

~~_____ (f) Suspension: The hearing report shall recommend to the Board that the license of the respondent be suspended for a specific or indefinite period of time and until specified reinstatement conditions have been met before respondent may petition for reinstatement of his license.~~

~~_____ (g) Revocation: The hearing report may recommend to the State Board of Education that the license of the respondent be revoked.~~

~~_____ (5) Notice of the right to appeal; and~~

~~_____ (6) Time limits applicable to appeal.~~

~~_____ B. Processing the hearing report:~~

~~_____ (1) The hearing officer shall circulate the draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.~~

~~_____ (2) Hearing panel members shall notify the hearing officer of any changes to the report as soon as possible after receiving the report and prior to the 20 day completion deadline of the hearing report.~~

~~_____ (3) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with UPPAC.~~

~~_____ (4) The Executive Secretary may participate in UPPAC's deliberation as a resource to UPPAC in explaining the hearing report and answering any procedural questions raised by UPPAC members.~~

~~_____ (5) The hearing officer may confer with the Executive Secretary or the panel members or both while preparing the hearing report. The hearing officer may request the Executive Secretary to confer with the hearing officer and panel following the hearing.~~

~~_____ (6) The Executive Secretary may return a hearing report to a hearing officer if the Report is incomplete, unclear, or unreadable, or missing essential components or information.~~

~~_____ (7) If UPPAC finds that there have not been significant procedural errors, that recommendations are based upon a reasonable interpretation of the evidence presented at the hearing, and that all issues explained in the hearing report are adequately addressed in the conclusions of the report, UPPAC shall vote to uphold the hearing officer's and panel's report and do one of the following:~~

~~_____ (a) If the recommendation is for final action to be taken by UPPAC, UPPAC shall direct the Executive Secretary to prepare a corresponding final order and provide all parties with a copy of the order and hearing report. A copy of the order and the hearing report shall be placed in and become part of the permanent case file. The order shall be effective upon approval by UPPAC.~~

~~_____ (b) If the recommendation is for final action to be taken by the Board, the Executive Secretary shall forward a copy of the hearing report to the Board for its further action. A copy of the hearing report shall also be placed in and become part of the permanent case file.~~

~~_____ (8) If UPPAC determines that:~~

~~_____ (a) the hearing process had procedural errors;~~

~~_____ (b) the hearing officer's report is not based upon a reasonable interpretation of the evidence presented at the hearing;~~

~~_____ (c) that the conclusions and findings of the hearing report do not provide adequate guidance to the educator; or~~

~~_____ (d) that the findings or conclusions of the hearing report do not adequately address the evidence as outlined in the hearing report, the Board or UPPAC may:~~

~~_____ (i) direct the Executive Secretary to schedule the matter for rehearing before a hearing officer and panel; or~~

~~_____ (ii) direct the Executive Secretary to amend the hearing report to reflect the UPPAC decision.~~

~~_____ C. Consistent with Section 63G-2-301(2)(c), the final administrative disposition of all administrative proceedings of UPPAC contained in the recommended disposition section of the hearing report shall be public.~~

~~_____ D. A respondent's failure to comply with the terms of a final disposition that includes a probation or suspension of the respondent's license may result in additional discipline against the educator license.~~

~~_____ E. If a hearing officer fails to satisfy the responsibilities under this rule, UPPAC may:~~

~~_____ (1) notify the Utah State Bar of the failure;~~

~~_____ (2) reduce the hearing officer's compensation consistent with the failure;~~

~~_____ (3) take timely action to avoid disadvantaging either party; and~~

~~_____ (4) preclude the hearing officer from further employment by the Board for UPPAC purposes.~~

~~_____ F. Deadlines within this Section may be waived by the Executive Secretary or UPPAC for good cause shown.~~

~~_____ G. All criteria of letters of warning and reprimand, probation, suspension and revocation shall also apply to the comparable sections of the final hearing reports.~~

R686-101-14. Default.

~~_____ A. The hearing officer may prepare an order of default in a hearing report including a statement of the grounds for default and the recommended disposition if:~~

~~_____ (1) the respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice. The hearing officer may determine that the respondent has failed to attend a properly scheduled hearing if the respondent has not appeared within 30 minutes of the appointed time for the hearing to begin, unless the respondent shows good cause for failing to appear in a timely manner;~~

~~_____ (2) the respondent or the respondent's representative commits misconduct during the course of the hearing process.~~

~~_____ B. The recommendation of default may be executed by the Executive Secretary following all applicable time periods, without further action by UPPAC.~~

~~_____ C. Except as provided in R686-101, a default judgment may result in a recommendation to the Board for revocation or for a suspension of no less than five years.~~

~~_____ D. A default judgment shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in 53A-6-501(2).~~

R686-101-15. Appeal.

~~_____ A. UPPAC shall notify a respondent of a UPPAC recommendation for a suspension of two years or more or a revocation immediately following the UPPAC meeting finalizing the UPPAC recommendation.~~

~~_____ B. Either party may appeal a final recommendation of UPPAC for a suspension of the respondent's license for two or more years or a revocation to the State Superintendent. A request for review by the State Superintendent shall follow the procedures in R277-514-3 and be submitted in writing within 15 days from the date that UPPAC sends written notice to the parties of its recommendation.~~

~~_____ C. Either party may appeal the Superintendent's decision to the Board following the procedures in R277-514-4.~~

~~_____ D. A request for appeal to the State Superintendent or the Board shall include:~~

~~_____ (1) name, position, and address of appellant;~~

~~_____ (2) issue(s) being appealed; and~~

~~_____ (3) signature of appellant.~~

R686-101-16. Temporary Suspension of License Pending a Hearing.

~~_____ A. If the Executive Secretary determines, after affording respondent an opportunity to discuss allegations of misconduct, that reasonable cause exists to believe that the charges will be proven to be correct and that permitting the respondent to retain his license prior to hearing would create unnecessary and unreasonable risks for children, then the Executive Secretary may order immediate suspension of the Respondent's license pending final Board action.~~

~~_____ B. The formal UPPAC recommendation and evidence of the temporary suspension may not be introduced at the hearing.~~

~~_____ C. Notice of the temporary suspension shall be provided to other states under R277-514.~~

R686-101-17. Remedies for Individuals Beyond UPPAC Actions.

~~_____ Despite UPPAC or Board actions, informants or other injured parties who feel that their rights have been compromised, impaired or not addressed by the provisions of this rule, may appeal directly to district court.~~

KEY: hearings, reports

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

Authorizing, and Implemented or Interpreted Law: 53A-6-306(1)(a)]

**Professional Practices Advisory
Commission, Administration
R686-102
Request for Licensure Reinstatement
and Reinstatement Procedures**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 39391

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 345, Education Abuse Policy, 2015 General Session, changed rulemaking authority from UPPAC to the Utah State Board of Education (Board). This rule is repealed in response to the legislation.

SUMMARY OF THE RULE OR CHANGE: Rule R686-102 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-6-306(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** It is anticipated that there is likely no cost or savings to the state budget. Rule R686-102 is repealed and will be replaced with a new Board rule under Title R277. (DAR NOTE: The proposed new rules are Rule R277-200 under DAR No. 39382, Rule R277-201 under DAR No. 39383, Rule R277-202 under DAR No. 39384, Rule R277-203 under DAR No. 39385, Rule R277-204 under DAR No. 39386, Rule R277-205 under DAR No. 39387, and Rule R277-206 under DAR No. 39388 in this issue, June 1, 2015, of the Bulletin.)

◆ **LOCAL GOVERNMENTS:** It is anticipated that there is likely no cost or savings to local government. Rule R686-102 is repealed and will be replaced with a new Board rule under Title R277.

◆ **SMALL BUSINESSES:** It is anticipated that there is likely no cost or savings to small businesses. Rule R686-102 is repealed and will be replaced with a new Board rule under Title R277.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is anticipated that there is likely no cost or savings to persons other than small businesses, businesses, or local government entities. Rule R686-102 is repealed and will be replaced with a new Board rule under Title R277.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely no compliance costs for affected persons. Rule R686-102 is repealed and will be replaced with a new Board rule under Title R277.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

PROFESSIONAL PRACTICES ADVISORY
COMMISSION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

~~[R686. Professional Practices Advisory Commission, Administration.~~

~~R686-102. Request for Licensure Reinstatement and Reinstatement Procedures.~~

~~R686-102-1. Definitions.~~

~~A. "Administrative hearing" means a formal adjudicative proceeding consistent with 53A-6-601. The Utah State Board of Education and Utah State Office of Education licensing process is not governed by the Utah Administrative Procedures Act, Title 63G, Chapter 4.~~

~~B. "Allegation of misconduct" means a written or oral report alleging that an educator has engaged in unprofessional or criminal conduct; is unfit for duty; has lost his license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in R277-515.~~

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

~~D. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file owned and maintained on all licensed Utah educators. The file includes information such as:~~

~~(1) personal directory information;~~

~~(2) educational background;~~

~~(3) endorsements;~~

~~(4) employment history; and~~

~~(5) a record of disciplinary action taken against the educator's license.~~

~~E. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of UPPAC.~~

~~F. "Hearing" means an administrative proceeding held pursuant to Section 53A-6-601, is a formal adjudication in which allegations made in a complaint are examined before a hearing officer and UPPAC hearing panel, where each party has the opportunity to present witnesses and evidence relevant to the complaint and respond to witnesses or evidence presented by the other party. At the conclusion of a hearing, the hearing officer, after consulting with members of the UPPAC hearing panel, prepares a hearing report and submits it to the Executive Secretary.~~

~~G. "Hearing officer" means a person who is experienced in matters relating to administrative procedures, education and education law and is either a member of the Utah State Bar Association or a person not a member of the bar who has received specialized training in conducting administrative hearings, and is appointed by the Executive Secretary at the request of UPPAC to manage the proceedings of a hearing. The hearing officer may not be an acting member of UPPAC. The hearing officer has broad authority to regulate the course of the hearing and dispose of procedural requests but shall not have a vote as to the recommended disposition of a case.~~

~~H. "Hearing panel" means a hearing officer and three or more members of UPPAC agreed upon by UPPAC to assist the hearing officer in conjunction with the hearing panel in conducting a hearing and preparing a hearing report.~~

I. "Hearing report" means a report prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing. The report includes a recommended disposition, detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent, and applicable law and rule.

J. "License" means a teaching or administrative credential, including endorsements, which is issued by a state to signify authorization for the person holding the license to provide professional services in the state's public schools.

K. "Petitioner" means the individual seeking an educator license following denial of a license or seeking reinstatement following license suspension or in the event of compelling circumstances, following revocation.

L. "Prosecutor" means the attorney designated by the USOE to represent the complainant and present evidence in support of the complaint. The prosecutor may also be the investigator, but does not have to be.

M. "Suspension" means an invalidation of a Utah educator license. A suspension may include specific conditions that an educator shall satisfy and may identify a minimum time period that shall elapse before the educator can request a reinstatement hearing before UPPAC.

N. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.

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

R686-102-2. Authority and Purpose.

A. This rule is authorized by Section 53A-6-306(1)(a) directing UPPAC to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures regarding educator license reinstatement.

R686-102-3. Application for Licensing Following Denial or Loss of License.

A. An individual who has been denied licensing or lost his license through suspension, or through surrender of a license or allowing a license to lapse in the face of an allegation of misconduct, may request review to consider reinstatement of a license. The request for review shall be in writing and addressed to the UPPAC Executive Secretary at the USOE mailing address, and shall have the following information:

- (1) name and address of the individual requesting review;
- (2) action being requested;
- (3) specific evidence and documentation of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations from UPPAC or the Board;
- (4) reason(s) that individual seeks reinstatement;
- (5) signature of person requesting review.

B. The Executive Secretary shall review the request with UPPAC:

(1) If UPPAC determines that the request is incomplete or invalid, the person requesting reinstatement shall be notified of the denial.

(2) If UPPAC determines that the request is complete, timely and appropriate, a hearing shall be scheduled and held as provided under Section R686-102-4.

C. Burden of Proof: The burden of proof for recommending or granting reinstatement of a license shall fall on the individual seeking the reinstatement.

(1) Individuals requesting reinstatement of a suspended license shall:

(a) show sufficient evidence of compliance with any conditions imposed in the past disciplinary action;

(b) provide sufficient evidence to the reinstatement hearing panel that the educator shall not engage in recurrences of the actions that gave rise to the suspension and that reinstatement is appropriate;

(c) undergo a criminal background check consistent with Utah law and R277-517; and

(d) provide materials for review by the hearing panel that demonstrate petitioner's compliance with directives from UPPAC or the Board found in petitioner's original stipulated agreement or hearing report.

(2) Individuals requesting licensing following denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable, when requesting reinstatement.

D. An individual whose license has been suspended or revoked in another state shall seek reinstatement in the other state prior to approval of a request for a reinstatement hearing.

R686-102-4. Reinstatement Hearing Procedures.

A. The individual seeking reinstatement of his license shall be the petitioner.

B. A hearing officer shall preside over the hearing and shall rule on all procedural issues as they arise.

C. A hearing panel, made up of three members of UPPAC, shall hear the evidence and along with the prosecutor and hearing officer, question the petitioner regarding the appropriateness of reinstatement.

D. A petitioner may be represented by counsel and may present evidence and witnesses.

E. Presentation of evidence and witnesses by either party shall be consistent with R686-101.

F. The hearing officer shall direct one or both parties to explain the background of a case to provide necessary information about the initial misconduct and subsequent UPPAC and Board action to panel members at the beginning of the hearing.

G. The petitioner shall present documentation or evidence that supports reinstatement.

H. The State, represented by the UPPAC prosecutor, shall present any evidence or documentation that explains and supports the State's recommendation in the matter.

I. Other evidence or witnesses may be presented by either party and shall be presented consistent with R686-101.

J. The petitioner shall:

(1) focus on the petitioner's actions and rehabilitative efforts and performance following license denial or suspension;

(2) explain item by item how each condition of the hearing report or stipulated agreement was satisfied;

~~(3) provide documentation in the form of evaluations, reports, or plans, as directed by the hearing report or stipulated agreement of satisfaction of all required and outlined conditions;~~

~~(4) be prepared to completely and candidly respond to the UPPAC prosecutor and hearing panel questions about the misconduct that caused the license suspension, subsequent rehabilitation activities, any counseling or therapy related to the original misconduct, and work and professional actions and behavior between the suspension and reinstatement request;~~

~~(5) present and be prepared to question witnesses (including counselors, current employers, support group members) at the hearing who can provide substantive corroboration of rehabilitation or current professional fitness to be an educator;~~

~~(6) provide copies of all reports and documents to the UPPAC prosecutor and hearing officer at least five days before a reinstatement hearing; and~~

~~(7) bring eight copies of all documents or materials that shall be introduced at the hearing to the hearing.~~

~~K. The UPPAC prosecutor, the hearing panel and hearing officer shall thoroughly question the petitioner as to the petitioner's:~~

~~(1) specific and exact compliance with reinstatement requirements;~~

~~(2) counseling, if required for reinstatement. Petitioner shall state, under oath, that he provided all relevant information and background to his counselor or therapist;~~

~~(3) specific plans for avoiding previous misconduct; and~~

~~(4) demeanor and changed understanding of petitioner's professional integrity and actions consistent with R277-515.~~

~~L. The appointed hearing officer shall rule on procedural issues in a reinstatement hearing in a timely manner as they arise.~~

~~M. No more than 20 days following a reinstatement hearing, the hearing officer, with the assistance of the hearing panel, shall prepare a hearing report, which shall comply with the requirements set forth in R686-102-5, and which shall be provided to the UPPAC Executive Secretary.~~

~~(1) The hearing report shall be submitted to UPPAC at the next meeting following receipt by the Executive Secretary.~~

~~(2) If the recommendation in the hearing report is for reinstatement of an educator license that was suspended, UPPAC may do the following upon receipt of the hearing report:~~

~~(a) accept the recommendation as prepared in the hearing report;~~

~~(b) amend the recommendation with conditions or modifications to the panel's recommendation which shall be directed by UPPAC and prepared by the UPPAC Executive Secretary and attached to the hearing report;~~

~~(c) reject the recommendation.~~

~~(3) If UPPAC rejects a recommendation for reinstatement of an educator license, the Executive Secretary shall notify the educator within 20 working days of the UPPAC meeting in which the recommendation was rejected.~~

R686-102-5. Reinstatement Hearing Report.

~~A. A reinstatement hearing report shall:~~

~~(1) provide a summary of the background of the original disciplinary action;~~

~~(2) provide adequate information, including summary statements of evidence presented, documents provided, and petitioner's testimony and demeanor for both UPPAC and the Board to evaluate petitioner's progress and rehabilitation since petitioner's original disciplinary action;~~

~~(3) specifically address petitioner's appropriateness and fitness to be a public school educator again; and~~

~~(4) provide a statement that the hearing panel's recommendation to UPPAC was unanimous or provide the panel's vote concerning reinstatement.~~

~~B. The conclusions section of a reinstatement hearing report is public information. Other parts of the hearing report are protected.~~

~~C. If a license is reinstated, an educator's CACTUS file shall show that the educator's license was reinstated and the date of formal Board action reinstating the license.~~

KEY: licensure, reinstatement, hearings

Date of Enactment or Last Substantive Amendment: November 7, 2013

Authorizing, and Implemented or Interpreted Law: 53A-6-306(1)(a)]

**Professional Practices Advisory
Commission, Administration
R686-103
Utah Professional Practices Advisory
Commission Review of Licensure Due
to Background Check Offenses**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 39392

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 345, Education Abuse Policy, 2015 General Session, changed rulemaking authority from UPPAC to the Utah State Board of Education (Board). This rule is repealed in response to the legislation.

SUMMARY OF THE RULE OR CHANGE: Rule R686-103 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-6-306(1)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: It is anticipated that there is likely no cost or savings to the state budget. Rule R686-103 is

repealed and will be replaced with a new Board rule under Title R277. (DAR NOTE: The proposed new rules are Rule R277-200 under DAR No. 39382, Rule R277-201 under DAR No. 39383, Rule R277-202 under DAR No. 39384, Rule R277-203 under DAR No. 39385, Rule R277-204 under DAR No. 39386, Rule R277-205 under DAR No. 39387, and Rule R277-206 under DAR No. 39388 in this issue, June 1, 2015, of the Bulletin.)

◆ LOCAL GOVERNMENTS: It is anticipated that there is likely no cost or savings to local government. Rule R686-103 is repealed and will be replaced with a new Board rule under Title R277.

◆ SMALL BUSINESSES: It is anticipated that there is likely no cost or savings to small businesses. Rule R686-103 is repealed and will be replaced with a new Board rule under Title R277.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is anticipated that there is likely no cost or savings to persons other than small businesses, businesses, or local government entities. Rule R686-103 is repealed and will be replaced with a new Board rule under Title R277.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely no compliance costs for affected persons. Rule R686-103 is repealed and will be replaced with a new Board rule under Title R277.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

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

PROFESSIONAL PRACTICES ADVISORY
COMMISSION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

~~[R686. — Professional Practices Advisory Commission, Administration.~~

~~R686-103. Utah Professional Practices Advisory Commission Review of License Due to Background Check Offenses.~~

~~R686-103-1. Definitions.~~

~~———— A. "Applicant" means an individual seeking a clearance of a criminal background check pursuant to approval for an educational license at any stage of the licensing process from the USOE, including license renewal.~~

~~———— B. "Arrest" means a seizure or forcible restraint; the taking or keeping of a person in custody by legal authority, especially in response to a criminal charge; specifically the apprehension of someone for the purpose of securing the administration of the law. For purposes of this rule, "arrest" also means fingerprinting at the time of restraint or at a later time related to the cause for restraint.~~

~~———— C. "Board" means the Utah State Board of Education.~~

~~———— D. "Conviction" means the act or process of judicially finding someone guilty of a crime.~~

~~———— E. "Executive Committee" means a subcommittee of UPPAC consisting of the Executive Secretary, Chair, Vice-Chair, and one member of UPPAC at large. All Executive Committee members, excluding the Executive Secretary, shall be selected by UPPAC. Substitutes may be appointed from within UPPAC by the Executive Secretary as needed.~~

~~———— F. "Executive Secretary" means an employee of the Utah State Office of Education who is appointed by the State Superintendent of Public Instruction to serve as the executive officer, and a non-voting member, of UPPAC.~~

~~———— G. "License" means a teaching or administrative credential, including endorsements, which is issued by the Board to signify authorization for the person holding the license to provide professional services in Utah's public schools.~~

~~———— H. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as establishing under Section 53A-6-301.~~

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

~~R686-103-2. Authority and Purpose.~~

~~———— A. This rule is authorized by Section 53A-6-306(1)(a) which directs UPPAC to adopt rules to carry out its responsibilities under the law.~~

~~———— B. The purpose of this rule is to establish procedures for an applicant to proceed toward licensing or be denied to continue when an application or recommendation for licensing or renewal identifies offenses in the applicant's criminal background check. The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Section 63G-4-102(2)(d).~~

~~R686-103-3. Initial Submission and Evaluation of Information.~~

~~———— A. Upon receipt of information as the result of a fingerprint check of all applicable state, regional, and national criminal records files pursuant to Section 53A-6-401, the Executive Secretary shall make a determination to approve the applicant's~~

request for criminal background check clearance based on time-passed since offense, violent nature of the offense (student safety), involvement or non-involvement of students or minors in the offense, and other relevant factors, or refer the application to UPPAC for a decision and request further information and explanation from the applicant. The Executive Secretary may require the applicant to provide additional information, including:

(1) a letter of explanation for each reported offense that details the circumstances, the final disposition, and any explanation for the offense the applicant may want to provide UPPAC, including any advocacy for approving licensing;

(2) official documentation regarding each offense, including court records and police reports for each offense, or if both court records and police reports are not available, a letter on official police or court stationery from the appropriate court or police department involved, explaining why the records are not available.

B. UPPAC shall only consider an applicant's licensing request after receipt of all letters of explanation and documentation requested in good faith by the Executive Secretary.

C. If an applicant is under court supervision of any kind, including parole, informal or formal probation or plea in abeyance, there is a presumption that the individual shall not be approved for licensing until the supervision is successfully terminated.

D. It is the applicant's sole responsibility to provide the requested material to UPPAC.

E. Upon receipt of any requested documentation, including the applicant's written letters of explanation and advocacy, UPPAC shall either approve the applicant's request for criminal background check clearance; deny the applicant's licensing request; or seek further information, personally from the applicant or other sources, at the first possible meeting of UPPAC.

F. UPPAC has directed the Executive Secretary to approve the following without additional UPPAC review:

(1) singular offenses committed by an applicant, excluding offenses identified in R686-103-4G, if the arrest occurred more than two years prior to the date of submission to UPPAC for review;

(2) more than two offenses committed by the applicant, excluding offenses identified in R686-103-4G, if at least one arrest occurred more than five years prior to the date of submission to UPPAC for review; or

(3) more than two offenses committed by the applicant, excluding offenses identified in R686-103-4G, if all arrests for the offenses occurred more than 10 years prior to the date of submission to UPPAC for review.

G. UPPAC shall review all arrests and convictions for the following:

(1) convictions or pleas in abeyance for any offense where the arrest occurred less than two years prior to the date of submission to UPPAC;

(2) conviction(s) for felonies;

(3) arrests or convictions for sex-related or lewdness offenses;

(4) arrests or convictions for drug-related offenses where the charge or conviction is for a class A misdemeanor or higher; and

(5) convictions involving children in any way.

H. UPPAC directs the Executive Secretary to use reasonable discretion to interpret the information received from the Bureau of Criminal Identification (BCI) provided to BCI from multiple jurisdictions to comply with the provisions of R686-103-4F and G and to interpret strictly the provisions of R686-103-4F and G.

R686-103-4. Appeal.

A. Should UPPAC deny an applicant's licensing request, UPPAC shall inform the applicant in writing that the application for licensing has been denied and notify the applicant of the right to appeal that decision under this Rule.

B. The applicant shall have 30 days from notice provided under R686-103-3A to make formal written request for an appeal.

C. An applicant's request to appeal the denial of clearance shall follow the application criteria and format contained in R686-101 and shall include:

(1) name and address of the individual requesting review;

(2) action being requested;

(3) the grounds for the appeal, which are limited to:

(a) a mistake of identity;

(b) a mistake of fact regarding the information relied upon by UPPAC in making its decision;

(c) information that could not, with reasonable diligence, have been discovered and produced by the applicant previously and provided previously to UPPAC; or

(d) compelling circumstances that in the judgment of the Executive Committee warrant an appeal.

(4) signature of person requesting review.

D. The Executive Secretary shall make a determination regarding the grounds for appeal in a timely manner, inform the applicant in writing of the decision, and, if necessary, schedule an appeal hearing at the earliest possible date, consistent with the standard UPPAC meetings.

R686-103-5. Appeal Procedure.

A. An applicant shall have the right to be represented by an attorney at an appeal hearing under this Rule. UPPAC shall be represented by a person appointed by the Investigations Unit of the USOE.

B. The burden of proof at an appeal hearing shall be on the applicant to show that the actions of UPPAC in denying the applicant's licensing request were based on the grounds enumerated in R686-103-3C.

C. The hearing shall be heard before a panel (three members) of UPPAC or UPPAC, chosen under the same procedures and having the same duties as delineated in R686-101.

D. The Executive Secretary or UPPAC Chair shall conduct the hearing and act as hearing officer. The hearing officer's duties shall be the same duties as delineated in R686-101.

E. At the sole discretion of the hearing officer, the hearing shall be conducted consistent with R686-101, as applicable. All procedural matters shall be at the discretion of the hearing officer and the Executive Secretary who has the right to limit witnesses and evidence presented by the applicant in support of the appeal.

F. Within 20 days after the hearing, the Executive Secretary or UPPAC Chair shall issue a written report containing:

~~(1) detailed findings of fact related to the factual basis for the appeal;~~
~~(2) the decision and rationale of the hearing panel concerning the applicant's clearance of criminal background check request; and~~
~~(3) any time line or conditions recommended by the panel for a reapplication for clearance by the applicant.~~
~~G. The panel's recommendation shall be reviewed by UPPAC at the first reasonable opportunity.~~
~~H. UPPAC's decision, upon review of the panel's recommendation, is the final administrative decision.~~

~~KEY: educator license, appeals~~
~~Date of Enactment or Last Substantive Amendment: November 7, 2013~~
~~Notice of Continuation: October 5, 2012~~
~~Authorizing, and Implemented or Interpreted Law: 53A-6-306(1)~~

**Professional Practices Advisory
 Commission, Administration
 R686-104
 Alcohol Related Offenses**

NOTICE OF PROPOSED RULE
 (Repeal)
 DAR FILE NO.: 39393
 FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 345, Education Abuse Policy, 2015 General Session, changed rulemaking authority from UPPAC to the Utah State Board of Education (Board). This rule is repealed in response to the legislation.

SUMMARY OF THE RULE OR CHANGE: Rule R686-104 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-6-306(1)(a)

ANTICIPATED COST OR SAVINGS TO:
 ♦ THE STATE BUDGET: It is anticipated that there is likely no cost or savings to the state budget. Rule R686-104 is repealed and will be replaced with a new Board rule under Title R277. (DAR NOTE: The proposed new rules are Rule R277-200 under DAR No. 39382, Rule R277-201 under DAR No. 39383, Rule R277-202 under DAR No. 39384, Rule R277-203 under DAR No. 39385, Rule R277-204 under DAR No. 39386, Rule R277-205 under DAR No. 39387, and Rule R277-206 under DAR No. 39388 in this issue, June 1, 2015, of the Bulletin.)

♦ LOCAL GOVERNMENTS: It is anticipated that there is likely no cost or savings to local government. Rule R686-104 is repealed and will be replaced with a new Board rule under Title R277.
 ♦ SMALL BUSINESSES: It is anticipated that there is likely no cost or savings to small businesses. Rule R686-104 is repealed and will be replaced with a new Board rule under Title R277.
 ♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is anticipated that there is likely no cost or savings to persons other than small businesses, businesses, or local government entities. Rule R686-104 is repealed and will be replaced with a new Board rule under Title R277.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely no compliance costs for affected persons. Rule R686-104 is repealed and will be replaced with a new Board rule under Title R277.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PROFESSIONAL PRACTICES ADVISORY
 COMMISSION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

~~[R686. Professional Practices Advisory Commission, Administration.
 R686-104. Alcohol Related Offenses.
 R686-104-1. Definitions:
 A. "Alcohol related offense" means:
 (1) driving while intoxicated;
 (2) alcohol related reckless driving;
 (3) public intoxication;~~

- ~~_____ (4) driving with an open container;~~
- ~~_____ (5) unlawful sale or supply of alcohol;~~
- ~~_____ (6) unlawful purchase, possession, or consumption of alcohol;~~
- ~~_____ (7) unlawful permitting of consumption of alcohol by minors;~~
- ~~_____ (8) unlawful consumption of alcohol in public places.~~

~~_____ B. "Applicant" means an individual seeking a clearance of a criminal background check pursuant to approval for an education license at any stage of the licensing process from the USOE.~~

~~_____ C. "Board" means the Utah State Board of Education.~~

~~_____ D. "Licensed educator means an individual issued a teaching or administrative credential, including endorsements, issued by the Board to signify authorization for the person holding the license to provide professional services in the Utah's public schools.~~

~~_____ E. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.~~

R686-104-2. Authority and Purpose.

~~_____ A. This rule is authorized by Section 53A-6-306(1)(a) which directs UPPAC to adopt rules to carry out its responsibilities under the law.~~

~~_____ B. The purpose of this rule is to establish procedures for disciplining educators regarding alcohol-related offenses.~~

R686-104-3. Action by UPPAC if a Licensed Educator Has Been Convicted of an Alcohol-Related Offense.

~~_____ A. If as a result of a background check, it is discovered that a licensed educator has been convicted of an alcohol-related offense in the previous five years, the following minimum conditions shall apply:~~

~~_____ (1) One conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule;~~

~~_____ (2) Two convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the second conviction. If the educator is currently employed, UPPAC shall also send a letter of reprimand to the educator regarding the convictions with a copy to the educator's employer.~~

~~_____ (3) Three convictions--UPPAC shall recommend to the Board suspension of the educator's license.~~

~~_____ B. This rule does not preclude more serious or additional action by UPPAC against an educator for other related or unrelated offenses.~~

R686-104-4. UPPAC Action Towards an Individual Who Does Not Hold Licensing.

~~_____ If as a result of a background check, it is discovered that an individual inquiring about educator licensing, seeking information about educator licensing, or placed in a public school for a variety of purposes has been convicted of an alcohol-related offense within five years of the date of the background check, the following minimum conditions shall apply:~~

~~_____ A. One conviction--the individual shall be denied UPPAC clearance for a period of one year from the date of the arrest;~~

~~_____ B. Two convictions--the individual shall be denied UPPAC clearance for a period of two years from the date of the most recent arrest and the applicant shall present documentation of clinical treatment before UPPAC clearance shall be considered; and~~

~~_____ C. Three convictions--UPPAC shall recommend denial of clearance.~~

R686-104-5. Previous Clearance.

~~_____ If the applicant or licensed educator presents documentation to UPPAC that recently discovered conviction(s) have previously been addressed by the UPPAC, UPPAC need not reconsider the conviction(s) absent additional convictions of the applicant or licensed educator.~~

KEY: educators, disciplinary actions

Date of Enactment or Last Substantive Amendment: September 10, 2013

Notice of Continuation: May 16, 2013

Authorizing, and Implemented or Interpreted Law: 53A-6-306(1)(a)]

Professional Practices Advisory Commission, Administration

R686-105

Drug Related Offenses

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 39394

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 345, Education Abuse Policy, 2015 General Session, changed rulemaking authority from UPPAC to the Utah State Board of Education (Board). This rule is repealed in response to the legislation.

SUMMARY OF THE RULE OR CHANGE: Rule R686-105 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-6-306(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: It is anticipated that there is likely no cost or savings to the state budget. Rule R686-105 is repealed and will be replaced with a new Board rule under Title R277. (DAR NOTE: The proposed new rules are Rule R277-200 under DAR No. 39382, Rule R277-201 under DAR No. 39383, Rule R277-202 under DAR No. 39384, Rule R277-203 under DAR No. 39385, Rule R277-204 under DAR No. 39386, Rule R277-205 under DAR No. 39387, and Rule R277-206 under DAR No. 39388 in this issue, June 1, 2015, of the Bulletin.)

- ◆ LOCAL GOVERNMENTS: It is anticipated that there is likely no cost or savings to local government. Rule R686-105 is repealed and will be replaced with a new Board rule under Title R277.
- ◆ SMALL BUSINESSES: It is anticipated that there is likely no cost or savings to small businesses. Rule R686-105 is repealed and will be replaced with a new Board rule under Title R277.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is anticipated that there is likely no cost or savings to persons other than small businesses, businesses, or local government entities. Rule R686-105 is repealed and will be replaced with a new Board rule under Title R277.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are likely no compliance costs for affected persons. Rule R686-105 is repealed and will be replaced with a new Board rule under Title R277.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I believe that there is likely no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PROFESSIONAL PRACTICES ADVISORY COMMISSION ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Benjamin Rasmussen by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at benjamin.rasmussen@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

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

~~[R686. Professional Practices Advisory Commission, Administration.~~

~~R686-105. Drug Related Offenses.~~

~~R686-105-1. Definitions.~~

~~A. "Applicant" means an individual seeking a clearance of a criminal background check pursuant to approval for an education license at any stage of the licensing process from the USOE.~~

- ~~B. "Board" means the Utah State Board of Education.~~
- ~~C. "Conviction" means the final disposition of a judicial action for a drug related offense defined under 58-37 through 37e. It includes no contest pleas, pleas in abeyance, expunged convictions and drug related offenses that are plead down to lesser convictions.~~
- ~~D. "Drug" means any controlled substance designated as such in Section 58-37-4.~~
- ~~E. "Drug related offense" means any offense designated in Section 58-37 through 37e.~~
- ~~F. "Licensed educator" means an individual issued a teaching or administrative credential, including endorsements, issued by the Board to signify authorization for the person holding the license to provide professional services in the Utah's public schools.~~
- ~~G. "Utah Professional Practices Advisory Commission (UPPAC)" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established under Section 53A-6-301.~~

~~R686-105-2. Authority and Purpose.~~

- ~~A. This rule is authorized by Section 53A-6-306(1)(a) which directs UPPAC to adopt rules to carry out its responsibilities under the law.~~
- ~~B. The purpose of this rule is to establish procedures for disciplining educators regarding drug related offenses.~~

~~R686-105-3. Action by UPPAC if a Licensed Educator Has Been Convicted of a Drug Related Offense.~~

- ~~A. If as a result of a background check, it is discovered that a licensed educator has been convicted of a drug related offense in the previous ten years, the following minimum conditions shall apply:~~
 - ~~(1) One conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule;~~
 - ~~(2) Two convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the second conviction:

 - ~~(a) If the most recent conviction was more than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, UPPAC shall send a letter of warning to the educator.~~
 - ~~(b) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, UPPAC shall send a letter of reprimand to the educator and a letter to the district with notice of treatment.~~
 - ~~(c) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical treatment, UPPAC shall send a letter of reprimand to the educator and a copy of the letter of reprimand to the educator's employer and UPPAC may initiate an investigation of the educator based upon the drug offenses.~~~~
 - ~~(3) Three convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and~~

requiring documentation of clinical treatment following the third conviction.

(a) If the most recent conviction was more than five years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, UPPAC shall send a letter of warning to the educator.

(b) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, UPPAC shall send a letter of reprimand to the educator and send a copy of the letter of reprimand to the educator's employer.

(c) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical treatment, UPPAC shall recommend suspension of the educator's license to the Board.

B. This rule does not preclude more serious or additional action by UPPAC against an educator for other related or unrelated offenses.

~~R686-105-4. UPPAC Action Towards an Individual Who Does Not Hold Licensing.~~

If as a result of a background check, it is discovered that an individual inquiring about educator licensing, seeking information about educator licensing, or placed in a public school for a variety of purposes has been convicted of an drug related offense within ten years of the date of the background check, the following minimum conditions shall apply:

A. One conviction—the individual shall be denied UPPAC clearance for a period of one year from the date of the arrest.

B. Two convictions—the individual shall be denied UPPAC clearance for a period of three years from the date of the most recent arrest and the applicant shall present documentation of clinical treatment before UPPAC clearance shall be considered.

C. Three convictions—the individual shall be denied UPPAC clearance for a period of five years from the date of the most recent arrest. UPPAC shall require the applicant to present documentation of clinical treatment and may recommend denial of clearance.

~~R686-105-5. Previous Clearance.~~

If the applicant or licensed educator presents documentation to UPPAC that recently discovered conviction(s) have previously been addressed by UPPAC, UPPAC need not reconsider the conviction(s) absent additional convictions of the applicant or licensed educator.

KEY: educators, disciplinary actions

Date of Enactment or Last Substantive Amendment: September 10, 2013

Notice of Continuation: May 16, 2013

Authorizing, and Implemented or Interpreted Law: 53A-6-306(1)(a)]

**Public Service Commission,
Administration
R746-360
Universal Public Telecommunications
Service Support Fund**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39367

FILED: 05/14/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this proposed rule change is to clarify that the Public Service Commission (PSC) will not authorize reimbursement of costs from the Universal Public Telecommunications Service Support Fund (USF) whenever the PSC determines that such reimbursement would constitute an inefficient use of the funds or a use inconsistent with the public interest.

SUMMARY OF THE RULE OR CHANGE: The purpose of the change is to clearly reflect in the rule the PSC's existing practice, which is to protect the public interest and ensure the efficient use of USF funds by denying recovery of costs whenever the PSC finds reimbursement would result in an inefficient use of the funds or otherwise be contrary to the public interest.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-3-1 and Section 54-4-1 and Section 54-7-25 and Section 54-7-26 and Section 54-8b-12 and Section 54-8b-15

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This rule concerns USF funds, which are not a component of the state budget.

♦ **LOCAL GOVERNMENTS:** The rule change should not result in any anticipated costs or savings to local governments.

♦ **SMALL BUSINESSES:** The rule change should not result in any anticipated costs or savings to small business. Small businesses, like the general public, have an interest in efficient use of USF funds because, to the extent they utilize telephone service, they are subject to the surcharge that funds the USF. However, this rule change merely clarifies the PSC's long-time practice and, therefore, should not impact small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The rule change should not result in any anticipated costs or savings to the public. Individuals who utilize telephone

service have an interest in efficient use of USF funds because they are subject to the surcharge that funds the USF. However, this rule change merely clarifies the PSC's long-time practice and, therefore, should not impact them.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule will not generate compliance costs for any person or entity.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule change underscores the PSC's existing practice of authorizing distributions from the USF only when it finds the distribution constitutes an efficient use of USF funds and to be consistent with the public interest. The change should not result in a fiscal impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SERVICE COMMISSION
ADMINISTRATION
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:
♦ Jordan White by phone at 801-530-6712, or by Internet E-mail at jordanwhite@utah.gov
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Jordan White, Legal Counsel

R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.

R746-360-1. General Provisions.

A. Authorization -- Section 54-8b-15 authorizes the Commission to establish an expendable trust fund, known as the Universal Public Telecommunications Service Support Fund, the "universal service fund," "USF" or the "fund," to promote equitable cost recovery and universal service by ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates, consistent with the Telecommunications Act of 1996.

B. Purpose -- The purposes of these rules are:

1. to govern the methods, practices and procedures by which:
 - a. the USF is created, maintained, and funded by end-user surcharges applied to retail rates;
 - b. funds are collected for and disbursed from the USF to qualifying telecommunications corporations so that they ~~will~~

~~provide]are able to recover the reasonable and prudent costs of providing~~ basic telecommunications service ~~[at]while charging~~ just, reasonable and affordable rates; and,

2. ~~[to govern the relationship between the fund and the trust fund established under 54-8b-12, and establish the mechanism for the phase-out and expiration of the latter fund.]to ensure funds collected and disbursed from the USF are used efficiently and in the public interest.~~

C. Application of the Rules -- The rules apply to all retail providers that provide intrastate public telecommunications services.

R746-360-2. Definitions.

A. Affordable Base Rate (ABR) -- means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission. The Affordable Base Rate does not include the applicable USF retail surcharge, municipal franchise fees, taxes, and other incidental surcharges.

B. Average Revenue Per Line -- means the average revenue for each access line computed by dividing the sum of all revenue derived from a telecommunications corporation's provision of public telecommunications services, including, but not limited to, revenues received from the provision of services in both the interstate and intrastate jurisdictions, whether designated "retail," "wholesale," or some other categorization, all revenues derived from providing network elements, services, functionalities, etc. required under the Federal Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 or the Utah Telecommunications Reform Act, Laws of Utah 1995, Chapter 269, all support funds received from the Federal Universal Service Support Fund, and each and every other revenue source or support or funding mechanism used to assist in recovering the costs of providing public telecommunications services in a designated support area by that telecommunications corporation's number of access lines in the designated support area.

C. Basic Telecommunications Service -- means a local exchange service consisting of access to the public switched network; touch-tone, or its functional equivalent; local flat-rated, unlimited usage, exclusive of extended area service; single-party service with telephone number listed free in directories that are received free; access to operator services; access to directory assistance, lifeline and telephone relay assistance; access to 911 and E911 emergency services; access to long-distance carriers; access to toll limitation services; and other services as may be determined by the Commission.

D. Designated Support Area -- means the geographic area used to determine USF support distributions. A designated support area, or "support area," need not be the same as a USF proxy model's geographic unit. The Commission will determine the appropriate designated support areas for determining USF support requirements. Unless otherwise specified by the Commission, the designated support area for a rate-of-return regulated Incumbent telephone corporation shall be its entire certificated service territory located in the State of Utah.

E. Facilities-Based Provider -- means a telecommunications corporation that uses its own facilities, a combination of its own facilities and essential facilities or unbundled network elements obtained from another telecommunications corporation, or a telecommunications corporation which solely uses essential facilities or unbundled network elements obtained from another

telecommunications corporation to provide public telecommunications services.

F. Geographic Unit -- means the geographic area used by a USF proxy cost model for calculating costs of public telecommunications services. The Commission will determine the appropriate geographic area to be used in determining public telecommunications service costs.

G. Net Fund Distributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues collected by that company, when the former amount is greater than the latter amount.

H. Net Fund Contributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the latter amount is greater than the former amount.

~~I. Trust Fund -- means the Trust Fund established by 54-8b-12.~~

[J]. USF Proxy Model Costs -- means the total, jurisdictionally unseparated, cost estimate for public telecommunications services, in a geographic unit, based on the forward-looking, economic cost proxy model(s) chosen by the Commission. The level of geographic cost disaggregation to be used for purposes of assessing the need for and the level of USF support within a geographic unit will be determined by the Commission. These models shall be provided by the Commission by January 2, 2001.

[K]. Universal Service Fund (USF or fund) -- means the Universal Public Telecommunications Service Support Fund established by 54-8b-15 and set forth by this rule.

R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.

(A) Determination of Support Amounts --

(1) Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support area. To the extent the Commission finds that inclusion of any cost will result in an inefficient use of USF funds or in a use of USF funds that is inconsistent with the public interest, such cost will be excluded from total embedded costs. [2] Total embedded costs [2] shall include a weighted average rate of return on capital of the intrastate and interstate jurisdictions. For example, in the case of an Incumbent telephone corporation whose costs are allocated fifty percent to each jurisdiction and whose interstate return is 11.25 percent and whose intrastate return authorized by the Commission is 9 percent, the weighted average return on capital would be 10.125 percent.

(a) In order to determine the interstate return on capital to calculate the weighted average rate of return on capital for Incumbent telephone corporations, the Commission shall:

(i) use the prior year return reported by the National Exchange Carriers Association (NECA) to the Federal Communications Commission (FCC) on FCC Form 492 for Incumbent telephone corporations that do separations between

intrastate and interstate jurisdictions under 47 CFR Part 36. In the event that the Incumbent local telephone corporation uses a future test period as provided in Utah Code Ann. Subsection 54-4-4(3)(b)(i), the interstate return for these Incumbent telephone corporations shall be the average of the actual return for the prior three years as reported on FCC Form 492.

(ii) use NECA's most recent interstate allocation computation filed at the FCC under 47 CFR Part 69.606 and the actual interstate return on capital reported by NECA as described in R746-360-8 A.1.a.i. for average schedule Incumbent telephone corporations.

(iii) use the actual interstate return of an Incumbent telephone corporation's relevant tariff group reported to the FCC in its most recent FCC Form 492A for Incumbent telephone corporations that are regulated on a price-cap basis in the interstate jurisdiction.

(2) Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

(B) Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

(C) Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-9. One-Time Distributions From the Fund.

A. Applications for One-Time Distributions -- Telecommunications corporations, whether they are or are not receiving USF funds under R746-360-7 or R746-360-8, potential customers not presently receiving service because facilities are not available, or customers receiving inadequate service may apply to the Commission for one-time distributions from the fund for extension of service to a customer, or customers, not presently served or for amelioration of inadequate service.

1. These distributions are to be made only in extraordinary circumstances, when traditional methods of funding and service provision are infeasible.

2. One-time distributions will not be made for:

- a. New subdivision developments;
- b. Property improvements, such as cable placement, when associated with curb and gutter installations; or
- c. Seasonal developments that are exclusively vacation homes.

i. Vacation home is defined as: A secondary residence which is primarily used for recreation and is unoccupied for a period of four consecutive weeks per year.

3. An application for a one-time distribution may be filed with the Commission by an individual or group of consumers desiring telephone service or improved service, a telecommunications corporation on behalf of those consumers, the Division of Public

Utilities, or any entity permitted by law to request agency action. An application shall identify the service(s) sought, the area to be served and the individuals or entities that will be served if the one-time distribution is approved.

4. Following the application's filing, affected telecommunications corporations shall provide engineering, facilities, costs, and any other pertinent information that will assist in the Commission's consideration of the application.

5. In considering the one-time distribution application, the Commission will examine relevant facts including the type and grade of service to be provided, the cost of providing the service, the demonstrated need for the service, whether the customer is within the service territory of a telecommunications corporation, whether the proposed service is for a primary residence, the provisions for service or line extension currently available, and other relevant factors to determine whether the one-time distribution is in the public interest.

B. Presumed Reasonable Amounts and Terms -- Unless otherwise ordered by the Commission, the maximum one-time distribution will be no more than \$10,000 per customer for customers of rate-of-return regulated companies. For customers of non-rate of return companies, the maximum one-time distribution shall be calculated so that the required customer payments would equal the payments required from a customer of a rate-of-return regulated company. The Commission will presume a company's service or line extension terms and conditions reasonable, for a subscriber in connection with one-time universal service fund distribution requests, if the costs of service extension, for each extension, are recovered as follows:

1. For rate-of-return regulated Local Exchange Carriers who request USF One-Time Distribution support for facility placement: The first \$2,500 of cost coverage per account is provided by the company; and for cost amounts exceeding \$2,500 per account up to two times the statewide average loop investment per account for rate-of-return regulated telecommunication companies, as determined annually by the Division of Public Utilities, the company will pay 50 percent of the costs of the project.

2. For non-rate-of-return Local Exchange Carriers who request USF One-Time Distribution support for facility placement the first \$2,500 of cost coverage per account is provided by the company; and all other costs are shared between the customer and the fund as provided herein.

3. For projects that exceed \$2,500 per account, but are equal to or less than \$10,000 per account, the customer shall pay 25 percent of the costs that exceed \$2,500. For projects that exceed \$10,000 per account, but are equal to or less than \$20,000 per account, the customer shall pay 50 percent of the costs that are greater than \$10,000 plus the previously calculated amount. For projects exceeding \$20,000 per account the customer shall pay 75 percent of the cost above \$20,000 until the State Universal Service Support Fund has paid the maximum amount as provided herein, any project costs above that level will be paid for 100 percent by the customer.

4. The State Universal Service Support Fund shall pay the difference between the sum of the defined company contributions plus customer contribution amounts and the total project cost up to the maximum amount provided herein. To the extent the Commission finds that inclusion of any cost will result in an inefficient use of USF funds or in a use of USF funds that is inconsistent with the public interest, such cost will be excluded from the total project cost.

5. Other terms and conditions for service extension shall be reviewed by the Commission in its consideration of an application and may be altered by the Commission in order to approve the use of universal service funds through the requested one-time distribution.

C. Combination of One-Time Distribution Funds with Additional Customer Funds and Future Customer Payment Recovery --

1. At least 51 percent of the potential customers must be full-time residents in the geographic area being petitioned for and must be willing to pay the initial up-front contribution to the project as calculated by the Commission or its agent.

2. Qualified customers in the area shall be notified by the telecommunications corporation of the nature and extent of the proposed service extension including the necessary customer contribution amounts to participate in the project. Customer contribution payments shall be made prior to the start of construction. In addition to qualified customers, the Local Exchange Company needs to make a good faith effort to contact all known property owners within the geographic boundaries of the proposed project and invite them to participate on the same terms as the qualified customers. Local Exchange Companies may ask potential customers to help in the process of contacting other potential customers.

3. New developments and empty lots will not be considered in the cost analysis for USF construction projects unless the property owner is willing to pay the per account costs for each lot as specified in this rule.

4. Potential customers who are notified and initially decline participation in the line extension project, but subsequently decide to participate, prior to completion of the project, may participate in the project if they make a customer contribution payment, prior to completion of the project, of 105 percent of the original customer contribution amount.

5. For a period of five years following completion of a project, new customers who seek telecommunications service in the project area, shall pay a customer contribution payment equal to 110 percent of the amount paid by the original customers in the project.

6. The telecommunications corporation shall ensure that all customer contribution payments required by R746-360-9(C)(3), (4), and (5) are collected. Funds received through these payments shall be sent to the universal service fund administrator. The company is responsible for tracking and notification to the Commission when the USF has been fully compensated. All monies will be collected and reported by the end of each calendar year, December 31st.

7. For each customer added during the five-year period following project completion, the telecommunications corporation and new customers shall bear the costs to extend service pursuant to the company's service or line extension terms and conditions, up to the telecommunications corporation's original contribution per customer for the project and the customer contributions required by this rule. The company may petition the Commission for a determination of the recovery from the universal service fund and the new customer for costs which exceed this amount.

D. Impact of Distribution on Rate of Return Companies -- A one-time distribution from the fund shall be recorded on the books of a rate base, rate of return regulated LEC as an aid to construction and treated as an offset to rate base.

E. Notice and Hearing -- Following notice that a one-time distribution application has been filed, any interested person may request a hearing or seek to intervene to protect his interests.

F. Bidding for Unserved Areas -- If only one telecommunications corporation is involved in the one-time distribution request, the distribution will be provided based on the reasonable and prudent actual or estimated costs of that company. If additional telecommunications corporations are involved, the distribution will be determined on the basis of a competitive bid. The estimated amount of the one-time distribution will be considered in evaluating each bid. Fund distributions in that area will be based on the winning bid.

KEY: public utilities, telecommunications, universal service fund
Date of Enactment or Last Substantive Amendment: [September 1, 2014] 2015
Notice of Continuation: November 13, 2013
Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-7-25; 54-7-26; 54-8b-12; 54-8b-15

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

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 39395
 FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to change the method of payment to child care providers.

SUMMARY OF THE RULE OR CHANGE: Previously, the Department paid parents directly and the parent was responsible to pay the provider. The Department will now pay the provider directly. This change explains how those payments will be made and include some other housekeeping changes to mirror federal regulations.

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

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 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Jon Pierpont, Executive Director

R986. Workforce Services, Employment Development.

R986-700. Child Care Assistance.

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.]~~ If an overpayment is established and it is determined that the client was at fault in the creation of the overpayment, the client must repay the overpayment to the Department. In some situations, the client and provider may be jointly liable. In the case of joint liability, both parties can be held liable for the entire overpayment.

(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) the date the child care subsidy was issued;

(c) the subsidy amount for that provider;

(d) the copayment amount;

(e) information available in the Department Provider Portal. The Provider Portal provides a provider with computer access to limited, secure information; ~~[the date a two party check was mailed to the client;]~~

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

~~[(g)]~~ the month the client is scheduled for review ~~[or reestablishment;]~~;

~~[(h)]~~ the date the client's application was received; and

~~[(i)]~~ 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.

(10) If a client uses a child care provider at least eight hours during the first week of the calendar month, and that provider has been paid for that month, the Department will not pay another provider for child care for the rest of that month even if the client changed providers. However, if it is the provider that decided not to provide care and the client is required to change providers, the Department may pay that second provider for a portion of that same month.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

(a) providers regulated through Department of Health Child Care Licensing (CCL):

(i) licensed homes;

(ii) licensed child care centers; and

(iii) homes with a residential certificate.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers as defined in R430-8-3. Programs or centers must have a current letter of exempt status from CCL and have at least one person who is trained in first aid and infant/child CPR who must be with the children at all times including when the children are being transported in a vehicle. Current verification of first aid and CPR training must be provided to CCL prior to Department approval. License exempt centers will be required to have background checks on all staff pursuant to CCL rules; or

(ii) DWS Family, Friend and Neighbor providers (FFN) as approved by CCL. The requirements for FFN approval are provided in subsection (3) of this section and in Department policy.

(2) The following providers are not eligible for receipt of a CC payment:

(a) a provider living in the same home as the parent client unless the provider is caring for a child who has special needs who cannot be otherwise accommodated;

(b) a sibling of the child living in the home can never be approved, even for a special needs child;

(c) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(d) undocumented aliens;

(e) persons under age 18;

(f) a provider providing care for the child in another state;

(g) a provider who has committed an IPV as a provider, or as a recipient of any funds from the Office of Child Care including subsidy and grant payments, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run, any resulting overpayment has been satisfied, and the provider is otherwise eligible ~~[including meeting the requirements of background checks under R986-700-753];~~

(h) any provider disqualified under R986-700-718;

(i) a provider who does not provide necessary information or cooperate with a Department investigation or audit or is not an approved provider; ~~[of a potential overpayment;];~~ or

(j) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment.

(3) FFN providers will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed and verification has been provided to CCL:

- (a) complete, sign and submit an application to CCL;
- (b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy as explained in the orientation;
- (c) pass a home inspection as provided in Department policy;
- (d) complete an infant/child CPR training;
- (e) complete first aid training; and,
- (f) the provider and all individuals 12 years old or older living in the home where care is provided must submit to and pass a background check as provided in R986-700-751 et seq.

(4) A FFN provider must also comply with all Department policy including abiding by the ratio requirements.

(5) FFN approval must be renewed annually. Renewal information is found in Department or CCL policy. The FFN CC provider must complete and submit a renewal application, together with any information, verifications or releases required or requested by the Department or CCL, 30 calendar days before the expiration date of the current approval.

(6) FFN CCL provider approval is for the provider and the location(s) and is not assignable or transferable.

(7) A FFN provider or applicant has a right to file an appeal when an adverse action has been taken against him or her in regards to FFN approval status or health and safety compliance. Prior to filing an appeal, the provider or applicant must request a review with the CCL manager. If unresolved after that review, the provider may file an appeal by requesting a fair hearing with DWS in accordance with R986-1-123 et seq.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect copayments and any other fees 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, and 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) Providers must provide initial verification information to determine eligibility. Providers must also cooperate with an investigation or audit to determine ongoing eligibility or if eligibility was correctly determined. Cooperation includes providing information and verification and returning telephone calls or responding to emails from Department employees or other persons authorized by the Department to obtain information such as an employee of ORS in a timely manner. "A timely manner" is usually considered to be ten business days for written documentation and two business days to return a phone call or email request. Providing incomplete or incorrect information will be treated the same as a failure to provide information if the

~~incorrect or insufficient information results in an improper decision with regard to the eligibility. Failure to disclose a material fact that might affect the eligibility determination can also lead to criminal prosecution. If a provider fails to cooperate with an investigation or audit, provide any and all information or verification requested, or fails to keep records for one year, the provider without good cause, will no longer be an approved provider. Good cause is limited to circumstances where the provider can show that the reasons for the delay in filing were due to circumstances beyond the provider's control or were compelling and reasonable. The period the provider will not be an approved provider will be from the date the information or verification was due until when it is received by the Department.~~

~~[(4)5] If a provider accepts payment from funds provided by the Department for services which were not provided, the provider is responsible for repayment of the resulting overpayment [the provider may be referred for eriminal 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.] and there may be a disqualification period and/or criminal prosecution.~~

~~[(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) CCL will keep a list of all providers that have been disqualified as a provider [Records will be kept by the Department for individuals who are not approved providers and] or against whom a referral or complaint is received.~~

(7) All providers, except FFN 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.

(8) Providers are required to access the Provider Portal at jobs.utah.gov/childcare and:

- (a) submit and manage bank account information;
- (b) read and agree to the terms and conditions contained in the Provider Guide;
- (c) view child care payment information;
- (d) certify, every month, that the provider has provided care for the children on the "Children in Care" screen in the Provider Portal. If the provider does not certify this information by the date requested by the Department, payment will not be made until the information is provided and the payment may be prorated.
- (e) report the following changes within 10 days, or by the monthly certification date, whichever is sooner:
 - (i) a child is no longer in child care;
 - (ii) a child was not in child care during that month;
 - (iii) that the provider decided not to charge the full subsidy amount for one month. The provider should notify the Department and the difference will be deducted from the next payment;
 - (iv) that a child attended for less than eight hours in the first week of the month, payment for the month was received and the child is not expected to return; or
 - (v) a change in bank account information for direct deposit.

(9) Providers are required to submit a W-9 Form and the Department will issue a 1099 annually.

(10) A provider who provides services for any part of a month and then terminates services with the client/child during the

month, must reimburse the Department for the days when care was not provided. However, if it was necessary to remove the child from care because the child or others were endangered, and the incident was reported to CCL or local authorities, the Department may waive repayment.

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 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.~~

]

R986-700-714. CC Payment Method.

(1) ~~[CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name, except as noted in paragraph (2) below. The check is mailed to the client.]~~The Department will issue payment to the provider by direct deposit. For open, ongoing cases, payment will be issued on the first day of the month for services to be provided during that month. The provider must provide a valid bank account number before payment can be made. The provider is not an employee of the Department, the Office of Child Care, or the state of Utah even if the provider is only providing care for one client.

(2) ~~[CC payments will be made by electronic benefit transfer (EBT) either through a point of sale (POS) machine or interactive voice recording (IVR) system to authorized provider types as determined by the Department. The provider may elect which option of EBT to use. The provider must complete the application process and sign an agreement with the Department's contractor in order to be eligible to receive CC payments. If the provider elects to use the POS method of payment, the provider must lease a POS machine at the provider's own expense. Providers that completed the application process prior to August 1, 2011 need to provide additional information to the Department contractor. If the provider does not provide this additional information, the provider will not be eligible for CC payments as of January 1, 2012.]~~Under unusual or extraordinary circumstances, the Department can issue payment by check. If a provider cannot obtain a bank account for direct deposit, the provider must contact the Department and explain why direct deposit is not possible.

(3) In the event that a check is reported as lost or stolen, ~~[both the parent and—]~~the provider ~~[are]~~is required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form ~~[and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized].~~ If the original check has been redeemed, the Department will conduct an investigation and the provider, or the parent and provider in the case of a two party check, may be required to~~[a copy of the check will be reviewed and both~~

~~the parent and provider must]~~ provide a sworn, notarized statement that the signature on the endorsed check is a forgery. If the Department determines the redeemed check was a forgery, [F]the Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice ~~[to the client]~~ if:

(a) the Department has determined that the client or the provider was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the ~~[parent]~~provider; or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible including when a provider accepts payment but does not provide care. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

~~[(2) If a parent or provider commits an IPV, as defined in R986-100-117, the parent or provider will be responsible for repayment of the overpayment and will be disqualified from receipt of any funds from the Office of Child Care, including subsidy funds, grants and funds as a provider:~~

~~—(a) for a period of one year for the first IPV;~~

~~—(b) for a period of two years for the second IPV; and~~

~~—(c) for life for the third IPV.~~

~~—(3) If the client was at fault in the creation of an overpayment for any reason other than an IPV as provided in paragraph (2) above, the client will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.]~~(2) Even if CC funds are authorized by the Department, a CC provider cannot receive and retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds received and retained by a provider but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and may be disqualified from receipt of further CC subsidy funds as provided in R986-700-718. A provider is considered to have retained subsidy funds if the provider knew or should have known the child would not receive services that month and fails to notify the Department within ten days or the provider does not notify the Department within ten days of the end of the month when the child was not in care at least eight hours that month.

~~[(4)]~~ All CC overpayments must be repaid to the Department.

(a) Client ~~[O]~~verpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the

Department is at fault in the creation of an overpayment, the Department will deduct \$10 from each month's CC payment unless the client requests a larger amount.

(b) Provider overpayments. If a provider does not repay any outstanding overpayment within 30 days of notice of the overpayment, the Department will commence collection procedures which may include recouping the overpayment by deducting a portion of the overpayment from ongoing child care subsidies from the Department. This is true even if the child or client no longer receives child care from the provider. The decision whether to recoup the overpayment from ongoing child care payments or to commence collection procedures lies with the Department and not the provider or client/s.

(i) If the Department elects to recoup the overpayment from ongoing child care payments, and the overpayment is less than \$1,000, the Department will recoup the full amount within 90 days. If the overpayment is more than \$1,000 the Department will recoup the amount within six months. If the recoupment presents a hardship because it is more than 50% of the provider's ongoing monthly subsidy amount, the provider can contact the Department to discuss alternative arrangements for repayment.

(ii) If a provider stops providing care and has a balance due on an overpayment, and seeks approval to become a provider at a later date, approval cannot be granted until the overpayment is paid in full even if any disqualification period has expired.

([5]4) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

([6]5) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

(6) A CC provider may appeal an overpayment as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment.

(7) If a provider receives and retains three overpayments in a rolling 12 month period, the provider will be taken off the approved provider list until all outstanding overpayments are paid in full, even if the time frames outlined in subsection (3)(b)(i) of this section have not expired.

R986-700-718. Provider Disqualification.

(1) If a parent or provider commits an IPV, as defined in R986-100-117, the parent or provider will be responsible for repayment of the overpayment, if there is one, and will be disqualified from receipt of any funds from the Office of Child Care, including subsidy funds, grants and funds as a provider or as a parent:

(a) for a period of one year for the first IPV;

(b) for a period of two years for the second IPV; and

(c) for life for the third IPV.

(2) If the overpayment resulted from parent or provider fault not amounting to fraud or an agency error, the client and/or provider will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

~~[(1) A child care provider removing child care subsidy funds from a client's account by way of electronic benefit transfer (EBT) and interactive voice response (IVR), can only remove those funds from a client's account that are authorized by the Department for that provider. All providers receiving payment for child care services through an EBT may learn the exact amount authorized for that provider for each client by accessing the Department's Provider Payment Authorization website. Providers who remove more funds than authorized will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds as follows;~~

~~(a) if the provider has never removed unauthorized CC subsidy funds before, the Department will send a notice of agency action to the provider's last known address informing the provider of the unauthorized access and establishing an overpayment in the amount of the excess funds. If the provider repays the overpayment within six months of the date of the notice of agency action, no further action will be taken on that overpayment. If the provider does not repay the overpayment in full within six months of the notice of agency action the overpayment will become an IPV and the provider will be disqualified as a provider for one year;~~

~~(b) if the provider removes funds in excess of those authorized by the Department a subsequent time, there is no outstanding balance on any previous provider overpayment and the provider has never been disqualified, the subsequent overpayment is treated as a first overpayment. The provider will be given six months from the notice of agency action to repay the overpayment under these circumstances. If the subsequent overpayment is not repaid in full within six months of the notice of agency action, the provider will be disqualified for one year. If the provider was previously disqualified, the provider will be given 30 days from the notice of agency action to repay all outstanding overpayments in full, including all prior and subsequent overpayments. If the overpayment/s is/are not paid within 30 days, the provider will be disqualified for a period of two years. If the provider has never been disqualified but has a balance due on a previous overpayment, the provider will be given six months to repay the overpayment but may be disqualified if the first overpayment is not paid in time.~~

~~(c) a CC provider that removes unauthorized funds after having been disqualified for a two year period due to unauthorized removal of funds in paragraph (1)(b) of this subsection will be given 30 days from the notice of agency action to repay all outstanding overpayments in full. If the overpayment/s is not paid in full within 30 days, the provider will be permanently disqualified.~~

~~(d) each time a provider removes unauthorized funds is a separate offense even if the removal occurs on the same day. If, for instance, a provider removed funds from three separate clients on the same day, it would be three offenses. Likewise, if the provider removed unauthorized funds from the same client three times in different months, it would be three offenses.~~

~~(2) Even if CC funds are authorized under this section, a CC provider cannot remove, accept and/or retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds were accepted from a client or removed from a client's account as provided in this section but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and will~~

be disqualified from receipt of further CC subsidy funds in the same manner as provided in subsection (1) of this section.

~~(3) CC providers disqualified under subsections (1) or (2) of this section will be ineligible for receipt of quality grants awarded by the Department during the period of disqualification.~~

~~(4) A CC provider overpayment not paid in full within the time limits specified in subsection (1) of this section will be referred to collection and will be collected in the same manner as all public assistance overpayments. Payment of provider overpayments must be made to the Department and not to the client.~~

[(5)4] A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment or disqualification. A provider who has been ~~found ineligible~~disqualified may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ. If the provider fails to file an appeal within 30 days of the date of the notice of agency action and the Department issues a default decision, and the provider files a request to set aside the default, CC subsidy funds will not continue unless or until the default is set aside by the ALJ. If the request to set aside the default is denied, the provider will be disqualified pending appeal of the denial to set aside the default[unless the provider is within the six month or 30 day grace period allowed under subsection (1) of this section].

[(6)5] A provider is ineligible for CC subsidy funds after a disqualification until all overpayments established in conjunction with the disqualification have been paid in full even if the disqualification period has ended.

[(7)6] A provider that intentionally breaches any program rule as provided in R986-100-117, except as provided in subsection (1) of this section, or violates CC rule R986-700-706(2) through (5) or who assumes a client's identity in order to gain access to client information or payment of Department funds will be disqualified for one year for the first offense, two years for the second offense and for life for the third offense.

[(8)7] All disqualification periods run ~~consecutively~~concurrently.

[(9)8] A disqualification issued to a provider, including a child care center, under this subsection will follow both the

provider, the principal provider, and any successor center or provider.

(a) A "successor" provider, including a child care center, that acquires the business or acquires substantially all of the assets of the provider or child care center. This includes a provider who changes from one status to another like a provider who was disqualified as a licensed family provider who then changes to be a license exempt provider.

(b) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(c) "Assets" are commonly defined to include any property, tangible or intangible, which has value. Assets may also include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(d) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(f) A "principal" is the individual or individuals who were responsible for the day to day business of the child care center provided that individual had an ownership interest in the center. An ownership interest includes a shareholder, director or officer of a corporation and a partner, member or manager of a limited liability partnership or company.

KEY: child care

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

Notice of Continuation: September 8, 2010

Authorizing, and Implemented or Interpreted Law: 35A-3-310; 53A-1b-110

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends July 1, 2015.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (.) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Division of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through September 29, 2015, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

Environmental Quality, Drinking Water
R309-500
Facility Design and Operation: Plan
Review, Operation and Maintenance
Requirements

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 39076

FILED: 05/15/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division of Drinking Water (DDW) was tasked to review the Drinking Water R309-500 series rules for revisions, clarifications, clarifications, corrections, updates, etc. The changes in proposed Rule R309-500 are being made in response to comments received during the 30-day comment period.

SUMMARY OF THE RULE OR CHANGE: The changes in proposed Rule R309-500 include the following: 1) add a phrase to Subsection R309-500-5(2) to exclude substantial distribution system upgrades from the definition of on-going operation and maintenance procedures, which do not require plan approval; 2) make a minor change by transposing the first two words of Subsection R309-500-6(2)(b); 3) revise the proposed language in Subsection R309-500-6(2)(c) to require conflicts and interferences to be adequately identified and addressed, and to remove "profile drawing may be required"; 4) revise Subsection R309-500-2(f) to clarify that the one year period in which construction or ordering of equipment must occur before renewal of plan approval is required begins with the date of the original plan approval; 5) rewrite Subsection R309-500-6(3)(b) to more clearly state the requirements for becoming eligible to request plan submittal waivers; 6) rewrite Section R309-500-11 to state that DDW is authorized to assess fees according to the Department of Environmental Quality fee schedule. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the February 1, 2015, issue of the Utah State Bulletin, on page 16. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-4-104(1)(a)(ii)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Proposed changes to Rule R309-500 are not expected to result in a change in the workload of the DDW and should have no effect on the state budget.

◆ **LOCAL GOVERNMENTS:** Local governments that own and operate public water systems will be affected by the proposed changes to Rule R309-500. However, the proposed amendments are not expected to result in increased costs or savings for local governments.

◆ **SMALL BUSINESSES:** Small businesses that own and operate public water systems will be affected by the proposed changes to Rule R309-500. However, the proposed changes are not expected to result in new costs or savings for the types of water systems owned and operated by small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Owners, operators, and customers of public water systems are persons directly or indirectly affected by Rule R309-500. Because the proposed changes to Rule R309-500 are not expected to result in increased costs or savings for public water systems, there should be no new costs or savings for any of these persons because of the proposed amendments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Plan review, operation, and maintenance costs for public water systems are not expected to change because of the proposed changes to Rule R309-500.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule changes will have no negative fiscal impact on businesses. The changes will not have a significant effect on public water systems and will clarify plan review, operation, and maintenance requirements as they pertain to public water systems.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bernie Clark by phone at 801-536-0092, or by Internet E-mail at bernieclark@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2015

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2015

AUTHORIZED BY: Ken Bousfield, Director

R309. Environmental Quality, Drinking Water.**R309-500. Facility Design and Operation: Plan Review, Operation and Maintenance Requirements.****R309-500-1. Purpose.**

The purpose of this rule is to describe plan review procedures and requirements, clarify projects requiring review, and inspection requirements for drinking water projects. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to public health.

R309-500-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

R309-500-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-500-4. General.

(1) Construction of New Facilities and Modification of Existing Facilities.

(a) Plans, specifications, and other data pertinent to new facilities, or existing facilities of public drinking water systems not previously reviewed, shall be submitted to the Director for review for conformance with rules R309-500 through R309-550. All submittals shall be from the public water system or its agent.

(b) The Director has the authority to grant an exception to R309-500 through R309-550 per R309-105-6(2)(b).

(c) Construction of a public drinking water project shall not begin until complete plans and specifications have received Plan Approval or a Plan Submittal Waiver has been issued by the Director.

(d) No new public drinking water facility shall be put into operation until the Director has issued an Operating Permit or a Plan Submittal Waiver.

(2) Minimum Quantity and Quality Requirements for Existing Facilities.

All existing public drinking water systems shall be capable of reliably delivering water that meets current drinking water minimum quantity and quality requirements. The Director may require modification of existing systems in accordance with R309-500 through R309-550 when such modifications are needed to reliably achieve minimum quantity and quality requirements.

(3) Operation and Maintenance.

Public drinking water system facilities shall be operated and maintained in a manner that protects public health. As a minimum, operation and maintenance procedures described in R309-500 through R309-550 shall be met.

R309-500-5. Public Drinking Water Project.

(1) Definition.

A public drinking water project, requiring submittal of a Project Notification Form and plans and specifications, is any of the following:

(a) Construction of any facility for a proposed drinking water system.

(b) Any addition to, or modification of, the facilities of an existing public drinking water system that may affect the quality or quantity of water delivered.

(c) Any activity, other than on-going operation and maintenance procedures, that may affect the quality or quantity of water delivered by an existing public drinking water system. Such activities may include:

(i) the interior re-coating or re-lining of any raw or drinking water storage tank, or water storage chamber within any treatment facility,

(ii) the in-situ re-lining of any pipeline,

(iii) a change or addition of a water treatment process,

(iv) the re-development of any spring or well source, ~~and~~

(v) replacement of a well pump with one of different capacity, and

~~(vi) [or] deepening a well.~~

(2) On-going Operation and Maintenance Procedures.

On-going operation and maintenance procedures are not considered public drinking water projects and, accordingly, are not subject to the project notification, plan approval and operating permit requirements of this rule. However, these activities shall be carried out in accordance with all requirements contained in R309-500 through R309-550 and specifically the design, construction, disinfection, flushing and bacteriological sampling and testing requirements before the facilities are placed back into service. The following activities are considered to be on-going operation and maintenance procedures:

(a) pipeline leak repair,

(b) replacement of existing deteriorated pipeline where the new pipeline segment is the same size as the old pipeline or the new segment is upgraded to meet the minimum pipeline sizes required by R309-550-5(4) or larger sizes as determined by a hydraulic analysis in accordance with R309-550-5(3), excluding substantial distribution system upgrades that involve long-term planning and complex design.

(c) tapping existing water mains with corporation stops so as to make connection to new service laterals to individual structures,

(d) distribution pipeline additions where the pipeline size is the same as the main supplying the addition or the pipeline addition meets the minimum pipeline sizes required by R309-550-5(4) or larger sizes as determined by a hydraulic analysis in accordance with R309-550-5(3), the length is less than 500 feet and contiguous segments of new pipe total less than 1000 feet in any fiscal year,

(e) entry into a drinking water storage facility for the purposes of inspection, cleaning and maintenance, and

(f) replacement of equipment or pipeline appurtenances with the same type, size and rated capacity (fire hydrants, valves, pressure regulators, meters, service laterals, chemical feeders and booster pumps including deep well pumps).

R309-500-6. Plan Approval Procedure.

(1) Project Notification.

The Division shall be notified prior to the construction of any "public drinking water project" as defined in R309-500-5(1) above. The notification may be prior to or simultaneous with

submission of construction plans and specifications as required by R309-500-6(2) below. Notification shall be made on a form provided by the Division.

(2) Pre-Construction Requirements.

All of the following shall be accomplished before construction of any public drinking water project begins:

(a) Plans and specifications for a public drinking water project shall be submitted to the Division at least 30 days prior to the date on which action is desired.

(b) Required [S]ubmittals [required—] may include engineering reports, hydraulic analyses of the existing system and additions, local requirements for fire flow and duration, proximity of sewers and other utilities, water consumption data, supporting information, evidence of rights-of-way and reference to any previously submitted master plans pertinent to the project, a description of a program for keeping existing water works facilities in operation during construction so as to minimize interruption of service, etc.

(c) Plans and specifications submitted shall be complete and sufficiently detailed for actual construction. ~~[In some cases, a profile drawing may be required to show potential water line conflicts and clearances.] Plans and specifications shall also adequately identify and address any conflicts or interferences.~~

(d) Drawings that are illegible or of unusual size will not be accepted for review.

(e) The plans and specifications shall be stamped and signed by a licensed professional engineer as required by Section 58-22-602(2) of the Utah Code.

(f) If construction or the ordering of substantial equipment has not commenced within one year of Plan Approval, a renewal of the Plan Approval shall be obtained prior to proceeding with construction.

(3) Eligibility for Plan Submittal Waivers.

In lieu of submitting plans and specifications for Plan Approval and obtaining Operating Permits, public water systems may request Plan Submittal Waivers for two types of water line projects (excluding booster pump stations) after first becoming eligible to request the waivers. The Director will issue written notification that a public water system is eligible to request the Plan Submittal Waivers described in R309-500-6(3)(a) and (3)(b) if the information provided is acceptable.

(a) Water Line Projects Included in an Approved Master Plan. To become eligible to request this type of waiver, a public water system must submit standard installation drawings, which meet the requirements in R309-550, and a master plan, which is supported by a hydraulic analysis, to the Director for approval.

~~[(b) Water Line Projects Included in (i) through (iii) below. To become eligible to request this type of waiver, a public water system must submit standard installation drawings, which meet the requirements in R309-550, and identify in writing the professional engineer or engineers responsible for the oversight of the hydraulic analysis for and the design of the entire water system to the Director for approval.]~~

[(b) Water Line Projects Included in (i) through (iii) below. To become eligible to request this type of waiver, a public water system must submit the following in writing to the Director: standard installation drawings that meet the requirements of R309-550, the name of the professional engineer responsible for design of the entire water system, and the name of the professional engineer responsible for oversight of the hydraulic analysis for the entire water system.]

(i) Water lines less than or equal to 8 inches in diameter in water systems providing water to a population less than 3,300;

(ii) Water lines less than or equal to 12 inches in diameter in water systems providing water to a population between 3,300 and 50,000; or

(iii) Water lines less than or equal to 16 inches in diameter in water systems providing water to a population greater than 50,000.

(4) Using Plan Submittal Waivers.

After becoming eligible to request Plan Submittal Waivers per R309-500-6(3), a public water system must complete the following when requesting a Plan Submittal Waiver for a water line project:

(a) Submit a complete Project Notification Form describing the project and specifying which Plan Submittal Waiver, R309-500-6(3)(a) or R309-500-6(3)(b), is being requested;

(b) For projects that will have a hydraulic impact, submit a certification of hydraulic analysis by a professional engineer per R309-511-6(1) indicating that the design will not result in unacceptable pressure and flow conditions (including fire flow if fire hydrants are installed);

(c) Submit a certification by a professional engineer, who is responsible for the design and construction of the project or has been designated by the water system in writing as the professional engineer directly responsible for the design of the entire water system, indicating that design and construction will meet the requirements of R309-500 through 550, that proper flushing and disinfection will be completed according to the appropriate ANSI/AWWA standard, that satisfactory bacteriological sample results will be obtained prior to placing the facilities into service, and that the water system will receive a copy of as-built or record drawings;

(d) Obtain a written Plan Submittal Waiver, in lieu of Plan Approval, from the Director prior to the start of construction; and

(e) Comply with the conditions in R309-500-6(4)(c) prior to placing the new facilities into service.

R309-500-7. Inspection during Construction.

Staff from the Division, the Department of Environmental Quality, or the local health department, after reasonable notice and presentation of credentials, may make visits to the work site to assure compliance with these rules.

R309-500-8. Change Orders.

Any deviations from approved plans or specifications affecting capacity, hydraulic conditions, operating units, the functioning of water treatment processes, or the quality of water to be delivered, shall be reported to the Director. The Director may require that revised plans and specifications be submitted for review. If required, revised plans or specifications shall be submitted to the Division in time to permit the review and [Director's] approval of such plans or specifications before any construction work, which will be affected by such changes, is begun.

R309-500-9. Operating Permit.

The Division shall be informed when a public drinking water project, or a well-defined phase thereof, is at or near completion. The new or modified facility shall not be placed into service until an Operating Permit or a Plan Submittal Waiver is issued by the Director.

The Operating Permit will not be issued until all of the following items are submitted and found to be acceptable for all projects. Distribution lines (not including in-line booster pump stations), may be placed into service prior to submittal of all items if the professional engineer responsible for the entire system, as identified to the Director, has received items (1) and (4):

(1) Certification of Rule Conformance by a professional engineer that all conditions of Plan Approval were accomplished and if applicable, changes made during construction were in conformance with rules R309-500 through 550,

(2) as-built or record drawings incorporating all changes to approved plans and specifications, unless no changes are made from previously submitted and approved plans during construction,

(3) confirmation that a copy of the as-built or record drawings has been received by the water system owner,

(4) evidence of proper flushing and disinfection in accordance with the appropriate ANSI/AWWA Standard,

(5) where appropriate, water quality data,

(6) all other documentation which may have been required during the plan review process, and

(7) confirmation that the water system owner has been provided with an Operation and Maintenance manual for the new facility if applicable.

R309-500-10. Waste and Wastewater Disposal.

Approval of plans and specifications may require evidence showing that the methods of waste and wastewater disposal have been

approved or accepted by the Utah Division of Water Quality, the local health agency, or the local authority for:

(1) new drinking water facilities, including discharges from treatment facilities, discharges related to construction, etc., and

(2) new drinking water facilities serving proposed developments.

R309-500-11. Fee Schedule.

The Division ~~[may charge a fee related to the review of plans and specifications]~~ is authorized to assess fees according to the Department of Environmental Quality fee schedule. [A]The fee schedule is available from the Division.

R309-500-12. Other Permits.

Local, county, federal, and other state authorities may impose different, more stringent, or additional requirements for public drinking water projects. Water systems may be required to comply with other permitting requirements before beginning construction of drinking water projects or placing new facilities into service.

KEY: drinking water, plan review, operation and maintenance requirements, permits

Date of Enactment or Last Substantive Amendment: 2015

Notice of Continuation: March 22, 2010

Authorizing, and Implemented or Interpreted Law: 19-4-104

End of the Notices of Changes in 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.

Attorney General, Administration **R105-1**

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

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 39363
FILED: 05/12/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: 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. This rule was amended to comply with S.B. 233 from the 2015 General Session which is effective as of 05/12/2015.

SUMMARY OF THE RULE OR CHANGE: This rule was amended to comply with S.B. 233 (2015) which is effective as of 05/12/2015. (DAR NOTE: A corresponding proposed amendment is under DAR No. 39364 in this issue, June 1, 2015, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-5-33 and Subsection 67-5-32(1)(a)

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

JUSTIFICATION: S.B. 233 (2015) is effective as of 05/12/2015. S.B. 233 specifically addresses the attorney general's selection of outside counsel, expert witnesses, and other litigation support services.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings that are expected. The changes made to this rule simply comply with S.B. 233 (2015) regarding the attorney general contingent fee contracts.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings that are expected. The changes made to this rule simply comply with S.B. 233 (2015) regarding the attorney general contingent fee contracts.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings that are expected. The changes made to this rule simply comply with S.B. 233 (2015) regarding the attorney general contingent fee contracts.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings that are expected.

The changes made to this rule simply comply with S.B. 233 (2015) regarding the attorney general contingent fee contracts.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs because the changes made to this rule simply comply with S.B. 233 (2015) regarding the attorney general contingent fee contracts.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated affects that this rule will have on businesses. The changes made to this rule simply comply with S.B. 233 (2015) regarding the attorney general contingent fee contracts. Other changes were simply clerical/housekeeping changes.

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

EFFECTIVE: 05/12/2015

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-](1) The purpose of this rule is to provide the requirements for procurements that are managed by the Attorney General, including the hiring of [ø]Outside [e]Counsel, expert witnesses, litigation support services and procurement items.

[B-](2) 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-](1) "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-](2) "Attorney General" means the Attorney General of the State of Utah, or the Attorney General's designee.

(3) "Contingent fee case" means a legal matter for which legal services are provided under a contingent fee contract.

(4) "Contingent fee contract" means a contract for legal services under which the compensation for legal services is a percentage of the amount recovered in the legal matter for which the legal services are provided.

[E-](5) "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-](6) "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.

(7) "Legal matter" means a legal issue or administrative or judicial proceeding within the scope of the attorney general's authority.

[E-](8) "Litigation Support Services" includes any goods, services, software, or technology.

[F-](9) "Outside [e]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. "[ø]Outside [e]Counsel" may or may not be designated as "Special Assistant Attorney General", as the Attorney General determines.

[G-](10) "Procurement item" or "Procurement items" means any goods, services, software or technology.

(11) "Securities class action" means an action brought as a class action alleging a violation of federal securities law, including a violation of the Securities Act of 1933, 15 U.S.C. Sec. 77a et seq., or the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78a et seq.

[H-](12) "Small purchase" means a purchase under Rule R105-1-7.

[I-](13) "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-](14) "State" means the State of Utah.

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

[A-](1) This rule applies to the procurement and appointment of [ø]Outside [e]Counsel, expert witnesses, litigation support services, litigation related consultants, as well as management software and services by the Attorney General.

[B-](2) In order to properly fulfill the responsibilities of the Office, the procurement of [ø]Outside [e]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-]~~(3) The Attorney General may select ~~[o]~~Outside ~~[e]~~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 ~~[o]~~Outside ~~[e]~~Counsel is responsible for providing the expert witnesses or other litigation goods and services through the selection process for ~~[o]~~Outside ~~[e]~~Counsel and pursuant to the contract provisions with the Attorney General.

~~[D-]~~(4) 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-]~~(a) The Utah Procurement Code; and

~~[2-]~~(b) 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-]~~(5) 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-]~~(6) The Attorney General may, in a multistate case involving other states as parties aligned with Utah, select ~~[o]~~Outside ~~[e]~~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-H.]~~

~~[G-]~~(7) 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-]~~(8) 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-]~~(9) 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.

(10) The procurement and requirements regarding a Contingency Fee Contract must meet the requirements of this Rule R105-1 and the applicable provisions of the Utah Code.

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. Rules 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-]~~(1) 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-]~~(2) 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-]~~(3) The Request for Proposal, shall contain, in addition to the requirements of Rule R33-7-102, at a minimum, the following information:

~~[1-]~~(a) A description of the project.

~~[2-]~~(b) Any fee arrangements.

~~[3-]~~(c) The persons or entities being sought in the procurement, including whether an individual person, firm or association of firms may respond.

~~[4-]~~(d) The qualification criteria and the relative importance of the criteria. The Attorney General shall request qualifications from outside counsel being considered to provide services under a contingent fee contract unless the Attorney General:

(i) determines that requesting qualifications is not feasible under the circumstances; and

(ii) sets forth the basis for this determination in writing.

(e) Examples of criteria include:

~~[a-]~~(i) Identification by name and experience of the proposed service provider(s);

~~[b-]~~(ii) A description of the duties and responsibilities of each person providing the service; and

~~[e-]~~(iii) 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-]~~(f) The Contractual Requirements, which may be accomplished by including a copy of the contract.

~~[6-]~~(g) 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-]~~(h) Requirements regarding the date, time, place, form and method concerning the filing of the Response to the Request for Proposals.

~~[8-]~~(i) A statement that the Attorney General reserves the right to reject late-filed or nonconforming proposals.

~~[9-]~~(j) 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)~~(4) Public notice of the Request for Proposals shall be provided in accordance with the Utah Procurement Code.

~~(E)~~(5) 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)~~(6) A record of the procurement shall be made in accordance with the Utah Procurement Code and this Rule, including Rule R105-1-14.

~~(G)~~(7) 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)~~(8) Minimum scores for any of the criteria may be used.

R105-1-7. Small Purchases.

~~(A)~~(1) Small purchases shall be conducted in accordance with the requirements set forth in the Utah Procurement Code, Section 63G-6a-408, [Small Purchases shall be conducted in accordance with the Utah Procurement Code and] Rule R33-4-105 with the exception of subsection R33-4-105(3), and R33-4-106 through R33-4-107 [R33-4-104;] [except that the] The maximum thresholds for small purchases shall be as described in this Rule R105-1-7. "Small Purchase" means a procurement conducted by a procurement unit that does not require the use of a standard procurement process.

~~(B)~~(2) 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)~~(3) For the selection of litigation support services that are not covered under Rule R105-1-7(~~(B)~~2), including but not limited to court reporting, litigation related copying and printing services, the small purchase maximum threshold is \$50,000. For a purchase of litigation support services that are not covered under Rule R105-1-7(2) 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 litigation support services that are not covered under Rule R105-1-7(2) of \$2500 or less, a direct award may be made.

~~(D)~~(4) 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)~~(5) 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)~~(1) Sole Source procurement shall be conducted in accordance with the requirements set forth in Section 63G-6a-802 of the Utah Procurement Code.

~~(B)~~(2) 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)~~(1) 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)~~(2) An emergency procurement is a procurement procedure where the Attorney General does not need to use a standard procurement process.

~~(C)~~(3) An emergency procurement may only be used when an emergency exists as defined in this Rule.

~~(D)~~(4) Emergency procurements are limited to those procurement items necessary to mitigate the emergency.

~~(E)~~(5) 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)~~(6) 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)~~(1) Protected Records.

~~(1)~~(a) 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)~~(i) Trade Secrets, as defined in Section 13-24-2;

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

~~(e)~~(iii) Other Protected Records under GRAMA.

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

~~(a)~~(i) 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)~~(ii) a concise statement of the reasons supporting each claimed provision of business confidentiality or as a protected record.

~~(e)~~(iii) Pricing may not be classified as business confidential and will be considered public information.

~~(d)~~(iv) 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)~~(v) The term "bid" or "proposal" ~~[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-]~~(2) Notification.

~~[+]~~(a) 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-]~~(b) 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-]~~(c) 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-]~~(3) Publicizing Awards.

~~[+]~~(a) 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-]~~(i) 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-]~~(ii) unsuccessful proposals, except for those portions that are to be non-disclosed under this Rule or State law;

~~[e-]~~(iii) the rankings of the proposals;

~~[d-]~~(iv) the names of the members of any evaluation committee members (reviewing authority);

~~[e-]~~(v) 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-]~~(vi) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under this Rule or State law.

~~[2-]~~(b) 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-]~~(i) the names of individual scorers/evaluators in relation to their individual scores or rankings;

~~[b-]~~(ii) any individual scorer's/evaluator's notes, drafts, and working documents;

~~[e-]~~(iii) non-public financial statements; and

~~[d-]~~(iv) 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-]~~(c) 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-]~~(i) the name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and

~~[b-]~~(ii) 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-]~~(1) The Attorney General shall not enter into a contract for outside counsel unless the ~~[following]~~ requirements of this Rule R105-1-11 are met throughout the contract period and any extensions, ~~[thereof].~~

~~[+]~~(2) 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-]~~(3) The Attorney General shall retain oversight and control over the course and conduct of the litigation or anticipated litigation. ~~[;]~~

~~[3-]~~(4) The Attorney General shall designate a member of the Attorney General's Office to personally oversee the litigation. ~~[;]~~

~~[4-]~~(5) 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-]~~(6) The Attorney General shall be apprised of, attend and/or participate in all settlement offers or conferences. ~~[; and]~~

~~[6-]~~(7) 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-]~~(8) Written Determination regarding using a Contingency Fee Contracts. ~~[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:]~~ The Attorney General may not enter into a contingent fee contract with outside counsel unless the Attorney General makes a written determination that the contingent fee contract is cost-effective and in the public interest. This written determination shall:

(a) be made before or within a reasonable time after the Attorney General enters into a contingent fee contract; and

(b) include specific findings regarding:

(i) whether sufficient and appropriate legal and financial resources exist in the Attorney General's office to handle the legal matter that is the subject of the contingent fee contract; and

(ii) the nature of the legal matter, unless information conveyed in the findings would violate an ethical responsibility of the Attorney General or a privilege held by the state.

~~(9) Contingency Fee Limit. The Attorney General may not enter into a contingent fee contract with outside counsel that provides for outside counsel to receive a contingent fee, exclusive of reasonable costs and expenses, that exceeds:~~

- ~~1. 25 percent up to a total of \$25,000,000 recovered;~~
~~2. 10 percent for any amount in excess of \$25,000,000 recovered; and~~
~~3. A total maximum contingency fee paid by the State of Utah to not exceed \$50,000,000.~~

~~](a) 25% of the amount recovered, if the amount recovered is no more than \$10,000,000;~~

~~(b) 25% of the first \$10,000,000 recovered, plus 20% of the amount recovered that exceeds \$10,000,000, if the amount recovered is over \$10,000,000 but no more than \$15,000,000;~~

~~(c) 25% of the first \$10,000,000 recovered, plus 20% of the next \$5,000,000 recovered, plus 15% of the amount recovered that exceeds \$15,000,000, if the amount recovered is over \$15,000,000 but no more than \$20,000,000; and~~

~~(d) 25% of the first \$10,000,000 recovered, plus 20% of the next \$5,000,000 recovered, plus 15% of the next \$5,000,000 recovered, plus 10% of the amount recovered that exceeds \$20,000,000, if the amount recovered is over \$20,000,000; or~~

~~(e) \$50,000,000.~~

~~[C-](10) Opt-out regarding Contingency Fee Contracts.~~

~~[+](a) [A contingent 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.]A provision of a contingent fee contract that is inconsistent with a provision of this section is invalid unless, before the contract is executed, the contingent fee contract provision is approved by a majority of the Attorney General, state treasurer, and state auditor.~~

~~[D-](11) Exceptions regarding Contingency Fee Contracts: [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.~~

~~](a) A contingent fee under a contingent fee contract may not be based on the imposition or amount of a penalty or civil fine.~~

~~(b) A contingent fee under a contingent fee contract may be paid only on amounts actually recovered by the state.~~

~~(c) Throughout the period covered by a contingent fee contract, including any extension of the contingent fee contract:~~

~~(i) outside counsel that is a party to the contingent fee contract shall acknowledge that the Attorney General retains complete control over the course and conduct of the contingent fee case for which outside counsel provides legal services under the contingent fee contract;~~

~~(ii) the Attorney General with supervisory authority shall oversee any litigation involved in the contingent fee case;~~

~~(iii) the Attorney General retains final authority over any pleading or other document that outside counsel submits to court;~~

~~(iv) an opposing party in a contingent fee case may contact the Attorney General directly, without having to confer with outside counsel;~~

~~(v) the Attorney General with supervisory authority over the contingent fee case may attend all settlement conferences; and~~

~~(vi) the outside counsel shall acknowledge that final approval regarding settlement of the contingent fee case is reserved exclusively to the discretion of the Attorney General.~~

~~(d) Nothing in Rule R105-1-11(11) may be construed to limit the authority of the client regarding the course, conduct, or settlement of the contingent fee case.~~

~~(12) Website Posting regarding Contingency Fee Contracts. Within five business days after entering into a contingent fee contract, the Attorney General shall post on the Attorney General's website:~~

~~(a) the contingent fee contract;~~

~~(b) the written determination under R105-1-11(8) relating to that contingent fee; and~~

~~(c) if applicable, any written determination made under Rule R105-1-6(3)(d) relating to that contingent fee contract.~~

~~(d) The Attorney General shall keep the contingent fee contract and written determination posted on the Attorney General's website throughout the term of the contingent fee contract.~~

~~(13) Contingency Fee Contract Records. The outside counsel that enters into a contingent fee contract with the Attorney General shall:~~

~~(a) from the time the contingent fee contract is entered into until three years after the contract expires, maintain detailed records relating to the legal services provided by outside counsel attorney under the contingent fee contract, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial that relate to the legal services provided by outside counsel; and~~

~~(b) maintain detailed contemporaneous time records for the outside counsel's attorneys and paralegals working on the contingent~~

fee case and promptly provide the records to the Attorney General upon request.

(14) Exemption regarding Contingency Fee Contracts. Rule R105-1-11(8) through (13) as well as Rule R105-1-12(3) do not apply to:

(a) to a contingent fee contract in existence before May 12, 2015, or to any renewal or modification of a contingent fee contract in existence before that date;

(b) to a contingent fee contract with outside counsel that the Attorney General hires to collect a debt that the Attorney General is authorized by law to collect; and

(c) with respect to a contingent fee contract with outside counsel in a securities class action in which the state is appointed as lead plaintiff under Section 27(a)(3)(B)(i) of the Securities Act of 1933 or Section 21D(a)(3)(B)(i) of the Securities Exchange Act of 1934 or in which any state is a class representative, or in any other action in which the state is participating with one or more other states:

(i) apply only with respect to the state's share of any judgment, settlement amount, or common fund; and

(ii) do not apply to attorney fees awarded to outside counsel for representing other members of a class certified under Rule 23 of the Federal Rules of Civil Procedure or applicable state class action procedural rules.

~~[E-](5)~~ 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-](1)~~ 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-](2)~~ Any payment by the Attorney General under a contingency fee contract shall be made available for public inspection in accordance with GRAMA.

~~[C-](3) [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 and is adequately assured of confidentiality through a confidentiality agreement or similar document.] After June 30 but on or before September 1 of each year, the Attorney General submit a written report to the president of the Senate and the speaker of the House of Representatives describing the Attorney General's use of contingent fee contracts with outside counsel during the fiscal year that ends the immediately preceding June 30.~~

~~(a) A report under Rule R105-1-12(3) shall identify:~~

~~(i) each contingent fee contract the Attorney General entered into during the fiscal year that ends the immediately preceding June 30; and~~

~~(ii) each contingent fee contract the Attorney General entered into during any earlier fiscal year if the contract remained in effect for any part of the fiscal year that ends the immediately preceding June 30.~~

~~(iii) state the name of the outside counsel that is a party to the contingent fee contract, including the name of the outside counsel's law firm if the outside counsel is an individual;~~

~~(iv) describe the nature of the legal matter that is the subject of the contingent fee contract, unless describing the nature of the legal matter would violate an ethical responsibility of the Attorney General or a privilege held by the state;~~

~~(v) identify the state agency which the outside counsel was engaged to represent or counsel;~~

~~(vi) state the total amount of attorney fees approved by the Attorney General for payment to an outside counsel for legal services under a contingent fee contract during the fiscal year that ends the immediately preceding June 30; and~~

~~(vii) be accompanied by each written determination under R105-1-11(8) and Rule R105-1-6(3)(d) made during the fiscal year that ends the immediately preceding June 30.~~

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-](1)~~ The final procurement documents issued by the Utah Attorney General;

~~[B-](2)~~ The provisions in documents submitted by the provider to the extent such provisions are accepted by the Attorney General;

~~[C-](3)~~ A termination for cause and a termination for convenience clause; and

~~[D-](4)~~ Any terms required by law, whether by the constitutions, statutes, or rules or regulations of the United States or the State of Utah.

~~(5) Nothing in this Rule regarding contingency fee contracts may be construed to expand the authority of a state department, division, or other agency to enter into a contract if that authority does not otherwise exist.~~

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

~~[A-](1)~~ 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-](2)~~ 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-](a)~~ If applicable, a copy of all written determinations of the Attorney General required by the Utah Procurement Code or this Rule;

~~[2-](b)~~ A copy of the procurement documents and any written documentation related to notification requirements; and

~~[3-](c)~~ All responses to procurements and modifications, in writing, to any procurement if those modifications have been negotiated by the Attorney General.

[4.](d) 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: May 12, 2015

Authorizing, and Implemented or Interpreted Law: Art VII Sec 16; 67-5; 63G-6

Human Services, Administration,
Administrative Services, Licensing

R501-12

Foster Care Services

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 39358

FILED: 05/11/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to make rule conform with the new definition of foster care that was statutorily created in H.B. 139 of the 2015 General Session. This change in definition modifies capacity in foster homes, as well as clarifies sibling group placement allowances.

SUMMARY OF THE RULE OR CHANGE: The current rule is not consistent with this new statute that will go into effect on 05/12/2015. This rule update will align rule with the new statute.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 62A-2-101(14)

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

JUSTIFICATION: The current rule will contradict statutory definition of foster care on 05/12/2015, if not updated. Because this rule change effects the placement of children and because there is a great need for increased placement options for children in foster care, it seems to be in the best interest of foster children and the community to proceed with this emergency rule change. No processes within Office of Licensing are affected. No complicated rulemaking that could delay implementation is needed. This rule change will simply align rule with statute and allow the legislative changes to go into effect immediately on 05/12/2015 with clarity.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The increased capacity and sibling placement provisions of this rule result in no significant increased or decreased cost for state entities. It is possible that the Division of Child and Family Services will enjoy some savings due to having more readily available placements for foster youth, including keeping siblings together.

◆ **LOCAL GOVERNMENTS:** The increased capacity and sibling placement provisions of this rule result in no significant increased or decreased cost for local governments.

◆ **SMALL BUSINESSES:** The increased capacity and sibling placement provisions of this rule may result in increased revenue for some licensed child placing agencies as they will be able to take in more foster children.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The increased capacity and sibling placement provisions of this rule result in no significant increased or decreased cost this group.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs are not increased or decreased by this change. If a foster home does not want to increase their capacity to the maximum allowed in the new definition, they don't need to.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will have minimal effect on businesses. It may allow for some increased volume/revenue for some child placing agencies.

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

HUMAN SERVICES
ADMINISTRATION, ADMINISTRATIVE SERVICES,
LICENSING
195 N 1950 W 1ST FLR
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Diane Moore by phone at 801-538-4235, by FAX at 801-538-4553, or by Internet E-mail at dmoore@utah.gov
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonessrobbins@utah.gov

EFFECTIVE: 05/12/2015

AUTHORIZED BY: Diane Moore, Director

R501. Human Services, Administration, Administrative Services, Licensing.
R501-12. Foster Care Services.

.....

R501-12-5. Foster Parent Requirements.

- (1) Foster parents shall:
 - (a) be in good health and emotionally stable;
 - (b) be able to provide for the physical, social, mental health, and emotional needs of the foster child;
 - (c) be responsible persons who are 21 years of age or older;
 - (d) provide documentation of legal residential status;
 - (e) have the ability to help the foster child thrive;
 - (f) not be dependent on foster care reimbursement for their own expenses, outside of those expenses directly associated with providing foster care services; and
 - (g) provide updated medical, social, financial, or other family information when requested by the Office of Licensing or Agency.
- (2) DHS employees shall not be licensed or certified as foster parents for children in the custody of their respective Divisions, unless they qualify as kinship providers for the child in accordance with Utah Code Ann. Section 78A-6-307. An employee may provide foster services for children in the custody of a different Division only with the prior written approval of both Divisions' Directors in accordance with DHS conflict of interest policy.
- (3) Agency owners, directors, managers, and members of the governing body shall not be certified to provide foster care services for children placed with or by the Agency.
- (4) Foster parents shall cooperate with the Office of Licensing, Agency, courts, and law enforcement officials.

(5) Each foster parent shall read, sign, and comply with the DHS Provider Code of Conduct.

(a) A foster parent shall not abuse, neglect, or maltreat a child through any act or omission.

(b) A foster parent shall not encourage or fail to deter the acts or omissions of another that abuse, neglect, or maltreat a child.

(6) No more than two children under the age of two, including children who are members of the household and foster children, shall reside in a foster home.

(7) No more than two non-ambulatory children, including children who are members of the household and foster children, shall reside in a foster home.

(8) Except as provided by Section 62A-2-101(14) and R501-12-5-9(b) and R501-12-5(10), no more than three foster children shall reside in a foster home;], no more than four foster children shall reside in a licensed foster home and no more than three children shall reside in a certified foster home.

(9) Foster parents may provide respite care in their home as long as they remain in compliance with licensing rules in regards to each child placed for foster and respite care. Foster parents may provide respite care when the additional foster child(ren) exceed their licensed capacity only as follows:

(a) Respite care is limited to a maximum of 10 days within any 30 day period.

(i) For foster children who are not siblings, each day of respite for each individual child counts as one day of respite care.

(ii) For foster children who are siblings, each day of respite for a sibling group receiving respite in the same foster home at the same time counts as one day of respite care.

(b) The foster home must have no licensing sanctions currently imposed, including corrective action plans or conditional licenses.

(c) Total number of foster and respite children in a home at one time shall not exceed six unless all but one or two of the children are part of a single sibling group.

(10) A foster parent shall report all major changes or events to the Office of Licensing or Agency within 48 hours. The Office of Licensing or Agency shall evaluate major changes to determine whether the foster parent remains able to provide foster care services. A major change in the lives of foster parents includes, but is not limited to:

(a) the death or serious illness of a member of the foster parent's household;

(b) change in marital status;

(c) loss of employment;

(d) change in household composition, such as the birth or adoption of a child, addition of household members, or tenants; or

(e) allegations of abuse or neglect of any child or vulnerable adult against any member of the foster parent's household.

(11) A foster parent shall report any potential change in address in advance to their licensor or agency.

(a) Licenses and certifications are site specific.

(b) An adjoining dwelling with a separate address that is not accessible from the foster home is not considered part of the foster home site.

(c) A foster child shall not be moved into a home that is not licensed or certified to provide foster care.

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R501-12-16. Special Considerations for Siblings.

(1) Except as described below, a sibling group may not be placed in a foster home that already has more than one foster child placed in the home when the addition of the sibling group would exceed four foster children in a licensed foster home or exceed three foster children in a certified foster home.

(2) The sibling(s) of a child already living in a foster home may be placed in the foster home for the purpose of reuniting the siblings, even if the addition of the sibling or sibling group would exceed four or more foster children in a licensed foster home or three or more foster children in a certified foster home.

(3) A foster home may provide for a sibling or a sibling group beyond the allowable four foster child limit for licensed foster care and three foster care limit for certified foster care only when they remain in compliance with licensing rules in regards to each child.

R501-12-17. Compliance.

Any active foster care license or certification on the effective date of this rule shall be given 30 days to achieve compliance with this rule.

KEY: licensing, human services, foster care, certified foster care

Date of Enactment or Last Substantive Amendment: May 12, 2015

Notice of Continuation: October 18, 2012

Authorizing, and Implemented or Interpreted Law: 62A-2-101 et seq.

**Money Management Council,
Administration**

R628-15

Certification as an Investment Adviser

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 39348

FILED: 05/06/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R628-15 expired (05/06/2015) and was removed from the Administrative Code. This filing puts the rule back in effect. The purpose of this rule is to establish a uniform standard to evaluate the financial condition and the standing of an investment adviser to determine if investment transactions with public treasurers by investment advisers would expose public funds to undue risk.

SUMMARY OF THE RULE OR CHANGE: This rule requires than an investment adviser who intends to provide investment advisory services to a public treasurer become certified. It provides for an application process and requests information

from an adviser to become certified. The rule requires that investment advisers renew their certification annually and contains post certification requirements. The rule also provides grounds and procedures for denial, suspension and termination of status as a certified investment adviser. (DAR NOTE: A corresponding proposed new rule R628-15 is under DAR No. 39396 in this issue, June 1, 2015, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 51-7-11(1)(b) and Subsection 51-7-18(2)(b)(vi)(vii) and Subsection 51-7-3(3)

EMERGENCY RULE REASON AND JUSTIFICATION:

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

JUSTIFICATION: The attorney general representative for the council has noted that "not having the rule in place, may create violations of the Money Management Act, Section 51-7-1 et seq." In Section 51-7-11, public entities are allowed to use certified investment advisers to transact investments for them. Currently, there are six firms that are certified and forty two agents on the list. Not having this rule in place with affect a substantial amount of public funds being invested by these firms.

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The fee is \$500 per each firm. As this rule has been ongoing, it will not affect any change the state budget.

♦ **LOCAL GOVERNMENTS:** If this rule is not in place, a substantial amount of public entities would have to move their funds out from these advisers, potentially incurring delivery fees and fines.

♦ **SMALL BUSINESSES:** The firms that provide these services will be impacted as they would lose business and have to work to move investments to other safekeeping locations. Currently, these firms pay an annual fee of \$500 to be certified.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The firms that provide this services will be impacted as they would lose business and have to work to move investments to other safekeeping locations. Currently, these firms pay an annual fee of \$500 to be certified.

COMPLIANCE COSTS FOR AFFECTED PERSONS:

Currently, the fee is \$500 per investment advisory firm. These firms have been filing the application and have insurance in place but if they need additional insurance to meet the requirement, it is estimated that it will cost 1% of the amount of the bond on errors and omissions insurance and the same on fidelity insurance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:

Investment advisers seeking certification must pay a \$500 annual certification fee established by Section 51-7-18.4. Compliance with this rule requires certified investment advisers to provide copies of certain documents and to give

notices which may result in nominal, incremental costs for duplication and delivery. Federal covered investment advisers may incur additional legal fees and other administrative and registration costs as a result of the requirement for licensing in Utah.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 MONEY MANAGEMENT COUNCIL
 ADMINISTRATION
 ROOM 180 UTAH STATE CAPITOL COMPLEX
 350 N STATE ST
 SALT LAKE CITY, UT 84114
 or at the Division of Administrative Rules.

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

EFFECTIVE: 05/06/2015

AUTHORIZED BY: Mark Watkins, Chair, Money Management Council

R628. Money Management Council, Administration.

R628-15. Certification as an Investment Adviser.

R628-15-1. Authority.

This rule is issued pursuant to Sections 51-7-3(3), 51-7-18(2)(b)(vi) and (vii), and 51-7-11.5.

R628-15-2. Scope.

This rule establishes the criteria applicable to all investment advisers and investment adviser representatives for certification by the Director as eligible to provide advisory services to public treasurers under the State Money Management Act (the "Act"). It further establishes the application contents and procedures, and the criteria and the procedures for denial, suspension, termination and reinstatement of certification.

R628-15-3. Purpose.

This rule establishes a uniform standard to evaluate the financial condition and the standing of an investment adviser to determine if investment of public funds by investment advisers would expose said public funds to undue risk.

R628-15-4. Definitions.

A. The following terms are defined in Section 51-7-3 of the Act, and when used in this rule, have the same meaning as in the Act:

1. "Certified investment adviser";
2. "Council";
3. "Director";
4. "Public treasurer";
5. "Investment adviser representative"; and
6. "Certified dealer".

B. For purposes of this rule the following terms are defined:

1. "Investment adviser" means either a federal covered adviser as defined in Section 61-1-13 or an investment adviser as defined in Section 61-1-13.

2. "Realized rate of return" means yield calculated by combining interest earned, discounts accreted and premiums amortized, plus any gains or losses realized during the month, less all fees, divided by the average daily balance during the reporting period. The realized return should then be annualized.

3. "Soft dollar" means the value of research services and other benefits, whether tangible or intangible, provided to a certified investment adviser in exchange for the certified investment adviser's business.

R628-15-5. General Rule.

Before an investment adviser or investment adviser representative provides investment advisory services to any public treasurer, the investment adviser or investment adviser representative must submit and receive approval of an application to the Division, pay to the Division a non-refundable fee as described in Section 51-7-18.4(2), and become a Certified investment adviser or Investment adviser representative under the Act.

R628-15-6. Criteria for Certification of an Investment Adviser.

To be certified by the Director as a Certified investment adviser or Investment adviser representative under the Act, an investment adviser or investment adviser representative shall:

A. Submit an application to the Division on Form 628-15 clearly designating:

- (1) the investment adviser;
- (2) its designated official as defined in R164-4-2 of the Division; and
- (3) any investment adviser representative who provides investment advisory services to public treasurers in the state.

B. Provide written evidence of insurance coverage as follows:

- (1) fidelity coverage based on the following schedule:

TABLE

Utah Public funds under management	Percent for Bond
\$0 to \$25,000,000	10% but not less than \$1,000,000
\$25,000,001 to \$50,000,000	8% but not less than \$2,500,000
\$50,000,001 to \$100,000,000	7% but not less than \$4,000,000
\$100,000,001 to \$500,000,000	5% but not less than \$7,000,000
\$500,000,001 to \$1.250 billion	4% but not less than \$25,000,000
\$1,250,000,001 and higher	Not less than \$50,000,000

(2) errors and omissions coverage equal to five percent (5%) of Utah public funds under management, but not less than \$1,000,000 nor more than \$10,000,000 per occurrence.

C. Provide to the Division at the time of application or renewal of application, its most recent annual audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles in accordance with R628-15-8A.

D. Pay to the Division the non-refundable fee described in Section 51-7-18.4(2).

E. Have a current Certificate of Good Standing dated within 30 days of application from the state in which the applicant is incorporated or organized.

F. Have net worth as of its most recent fiscal year-end of not less than \$150,000 documented by the financial statements audited according to Subsection R628-15-6(C).

G. Allow the public treasurer to select the forum and method for dispute resolution, whether that forum be arbitration, mediation or litigation in any state or federal court. No agreement, contract, or other document that the applicant requires or intends to require to be signed by the public treasurer to establish an investment advisory relationship shall require or propose to require that any dispute between the applicant and the public treasurer must be submitted to arbitration.

H. Agree to the jurisdiction of the Courts of the State of Utah and applicability of Utah law, where relevant, for litigation of any dispute arising out of transactions between the applicant and the public treasurer.

I. All Investment adviser representatives who have any contact with a public treasurer or its account, must sign and have notarized a statement that the representative:

(1) is familiar with the authorized investments as set forth in the Act and the rules of the Council;

(2) is familiar with the investment objectives of the public treasurer, as set forth in Section 51-7-17(2);

(3) acknowledges, understands, and agrees that all investment transactions conducted for the benefit of the public treasurer must fully comply with all requirements set forth in Section 51-7-7 and that the Certified investment adviser and any Investment adviser representative is prohibited from receiving custody of any public funds or investment securities at any time.

R628-15-7. Certification.

A. The initial application for certification must be received on or before the last day of the month for approval at the following month's Council meeting.

B. All certifications shall be effective upon acceptance by the Council.

C. All certifications not otherwise terminated shall expire on June 30 of each year, unless renewed.

R628-15-8. Renewal of Application.

A. Certified investment advisers shall apply annually, on or before April 30 of each year, for certification to be effective July 1 of each year.

B. The application must contain all of the documents and meet all of the requirements as set forth above with respect to initial applications.

C. The application must be accompanied by an annual certification fee as described in Section 51-7-18.4(2).

D. A Certified investment adviser whose certification has expired as of June 30 may not function as a Certified investment adviser until the investment adviser's certification is renewed.

R628-15-9. Post Certification Requirements.

A. Certified investment advisers shall notify the Division of any changes to any items or information contained in the original

application within 30 calendar days of the change. The notification shall provide copies, where necessary, of relevant documents.

B. Certified investment advisers shall maintain a current application on Form 628-15 with the Division throughout the term of any agreement or contract with any public treasurer. Federal covered advisers shall maintain registration as an investment adviser under the Investment Advisers Act of 1940 throughout the term of any agreement or contract with any public treasurer.

C. Certified investment advisers shall provide and maintain written evidence of insurance coverage as described in R628-15-6(B).

D. Certified investment advisers shall provide to the public treasurer the SEC Form ADV Part II prior to contract execution.

E. Certified investment advisers shall file annual audited financial statements with all public treasurers with whom they are doing business.

F. Certified investment advisers shall fully disclose all conflicts of interest and all economic interests in certified dealers and other affiliates, consultants and experts used by the Investment adviser in providing investment advisory services.

G. Certified investment advisers shall act with the degree of care, skill, prudence, and diligence that a person having special skills or expertise acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

H. Certified investment advisers shall exercise good faith in allocating transactions to certified dealers in the best interest of the account and in overseeing the completion of transactions and performance of certified dealers used by the Investment adviser in connection with investment advisory services.

I. Certified investment advisers shall fully disclose to the public treasurer any self-dealing with subsidiaries, affiliates or partners of the Investment adviser and any soft dollar benefits to the Investment adviser for transactions placed on behalf of the public treasurer.

J. Certified investment advisers shall fully and completely disclose to all public treasurers with whom they do business the basis for calculation of fees, whether and how fees may be adjusted during the term of any agreement, and any other costs chargeable to the account. If performance-based fees are proposed, the disclosure shall include a clear explanation of the amount of the fee at specific levels of performance and how prior losses are handled in calculation of the performance-based fee.

K. Certified investment advisers shall not assign any contract or agreement with a public treasurer without the written consent of the public treasurer.

L. Certified investment advisers shall provide immediate written notification to any public treasurer to whom advisory services are provided and to the Division upon conviction of any crime involving breach of trust or fiduciary duty or securities law violations.

M. Not less than once each calendar quarter and as often as requested by the public treasurer, Certified investment advisers shall timely deliver to the public treasurer:

(1) copies of all trade confirmations for transactions in the account;

(2) a summary of all transactions completed during the reporting period;

(3) a listing of all securities in the portfolio at the end of each reporting period, the market value and cost of each security, and the credit rating of each security;

(4) performance reports for each reporting period showing the total return on the portfolio as well as the realized rate of return, when applicable, and the net return after calculation of all fees and charges permitted by the agreement; and

(5) a statistical analysis showing the portfolio's weighted average maturity and duration, if applicable, as of the end of each reporting period.

R628-15-10. Notification of Certification.

The Director shall provide a list of Certified investment advisers and Investment adviser representatives to the Council at least semiannually. The Council shall mail this list to each public treasurer.

R628-15-11. Grounds for Denial, Suspension or Termination of Status as a Certified Investment Adviser.

Any of the following constitutes grounds for denial, suspension, or termination of status as a Certified investment adviser:

A. Denial, suspension or termination of the Certified investment adviser's license by the Division.

B. Failure to maintain a license with the Division by the firm or any of its Investment adviser representatives conducting investment transactions with a public treasurer.

C. Failure to maintain the required minimum net worth and the required bond.

D. Requiring the public treasurer to sign any documents, contracts, or agreements which require that disputes be submitted to mandatory arbitration.

E. Failure to pay the annual certification fee.

F. Making any false statement or filing any false report with the Division.

G. Failure to comply with any requirement of section R628-15-9.

H. Engaging in any material act in negligent or willful violation of the Act or Rules of the Council.

I. Failure to respond to requests for information from the Division or the Council within 15 days after receipt of a request for information.

J. Engaging in a dishonest or unethical practice. "Dishonest or unethical practice" includes but is not limited to those acts and practices enumerated in Rule R164-6-1g.

K. Being the subject of:

(1) an adjudication or determination, within the past five years by a securities or commodities agency or administrator of another state, Canadian province or territory, or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state; or

(2) an order entered within the past five years by the securities administrator of any state or Canadian province or territory or by the Securities and Exchange Commission denying or revoking license as an investment adviser, or investment adviser representative

or the substantial equivalent of those terms or is the subject of an order of the Securities and Exchange Commission suspending or expelling the person from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order.

R628-15-12. Procedures for Denial, Suspension, or Termination and Reinstatement of Status.

A. Where it appears to the Division or to the Council that grounds may exist to deny, suspend, or terminate status as a Certified investment adviser, the Council shall proceed under the Utah Administrative Procedures Act, Chapter 4, Title 63G ("UAPA").

B. All proceedings to suspend a Certified investment adviser or to terminate status as a certified investment adviser are designated as informal proceedings under ("UAPA").

C. In any hearings held, the Chair of the Council shall be the presiding officer, and that person may act as the hearing officer, or may designate another person from the Council or the Division to be the hearing officer. After the close of the hearing, other members of the Council may make recommendations to the hearing officer.

D. The Notice of Agency Action as set forth under UAPA, or any petition filed in connection with it, shall include a statement of the grounds for suspension or termination, and the remedies required to cure the violation.

E. A Certified investment adviser and its Investment adviser representative who has received a Notice of Agency Action alleging violations of the Act or these rules, may continue, in the discretion of the public treasurer, to conduct investment transactions with the public treasurer until the violations asserted by the Money Management Council in the Notice of Agency Action becomes subject to a written order of the Council or Agency against the adviser or adviser representative, or until the Council enters an emergency order indicating that public funds will be jeopardized by continuing investment transactions with the adviser or adviser representative.

F. The Council may issue an emergency order to cease and desist operations or specified actions with respect to public treasurers or public funds. Further, the Council may issue an emergency suspension of certification if the Council determines that public funds will be jeopardized by continuing investment transactions or other specified actions with the adviser or adviser representative.

G. Within ten business days after the conclusion of a hearing on an emergency order, the Council shall lift this prohibition upon a finding that the Certified investment adviser and its investment adviser representative may maintain certification.

KEY: cash management, public investments, securities regulations, investment advisers

Date of Enactment or Last Substantive Amendment: May 6, 2015 Authorizing, and Implemented or Interpreted Law: 51-7-3(3); 51-7-18(2)(b)(vi); 51-7-18(2)(b)(vii); 51-7-11.5(2)(b); 51-7-11.5(2)(c)

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.

Education, Administration **R277-520** Appropriate Licensing and Assignment of Teachers

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 39371
FILED: 05/15/2015

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: Subsection 53A-1-401(3) authorizes the Utah State Board of Education to adopt rules in accordance with its responsibilities, and Subsection 53A-6-104(2)(a) authorizes the Board to rank, endorse, or classify licenses for educators.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides criteria for local boards to employ educators in appropriate assignments so that local boards can receive state funding for appropriately qualified and assigned staff. Therefore, this rule should be continued.

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

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

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

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

EFFECTIVE: 05/15/2015

Environmental Quality, Air Quality **R307-302** Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber Counties

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 39349
FILED: 05/06/2015

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: Rule R307-302 identifies no-burn periods for solid fuel burning devices in areas that sometimes exceed the health standards for fine particulate and carbon monoxide. Subsection 19-2-104(1)(a) allows the Air Quality Board to make rules "...regarding the control, abatement, and prevention of air pollution from all sources and the establishment of the maximum quantity of air contaminants that may be emitted by any air contaminant source."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-302 has gone through four rulemakings since its last five-year review. Under DAR No. 36611, amendments were made effective 01/01/2013, and three comments were submitted in general support of the proposed amendments. With DAR No. 38166, amendments were made effective 03/06/2014; two comments were submitted with the rulemaking; however, none were pertinent to the proposed amendment. With DAR No. 38842, amendments were made effective 02/04/2015. With DAR No. 38842, comments centered around suggestions to clarify the intent of the rule or to ask for exemptions; there were no comments made directly opposing the rule. The fourth rulemaking since the last five-year review was under DAR No. 38994, which proposed a seasonal solid fuel heating ban in the PM2.5 nonattainment areas from November 1 to March 15. During the public comment period for DAR No. 38994, DAQ received over 2,000 oral and written comments, with the majority opposed to the proposal in one form or another. Commenters brought up several issues that are currently taking a significant amount of time and resources to evaluate, address, and resolve. Additionally, during the 2015 General Session, the state legislature passed H.B. 396, which prohibited the Division of Air Quality from "imposing a burning ban prohibiting burning during a specified seasonal period of time." Therefore, the filed rulemaking lapsed on 05/01/2015 without any final action being taken.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The provisions to regulate solid fuel burning are part of the requirements to reduce particulates and carbon monoxide that are included in Utah's state implementation plans for particulate matter and carbon monoxide. Because the provisions in this rule are needed to reduce pollution during winter temperature inversions when pollutants build up in the air, and because the rule is part of Utah's state implementation plan, the rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 AIR QUALITY
 FOURTH FLOOR
 195 N 1950 W

SALT LAKE CITY, UT 84116-3085
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 05/06/2015

**Health, Health Care Financing,
 Coverage and Reimbursement Policy
 R414-33D
 Targeted Case Management for
 Individuals with Serious Mental Illness**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 39377
 FILED: 05/15/2015

**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: Subsection 26-18-3(2)(a) requires the Department to implement the Medicaid program through administrative rules. In addition, Section 26-1-5 grants the Department the authority to adopt, amend, or rescind rules as necessary to implement the Medicaid program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it implements targeted case management for Medicaid recipients with serious mental illness, as described in the Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual and in the Medicaid State Plan.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HEALTH
 HEALTH CARE FINANCING,
 COVERAGE AND REIMBURSEMENT POLICY

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 05/15/2015

**Health, Family Health and
Preparedness, Primary Care and Rural
Health
R434-100
Physician Visa Waivers**

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

DAR FILE NO.: 39342
FILED: 05/04/2015

**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 26-1-18 designates the Utah Department of Health as the health, health planning, and medical assistance authority of the state and as the sole state agency for administration of federally assisted state programs or plans for public health, health planning, maternal and child health, crippled children's services, and medical assistance. The Conrad State 30 J-1 Visa Waiver Program is a federally-assisted program managed by the Utah Department of Health.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received on the Conrad 30 J-1 Visa Waiver Program from the State, local governments, small businesses, or other persons other than businesses.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Conrad 30 J-1 Visa Waiver Program addresses the shortage of qualified physicians in medically underserved areas. Applicants must obtain sponsorship from

the State Health Department. This rule outlines the sponsorship requirements. The rule needs to be continued in order for the Utah Department of Health to process applications to U.S. Department of State.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
PRIMARY CARE AND RURAL HEALTH
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Erin Olsen by phone at 801-273-6618, by FAX at 801-273-4146, or by Internet E-mail at elolsen@utah.gov
♦ Stephanie Saperstein by phone at 801-538-6430, or by Internet E-mail at stephaniesaperstein@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 05/04/2015

**Insurance, Administration
R590-199
Plan of Orderly Withdrawal Rule
Relating to Health Benefit Plans**

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

DAR FILE NO.: 39398
FILED: 05/15/2015

**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: Subsection 31A-2-201(3) allows the commissioner to write rules to implement the provisions of Title 31A. Subsection 31A-4-115(8) allows the commissioner to write rules to implement this section regarding an insurer's "Plan of Orderly Withdrawal." The rule sets the information that is to be a part of the withdrawal plan and the way in which it is to be implemented, including to whom and when notification of the withdrawal is to be sent.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule requires specific information to be provided to the commissioner for purposes of approving a plan of orderly withdrawal. This rule is needed to maintain a health benefit market that is stable, fair, and efficient for individuals and small employers. The rule promotes an orderly process by which an insurer can elect to nonrenew health benefit plan coverages. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 05/15/2015

**Natural Resources, Wildlife Resources
R657-55
Wildlife Expo Permits**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 39345
FILED: 05/05/2015

**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: Under Sections 23-14-18 and 23-14-19, the Wildlife Board is authorized and required to provide rules to regulate the management of big game species. This rule provides the standards and procedures for conservation groups to distribute hunting permits at the annual wildlife expo.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-55 were received since 06/01/2010 when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-55 provides the requirements, procedures, and standards for conservation groups to issue the 200 hunting permits made available at the wildlife expo. This rule provides the opportunity for residents and nonresidents to visit Utah during the expo for an opportunity to obtain one of the permits. The wildlife expo brings hundreds of thousands of dollars into the state each year. The provisions adopted in this rule are effective in providing the requirements, procedures and standards for managing the wildlife expo permit program. Continuation of this rule is necessary for continued success of this program.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: Gregory Sheehan, Director

EFFECTIVE: 05/05/2015

**Public Safety, Criminal Investigations
and Technical Services, Criminal
Identification
R722-300
Concealed Firearm Permit and
Instructor Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 39359
FILED: 05/12/2015

**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 Utah Department of Public Safety has been tasked in Section 53-5-704 to: 1) administer and manage the issuance of concealed firearm permits (CFP); 2) train and certify concealed firearm instructors and administer and manage the issuance of concealed firearm instructor licenses; 3) to present to the Concealed Firearm

Review Board recommendations to uphold denial, suspension, or revocation of said licenses when a determination is made that would make the licensee ineligible to hold a license; and 4) maintain and update as required, a database of licensee information. This rule is established to outline a process by which the Bureau of Criminal Identification can administer, manage, and maintain the tasks above.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The requirement to administer, manage, and maintain the licensure of concealed firearm permit holders

and concealed firearm instructors is statutorily required and the need to continue with the current rule still exists.

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

AUTHORIZED BY: Alice Moffat, Bureau Chief

EFFECTIVE: 05/12/2015

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).

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

FIVE-YEAR REVIEW EXPIRATION

DAR FILE NO.: 39344

FILED: 05/05/2015

SUMMARY: The five-year notice of review and statement of continuation was not filed by the extended due date of 05/04/2015. The rule expires and will be removed from the administrative code.

EFFECTIVE: 05/05/2015

Money Management Council,
Administration

R628-15

Certification as an Investment Adviser

FIVE-YEAR REVIEW EXPIRATION

DAR FILE NO.: 39347

FILED: 05/06/2015

SUMMARY: The five-year notice of review and statement of continuation was not filed by the due date of 05/05/2015. The rule expired and will be removed from the administrative code. (DAR NOTE: A 120-day (emergency) rule that puts the rule back into place and is effective as of 05/06/2015 is under DAR No. 39348, and the proposed new Rule R628-15 is under DAR No. 39396 in this issue, June1, 2015, of the Bulletin.)

EFFECTIVE: 05/06/2015

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

Commerce

Occupational and Professional Licensing
No. 39176 (AMD): R156-44a-609. Standards for Out-of-State Programs Providing Certified Nurse Midwife Clinical Experiences in Utah
Published: 04/01/2015
Effective: 05/11/2015

Education

Administration
No. 39218 (AMD): R277-116-1. Definitions
Published: 04/01/2015
Effective: 05/08/2015

No. 39219 (AMD): R277-504. Early Childhood, Elementary, Secondary, Special Education (K-12), and Preschool Special Education (Birth-Age 5) Licensure
Published: 04/01/2015
Effective: 05/08/2015

Rehabilitation

No. 39220 (AMD): R280-200. Rehabilitation
Published: 04/01/2015
Effective: 05/08/2015

Environmental Quality

Radiation Control
No. 39047 (AMD): R313-34. Requirements for Irradiators
Published: 01/15/2015
Effective: 05/05/2015

Health

Disease Control and Prevention, Epidemiology
No. 39170 (AMD): R386-703. Injury Reporting Rule
Published: 04/01/2015
Effective: 05/15/2015

Health Care Financing, Coverage and Reimbursement Policy
No. 39165 (AMD): R414-303-8. Foster Care, Former Foster Care Youth and Independent Foster Care Adolescents
Published: 04/01/2015
Effective: 05/08/2015

Natural Resources

Wildlife Resources
No. 39217 (AMD): R657-3. Collection, Importation, Transportation, and Possession of Animals
Published: 04/01/2015
Effective: 05/08/2015

No. 39215 (AMD): R657-19. Taking Nongame Mammals
Published: 04/01/2015
Effective: 05/08/2015

No. 39216 (NEW): R657-70. Taking Utah Prairie Dogs
Published: 04/01/2015
Effective: 05/08/2015

Professional Practices Advisory Commission

Administration
No. 39221 (AMD): R686-100-7. Default Procedures
Published: 04/01/2015
Effective: 05/08/2015

No. 39222 (AMD): R686-101-14. Default
Published: 04/01/2015
Effective: 05/08/2015

NOTICES OF RULE EFFECTIVE DATES

Public Safety

Criminal Investigations and Technical Services, 911
Committee (Utah)
No. 39022 (AMD): R720-1 (Changed to R173-1). Utah 911
Committee
Published: 01/15/2015
Effective: 05/06/2015

Technology Services

Administration
No. 39026 (AMD): R895-6. IT Plan Submission Rule for
Agencies
Published: 01/15/2015
Effective: 05/05/2015

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 May 15, 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

<p>AMD = Amendment (Proposed Rule) CPR = Change in Proposed Rule EMR = 120-Day (Emergency) Rule EXD = Expired Rule EXP = Expedited Rule EXT = Five-Year Review Extension GEX = Governor's Extension</p>	<p>LNR = Legislative Nonreauthorization NEW = New Rule (Proposed Rule) NSC = Nonsubstantive Rule Change R&R = Repeal and Reenact (Proposed Rule) REP = Repeal (Proposed Rule) 5YR = Five-Year Notice of Review and Statement of Continuation</p>
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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Facilities Construction and Management</u>					
R23-1	Procurement of Construction	39033	R&R	03/03/2015	2015-2/4
R23-2	Procurement of Architect-Engineer Services	39061	REP	03/16/2015	2015-3/4
<u>Finance</u>					
R25-25-7	Travel-Related Reimbursements for State Employees	39160	AMD	04/21/2015	2015-6/10
<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
R33-26-202	Information Technology Equipment	39042	AMD	03/31/2015	2015-2/33
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	2015-4/37
<u>Plant Industry</u>					
R68-1	Utah Bee Inspection Act Governing Inspection of Bees	39237	5YR	03/24/2015	2015-8/33
R68-22	Industrial Hemp Research	39148	NEW	04/22/2015	2015-6/14
<u>Regulatory Services</u>					
R70-101	Bedding, Upholstered Furniture and Quilted Clothing	39223	5YR	03/16/2015	2015-7/57
ALCOHOLIC BEVERAGE CONTROL					
<u>Administration</u>					
R81-1-3	General Policies	39156	AMD	04/28/2015	2015-6/16
R81-1-6	Violation Schedule	39158	AMD	04/28/2015	2015-6/18

R81-2-1	Special Orders of Liquor by Public	39154	AMD	04/28/2015	2015-6/22
R81-3-5	Special Orders of Liquor by Public	39155	AMD	04/28/2015	2015-6/23
R81-4E	Resort Licenses	39059	5YR	01/08/2015	2015-3/69
ATTORNEY GENERAL					
<u>Administration</u>					
R105-1	Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services	39032	AMD	03/26/2015	2015-2/34
R105-1	Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services	39099	AMD	03/26/2015	2015-4/4
R105-1	Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services	39363	EMR	05/12/2015	Not Printed
AUDITOR					
<u>Administration</u>					
R123-6	Allocation of Money in the Property Tax Valuation Agency Fund	39136	AMD	04/08/2015	2015-5/8
CAPITOL PRESERVATION BOARD (STATE)					
<u>Administration</u>					
R131-2	Capitol Hill Complex Facility Use	39025	AMD	02/24/2015	2015-2/41
R131-9	Art and Exhibits	39266	EXD	04/08/2015	2015-9/87
COMMERCE					
<u>Administration</u>					
R151-4-109	Extension of Time and Continuance of Hearing	39144	AMD	04/10/2015	2015-5/9
R151-14-3	Adjudicative Proceedings	39034	AMD	02/24/2015	2015-2/49
<u>Consumer Protection</u>					
R152-1	Utah Division of Consumer Protection: "Buyer Beware List"	39281	5YR	04/15/2015	2015-9/83
R152-39	Child Protection Registry Rules	39282	5YR	04/15/2015	2015-9/83
<u>Occupational and Professional Licensing</u>					
R156-17b	Pharmacy Practice Act Rule	39056	5YR	01/05/2015	2015-3/69
R156-17b	Pharmacy Practice Act Rule	39018	AMD	02/24/2015	2015-2/51
R156-20a	Environmental Health Scientist Act Rule	39306	5YR	04/27/2015	2015-10/101
R156-24b-302b	Qualifications for Licensure - Examination Requirements	39092	AMD	03/24/2015	2015-4/9
R156-26a-501	Unprofessional Conduct	39055	AMD	04/02/2015	2015-3/7
R156-31b	Nurse Practice Act Rule	39132	AMD	04/07/2015	2015-5/10
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
R156-37	Utah Controlled Substances Act Rule	39015	AMD	02/24/2015	2015-2/80
R156-37f-102	Definitions	39020	AMD	02/24/2015	2015-2/84
R156-44a-609	Standards for Out-of-State Programs Providing Certified Nurse Midwife Clinical Experiences in Utah	39176	AMD	05/11/2015	2015-7/2
R156-47b	Massage Therapy Practice Act Rule	38915	AMD	04/21/2015	2014-22/16
R156-47b	Massage Therapy Practice Act Rule	38915	CPR	04/21/2015	2015-6/42
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
R156-71-202	Naturopathic Physician Formulary	39151	AMD	04/21/2015	2015-6/25
R156-83	Online Prescribing, Dispensing, and Facilitation Licensing Act Rule	39298	5YR	04/23/2015	2015-10/102

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R162-2c-201	Licensing and Registration Procedures	38999	AMD	02/10/2015	2015-1/8
R162-2e	Appraisal Management Company Administrative Rules	39291	5YR	04/17/2015	2015-10/102
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
R162-57a	Timeshare and Camp Resort Rules	39292	5YR	04/21/2015	2015-10/103

Securities

R164-2	Investment Adviser - Unlawful Acts	39104	5YR	02/02/2015	2015-4/37
R164-15-2	Notice Filings for Rule 506 Offerings	38926	AMD	03/10/2015	2014-22/20

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R251-303	Offenders' Use of Telephones	39060	5YR	01/08/2015	2015-3/70
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R277-111	Sharing of Curriculum Materials by Public School Educators	39077	5YR	01/15/2015	2015-3/71
R277-111	Sharing of Curriculum Materials by Public School Educators	39078	AMD	03/10/2015	2015-3/13
R277-114	Corrective Action and Withdrawal or Reduction of Program Funds	39335	5YR	05/01/2015	2015-10/104
R277-116-1	Definitions	39218	AMD	05/08/2015	2015-7/7
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
R277-459	Classroom Supplies Appropriation	39336	5YR	05/01/2015	2015-10/104
R277-468	Parent/Guardian Review of Public Education Curriculum and Review of Complaint Process	39079	NEW	03/10/2015	2015-3/14
R277-474	School Instruction and Human Sexuality	39337	5YR	05/01/2015	2015-10/105
R277-475	Patriotic, Civic and Character Education	39338	5YR	05/01/2015	2015-10/105
R277-487	Public School Data Confidentiality and Disclosure	38956	AMD	01/07/2015	2014-23/6
R277-497	School Grading System	39007	AMD	02/09/2015	2015-1/11
R277-504	Early Childhood, Elementary, Secondary, Special Education (K-12), and Preschool Special Education (Birth-Age 5) Licensure	39008	AMD	02/09/2015	2015-1/13
R277-504	Early Childhood, Elementary, Secondary, Special Education (K-12), and Preschool Special Education (Birth-Age 5) Licensure	39219	AMD	05/08/2015	2015-7/8
R277-520	Appropriate Licensing and Assignment of Teachers	39371	5YR	05/15/2015	Not Printed

Rehabilitation

R280-200	Rehabilitation	39220	AMD	05/08/2015	2015-7/13
R280-203	Certification Requirements for Interpreters for the Hearing Impaired	38930	AMD	01/02/2015	2014-22/22

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Administration

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Air Quality

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R307-120	General Requirements: Tax Exemption for Air Pollution Control Equipment	38998	AMD	03/05/2015	2015-1/17
R307-165	Emission Testing	39110	5YR	02/05/2015	2015-5/102

R307-201	Emission Standards: General Emission Standards	39111	5YR	02/05/2015	2015-5/103
R307-202	Emission Standards: General Burning	39113	5YR	02/05/2015	2015-5/103
R307-203	Emission Standards: Sulfur Content of Fuels	39112	5YR	02/05/2015	2015-5/104
R307-204	Emission Standards: Smoke Management	39114	5YR	02/05/2015	2015-5/104
R307-205	Emission Standards: Fugitive Emissions and Fugitive Dust	39115	5YR	02/05/2015	2015-5/105
R307-206	Emission Standards: Abrasive Blasting	39116	5YR	02/05/2015	2015-5/105
R307-207	Residential Fireplaces and Solid Fuel Burning Devices	39117	5YR	02/05/2015	2015-5/106
R307-302	Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber Counties	38842	AMD	02/04/2015	2014-19/44
R307-302	Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber Counties	38842	CPR	02/04/2015	2015-1/48
R307-302	Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber Counties	39349	5YR	05/06/2015	Not Printed
R307-305	Nonattainment and Maintenance areas for PM10: Emission Standards	39118	5YR	02/05/2015	2015-5/107
R307-306	PM10 Nonattainment and Maintenance Areas: Abrasive Blasting	39119	5YR	02/05/2015	2015-5/107
R307-307	Road Salting and Sanding	39120	5YR	02/05/2015	2015-5/108
R307-309	Nonattainment and Maintenance Areas for PM10 and PM2.5: Fugitive Emissions and Fugitive Dust	39121	5YR	02/05/2015	2015-5/108
R307-310	Salt Lake County: Trading of Emission Budgets for Transportation Conformity	39122	5YR	02/05/2015	2015-5/109
R307-311	Utah County: Trading of Emission Budgets for Transportation Conformity	38997	NEW	03/05/2015	2015-1/22
R307-401-19	General Approval Order	38901	AMD	02/05/2015	2014-21/16
R307-841	Residential Property and Child Occupied Facility Renovation	39123	5YR	02/05/2015	2015-5/109
R307-842	Lead-Based Paint Activities	39124	5YR	02/05/2015	2015-5/110
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R309-105	Administration: General Responsibilities of Public Water Systems	39197	5YR	03/13/2015	2015-7/58
R309-110	Administration: Definitions	39198	5YR	03/13/2015	2015-7/59
R309-115	Administrative Procedures	39199	5YR	03/13/2015	2015-7/59
R309-200	Monitoring and Water Quality: Drinking Water Standards	39200	5YR	03/13/2015	2015-7/60
R309-205	Monitoring and Water Quality: Source Monitoring Requirements	39201	5YR	03/13/2015	2015-7/60
R309-210	Monitoring and Water Quality: Distribution System Monitoring Requirements	39202	5YR	03/13/2015	2015-7/61
R309-215	Monitoring and Water Quality: Treatment Plant Monitoring Requirements	39203	5YR	03/13/2015	2015-7/61
R309-220	Monitoring and Water Quality: Public Notification Requirements	39204	5YR	03/13/2015	2015-7/62
R309-225	Monitoring and Water Quality: Consumer Confidence Reports	39205	5YR	03/13/2015	2015-7/62
R309-300	Certification Rules for Water Supply Operators	39206	5YR	03/13/2015	2015-7/63
R309-305	Certification Rules for Backflow Technicians	39207	5YR	03/13/2015	2015-7/63
R309-400	Water System Rating Criteria	39208	5YR	03/13/2015	2015-7/64
R309-405	Compliance and Enforcement: Administrative Penalty	39209	5YR	03/13/2015	2015-7/64
R309-500	Facility Design and Operation: Plan Review, Operation and Maintenance Requirements	39184	5YR	03/13/2015	2015-7/65
R309-505	Facility Design and Operation: Minimum Treatment Requirements	39185	5YR	03/13/2015	2015-7/65
R309-510	Facility Design and Operation: Minimum Sizing Requirements	39186	5YR	03/13/2015	2015-7/66
R309-511	Hydraulic Modeling Requirements	39187	5YR	03/13/2015	2015-7/66

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R309-515	Facility Design and Operation: Source Development	39188	5YR	03/13/2015	2015-7/67
R309-520	Facility Design and Operation: Disinfection	39189	5YR	03/13/2015	2015-7/67
R309-525	Facility Design and Operation: Conventional Surface Water Treatment	39190	5YR	03/13/2015	2015-7/68
R309-530	Facility Design and Operation: Alternative Surface Water Treatment Methods	39191	5YR	03/13/2015	2015-7/68
R309-535	Facility Design and Operation: Miscellaneous Treatment Methods	39192	5YR	03/13/2015	2015-7/69
R309-540	Facility Design and Operation: Pump Stations	39193	5YR	03/13/2015	2015-7/69
R309-545	Facility Design and Operation: Drinking Water Storage Tanks	39194	5YR	03/13/2015	2015-7/70
R309-550	Facility Design and Operation: Transmission and Distribution Pipelines	39195	5YR	03/13/2015	2015-7/70
R309-600	Source Protection: Drinking Water Source Protection for Ground Water Sources	39213	5YR	03/13/2015	2015-7/71
R309-605	Source Protection: Drinking Water Source Protection for Surface Water Sources	39214	5YR	03/13/2015	2015-7/71
R309-700	Financial Assistance: State Drinking Water State Revolving Fund (SRF) Loan Program	39210	5YR	03/13/2015	2015-7/72
R309-705	Financial Assistance: Federal Drinking Water State Revolving Fund (SRF) Loan Program	39211	5YR	03/13/2015	2015-7/72
R309-800	Capacity Development Program	39212	5YR	03/13/2015	2015-7/73

Environmental Response and Remediation

R311-500	Illegal Drug Operations Site Reporting and Decontamination Act, Decontamination Specialist Certification Program	39146	5YR	02/18/2015	2015-6/45
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Radiation Control

R313-15-1208	Reports of Leaking or Contaminated Sealed Sources	39082	AMD	03/17/2015	2015-3/21
R313-17-4	Special Procedures for Decisions Associated with Licenses for Uranium Mills and Disposal of Byproduct Material	38770	AMD	02/17/2015	2014-17/95
R313-17-4	Special Procedures for Decisions Associated with Licenses for Uranium Mills and Disposal of Byproduct Material	38770	CPR	02/17/2015	2014-24/40
R313-19	Requirements of General Applicability to Licensing of Radioactive Material	38907	AMD	02/17/2015	2014-21/18
R313-24-1	Purpose and Authority	39149	NSC	03/06/2015	Not Printed
R313-28-31	General and Administrative Requirements	39016	AMD	03/24/2015	2015-2/85
R313-34	Requirements for Irradiators	39047	AMD	05/05/2015	2015-2/87
R313-38-3	Clarifications or Exceptions	39083	AMD	03/17/2015	2015-3/22

Solid and Hazardous Waste

R315-15-1	Applicability, Prohibitions, and Definitions	39302	NSC	05/11/2015	Not Printed
R315-15-3	Standards for Used Oil Collection Centers and Aggregation Points	39303	NSC	05/06/2015	Not Printed
R315-15-5	Standards for Used Oil Processors and Re-Refiners	39304	NSC	05/11/2015	Not Printed
R315-15-6	Standards for Used Oil Burners Who Burn Used Oil for Energy Recovery	39307	NSC	05/11/2015	Not Printed
R315-15-13	Registration and Permitting of Used Oil Handlers	39308	NSC	05/11/2015	Not Printed

Water Quality

R317-4	Onsite Wastewater Systems	39106	5YR	02/03/2015	2015-5/111
R317-10-8	Utah Wastewater Operator Certification Council	39105	AMD	04/29/2015	2015-4/10

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
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R356-1	Procedures for the Calculation and Distribution of Funds to Reimburse County Correctional Facilities Housing State Probationary Inmates or State Parole Inmates	39344	EXD	05/05/2015	Not Printed
<u>Economic Development</u>					
R357-3	Refundable Economic Development Tax Credit	39094	R&R	04/13/2015	2015-4/12
R357-11	Technology Commercialization and Innovation Program (TCIP)	38944	NEW	03/23/2015	2014-23/14
R357-12	Fiscal Emergency Contingent Management of Federal Lands	38945	NEW	03/20/2015	2014-23/17
<u>Energy Development (Office of)</u>					
R362-3	Energy Efficiency Fund	38931	AMD	01/07/2015	2014-22/24
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<u>Center for Health Data, Health Care Statistics</u>					
R428-15	Health Data Authority Health Insurance Claims Reporting	39247	NSC	04/07/2015	Not Printed
<u>Child Care Center Licensing Committee</u>					
R381-60	Hourly Child Care Centers	39130	NEW	05/01/2015	2015-5/16
R381-70	Out of School Time Programs	39129	NEW	05/01/2015	2015-5/25
R381-100	Child Care Centers	39128	NEW	05/01/2015	2015-5/36
<u>Children's Health Insurance Program</u>					
R382-10	Eligibility	39102	AMD	04/01/2015	2015-4/15
<u>Disease Control and Prevention, Environmental Services</u>					
R392-600	Illegal Drug Operations Decontamination Standards	39159	EXD	02/26/2015	2015-6/49
R392-600	Illegal Drug Operations Decontamination Standards	39161	NEW	05/01/2015	2015-6/27
<u>Disease Control and Prevention, Epidemiology</u>					
R386-703	Injury Reporting Rule	39170	AMD	05/15/2015	2015-7/24
R386-800	Immunization Coordination	39108	5YR	02/05/2015	2015-5/111
<u>Disease Control and Prevention, Health Promotion</u>					
R384-300	Parkinson's Disease Reporting Rule	39052	NEW	03/12/2015	2015-3/24
<u>Disease Control and Prevention, Immunization</u>					
R396-100	Immunization Rule for Students	39171	NSC	03/24/2015	Not Printed
<u>Family Health and Preparedness, Child Care Licensing</u>					
R430-60	Hourly Child Care Centers	39127	REP	05/01/2015	2015-5/56
R430-70	Out of School Time Child Care Programs	39126	REP	05/01/2015	2015-5/66
R430-100	Child Care Centers	39125	REP	05/01/2015	2015-5/76
<u>Family Health and Preparedness, Children with Special Health Care Needs</u>					
R398-30	Children's Organ Transplants	39133	NEW	04/20/2015	2015-5/49
<u>Family Health and Preparedness, Licensing</u>					
R432-2-6	Application	38982	AMD	02/06/2015	2014-24/33
R432-35	Background Screening -- Health Facilities	38954	AMD	01/27/2015	2014-23/23
<u>Family Health and Preparedness, Maternal and Child Health</u>					
R433-1	Very Low Birth Weight Infant Reporting	38802	NEW	02/12/2015	2014-18/20
R433-1	Very Low Birth Weight Infant Reporting	38802	CPR	02/12/2015	2015-1/50
<u>Family Health and Preparedness, Primary Care and Rural Health</u>					
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R414-10B	Children's Organ Transplants	39134	REP	04/20/2015	2015-5/51
R414-11	Podiatric Services	38952	AMD	01/13/2015	2014-23/22
R414-14A	Hospice Care	39142	AMD	04/07/2015	2015-5/53
R414-19A	Coverage for Dialysis Services by a Free-Standing State Licensed Dialysis Facility	39005	AMD	02/18/2015	2015-1/24
R414-19A	Coverage for Dialysis Services by a Free-Standing State Licensed Dialysis Facility	39264	5YR	04/07/2015	2015-9/84
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R414-38	Personal Care Service	39131	AMD	04/07/2015	2015-5/54
R414-303-8	Foster Care, Former Foster Care Youth and Independent Foster Care Adolescents	39165	AMD	05/08/2015	2015-7/26
R414-309	Medicare Drug Benefit Low-Income Subsidy Determination	39145	5YR	02/18/2015	2015-6/45
R414-310-7	Household Composition and Income Provisions	38984	AMD	02/01/2015	2014-24/32

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Administration

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R501-19	Residential Treatment Programs	39258	5YR	04/01/2015	2015-8/34
R501-20	Day Treatment Programs	39259	5YR	04/01/2015	2015-8/35
R501-21	Outpatient Treatment Programs	39260	5YR	04/01/2015	2015-8/35
R501-22	Residential Support Programs	39257	5YR	04/01/2015	2015-8/36

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R523-8	Evidence-Based Prevention Registry	38917	NEW	01/06/2015	2014-22/33
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R590-130-7	Advertisements of Benefits Payable, Losses Covered or Premiums Payable	39029	NSC	01/15/2015	Not Printed
R590-140	Reference Filings of Rate Service Organization Prospective Loss Costs	39147	5YR	02/18/2015	2015-6/46
R590-142	Continuing Education Rule	38934	AMD	01/12/2015	2014-23/25
R590-164	Uniform Health Billing Rule	39174	5YR	03/10/2015	2015-7/74
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R590-194	Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism	39038	NSC	01/15/2015	Not Printed
R590-199	Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans	39398	5YR	05/15/2015	Not Printed
R590-226-14	Responses	39031	NSC	01/15/2015	Not Printed
R590-231	Workers' Compensation Market of Last Resort	39313	5YR	04/29/2015	2015-10/106
R590-244	Individual and Agency Licensing Requirements	38935	AMD	01/12/2015	2014-23/31

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Administration

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R595-3	Procedure	39050	5YR	01/02/2015	2015-3/72
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R628-15	Certification as an Investment Adviser	39348	EMR	05/06/2015	Not Printed

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R652-160	Department of Natural Resources Wilderness Rules	38942	NEW	01/27/2015	2014-23/36
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R651-207	Registration Fee	39006	AMD	02/11/2015	2015-1/25
R651-214	Temporary Registration	38970	AMD	01/22/2015	2014-24/34
R651-223	Vessel Accident Reporting	39090	5YR	01/23/2015	2015-4/38
R651-409	Minimum Amounts of Liability Insurance Coverage for an Organized Practice or Sanctioned Race	39140	5YR	02/12/2015	2015-5/113
R651-412	Curriculum Standards for OHV Education Programs Offered by Non-Division Entities	39088	5YR	01/22/2015	2015-4/38
R651-634	Nonresident OHV User Permits and Fees	39089	5YR	01/22/2015	2015-4/39
R651-635	Commercial Use of Division Managed Park Areas	39141	5YR	02/12/2015	2015-5/113

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R657-5	Taking Big Game	38996	AMD	02/09/2015	2015-1/26
R657-5	Taking Big Game	39062	AMD	03/16/2015	2015-3/30

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R657-19	Taking Nongame Mammals	39215	AMD	05/08/2015	2015-7/33
R657-21	Cooperative Wildlife Management Units for Small Game and Waterfowl	39163	5YR	03/03/2015	2015-7/76
R657-33	Taking Bear	39063	AMD	03/16/2015	2015-3/31
R657-38	Dedicated Hunter Program	39064	AMD	03/16/2015	2015-3/39
R657-41	Conservation and Sportsman Permits	39065	AMD	03/16/2015	2015-3/40
R657-42	Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents	39066	AMD	03/16/2015	2015-3/42
R657-43	Landowner Permits	38995	AMD	02/09/2015	2015-1/33
R657-55	Wildlife Convention Permits	39067	AMD	03/16/2015	2015-3/43
R657-55	Wildlife Expo Permits	39345	5YR	05/05/2015	Not Printed
R657-57	Division Variance Rule	39068	AMD	03/16/2015	2015-3/48
R657-59	Private Fish Ponds	39069	AMD	03/16/2015	2015-3/50
R657-62	Drawing Application Procedures	39070	AMD	03/16/2015	2015-3/52
R657-68	Trial Hunting Authorization	39071	AMD	03/16/2015	2015-3/54
R657-69	Turkey Depredation	38949	AMD	01/08/2015	2014-23/39
R657-70	Taking Utah Prairie Dogs	39216	NEW	05/08/2015	2015-7/36

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R671-201	Original Parole Grant Hearing Schedule and Notice	39093	AMD	03/24/2015	2015-4/20
R671-303-1	Information Received, Maintained or Used by the Board	39107	AMD	04/07/2015	2015-5/90
R671-305-1	Board Decisions and Orders	39137	AMD	04/07/2015	2015-5/91

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R686-101-14	Default	39222	AMD	05/08/2015	2015-7/43

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R720-1 (Changed to R173-1)	Utah 911 Committee	39022	AMD	05/06/2015	2015-2/98
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Criminal Investigations and Technical Services, Criminal Identification

R722-300	Concealed Firearm Permit and Instructor Rule	39359	5YR	05/12/2015	Not Printed
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
R722-370	Firearm Safety Program	39019	NEW	02/24/2015	2015-2/100
R722-380	Firearm Background Check Information	39091	NEW	03/24/2015	2015-4/22

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R708-32	Uninsured Motorist Identification Database	39179	5YR	03/10/2015	2015-7/77
R708-36	Disclosure of Personal Identifying Information in MVRs	39178	5YR	03/10/2015	2015-7/77
R708-37	Certification of Licensed Instructors of Commercial Driver Training Schools or Testing Only Schools to Administer Driving Skills Tests	39180	5YR	03/10/2015	2015-7/78
R708-40	Driving Simulators	39181	5YR	03/10/2015	2015-7/78
R708-41	Requirements for Acceptable Documentation, Storage and Maintenance	39182	5YR	03/10/2015	2015-7/79
R708-50	Vehicle Impound Fee Reimbursement	39003	NEW	02/09/2015	2015-1/38
R708-51	Mobility Vehicle Permit	39043	NEW	02/25/2015	2015-2/97

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R728-506	Canine Body Armor Restricted Account	38983	NEW	01/26/2015	2014-24/36
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Administration

R746-312	Electrical Interconnection	39311	5YR	04/29/2015	2015-10/107
R746-341-5	Duties of ETCs	38936	AMD	01/07/2015	2014-23/43

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R765-571	Delegation of Purchasing Authority	39010	NEW	04/28/2015	2015-1/39
R765-609	Regents' Scholarship	39157	5YR	02/25/2015	2015-6/48
R765-611	Veterans Tuition Gap Program	39023	NEW	02/25/2015	2015-2/101

SCHOOL AND INSTITUTIONAL TRUST FUND BOARD OF TRUSTEES

Administration

R849-1	Appeal Rule	39143	NEW	04/15/2015	2015-5/92
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Administration

R850-21	Oil, Gas and Hydrocarbon Resources	39250	5YR	04/01/2015	2015-8/37
R850-22	Bituminous-Asphaltic Sands and Oil Shale Resources	39251	5YR	04/01/2015	2015-8/37
R850-23	Sand, Gravel and Cinders Permits	39252	5YR	04/01/2015	2015-8/38
R850-24	General Provisions: Mineral and Material Resources, Mineral Leases and Material Permits	39253	5YR	04/01/2015	2015-8/38
R850-25	Mineral Leases and Materials Permits	39254	5YR	04/01/2015	2015-8/39
R850-26	Coal Leases	39255	5YR	04/01/2015	2015-8/39
R850-27	Geothermal Steam	39256	5YR	04/01/2015	2015-8/40
R850-90	Land Exchanges	39295	NSC	05/11/2015	Not Printed

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Administration

R895-6	IT Plan Submission Rule for Agencies	39026	AMD	05/05/2015	2015-2/104
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Motor Carrier

R909-1	Safety Regulations for Motor Carriers	39172	EMR	03/06/2015	2015-7/53
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R916-3	DESIGN-BUILD Contracts	39100	AMD	03/27/2015	2015-4/23
R916-4	Construction Manager/General Contractor Contracts	39183	EXT	03/10/2015	2015-7/81
R916-4	Construction Manager/General Contractor Contracts	39101	AMD	03/27/2015	2015-4/26

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R918-7	Highway Sponsorship Programs	39004	NEW	02/20/2015	2015-1/42
R918-7	Highway Sponsorship Programs	39150	AMD	04/23/2015	2015-6/36

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R920-4	Special Road Use or Event	39095	EMR	01/29/2015	2015-4/33
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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	Child Care Assistance	39098	AMD	05/01/2015	2015-4/28
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

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Housing and Community Development

R990-8	Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance	39085	AMD	03/10/2015	2015-3/58
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R994-204	Covered Employment	39239	5YR	03/25/2015	2015-8/40
R994-205	Exempt Employment	39240	5YR	03/25/2015	2015-8/41
R994-206	Agricultural Labor	39241	5YR	03/25/2015	2015-8/41
R994-304	Special Provisions Regarding Transfers of Unemployment Experience and Assigning Rates	39242	5YR	03/25/2015	2015-8/42

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ABBREVIATIONS

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

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>abrasive blasting</u>					
Environmental Quality, Air Quality	39116	R307-206	5YR	02/05/2015	2015-5/105
	39119	R307-306	5YR	02/05/2015	2015-5/107
<u>acceptable documents</u>					
Public Safety, Driver License	39182	R708-41	5YR	03/10/2015	2015-7/79
<u>access</u>					
Environmental Quality, Drinking Water	39194	R309-545	5YR	03/13/2015	2015-7/70
<u>accidents</u>					
Natural Resources, Parks and Recreation	39090	R651-223	5YR	01/23/2015	2015-4/38
<u>accountants</u>					
Commerce, Occupational and Professional Licensing	39055	R156-26a-501	AMD	04/02/2015	2015-3/7
<u>adjudicative proceedings</u>					
Commerce, Administration	39144	R151-4-109	AMD	04/10/2015	2015-5/9
	39034	R151-14-3	AMD	02/24/2015	2015-2/49
Environmental Quality, Drinking Water	39199	R309-115	5YR	03/13/2015	2015-7/59
Environmental Quality, Environmental Response and Remediation	39146	R311-500	5YR	02/18/2015	2015-6/45
Environmental Quality, Radiation Control	38770	R313-17-4	AMD	02/17/2015	2014-17/95
	38770	R313-17-4	CPR	02/17/2015	2014-24/40
School and Institutional Trust Fund Board of Trustees, Administration	39143	R849-1	NEW	04/15/2015	2015-5/92
<u>administrative penalties</u>					
Natural Resources, Water Rights	39153	R655-14	5YR	02/24/2015	2015-6/47
<u>administrative procedures</u>					
Commerce, Administration	39144	R151-4-109	AMD	04/10/2015	2015-5/9
Environmental Quality, Air Quality	39109	R307-103	5YR	02/05/2015	2015-5/101
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	39206	R309-300	5YR	03/13/2015	2015-7/63
Environmental Quality, Radiation Control	38770	R313-17-4	AMD	02/17/2015	2014-17/95
	38770	R313-17-4	CPR	02/17/2015	2014-24/40
Natural Resources, Parks and Recreation	39139	R651-101	5YR	02/12/2015	2015-5/112
Public Safety, Driver License	39072	R708-7	AMD	03/10/2015	2015-3/55
School and Institutional Trust Lands, Administration	39250	R850-21	5YR	04/01/2015	2015-8/37
	39251	R850-22	5YR	04/01/2015	2015-8/37
	39254	R850-25	5YR	04/01/2015	2015-8/39
	39255	R850-26	5YR	04/01/2015	2015-8/39
	39256	R850-27	5YR	04/01/2015	2015-8/40
	39295	R850-90	NSC	05/11/2015	Not Printed
<u>administrative proceedings</u>					
Commerce, Real Estate	38971	R162-2e-401	AMD	01/28/2015	2014-24/26
Environmental Quality, Air Quality	39109	R307-103	5YR	02/05/2015	2015-5/101
Environmental Quality, Drinking Water	39199	R309-115	5YR	03/13/2015	2015-7/59
Environmental Quality, Environmental Response and Remediation	39146	R311-500	5YR	02/18/2015	2015-6/45
<u>advertising</u>					
Commerce, Consumer Protection	39282	R152-39	5YR	04/15/2015	2015-9/83
<u>air pollution</u>					
Environmental Quality, Air Quality	39109	R307-103	5YR	02/05/2015	2015-5/101
	38998	R307-120	AMD	03/05/2015	2015-1/17
	39110	R307-165	5YR	02/05/2015	2015-5/102
	39111	R307-201	5YR	02/05/2015	2015-5/103
	39113	R307-202	5YR	02/05/2015	2015-5/103
	39112	R307-203	5YR	02/05/2015	2015-5/104
	39115	R307-205	5YR	02/05/2015	2015-5/105
	39116	R307-206	5YR	02/05/2015	2015-5/105
	38842	R307-302	AMD	02/04/2015	2014-19/44
	38842	R307-302	CPR	02/04/2015	2015-1/48
	39349	R307-302	5YR	05/06/2015	Not Printed
	39118	R307-305	5YR	02/05/2015	2015-5/107
	39119	R307-306	5YR	02/05/2015	2015-5/107
	39120	R307-307	5YR	02/05/2015	2015-5/108
	39121	R307-309	5YR	02/05/2015	2015-5/108
	39122	R307-310	5YR	02/05/2015	2015-5/109
	38997	R307-311	NEW	03/05/2015	2015-1/22
	38901	R307-401-19	AMD	02/05/2015	2014-21/16
<u>air quality</u>					
Environmental Quality, Air Quality	39114	R307-204	5YR	02/05/2015	2015-5/104
<u>air travel</u>					
Administrative Services, Finance	39160	R25-25-7	AMD	04/21/2015	2015-6/10
<u>alcoholic beverages</u>					
Alcoholic Beverage Control, Administration	39156	R81-1-3	AMD	04/28/2015	2015-6/16
	39158	R81-1-6	AMD	04/28/2015	2015-6/18
	39154	R81-2-1	AMD	04/28/2015	2015-6/22
	39155	R81-3-5	AMD	04/28/2015	2015-6/23
	39059	R81-4E	5YR	01/08/2015	2015-3/69
<u>alternative onsite wastewater systems</u>					
Environmental Quality, Water Quality	39106	R317-4	5YR	02/03/2015	2015-5/111
<u>animal protection</u>					
Natural Resources, Wildlife Resources	39217	R657-3	AMD	05/08/2015	2015-7/29
<u>appeals</u>					
School and Institutional Trust Fund Board of Trustees, Administration	39143	R849-1	NEW	04/15/2015	2015-5/92
<u>appraisal management company</u>					
Commerce, Real Estate	39291	R162-2e	5YR	04/17/2015	2015-10/102

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<u>approval orders</u>					
Environmental Quality, Air Quality	38901	R307-401-19	AMD	02/05/2015	2014-21/16
<u>aquaculture</u>					
Agriculture and Food, Animal Industry	39074	R58-17	5YR	01/13/2015	2015-3/68
Natural Resources, Wildlife Resources	39069	R657-59	AMD	03/16/2015	2015-3/50
<u>architects</u>					
Administrative Services, Facilities Construction and Management	39061	R23-2	REP	03/16/2015	2015-3/4
<u>art</u>					
Capitol Preservation Board (State), Administration	39266	R131-9	EXD	04/08/2015	2015-9/87
<u>assignments</u>					
Education, Administration	39371	R277-520	5YR	05/15/2015	Not Printed
<u>Attorney General</u>					
Attorney General, Administration	39032	R105-1	AMD	03/26/2015	2015-2/34
	39099	R105-1	AMD	03/26/2015	2015-4/4
<u>attorney general</u>					
Attorney General, Administration	39363	R105-1	EMR	05/12/2015	Not Printed
<u>automobiles</u>					
Commerce, Administration	39034	R151-14-3	AMD	02/24/2015	2015-2/49
<u>backflow assembly tester</u>					
Environmental Quality, Drinking Water	39207	R309-305	5YR	03/13/2015	2015-7/63
<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
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Environmental Quality, Radiation Control	39016	R313-28-31	AMD	03/24/2015	2015-2/85
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Natural Resources, Wildlife Resources	39063	R657-33	AMD	03/16/2015	2015-3/31
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Agriculture and Food, Plant Industry	39237	R68-1	5YR	03/24/2015	2015-8/33
<u>beneficial use</u>					
Natural Resources, Water Rights	39152	R655-16	5YR	02/24/2015	2015-6/47
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<u>big game seasons</u>					
Natural Resources, Wildlife Resources	38996	R657-5	AMD	02/09/2015	2015-1/26
	39062	R657-5	AMD	03/16/2015	2015-3/30
	38995	R657-43	AMD	02/09/2015	2015-1/33
<u>birds</u>					
Natural Resources, Wildlife Resources	39162	R657-15	5YR	03/03/2015	2015-7/75
<u>bituminous-asphaltic sands</u>					
School and Institutional Trust Lands, Administration	39251	R850-22	5YR	04/01/2015	2015-8/37
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Natural Resources, Parks and Recreation	39006	R651-207	AMD	02/11/2015	2015-1/25

	38970	R651-214	AMD	01/22/2015	2014-24/34
	39090	R651-223	5YR	01/23/2015	2015-4/38
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Heritage and Arts, Arts and Museums	39096	R451-3	EXD	01/28/2015	2015-4/41	
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School and Institutional Trust Lands, Administration	39252	R850-23	5YR	04/01/2015	2015-8/38	
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Public Safety, Criminal Investigations and Technical Services, Criminal Identification	39019	R722-370	NEW	02/24/2015	2015-2/100	
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	39303	R315-15-3	NSC	05/06/2015	Not Printed	
	39304	R315-15-5	NSC	05/11/2015	Not Printed	
	39307	R315-15-6	NSC	05/11/2015	Not Printed	
	39308	R315-15-13	NSC	05/11/2015	Not Printed	
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Environmental Quality, Drinking Water	39199	R309-115	5YR	03/13/2015	2015-7/59	
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	38770	R313-17-4	CPR	02/17/2015	2014-24/40	
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	39222	R686-101-14	AMD	05/08/2015	2015-7/43	
School and Institutional Trust Fund Board of Trustees, Administration	39143	R849-1	NEW	04/15/2015	2015-5/92	
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Agriculture and Food, Plant Industry	39148	R68-22	NEW	04/22/2015	2015-6/14	
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Environmental Quality, Drinking Water	39185	R309-505	5YR	03/13/2015	2015-7/65	
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	39183	R916-4	EXT	03/10/2015	2015-7/81
	39101	R916-4	AMD	03/27/2015	2015-4/26
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Public Safety, Driver License	39182	R708-41	5YR	03/10/2015	2015-7/79
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	39308	R315-15-13	NSC	05/11/2015	Not Printed
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