

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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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

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**Health**  
**Health Care Financing, Coverage and Reimbursement Policy**  
**International Classification of Diseases (ICD)-10-CM Code Updates**

In accordance with requirements set forth in the Health Insurance Portability and Accountability Act (HIPAA) and under the direction of the United States Congress, the Division of Medicaid and Health Financing (DMHF) will submit a State Plan Amendment (SPA) to implement ICD-10-CM codes in the Utah Medicaid State Plan that become effective October 1, 2015.

For this purpose, DMHF will submit [SPA 15-0020-UT, ICD-10-CM Code Updates](#), which updates diagnosis codes to reflect ICD-10-CM in Section 920b of ATTACHMENT 4.19-D and on Pages 1 and 2 of ATTACHMENT 4.22-A.

This amendment does not affect total annual expenditures for the Medicaid program.

This amendment is pending CMS approval and the proposed effective date is October 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, PO Box 143102, Salt Lake City, UT 84114-3102. Comments are welcome at the same address. Copies of this change are also available at local county health department offices.*

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

**Notice for August 2015 Medicaid Rate Changes**

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

**End of the Special Notices Section**





# EXECUTIVE DOCUMENTS

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

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

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## Wildland Fire Management, Utah Exec. Order No. 2015-5

### EXECUTIVE ORDER

#### Wildland Fire Management

**WHEREAS**, the danger from wildland fires is high throughout the State of Utah;

**WHEREAS**, below-normal precipitation in central and southern Utah has contributed to the early drying of wildland vegetation;

**WHEREAS**, some of the potential fire dangers areas are extremely remote, inaccessible and in the even to a wildfire occurring the situation has the potential to deteriorate if left unattended;

**WHEREAS**, the potential for large fire occurrence is increasing regionally as the wildland vegetation completes curing in the wake of the recent hot and dry weather;

**WHEREAS**, immediate action is required to suppress the fire conditions and mitigate potential post-burn destruction. This destruction can lead to mudslides and flash floods causing dangerous conditions for life safety, property, natural resources and the environment;

**WHEREAS**, The National Weather Service is predicting a persistent hot dry pattern of weather for the foreseeable future;

**WHEREAS**, the eleven Interagency Hotshot Firefighting Crews and two of the five Type 2 Incident Management Teams located in the Great Basin Geographic Area are assigned to active wildfire incidents;

**WHEREAS**, the National Wildfire Planning Level has been elevated to a Planning Level 3, and the Regional Wildfire Planning Level is elevated to Planning Level 2, indicating the potential firefighting resources will be scarcity; and

**WHEREAS**, these conditions do create the potential for a disaster emergency within the intent of the Disaster Response and Recovery Act of 1981,

**NOW THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah by virtue of the power vested in me by the constitution and the laws of the State of Utah, do hereby order that:

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, critical infrastructure, natural resources and the environment for thirty days, effective as of July 1, 2015 requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

**IN TESTIMONY, WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 29st day of June 2015

(State Seal)

**Gary R. Herbert**  
Governor

**ATTEST:**

**Lieutenant Governor**  
**Spencer J. Cox**

2015/005/EO

**End of the Executive Documents Section**

## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between June 16, 2015, 12:00 a.m., and July 01, 2015, 11:59 p.m. are included in this, the July 15, 2015, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least August 14, 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 November 12, 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.

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**The Proposed Rules Begin on the Following Page**

## Administrative Services, Purchasing and General Services

### R33-4

## General Procurement Provisions, Prequalifications, Specifications, and Small Purchases

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39472

FILED: 06/29/2015

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to amend the title of "architectural or engineering" to "design professional," amend Section R33-4-106, Small Purchases Threshold for Construction Projects, require the involvement of the Division of Purchasing at the beginning of the quote or solicitation process in Section R33-4-108, and to add a section on vendors with exclusive authorization to bid.

**SUMMARY OF THE RULE OR CHANGE:** The changes amend the title of "architectural or engineering" to "design professional", amend Section R33-4-106: Small Purchases Threshold for Construction Projects regarding the chief procurement officer or head of a procurement unit with independent procurement authority's responsibilities, require the involvement of the Division of Purchasing at the beginning of the quote or solicitation process in Section R33-4-108, and to add a section on vendors with exclusive authorization to bid.

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

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings that are expected. The changes made to the rule simply amend the title of "architectural or engineering" to "design professional", require the chief procurement officer or head of a procurement unit with independent procurement authority to procure small construction projects costing more than \$100,000 up to a maximum of \$2,500,000 through a two-stage process, require the Division of Purchasing to be included at the beginning of the quote or solicitation process, and to add a section on vendors with exclusive authorization to bid.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings that are expected. The changes made to the rule simply amend the title of "architectural or engineering" to "design professional", require the chief procurement officer or head of a procurement unit with independent procurement authority to procure small construction projects costing more

than \$100,000 up to a maximum of \$2,500,000 through a two-stage process, require the Division of Purchasing to be included at the beginning of the quote or solicitation process, and to add a section on vendors with exclusive authorization to bid.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings that are expected. The changes made to the rule simply amend the title of "architectural or engineering" to "design professional", require the chief procurement officer or head of a procurement unit with independent procurement authority to procure small construction projects costing more than \$100,000 up to a maximum of \$2,500,000 through a two-stage process, require the Division of Purchasing to be included at the beginning of the quote or solicitation process, and to add a section on vendors with exclusive authorization to bid.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings that are expected. The changes made to the rule simply amend the title of "architectural or engineering" to "design professional," require the chief procurement officer or head of a procurement unit with independent procurement authority to procure small construction projects costing more than \$100,000 up to a maximum of \$2,500,000 through a two-stage process, require the Division of Purchasing to be included at the beginning of the quote or solicitation process, and to add a section on vendors with exclusive authorization to bid.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no compliance costs because the changes to the rule simply amend titles, establish requirements for the chief procurement officer or head of a procurement unit with independent procurement authority, require the Division of Purchasing to be included at the beginning of the quote or solicitation process, and to add a section on vendors with exclusive authorization to bid.

**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 business. The changes to the rule simply amend titles, establish requirements for the chief procurement officer or head of a procurement unit with independent procurement authority, require the Division of Purchasing to be included at the beginning of the quote or solicitation process, and to add a section on vendors with exclusive authorization to bid.

**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:

- ◆ 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
- ◆ 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 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: Kent Beers, Director

### **R33. Administrative Services, Purchasing and General Services.**

#### **R33-4. General Procurement Provisions, Prequalifications, Specifications, and Small Purchases.**

##### **R33-4-101. Prequalification of Potential Vendors.**

General procurement provisions, including prequalification of potential vendors, approved vendor lists, and small purchases shall be conducted in accordance with the requirements set forth in Sections 63G-6a-402 through 408. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

##### **R33-4-101a. Vendors with Exclusive Authorization to Bid.**

(1) The requirements of this rule shall only apply when a procurement unit issues a prequalification for potential vendors as set forth in Utah Code 63G-6a-403 for all qualified, responsive and responsible vendors with an exclusive dealership, franchise, distributorship, or other arrangement, from a manufacturer identifying the vendor as the only one authorized to submit bids or quotes for the specified procurement item within the State of Utah or a region within the State of Utah.

(a) Under the provisions of this rule, no vendor described in (1) may be excluded from the list of prequalified vendors, unless a determination is made by the procurement unit that a vendor is not qualified, responsive or responsible.

(b) The request for statements of qualifications shall indicate that all vendors on the prequalified vendor list will be invited to submit bids or quotes.

(2) After the prequalified list has been compiled, a procurement unit may award a contract by obtaining bids or quotes from all vendors on the prequalified list taking into consideration a best value analysis that includes, as applicable:

- (a) cost;
- (b) compatibility with existing equipment, technology, software, accessories, replacement parts, or service;
- (c) training, knowledge and experience of employees of the procurement unit and of the vendors;
- (d) past performance of vendors and pertaining to the procurement item being purchased;
- (e) the costs associated with transitioning from an existing procurement item to a new procurement item; or

(f) other factors determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority.

(3) Procurement units must follow the requirements in R33-4-110 when obtaining quotes and the requirements in Part 6 of the Utah Procurement Code when obtaining bids.

(4) An exception to the requirements of this rule may be authorized by the chief procurement officer or head of a procurement unit with independent procurement authority.

##### **R33-4-102. Thresholds for Approved Vendor Lists.**

(1) Public entities may establish approved vendor lists in accordance with the requirements of Sections 63G-6a-403 and 63G-6a-404.

(a) Contracts or purchases from an approved vendor list may not exceed the following thresholds:

(i) Construction Projects: \$2,500,000 per contract, for direct construction costs, including design and allowable furniture or equipment costs, awarded using an invitation for bids or a request for proposals;

(ii) Professional and General Services, including architectural and engineering services: \$100,000; and

(iii) Information Technology: \$500,000

(b) Thresholds for other approved vendor lists may be established by the Chief Procurement Officer, or as applicable, the head of a procurement unit with independent procurement authority.

##### **R33-4-103. Specifications.**

(1) Public entities shall include in solicitation documents specifications for the procurement item(s).

(2) Specifications shall be drafted with the objective of clearly describing the procurement unit's requirements and encouraging competition.

(a) Specifications shall emphasize the functional or performance criteria necessary to meet the needs of the procurement unit.

(3) Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications. Procurement units may retain the services of a person to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. However the person assisting in writing specifications shall not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation.

(a) Rule R33-4-104(3) does not apply to the following:

- (i) a design build construction project; and
  - (ii) other procurements determined in writing by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.
- (b) Violations of this Rule R33-4-104(3) may result in:
- (i) the bidder or offeror being declared ineligible for award of the contract;
  - (ii) the solicitation being canceled;
  - (iii) termination of an awarded contract; or

(iv) any other action determined to be appropriate by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.

(4) Brand Name or Equal Specifications.

(a) Brand name or equal specifications may be used when:

(i) "or equivalent" reference is included in the specification; and,

(ii) as many other brand names as practicable are also included in the specification.

(b) Brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required. Specifications unique to the brands shall be described in sufficient detail that another person can respond with an equivalent brand.

(c) When a manufacturer's specification is used in a solicitation, the solicitation shall state the minimum acceptable requirements of an equivalent. When practicable, the procurement unit shall name at least three manufacturer's specifications.

(5) Brand Name Sole Source Requirements.

(a) If only one brand can meet the requirement, the procurement unit shall conduct the procurement in accordance with 63G-6a-802 and shall solicit from as many providers of the brand as practicable; and,

(b) If there is only one provider that can meet the requirement, the procurement unit shall conduct the procurement in accordance with Section 63G-6a-802.

#### **R33-4-104. Small Purchases.**

Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-408. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(1) "Small Purchase" means a procurement conducted by a procurement unit that does not require the use of a standard procurement process.

(2) Small Purchase thresholds:

(a) The "Individual Procurement" threshold is a maximum amount of \$1,000 for a procurement item;

(i) For individual procurement item(s) costing up to \$1,000, an entity subject to these rules may select the best source by direct award and without seeking competitive bids or quotes.

(a) The single procurement aggregate threshold is a maximum amount of \$5,000 for multiple procurement item(s) purchased from one source at one time; and

(b) The annual cumulative threshold from the same source is a maximum amount of \$50,000.

(3) Whenever practicable, the Division of Purchasing and General Services and entities subject to these rules shall use a rotation system or other system designed to allow for competition when using the small purchases process.

#### **R33-4-105. Small Purchases Threshold for ~~[Architectural and Engineering] Design Professional Services.~~**

(1) The small purchase threshold for ~~[architectural or engineering] design professional~~ services is a maximum amount of \$100,000.

(2) ~~[Architectural or engineering] Design professional~~ services may be procured up to a maximum of \$100,000, by direct

negotiation after reviewing the qualifications of a minimum of three ~~[architectural or engineering] design professional~~ firms.

~~[(3) Procurement units subject to these rules shall follow the process described in Section 63G-6a-403 to prequalify potential vendors and Section 63G-6a-404 of the to develop an approved vendor list or Part 15 of the Utah Procurement Code for the selection of architectural and engineering services.~~

~~[(3)4] Procurement units that are subject to these rules shall include minimum specifications when using the small purchase threshold for [architectural and engineering] design professional services.~~

~~[(4)5] Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing in the qualification process described under Section 63G-6a-403, the approved vendor list process described under Section 63G-6a-404, and the evaluation and fee negotiation process described in Part 15 of the Utah Procurement Code in the procurement of [architectural or engineering] design professional services.~~

#### **R33-4-106. Small Purchases Threshold for Construction Projects.**

(1) The small construction project threshold is a maximum of \$2,500,000 for direct construction costs, including design and allowable furniture or equipment costs;

~~[(2) Procurement units subject to these rules shall follow the process described in the Section 63G-6a-403 to prequalify potential vendors and Section 63G-6a-404 to develop an Approved Vendor List or other applicable selection methods described in the Utah Procurement Code for construction services.~~

~~[(2)3] Procurement units subject to these rules shall include minimum specifications when using the small purchases threshold for construction projects.~~

~~[(3)4] Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing [and General Services] in the qualification process described under Section 63G-6a-403, the approved vendor list process described under Section 63G-6a-404, and the obtaining of quotes, bids or proposals in the procurement of small construction projects.~~

~~[(4)5] The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may procure small construction projects up to a maximum of \$25,000 by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting and other construction related requirements are met. The awarded contractor must certify that [they are] it is capable of meeting the minimum specifications of the project.~~

~~[(5)6] The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may procure small construction projects costing more than \$25,000 up to a maximum of \$100,000 by obtaining a minimum of two competitive quotes that include minimum specifications and shall award to the contractor with the lowest quote that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.~~

~~[(7) If an approved vendor list is not established under Sections 63G-6a-403 and 404, procurement units shall procure construction projects over \$100,000 using an invitation to bid or other~~

~~approved source selection method outlined in the Utah Procurement Code.~~

~~]~~ (6) Under this Rule, the chief procurement officer or head of a procurement unit with independent procurement authority shall procure small construction projects costing more than \$100,000 up to a maximum of \$2.5 million through a two-stage process. Stage one, qualify vendors under Section 63G-6a-403 and develop an Approved Vendor List under Section 63G-6a-404. Stage two, issue to all vendors, qualified and approved in stage one, an invitation for bids or request for proposals and use the procedures set forth therein to award a contract.

#### **R33-4-107. Quotes for Small Purchases from \$1,001 to \$50,000.**

(1) For procurement item(s) where the cost is greater than \$1,000 but up to a maximum of \$5,000, an entity subject to these rules shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(2) For procurement item(s) where the cost is greater than \$5,000 up to a maximum of \$50,000, a procurement unit with independent procurement authority that is subject to these rules or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(3) For procurement item(s) costing over \$50,000, a procurement unit with independent procurement authority that is subject to these rules or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall conduct an invitation for bids or other procurement process outlined in the Utah Procurement Code.

(4) Limited Purchasing Delegation for Small Purchases. The Division of Purchasing and General Services may delegate limited purchasing authority for small purchases costing more than \$5,000 up to a maximum of \$50,000, to an executive branch procurement unit provided that the executive branch procurement unit enters into an agreement with the Division outlining the duties and responsibilities of the unit to comply with applicable laws, rules, policies and other requirements of the Division.

(5) The names of the vendors offering quotations and bids and the date and amount of each quotation or bid shall be recorded and maintained as a governmental record.

#### **R33-4-108. Small Purchases of ~~Services of~~ Professionals, Professional Service Providers[,] and Consultants.**

(1) The small purchase threshold for professional service providers and consultants is a maximum amount of \$100,000.

(2) After reviewing the qualifications of a minimum of two professional service providers or consultants, the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may obtain professional services or consulting services:

- (a) up to a maximum of \$50,000 by direct negotiation; or
- (b) over \$50,000 up to a maximum of \$100,000 by obtaining a minimum of two quotes.

(3) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing at the beginning of the quote or solicitation process, in the procurement of professional services or consulting services.

**KEY: government purchasing, general procurement provisions, specifications, small purchases**

**Date of Enactment or Last Substantive Amendment: ~~[June 23,] 2015~~**

**Notice of Continuation: July 8, 2014**

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

## Administrative Services, Purchasing and General Services **R33-16** Controversies and Protests

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39470

FILED: 06/29/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to add a section on grounds for a protest.

**SUMMARY OF THE RULE OR CHANGE:** The change adds a section detailing the grounds required for a protest.

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

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There are no anticipated costs or savings that are expected. The changes simply add a section detailing the grounds required for a protest.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings that are expected. The changes simply add a section detailing the grounds required for a protest.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings that are expected. The changes simply add a section detailing the grounds required for a protest.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings that are expected. The changes simply add a section detailing the grounds required for a protest.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no compliance costs because the changes simply add a section detailing the grounds required for a protest.

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 simply add a section detailing the grounds required for a protest.

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:

- ◆ 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
- ◆ 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 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: Kent Beers, Director

### **R33. Administrative Services, Division of Purchasing and General Services.**

#### **R33-16. Controversies and Protests.**

##### **R33-16-101. Conduct.**

Controversies and protests shall be conducted in accordance with the requirements set forth in Sections 63G-6a-1601 through 13G-6a-604. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

##### **R33-16-101a. Grounds for a Protest.**

(1) This Rule shall apply to all protests filed under Section 63G-6a-1602 of the Utah Procurement Code.

(2) In accordance with the requirements set forth in Section 63G-6a-1602(2)(b), a person filing a protest must include a concise statement of the grounds upon which the protest is made.

(a) A concise statement of the grounds for a protest should include the relevant facts leading the protestor to contend that a grievance has occurred, including but not limited to specifically referencing:

- (i) An alleged violation of Utah Procurement Code 63G-6a;
- (ii) An alleged violation of Administrative Rule R33 or other applicable rule;
- (iii) A provision of the request for proposals, invitation for bids, or other solicitation allegedly not being followed;

(iv) A provision of the solicitation alleged to be:

- (A) ambiguous;
- (B) confusing;
- (C) contradictory;
- (D) unduly restrictive;
- (E) erroneous;
- (F) anticompetitive; or
- (G) unlawful;

(v) An alleged error made by the evaluation committee or conducting procurement unit;

(vi) An allegation of bias by the evaluation committee or an individual committee member; or

(vii) A scoring criteria allegedly not being correctly applied or calculated.

(b) "Relevant Facts" as referred to in (2)(b), in addition to being relevant, must be specific enough to enable the protest officer to determine, if such facts are proven to be true, whether a legitimate basis for the protest exists.

(c) None of the following qualify as a concise statement of the grounds for a protest:

(i) claims made after the opening of bids or closing date of proposals that the specifications, terms and conditions, or other elements of a solicitation are ambiguous, confusing, contradictory, unduly restrictive, erroneous, or anticompetitive;

(ii) vague or unsubstantiated allegations that do not reference relevant or specific facts including, but not limited to, vague or unsubstantiated allegations by a bidder, offeror, or prospective contractor that:

(A) a bidder, offeror, or prospective contractor should have received a higher score or that another bidder, offeror, or prospective contractor should have received a lower score;

(B) a service or product provided by a bidder, offeror, or prospective contractor is better than another bidder's, offeror's, or prospective contractor's service or product;

(C) another bidder, offeror, or prospective contractor cannot provide the procurement item for the price bid or perform the services described in the solicitation; or

(D) any item listed in Section (2)(b) of this Rule has occurred that is not relevant or specific;

(iii) Filing a protest requesting:

(A) a detailed explanation of the thinking and scoring of evaluation committee members, beyond the official justification statement described in Section 63G-6a-708,

(B) protected information beyond what is provided under the disclosure provisions of the Utah Procurement Code; or

(C) other information, documents, or explanations reasonably deemed to be not in compliance with the Utah Code or this Rule by the protest officer.

(d) In accordance with Section 63G-6a-1603(3)(a), a protest officer may dismiss a protest if the concise statement of the grounds for filing a protest does not comply with this Rule.

##### **R33-16-201. Verification of Legal Authority.**

A person filing a protest may be asked to verify that the person has legal authority to file a protest on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association.



**R33-16-301. Intervention in a Protest.**

(1) Application. This Rule contains provisions applicable to intervention in a protest, including who may intervene and the time and manner of intervention.

(2) Period of Time to File. After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement and may notify others of the protest. A Motion to Intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those Motions to Intervene made within the time prescribed in this Rule will be considered timely. The entity or entities who conducted the procurement and those who are the intended beneficiaries of the procurement are automatically considered a Party of Record and need not file any Motion to Intervene.

(3) Contents of a Motion to Intervene. A copy of the Motion to Intervene shall also be mailed or emailed to the person protesting the procurement.

(4) Any Motion to Intervene must state, to the extent known, the position taken by the person seeking intervention and the basis in fact and law for that position. A motion to intervene must also state the person's interest in sufficient factual detail to demonstrate that:

(a) the person seeking to intervene has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(b) the person seeking to intervene has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:

- (i) consumer;
- (ii) customer;
- (iii) competitor;
- (iv) security holder of a party; or
- (v) the person's participation is in the public interest.

(5) Granting of Status. If no written objection to the timely Motion to Intervene is filed with the Protest Officer within seven calendar days after the Motion to Intervene is received by the protesting person, the person seeking intervention becomes a party at the end of this seven day period. If an objection is timely filed, the person seeking intervention becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a reason for intervention exists as stated in this Rule. Notwithstanding any provision of this Rule, an awardee of the procurement that is the subject of a protest will not be denied their Motion to Intervene, regardless of its content, unless it is not timely filed with the Protest Officer.

(6) Late Motions. If a motion to intervene is not timely filed, the motion shall be denied by the Protest Officer.

**R33-16-401. Protest Officer May Correct Noncompliance, Errors and Discrepancies.**

(1) At any time during the protest process, if it is discovered that a procurement is out of compliance with any part of the Utah Procurement Code or Administrative Rules established by the applicable rule making authority, including errors or discrepancies, the protest officer, chief procurement officer, or head of a procurement unit with independent procurement authority, may take administrative action to correct or amend the procurement to bring it into compliance, correct errors or discrepancies or cancel the procurement.

**KEY: conduct, controversies, government purchasing, protests**  
**Date of Enactment or Last Substantive Amendment: |~~January 28,~~**  
**|2015**  
**Authorizing, and Implemented or Interpreted Law: 63G-6a**

**Administrative Services, Purchasing  
 and General Services  
 R33-26-202  
 Disposal of State-Owned Surplus  
 Electronic Data Devices**

**NOTICE OF PROPOSED RULE  
 (Amendment)**

DAR FILE NO.: 39454  
 FILED: 06/19/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to provide an exception for directors and other state officials regarding the gifting and selling of surplus state-owned electronic devices defined under this rule.

**SUMMARY OF THE RULE OR CHANGE:** The addition of an exception for directors and other state officials regarding the gifting and selling of surplus state-owned electronic devices defined under this rule.

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are no anticipated costs of saving that are expected. The amendment to this rule simply adds an exception for directors and other state officials regarding the gifting and selling of surplus state-owned electronic devices defined under this rule.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs of saving that are expected. The amendment to this rule simply adds an exception for directors and other state officials regarding the gifting and selling of surplus state-owned electronic devices defined under this rule.

◆ **SMALL BUSINESSES:** There are no anticipated costs of saving that are expected. The amendment to this rule simply adds an exception for directors and other state officials regarding the gifting and selling of surplus state-owned electronic devices defined under this rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs of saving that are expected. The amendment to this rule simply adds an exception for directors and other state officials regarding the gifting and selling of surplus state-owned electronic devices defined under this rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no compliance costs because the amendment simply adds an exception for directors and other state officials regarding the gifting and selling of surplus state-owned electronic devices defined under this rule.

**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 amendment to this rule simply add an exception for directors and other state officials regarding the gifting and selling of surplus state-owned electronic devices defined under this rule.

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:

- ◆ 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
- ◆ 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 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: Kimberly Hood, Executive Director

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**R33. Administrative Services, Purchasing and General Services.**

**R33-26. State Surplus Property.**

**R33-26-202. Disposal of State-Owned Surplus Electronic Data Devices.**

(1) For the purpose of this rule, Electronic Data Device means an electronic device capable of downloading, storing or transferring State-owned data. Electronic Data Devices include:

- (a) Computers;
- (b) Tablets (iPads, Surface Pro, Google Nexus, Samsung Galaxy, etc.);
- (c) Smart phones;
- (d) Personal Digital Assistants (PDAs);
- (e) Digital copiers and multifunction printers;
- (f) Flash drives and other portable data storage devices; and
- (g) Other similar devices.

(2) The State has determined that the security risk of a potential data breach resulting from the improper disposal or sale of an electronic data device, as defined in this rule, outweigh the potential revenue that may be received by the State from the sale of an electronic data device deemed surplus property. Therefore, the State has adopted this Administrative Rule regarding the proper disposal of State-owned surplus electronic data devices:

(a) Each State agency shall ensure that all surplus State-owned electronic data devices are disposed of in accordance with the following procedures.

(b) Surplus State-owned electronic devices defined under this Rule may not be sold or gifted ~~by [via on-line auction or] any [other]~~ means.

(i) An exception for directors and other State officials may be granted by the Director of the Division of Purchasing after receiving documentation from:

(A) the Executive Director of Department of Technology Services certifying that all connectivity to sensitive, confidential, protected, and classified State data has been removed from the State-owned electronic data device and that the State-owned electronic data device no longer has access to the State's network; and

(B) the State Surplus Property Manager regarding the market value of the State-owned electronic data device.

(c) Surplus State-owned electronic data devices must be disposed of through the vendor under contract with the State, unless a separate contractual agreement has been entered into with the manufacturer or supplier of the device for proper destruction and disposal.

(d) The Division of Purchasing shall enter into a contract with a vendor for the destruction and proper disposal of all State-owned surplus electronic data devices.

(e) Proper disposal includes:

(i) Recycling components and parts after the State-owned electronic data device has been destroyed to the point that State-owned data cannot be retrieved;

(ii) Disposal in a landfill approved for electronic waste after the State-owned electronic data device has been destroyed to the point that State-owned data cannot be retrieved; or

(iii) Computers, digital copiers and multifunction printers that have had the hard drive destroyed may be resold by the contractor.

(f) State agencies shall request assistance from the Department of Technology Services (DTS) to destroy the hard drives of computers and other State-owned surplus electronic data devices purchased through DTS prior to the agency transferring the devices to the vendor under contract with the State.

(g) State agencies shall contact the vendor under contract with the State to destroy and properly dispose of all other State-owned surplus electronic data communication devices.

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

**Date of Enactment or Last Substantive Amendment: [June 10,] 2015**

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

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**Alcoholic Beverage Control,  
Administration  
R81-2-8  
Accepting Checks as Payment for  
Liquor**

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 39476  
FILED: 06/29/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This section is being amended to authorize the director to make internal department policies regarding payment for products.

**SUMMARY OF THE RULE OR CHANGE:** This filing clarifies that payment for product from licensees must come from the licensee and authorizes the agency to make internal department policies for acceptance of payments for liquor.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32B-2-206 and Subsection 32B-2-202(1) and Subsection 32B-5-303(1)(c)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** None--This rule is necessary to authorize the director to make internal department policies regarding payment for products. Any cost to the state has been authorized by the legislature through the budgetary process and not as a result of this rule amendment.
- ◆ **LOCAL GOVERNMENTS:** This rule is necessary to authorize the director to make internal department policies regarding payment for products and does not affect local government. There are no anticipated cost or savings to local government.
- ◆ **SMALL BUSINESSES:** This rule is necessary to authorize the director to make internal department policies payment for products. There are no anticipated cost or savings for small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule is necessary to authorize the director to make internal department policies regarding payment for products. There are no anticipated cost or savings for persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--This rule is necessary to authorize the director to make internal department policies regarding payment for products. Any compliance costs passed on to the consumer will go through the fee assessment processes outlined in Section 63J-1-504.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** None--This rule is necessary to authorize the director to make internal department policies regarding payment for products. Any fiscal impact has been authorized by the legislature through the budgetary process and not as a result of this rule amendment.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ALCOHOLIC BEVERAGE CONTROL  
ADMINISTRATION  
1625 S 900 W  
SALT LAKE CITY, UT 84104-1630  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
◆ Andrew Hofeling by phone at 801-977-6835, by FAX at 801-977-6888, or by Internet E-mail at ahofeling@utah.gov  
◆ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: Sal Petilos, Executive Director

**R81. Alcoholic Beverage Control, Administration.  
R81-2. State Stores.**

**R81-2-8. ~~Accepting Checks as~~ Payment for Liquor.**

- ~~(1) Accepting Licensee Payments: Pursuant to 32B-5-303(1)(c), this rule requires that payments collected from licensees for the purchase of liquor come from the licensee and authorizes the agency to make internal department policies in accordance with 32B-2-206(1), (2) and (5) for the acceptance of payments for liquor.~~
- ~~(1) A state liquor store may accept a check as payment for liquor from an individual customer only under the following conditions:~~
- ~~(a) The check may be drawn only on a United States, Canadian, Puerto Rican, or U.S. Virgin Islands financial institution.~~
  - ~~(b) The following must appear on the check:
 
    - ~~(i) name (must be imprinted);~~
    - ~~(ii) address (if post office box, the full address must be written in); and~~
    - ~~(iii) telephone number (may be hand-written).~~~~
  - ~~(c) The check must be made out to the Department of Alcoholic Beverage Control, or D.A.B.C. (no two-party checks).~~
  - ~~(d) The check must be made out for the exact amount of the purchase.~~
  - ~~(e) An acceptable form of identification is required for any check written over \$50.00, and may be required at the discretion of the cashier or store manager for any check written under \$50.00. Acceptable forms of identification include those listed in R81-2-4.~~

~~\_\_\_\_\_ (2) A state liquor store may accept a check as payment for liquor from a licensee only under the following conditions:~~

~~\_\_\_\_\_ (a) The check must be imprinted with the name of the licensee's business, its business address, and its telephone number.~~

~~\_\_\_\_\_ (b) The check must be made out to the Department of Alcoholic Beverage Control, or D.A.B.C. (no two-party checks).~~

~~\_\_\_\_\_ (c) The check must be made out for the exact amount of the purchase.~~

~~\_\_\_\_\_ (3) A state liquor store may accept a business or company check as payment for liquor only under the following conditions:~~

~~\_\_\_\_\_ (a) The check may be drawn only on a United States, Canadian, Puerto Rican, or U.S. Virgin Islands financial institution.~~

~~\_\_\_\_\_ (b) The check must be imprinted with the name of the business or company, its business address, and its telephone number.~~

~~\_\_\_\_\_ (c) The check must be made out to the Department of Alcoholic Beverage Control, or D.A.B.C. (no two-party checks).~~

~~\_\_\_\_\_ (d) The check must be made out for the exact amount of the purchase.~~

~~\_\_\_\_\_ (e) Further identification is not required.~~

~~\_\_\_\_\_ (f) The department may place a maximum limit on the total dollar amount in checks a business or company may tender to the department in a 24-hour period.~~

~~\_\_\_\_\_ (4) A state liquor store may accept a traveler's check as payment for liquor under the following conditions:~~

~~\_\_\_\_\_ (a) Traveler's checks shall be in "US Dollars".~~

~~\_\_\_\_\_ (b) Each traveler's check shall have been previously signed by the holder of the check at the issuing bank or company. The check shall then be signed a second time in front of the DABC store employee that is handling the sale. The store employee shall compare the two signatures to verify that the signatures match, and shall otherwise examine the check to verify its validity.~~

~~\_\_\_\_\_ (c) Traveler's checks shall be made out to the Department of Alcoholic Beverage Control or "D.A.B.C."~~

~~\_\_\_\_\_ (d) When accepting a traveler's check for \$50.00 or more, the store employee shall:~~

~~\_\_\_\_\_ (i) call the issuing bank or company and receive an authorization, and authorization number; and~~

~~\_\_\_\_\_ (ii) check the identification of the customer. Acceptable forms of identification include those listed in R81-2-4.~~

~~\_\_\_\_\_ (e) On the upper, left hand corner of a traveler's check for \$50.00 or more, the employee shall write:~~

~~\_\_\_\_\_ (i) the authorization number from the issuing bank or company;~~

~~\_\_\_\_\_ (ii) the type of identification used including expiration date and individual's identification number; and~~

~~\_\_\_\_\_ (iii) the store employee's initials.~~

]

**KEY: alcoholic beverages**

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

**Notice of Continuation: May 10, 2011**

**Authorizing, and Implemented or Interpreted Law: 32B-2-202**

## Alcoholic Beverage Control, Administration **R81-7** Single Event Permits

### NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 39474

FILED: 06/29/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to make changes to the rule as requested by the legislative Administrative Rules Review Committee. Additionally, the rule has been redrafted to clarify language and reference statutory authority.

**SUMMARY OF THE RULE OR CHANGE:** The reenacted Rule R81-7 will combine Rule R81-7, Single Event Permits, and Rule R81-10B, Temporary Beer Permits, to bring the administrative rules in line with statutory provision of Title 32B, Chapter 9, which contains provisions for both types of event permits. The proposed rule will: 1) require complete permit applications to be submitted within seven business days in advance of the event and allows flexibility for the department to update application requirements as the need arises; 2) provide provisions for the director to consider the recommendation from the locality regarding whether a single event permit applicant is conducting a civic or community enterprise; 3) require the director to review the totality of the circumstances to determine if permit should be issued - including whether permits are being used to circumvent provisions of Title 32B, Chapter 9, and violation history of the applicant, the event and venue of the event; 4) require that the director detail any denial in writing and allow the applicant to request review by the commission if the application is denied; and 5) streamline control measures required for events. (DAR NOTE: the proposed repeal of Rule R81-10B is under DAR No. 39475 in this issue, July 15, 2015, of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 32B-2-202(1) and Title 32B, Chapter 9

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** None--This amendment makes changes to the rule as requested by the Administrative Rules Review Committee and to clarify language and reference statutory authority. There are no anticipated costs or savings as the department's responsibilities remain the same.

◆ LOCAL GOVERNMENTS: None--This amendment makes changes to the rule as requested by the Administrative Rules Review Committee and to clarify language and reference statutory authority. There are no anticipated costs or savings to local government.

◆ SMALL BUSINESSES: None--This amendment makes changes to the rule as requested by the Administrative Rules Review Committee and to clarify language and reference statutory authority. There are no anticipated costs or savings to small businesses. Any additional costs or savings to small businesses would result from a business' decision related to control measures for an event or a requirement to increase control measures to minimize the likelihood of service to minors and service to intoxicated individuals based on totality of the circumstances.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This amendment makes changes to the rule as requested by the Administrative Rules Review Committee and to clarify language and reference statutory authority. There are no anticipated costs or savings to persons other than small business, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This amendment makes changes to the rule as requested by the Administrative Rules Review Committee and to clarify language and reference statutory authority. Any compliance cost for affected persons would result from a business' decision related to control measures for an event or a requirement to increase control measures to minimize the likelihood of service to minors and service to intoxicated individuals based on totality of the circumstances.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment makes changes to the rule as requested by the Administrative Rules Review Committee and to clarify language and reference statutory authority. Any fiscal impact that this rule may have on businesses would result from a business' decision related to control measures for an event or a requirement to increase control measures to minimize the likelihood of service to minors and service to intoxicated individuals based on totality of the circumstances.

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

ALCOHOLIC BEVERAGE CONTROL  
ADMINISTRATION  
1625 S 900 W  
SALT LAKE CITY, UT 84104-1630  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Andrew Hofeling by phone at 801-977-6835, by FAX at 801-977-6888, or by Internet E-mail at ahofeling@utah.gov  
◆ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 07/28/2015 10:00 AM, ABC, 1625 S 900 W, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: Sal Petilos, Executive Director

**R81. Alcoholic Beverage Control, Administration.**

**R81-7. [Single]Event Permits.**

**[R81-7-1. Application Guidelines.**

~~\_\_\_\_\_ (1) A single event permit is issued to those who are conducting a convention, civic or community enterprise.~~

~~\_\_\_\_\_ (a) "Conducting" means the conduct, management, control or direction of an event. The organization directly benefiting from the event, monetarily or otherwise, shall be deemed to be conducting the event.~~

~~\_\_\_\_\_ (b) "Convention, civic or community enterprise" means a function that is in the nature of a temporary special event such as a social, business, religious, political, governmental, educational, recreational, cultural, charitable, athletic, theatrical, scholastic, artistic, or scientific event. A "civic or community enterprise" generally is a gathering that brings members of a community together for the common good.~~

~~\_\_\_\_\_ (2) An application for a single event permit application shall be considered for issuance of a single event permit when the requirements of Section 32B-1-304 and 32B-9-201, 203 and 304 have been met, and a completed application has been received by the department. Applications submitted less than 30 days prior to the event risk non-issuance of a permit and the department will not consider an application submitted less than 7 business days prior to the event.~~

~~\_\_\_\_\_ (a) Once received, the application will be considered in compliance with section 32B-9-202.~~

~~\_\_\_\_\_ (b) All approvals, notifications, requests for meetings or requirements to inform under section 32B-9-202 shall be done electronically. For purposes of 32B-9-202(4), notice to law enforcement, the department may provide notice to law enforcement of the preliminary approval within three business days of the event, so long as law enforcement is notified if that approval does not become final.~~

~~\_\_\_\_\_ (3) Pursuant to Section 32B-9-303, Subject to the requirements of 32B-9-202(2)(f)(g)and(h) and 32B-9-202(3)(a)(b) (e)and(d), the director may grant single event permits to a bona fide partnership, corporation, limited liability company, church, political organization, or incorporated association, and to each bona fide and recognized subordinate lodge, chapter or local unit of any qualifying parent entity. To be a "bona fide" and "recognized" subordinate or local entity, the applicant must have been in existence for at least one year prior to the date of the application and must furnish proof thereof.~~

(4) If the applicant is a bona fide incorporated association, corporation, or a separately incorporated subordinate lodge, chapter or local unit thereof, the applicant shall submit a copy of its certificate and articles of incorporation from the state, which reflect that the applicant has been in existence for at least one year prior to date of application.

(5) If the applicant is a bona fide limited liability company, the applicant shall submit a copy of its limited liability company certificate of existence from the state, which reflects that the applicant has been in existence for at least one year prior to date of application.

(6) If the applicant is a bona fide church, political organization, or recognized subordinate chapter or local unit thereof, the applicant shall submit proof of its tax exempt status as provided by the Internal Revenue Service.

(7) Any subordinate or local entity of a parent entity must also establish that it is duly "recognized" by the parent entity by providing written verification of its "recognized" status such as a letter from, or bylaws of the parent entity. The subordinate or local unit shall also furnish proof that the parent entity qualifies under sections (1), (2), (3), (4), and (5) of this rule. These requirements shall not apply in situations where the subordinate or local unit is separately incorporated.

(8) Single event permits are issued to state agencies, political subdivisions of the state, and organizations listed in Subsection (2) that are conducting a convention, civic or community enterprise. Single event permits may not be issued to or obtained by an entity or organization for the purpose of avoiding or attempting to avoid the requirement of state retail alcohol licensing.

To ensure compliance with Subsection (1), the director may consider factors such as:

- (a) the purpose of the entity or organization;
  - (b) the nature and purpose of the event;
  - (c) the type of entertainment, if any, at the event;
  - (d) the location of the event;
  - (e) the frequency of events held at the same location;
  - (f) whether the location is government owned and operated;
- and
- (g) the extent to which the event:
    - (i) benefits the community;
    - (ii) is held for charitable purposes; or
    - (iii) is held for the profit of the entity or organization.

(9) Calendar year is defined as January 1 through December 31.

(10) The single event permit bond, as required by Section 32B-9-304(3), shall not be released back to the single event permittee until the permittee provides to the department the required data regarding liquor purchases, sales, prices charged, and net profit generated at the event for which the single event permit was issued.

(11) If an organization or individual other than the one applying for the single event permit posts the \$1,000 bond required by Section 32B-9-304(3), an affidavit must be submitted attesting that the \$1,000 bond is for the permittee's compliance with the provisions of the Act and the commission rules, and that if a violation occurs at the single event, the bond may be forfeited.

(12) The director may authorize multiple sales outlets on different properties under one single event permit, provided that each site conforms to location requirements of Section 32B-9-201(4). The commission may authorize simultaneous sale and consumption hours at multiple sales outlets.

#### **R81-7-2. Guidelines for Issuing Permits.**

(1) Purpose—In deciding whether to issue a single event permit for such events, the director must be satisfied that sufficient controls will be in place to minimize the possibility of minors being sold or furnished alcohol or adults being over-served alcohol at the event. This rule identifies control measures that must be in place before the director will issue a single event permit. However, this rule gives the director discretion not to require specific control measures under certain circumstances after considering the facts and circumstances of a particular event. The sale of alcohol at outdoor public events such as street festivals, fairs, concerts, and rodeos poses special control issues for event organizers and law enforcement officials. Furthermore, the sale of beer at public events attended by large numbers of people, many of whom may be under the age of 21, also poses special control issues. Applicants for outdoor or large scale events will need to address these issues in their application.

(2) Definitions.

(a) For purposes of this rule, "large-scale public event" includes any event that is open to the general public and the estimated attendance at the event is in excess of 1000 people.

(3) Authority. This rule is enacted under the authority of Sections 63G-3-201, 32B-2-202 and 32B-9-202 and -303.

(4) Policy.

(a) Before a single event permit will be issued by the director to allow the sale of alcoholic beverages at an outdoor or a large-scale public event, the following control measures must be present at the event:

(i) There must be at least one location at the event where those wanting to purchase alcoholic beverages must show proof of age and either have their hand stamped or be issued a non-transferable wristband.

(A) The proof of age location(s) shall be separate from the alcoholic beverage sales and dispensing location(s).

(B) Proof of age may be established by:

(I) a current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(II) a current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(III) a current valid military identification that includes date of birth and has a picture affixed; or

(IV) a current valid passport.

(C) Any person assigned to check proof of age shall have completed the alcohol server training seminar outlined in 62A-15-401.

(D) The use of hand stamps or issuance of wristbands does not relieve those selling and dispensing alcoholic beverages from asking for proof of age if they suspect a person attempting to purchase an alcoholic beverage is under the age of 21 years.

(ii) Alcoholic sales and dispensing location(s) shall be separate from food and non-alcoholic beverage concession locations. However, if the consumption of alcohol at the event is limited to a confined, restricted area such as a "beer garden", then alcoholic beverages, food and non-alcoholic beverages may be sold at the same sales locations within the confined, restricted area.

~~(iii) Alcoholic beverages shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages.~~

~~(iv) No more than two alcoholic beverages shall be sold to a customer at a time.~~

~~(v) At least one person who has completed the alcohol server training seminar outlined in 62A-15-401 shall be at each location where alcoholic beverages are sold and dispensed to supervise the sale and dispensing of alcoholic beverages.~~

~~(vi) If minors may attend the event, all dispensing and consumption of alcoholic beverages shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where alcohol consumption may be closely monitored.~~

~~(b) Notwithstanding Subsection (a), the director, after reviewing the facts and circumstances of a particular outdoor or large-scale public event, has the discretion to relax any of the control measures outlined in Subsection (a) above.~~

~~(c) After reviewing the facts and circumstances of the outdoor or large-scale public event, the director has the discretion to require additional control measures as a condition of issuing a single event permit. These can include but are not limited to the following:~~

~~(i) Placing limits on the variety of alcoholic beverages served at the event.~~

~~(ii) Requiring that alcoholic beverages be distinguishable in appearance from non-alcoholic beverages.~~

~~(iii) Requiring a certain minimum number of law enforcement and/or security personnel at the event.~~

~~(5) Procedure. The following procedure shall govern applications for single event permits for outdoor or large-scale public events:~~

~~(a) In addition to providing a description of the times, dates, location, nature and purpose of the event, the applicant shall include in the single event permit application a summary of all control measures that will be taken at the event to reduce the possibility of minors being furnished alcohol and adults being over-served alcohol at the event.~~

~~(b) Department staff shall provide this information to the director prior to the director's consideration of the single event permit application.~~

~~(c) The director shall review the application to determine if all statutory requirements are in place, to determine if all controls listed in Subsections (4)(a)(i) through (vi) are in place, to consider any request to waive any of the controls listed in Subsections (4)(a)(i) through (vi), and to assess whether any additional control measures such as those listed in Subsection (4)(c) should be required prior to issuing the single event permit.~~

### **R81-7-3. Price Lists.**

~~(1) A single event permittee shall have a printed alcoholic beverage price list available for inspection containing prices of mixed drinks, wine, beer, and heavy beer. The list shall include any charges for the service of packaged wines or heavy beer, and any service charges for the supply of glasses, chilling, or wine service.~~

~~(2) The permittee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the event premises.]~~

### **R81-7-1. Authority and Purpose.**

(1) Pursuant to 32B-2-202(1)(c)(i) and (1)(n), this rule establishes procedures and criteria for issuing and denying event permits in accordance with 32B-9.

### **R81-7-2. Application Guidelines.**

(1) A event permit application will not be submitted to the Director for consideration until the requirements of Section 32B-1-304, 32B-9-201-203, -304 (for single event permits) and -405 (for temporary beer event permits) have been met, including:

(a) A complete application including all documents and supplemental materials listed on the department's application checklist has been submitted to the department 7 business days prior to the event; and

(b) The department has conducted an investigation in compliance with 32B-9-202(1)(a).

### **R81-7-3. Guidelines for Issuing Permits.**

(1) Once submitted to the director, the application will be considered in compliance with 32B-9-202 and 303 (for single event permits) and -403 (for temporary beer event permits), including consideration of (2) (for single event permits), (3) (4) and (5) below.

(i) After consideration of the totality of the circumstances, the director will either issue a preliminary decision to issue or deny the event permit or refer the application to the commission in accordance with 32B-9-202(3).

(ii) If the director issues a preliminary decision to deny issuance of an event permit, the decision shall be provided in writing detailing the basis for the denial.

(iii) An applicant may submit a request for review by the commission within the time limits of 32B-9-202(3)(b) and (c) related to the three business day review period and regularly scheduled commission meetings. If at least three commissioners request review of the denial in compliance with 32B-9-202(3)(b) and (c), the commission shall review the request at their next regularly schedule commission meeting.

(2) Additional Consideration for Single Event Permits: In accordance with 32B-9-303(2), a single event permit is issued to entities in existence for a year or more conducting a convention, civic or community enterprise.

(a) "Conducting" means the conduct, management, control or direction of an event. An applicant may be deemed to be conducting the event if there is a contract in which the applicant has been designated as the agent for the event's beverage service.

(3) As part of local consent required by 32B-9-201(1)(c), the locality may provide a recommendation as to whether the entity is conducting a civic or community enterprise. The director may consider the recommendation of the local authority in determining whether the entity is conducting a civic or community enterprise. Notwithstanding subsections (a), an event permit will not be issued if based on the totality of the circumstances, it is determined that the permit is being used to circumvent other applicable requirements of 32B-9 Event Permit Act, Violation History: In accordance with 32B-9-202(2)(d), in considering the nature of the event, the director will consider the violation history for the last three years of the applicant, the event, and the venue where the event will be held.

(4) Control Measures: In accordance with 32B-9-202(2)(d), in considering the nature of the event, the director must determine that adequate and appropriate control measures will be in place to minimize the possibility of minors being sold or furnished alcohol or adults being over-served alcohol at the event.

(a) Before an event permit may be issued by the director, the following control measures must be present at the event unless relaxed by the director in accordance with section (c) below.

(i) There must be at least one location at the event where those wanting to purchase alcoholic beverages must show proof of age:

(ii) Any person assigned to check proof of age shall have completed the alcohol server training seminar outlined in 62A-15-401:

(iii) At least one person who has completed the alcohol server training seminar outlined in 62A-15-401 shall be at each location where alcoholic beverages are sold and dispensed to supervise the sale and dispensing of alcoholic beverages:

(iv) The event shall be properly secured and completely delineated by some type of physical structure(s), such as fencing, walls, gates and secured entry and exits; and

(v) A minimum of one (1) security person for every fifty (50) people estimated to be in the consumption area at one time; security may include police officers, hired security, organization staff members and security volunteers.

(b) In accordance with 32B-9-202(2)(e), the following additional control measures must be present for an outdoor public event or a large-scale public event where minors are present, unless relaxed by the director in accordance with section (c) below.

(i) Alcoholic beverages shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages:

(ii) All dispensing and consumption of alcoholic beverages shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where alcohol consumption may be closely monitored;

(iii) The proof of age location(s) shall be separate from the alcoholic beverage sales and dispensing location(s); and

(iv) The proof of age location(s) will either issue a hand stamp and/or non-transferable wristband.

(c) The director, after reviewing the facts and circumstances of a particular event, has the discretion to relax any of the control measures outlined in Subsection (a) and (b) above or to require additional control measures as a condition of issuing an event permit.

(5) In accordance with 32B-9-202(2)(d), the director may authorize multiple sales outlets on different properties under one single event permit, provided that each site conforms to location requirements of Section 32B-9-201(4).

(6) All approvals, notifications, requests for meetings or requirements to inform under section 32B-9-202 shall be done electronically.

(7) For purposes of 32B-9-202(4), the department may provide notice to law enforcement of the preliminary approval within three business days of the event, so long as law enforcement is notified if that approval does not become final.

**KEY: alcoholic beverages, [single] event permits**  
**Date of Enactment or Last Substantive Amendment: [March 25, 2014]2015**

**Notice of Continuation: May 10, 2011**

**Authorizing, and Implemented or Interpreted Law: 32B-2-202(1); 32B-9-101; 32B-9-102; 32B-9-201; 32B-9-202; 32B-9-203; 32B-9-204; 32B-9-301; 32B-9-302; 32B-9-303; 32B-9-304; 32B-9-305; 32B-9-401; 32B-9-402; 32B-9-403; 32B-9-404; 32B-9-405; 32B-9-406**

## Alcoholic Beverage Control, Administration **R81-10B** Temporary Beer Event Permits

### NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 39475

FILED: 06/29/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this repeal is to combine administrative rules related to event permits into one rule to bring the administrative rules in line with statutory provisions of Title 32B, Chapter 9, Event Permit Act, which contains provisions for both temporary beer and single event permits.

**SUMMARY OF THE RULE OR CHANGE:** This rule will be replaced with a reenacted Rule R81-7, Event Permits. The new Rule R81-7 will combine Rule R81-7, Single Event Permits, and Rule R81-10B, Temporary Beer Permits, to bring the administrative rules in line with statutory provision of Title 32B, Chapter 9, which contains provisions for both types of event permits. The proposed reenacted Rule R81-7 will: 1) require complete permit applications to be submitted within seven business days in advance of the event and allows flexibility for the department to update application requirements as the need arises; 2) provide provisions for the director to consider the recommendation from the locality regarding whether a single event permit applicant is conducting a civic or community enterprise; 3) require the director to review the totality of the circumstances to determine if permit should be issued - including whether permits are being used to circumvent provisions of Title 32B, Chapter 9, and violation history of the applicant, the event and venue of the event; 4) require that the director detail any denial in writing and allows the applicant to request review by the commission if the application is denied; and 5) streamline control measures required for events. This rule is repealed in its entirety. (DAR NOTE: the proposed repeal and reenactment of Rule R81-7 is under DAR No. 39474 in this issue, July 15, 2015, of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 32B-2-202(1) and Title 32B, Chapter 9



**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** None--This repeal helps combine rules for temporary beer event permits with single event permits; there are no anticipated cost or savings as the department's responsibilities remain the same.
- ◆ **LOCAL GOVERNMENTS:** None--This repeal helps combine rules for temporary beer event permits with single event permits; there are no anticipated cost or savings to local government.
- ◆ **SMALL BUSINESSES:** None--This repeal helps combine rules for temporary beer event permits with single event permits; there are no anticipated cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This repeal helps combine rules for temporary beer event permits with single event permits; there are no anticipated cost or savings to persons other than small business, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--This repeal helps combine rules for temporary beer event permits with single event permits; there are no anticipated compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** None--This repeal helps combine rules for temporary beer event permits with single event permits and therefore does not have a fiscal impact on businesses.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 ALCOHOLIC BEVERAGE CONTROL  
 ADMINISTRATION  
 1625 S 900 W  
 SALT LAKE CITY, UT 84104-1630  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ◆ Andrew Hofeling by phone at 801-977-6835, by FAX at 801-977-6888, or by Internet E-mail at ahofeling@utah.gov  
 ◆ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015**

**THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015**

**AUTHORIZED BY: Sal Petilos, Executive Director**

**R81. Alcoholic Beverage Control, Administration.  
 [R81-10B. Temporary Beer Event Permits.  
 R81-10B-1. Application Guidelines.**

(1) A temporary special event beer permit application shall be considered for issuance of the permit, when the requirements of

~~32B-1-304 and 32B-9-201, 203 and 405 have been met, and a completed application has been received by the department. Applications submitted less than 30 days to prior to the event risk non-issuance of a permit and the department will not consider an application submitted less than 7 business days prior to the event.~~

~~(a) Once received -- the application will be considered in compliance with section 32B-9-202.~~

~~(b) All approvals, notifications, requests for meetings or requirements to inform under section 32B-9-202 shall be done electronically. For purposes of 32B-9-202(4), notice to law enforcement, the department may provide notice to law enforcement of the preliminary approval within three business days of the event, so long as law enforcement is notified if that approval does not become final.~~

~~(2) The sale of beer under a series of permits issued to the same person may not exceed a total of 90 days in any one calendar year. "Calendar year" means January 1 through December 31.~~

~~(3) Pursuant to 32B-9-403, a temporary special event beer permit may be issued to a person for the sale of beer for on-premise consumption at a temporary special event that does not last longer than 30 days. The sale of beer under a series of permits issued to the same person may not exceed a total of 90 days in any one calendar year. However, temporary special event beer permit may not be issued or obtained for the purpose of avoiding or attempting to avoid the requirement of obtaining a state on-premise beer license under 32B-9-403. To ensure compliance with this Subsection (3), the director may consider factors such as:~~

- ~~(a) the purpose of the entity or organization;~~
- ~~(b) the nature and purpose of the event;~~
- ~~(c) whether the event is a convention, community or civic enterprise;~~
- ~~(d) the type of entertainment, if any, at the event;~~
- ~~(e) the location of the event;~~
- ~~(f) the frequency of events held at the same location;~~
- ~~(g) whether the location is government owned and operated;~~

- ~~and~~
- ~~(h) the extent to which the event:~~
- ~~(i) benefits the community;~~
- ~~(ii) is held for charitable purposes; or~~
- ~~(iii) is held for the profit of the entity or organization.~~

~~(4)(a) The temporary special event beer permit bond, as required by Section 32B-9-405(3), shall not be released back to the permittee sooner than 30 days following the event.~~

~~(b) If an organization or individual other than the one applying for the permit posts the bond, an affidavit must be submitted attesting that the bond is for the permittee's compliance with the provisions of the Act and the director rules, and that if a violation occurs at the event, the bond may be forfeited.~~

~~(5) The director may authorize multiple sales outlets on different properties under one temporary special event beer permit, provided that each site conforms to location requirements of Section 32B-9-201(4). The director may authorize simultaneous sale and consumption hours at multiple sales outlets.~~

**R81-10B-2. Guidelines for Issuing Permits.**

(1) Purpose. In deciding whether to issue a temporary special event beer permit for such events, the director must be satisfied that sufficient controls will be in place to minimize the possibility of minors being sold or furnished beer or adults being over-served beer at

the event. This rule identifies control measures that must be in place before the director will issue a temporary special event beer permit. However, this rule gives the director discretion not to require specific control measures under certain circumstances after considering the facts and circumstances of a particular event. The sale of alcohol at outdoor public events such as street festivals, fairs, concerts, and rodeos poses special control issues for event organizers and law enforcement officials. Furthermore, the sale of beer at public events attended by large numbers of people, many of whom may be under the age of 21, also poses special control issues. Applicants for outdoor or large scale events will need to address these issues in their application.

~~(2) Definitions:~~

~~(a) For purposes of this rule, "large-scale public event" includes any event that is open to the general public and the estimated attendance at the event is in excess of 1000 people.~~

~~(3) Authority. This rule is enacted under the authority of Sections 63G-3-201, 32B-2-202 and 32B-9-202 and 403.~~

~~(4) Policy:~~

~~(a) Before a temporary special event beer permit will be issued by the director to allow the sale of beer at an outdoor or a large-scale public event, the following control measures must be present at the event:~~

~~(i) There must be at least one location at the event where those wanting to purchase beer must show proof of age and either have their hand stamped or be issued a non-transferable wristband.~~

~~(A) The proof of age location(s) shall be separate from the beer sales and dispensing location(s).~~

~~(B) Proof of age may be established by:~~

~~(I) a current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;~~

~~(II) a current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, identification Card Act, or issued by another state that is substantially similar to this state's identification card;~~

~~(III) a current valid military identification that includes date of birth and has a picture affixed; or~~

~~(IV) a current valid passport.~~

~~(C) Any person assigned to check proof of age shall have completed the alcohol server training seminar outlined in 63A-15-401.~~

~~(D) The use of hand stamps or issuance of wristbands does not relieve those selling and dispensing beer from asking for proof of age if they suspect a person attempting to purchase beer is under the age of 21 years.~~

~~(ii) Beer sales and dispensing location(s) shall be separate from food and non-alcoholic beverage concession locations. However, if the consumption of beer at the event is limited to a confined, restricted area such as a "beer garden", then beer, food and non-alcoholic beverages may be sold at the same sales locations within the confined, restricted area.~~

~~(iii) Beer shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages.~~

~~(iv) No more than two beers shall be sold to a customer at a time.~~

~~(v) At least one person who has completed the alcohol server training seminar outlined in 62A-15-401 shall be at each location where beer is sold and dispensed to supervise the sale and dispensing of beer.~~

~~(vi) If minors may attend the event, all dispensing and consumption of beer shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where beer consumption may be closely monitored.~~

~~(b) Notwithstanding Subsection (a), the director, after reviewing the facts and circumstances of a particular outdoor or large-scale public event, has the discretion to relax any of the control measures outlined in Subsection (a) above.~~

~~(c) After reviewing the facts and circumstances of the outdoor or large-scale public event, the director has the discretion to require additional control measures as a condition of issuing a temporary special event beer permit. These can include but are not limited to the following:~~

~~(i) Requiring that beer products be distinguishable in appearance from non-alcoholic beverages.~~

~~(ii) Requiring a certain minimum number of law enforcement and/or security personnel at the event.~~

~~(5) Procedure. The following procedure shall govern applications for temporary special event beer permits for outdoor or large-scale public events:~~

~~(a) In addition to providing a description of the times, dates, location, nature and purpose of the event, the applicant shall include in the permit application a summary of all control measures that will be taken at the event to reduce the possibility of minors being furnished beer and adults being over-served beer at the event.~~

~~(b) Department staff shall provide this information to the director prior to the director's consideration of the permit application.~~

~~(c) The director shall review the application to determine if all statutory requirements are in place, to determine if all controls listed in Subsections (4)(a)(i) through (vi) are in place, to consider any request to waive any of the controls listed in Subsections (4)(a)(i) through (vi), and to assess whether any additional control measures such as those listed in Subsection (4)(c) should be required prior to issuing the permit.~~

**R81-10B-3. Price Lists.**

~~(1) A temporary special event beer event permittee shall have a printed price list or menu available for inspection containing beer prices.~~

~~(2) The permittee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the event premises.~~

**KEY: alcoholic beverages, temporary beer event permits**

**Date of Enactment or Last Substantive Amendment: March 25, 2014**

**Notice of Continuation: July 11, 2013**

**Authorizing, and Implemented or Interpreted Law: 32B-2-202(1); 32B-9-101; 32B-9-102; 32B-9-201; 32B-9-202; 32B-9-203; 32B-9-204; 32B-9-401; 32B-9-402; 32B-9-403; 32B-9-404; 32B-9-405; 32B-9-406]**

**Commerce, Occupational and  
Professional Licensing  
R156-55a  
Utah Construction Trades Licensing Act  
Rule**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39461

FILED: 06/23/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Note for clarification: Many of these proposed rule changes were previously recommended by the Construction Services Commission and submitted and published in the February 1, 2015, issue of the Utah State Bulletin under DAR No. 39081. That proposed rule change was abandoned because of the passage of H.B. 193 (2015 General Session) that was passed while the prior rule was open for public comment. The legislation made further changes necessary to the rule on continuing education. The purpose of this rule filing is to: 1) make changes to the contractor experience requirements as a result of change in the statute made by S.B. 102 passed in 2013; 2) clarify the liability insurance requirement for contractors; 3) clarify details of the pre-licensure education requirement for contractors; 4) update continuing education requirements for contractors as a result of change in the statute made by H.B. 193 passed in 2015; 5) clarify details of continuing education requirements for contractors; 6) add failure to comply with certain insurance requirements to unprofessional conduct for contractors; and 7) make a technical correction.

**SUMMARY OF THE RULE OR CHANGE:** In Subsection R156-55a-302b(1), this change deletes requirements that experience be directly related to the classification of licensure applied for. S.B. 102 (2013) provides that experience may be in any area of the construction trades. In Subsection R156-55a-302d(2), this change clarifies that a public liability insurance policy shall not exclude coverage for any type of work that a contractor performs. In Subsection R156-55a-302e(2)(ii), this change makes a technical correction to update a reference to a section of rule that has been changed. In Subsection R156-55a-302f(3)(b), this change allows an association with less than 250 members to be considered by the Commission to be a pre-license education course provider. In Subsection R156-55a-302f(6)(h), this change allows a pre-license education course to be taught by live broadcast if certain criteria is met. In Subsection R156-55a-302f(12)(c), this change specifies the time frame applicable to this exemption. In Subsection R156-55a-302b(1), this change requires at least three hours of the total of six hours of the continuing education must in live seminars. The prior rule allows all of the continuing education be obtained through distance learning. In Subsections R156-

55a-302b(1)(a), (b) and (c), these changes add "job site safety" and "finance and bookkeeping" to core continuing education, deletes "finance and bookkeeping" from professional continuing education, and adds "business motivation" as an unacceptable subject for continuing education. In Subsections R156-55a-302b(2)(b) and (6), this deletes the prior list of allowed continuing education providers and references Subsection 58-55-302.5(2)(b) where the new list of providers is specified in statute. In Subsection R156-55a-302b(2)(g), this change adds additional tracking requirements for continuing education providers who offer distance learning. In Subsection R156-55a-302b(10)(b) (iii), this change is a grammatical correction. In Subsections R156-55a-501(2) and (3), this change adds failure to comply with certain insurance requirements to the definition of unprofessional conduct for contractors.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-55-101 and Subsection 58-1-106(1) (a) and Subsection 58-1-202(1)(a) and Subsection 58-55-102(39)(a) and Subsection 58-55-308(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This proposed rule change will not affect the state budget other than the cost to republish the rule of approximately \$75 once 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 contractors, applicants for licensure in that classification and construction trade continuing education providers. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The change in experience requirements in Section R156-55a-302b will not have any impact beyond the impact from the statutory change through S.B. 102 (2013). The proposed rules on continuing education will disqualify existing continuing education providers who are not listed in H.B. 193 (2015). This rule change does not have any cost impact beyond the impact of H.B. 193 (2015). Licensees who are required to attend live seminars for half of the six-hour requirement rather than distance seminars may pay additional costs to attend live seminars. Such additional costs cannot be estimated. Courses could be more difficult to obtain for contractors who are located in rural areas. Continuing education providers who provide distance learning may be required to pay additional costs to comply with the additional tracking provided for under this rule. These costs cannot be estimated.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The change in experience requirements in Section R156-55a-302b will not have any impact beyond the impact from the statutory change through S.B. 102 (2013). The proposed rules on continuing education will disqualify existing continuing education providers who are not listed in H.B. 193 (2015). This rule change does not have any cost impact beyond the impact of H.B. 193 (2015). Licensees who are required to attend live seminars for half of the six-hour

requirement rather than distance seminars may pay additional costs to attend live seminars. Such additional costs cannot be estimated. Courses could be more difficult to obtain for contractors who are located in rural areas. Continuing education providers who provide distance learning may be required to pay additional costs to comply with the additional tracking provided for under this rule. These costs cannot be estimated.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The change in experience requirements in Section R156-55a-302b will not have any impact beyond the impact from the statutory change through S.B. 102 (2013). The proposed rules on continuing education will disqualify existing continuing education providers who are not listed in H.B. 193 (2015). This rule change does not have any cost impact beyond the impact of H.B. 193 (2015). Licensees who are required to attend live seminars for half of the six-hour requirement rather than distance seminars may pay additional costs to attend live seminars. Such additional costs cannot be estimated. Courses could be more difficult to obtain for contractors who are located in rural areas. Continuing education providers who provide distance learning may be required to pay additional costs to comply with the additional tracking provided for under this rule. These costs cannot be estimated.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** As explained in the rule analysis, this comprehensive filing responds to legislative action (S.B. 102, 2013 General Session and H.B. 193, 2015 General Session), which made it necessary to amend the rules governing the experience and education requirements for the contractor license. No fiscal impact to businesses is anticipated beyond that considered by the Legislature in determining to modify the license requirements. In addition, this filing mandates that at least part of the continuing education requirement be completed through live courses, which might result in travel and lodging costs for some licensees. It is not anticipated that such costs will affect businesses. Finally, the filing establishes that failure to maintain certain insurance coverage is a basis for disciplinary action. The attendant costs will affect businesses that operate in the construction trades. Those costs will vary and cannot be estimated.

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:

♦ Dan Jones by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 07/29/2015 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.  
R156-55a. Utah Construction Trades Licensing Act Rule.  
R156-55a-302b. Qualifications for Licensure - Experience Requirements.**

In accordance with Subsection 58-55-302(1)(e)(ii), the minimum experience requirements are established as follows:

(1) Requirements for all license classifications:

(a) Unless otherwise provided in this rule, two years of experience shall be lawfully performed within the 10-year period preceding the date of application under the general supervision of a contractor [~~licensed in the classification applied for or a substantially equivalent classification~~], and shall be subject to the following:

(i) If the experience was completed in Utah, it shall be:

(A) completed while a W-2 employee of a licensed contractor; or

(B) completed while working as an owner of a licensed contractor, which has for all periods of experience claimed, employed a qualifier who performed the duties and served in the capacities specified in Subsection 58-55-304(4) and in Subsection R156-55a-304.

(ii) If the experience was completed outside of the state of Utah, it shall be:

(A) completed in compliance with the laws of the jurisdiction in which the experience is completed; and

(B) completed with supervision that is substantially equivalent to the supervision that is required in Utah.

(iii) Experience may be determined to be substantially equivalent if lawfully obtained in a setting which has supervision of qualified persons and an equivalent scope of work, such as performing construction activities in the military where licensure is not required. [~~Unless otherwise provided in this rule, all experience shall be directly related to the scope of practice set forth in Section R156-55a-301 of the classification the applicant is applying for, as determined by the Division.~~]

([e]b) One year of work experience means 2000 hours.  
([d]c) No more than 2000 hours of experience during any 12 month period may be claimed.  
([e]d) Except as described in Subsection (2)b, experience obtained under the supervision of a construction trades instructor as a part of an educational program is not qualifying experience for a contractors license.  
([f]e) If the applicant's qualifying experience is outdated but has previously been approved in the state of Utah, a passing

score on the trade examination and the laws and rules examination obtained within the one-year period preceding the date of application will requalify the applicant's experience.

(2) Requirements for E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building license classifications:

(a) One of the required two years of experience shall be in a supervisory or managerial position.

(b) A person holding a four year bachelors degree or a two year associates degree in Construction Management may have one year of experience credited towards the supervisory or managerial experience requirement.

(c) A person holding a Utah professional engineer license may be credited with satisfying one year toward the supervisory or managerial experience required for E100 contractor license.

(3) Requirements for I101 General Engineering Trades Instruction Facility, I102 General Building Trades Instruction Facility, I103 Electrical Trades Instruction Facility, I104 Plumbing Trades Instruction Facility, I105 Mechanical Trades Instruction Facility license classifications:

An applicant for construction trades instruction facility license shall have the same experience that is required for the license classifications for the construction trade they will instruct.

(4) Requirements for S202 Solar Photovoltaic Contractor. In addition to the requirements of Subsection (1), an applicant shall hold a current certificate by the North American Board of Certified Energy Practitioners.

(5) Requirements for S354 Radon Mitigation Contractor. In addition to the requirements of Subsection (1), an applicant shall hold a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP). Experience completed prior to the effective date of this rule does not need to be performed under the supervision of a licensed contractor. Experience completed after the effective date of this rule must be performed under the supervision of a licensed contractor who has authority to practice radon mitigation.

**R156-55a-302d. Qualifications for Licensure - Proof of Insurance and Registrations.**

(1) In accordance with the provisions of Subsection 58-55-302(2)(b), an applicant who is approved for licensure shall submit proof of public liability insurance in coverage amounts of at least \$100,000 for each incident and \$300,000 in total by means of a certificate of insurance naming the Division as a certificate holder.

(2) The public liability insurance coverage required under Subsection 58-55-302(2)(b), and Subsection (1) above, shall not exempt from coverage any area of construction within the scope of the work performed.

**R156-55a-302e. Additional Requirements for Construction Trades Instructor Classifications.**

In accordance with Subsection 58-55-302(1)(f), the following additional requirements for licensure are established:

(1) Any school that provides instruction to students by building houses for sale to the public is required to become a Utah licensed contractor with a B100 General Building Contractor or R100 Residential and Small Commercial Building Contractor classification or both.

(2) Any school that provides instruction to students by building houses for sale to the public is also required to be licensed in the appropriate instructor classification.

(a) Before being licensed in a construction trades instruction facility classification, the school shall submit the name of an individual person who acts as the qualifier in each of the construction trades instructor classifications in accordance with Section R156-55a-304. The applicant for licensure as a construction trades instructor shall:

(i) provide evidence that the qualifier has passed the required examinations established in Section R156-55a-302a; and

(ii) provide evidence that the qualifier meets the experience requirement established in Subsection R156-55a-302b(4)(3).

(3) Each individual employed by a school licensed as a construction trades instruction facility and working with students on a job site shall meet any teacher certification, or other teacher requirements imposed by the school district or college, and be qualified to teach the construction trades instruction facility classification as determined by the qualifier.

**R156-55a-302f. Pre-licensure Education - Standards.**

(1) Qualifier Education Requirement. The 20-hour pre-licensure education program required by Subsection 58-55-302(1)(e)(iii) shall be completed by the qualifier for a contractor applicant.

(2) Program Pre-Approval. A pre-licensure education provider shall submit an application for approval as a provider on the form provided by the Division. The applicant shall demonstrate compliance with Section R156-55a-302f.

(3) Eligible Providers. The following may be approved to provide pre-licensure education:

(a) a nationally or regionally recognized accredited college or university having a physical campus located within the State of Utah; or

(b) a non-profit Utah construction trades association involved in the construction trades in the State of Utah;

(i) representing multiple construction trade classifications;

(ii) with [whose] membership [includes] of:

(A) at least 250 contractors licensed in Utah; or

(B) less than 250 members, if the association is:

(I) competent, as determined by the Commission and the Director according to their sole discretion; and

(II) compliant with all other standards of this rule; and

(iii) having five years of experience providing education to contractors in Utah.

(4) Content. The 20-hour program shall include the following topics and hours of education relevant to the practice of the construction trades consistent with the laws and rules of this state:

(a) ten hours of financial responsibility instruction that includes the following:

(i) record keeping and financial statements;

(ii) payroll, including:

(A) payroll taxes;

(B) worker compensation insurance requirements;

(C) unemployment insurance requirements;

(D) professional employer organization (employee leasing) alternatives;

(E) prohibitions regarding paying employees on 1099 forms as independent contractors, unless licensed or exempted;

(F) employee benefits; and

(G) Fair Labor Standard Act;

(iii) cash flow;

(iv) insurance requirements including auto, liability, and health; and

(v) independent contractor licensure and exemption requirements;

(b) six hours of construction business practices that includes the following:

(i) estimating and bidding;

(ii) contracts;

(iii) project management;

(iv) subcontractors; and

(v) suppliers;

(c) two hours of regulatory requirements that includes the following:

(i) licensing laws;

(ii) Occupational Safety and Health Administration (OSHA);

(iii) Environmental Protection Agency (EPA); and

(iv) consumer protection laws; and

(d) two hours of mechanic lien fundamentals that include the State Construction Registry.

(5) Program Schedule.

(a) A pre-licensure education provider shall offer programs at least 12 times per year.

(b) The pre-licensure education provider is not obligated to provide a course if the provider determines the enrollment is not sufficient to reach breakeven on cost.

(6) Program Instruction Requirements: The pre-licensure education shall meet the following standards:

(a) Time. Each hour of pre-licensure education credit shall consist of 60 minutes of education in the form of live lectures or training sessions. Time allowed for lunches or breaks may not be counted as part of the education time for which education credit is issued.

(b) Learning Objectives. The learning objectives of the pre-licensure education shall be reasonably and clearly stated.

(c) Teaching Methods. The pre-licensure education shall be presented in a competent and well organized manner consistent with the stated purpose and objective of the program. The student must demonstrate knowledge of the course material and must be given a pass/fail grade.

(d) Faculty. The pre-licensure education shall be prepared and presented by individuals who are qualified by education, training or experience.

(e) Distance Learning. Distance learning, internet courses, and home study courses are not allowed to meet pre-licensure education requirements.

(f) Registration and Attendance. The provider shall have a competent method of registration and verification of attendance of individuals who complete the pre-licensure education.

(g) Education Curriculum and Study/Resource Guide. The provider shall be responsible to provide or develop pre-licensure education curriculum and study/resource guide for the pre-

licensure education that must be pre-approved by the Commission and the Division prior to use by the provider.

(h) Live Broadcast. The pre-licensure education course may be taught by live broadcast if:

(i) the student and the instructor are able to see and hear each other; and

(ii) a representative of the provider is at any remote location to monitor registration and attendance at the course.

(7) Certificates of Completion. The pre-licensure education provider shall provide individuals completing the pre-licensure education a certificate that contains the following information:

(a) the date of the pre-licensure education;

(b) the name of the pre-licensure education provider;

(c) the attendee's name;

(d) verification of completion of the 20-hour requirement;

and

(e) the signature of the pre-licensure education provider.

(8) Reporting of Program Completion. A pre-licensure education provider shall, within seven calendar days, submit directly to the Division verification of attendance and completion on behalf of persons attending and completing the program. This verification shall be submitted on forms provided by the Division.

(9) Program Monitoring. On a random basis, the Division or Commission may assign monitors at no charge to attend a pre-licensure education course for the purpose of evaluating the education and the instructor(s).

(10) Documentation Retention. Each provider shall for a period of four years maintain adequate documentation as proof of compliance with this section and shall, upon request, make such documentation available for review by the Division or the Commission. Documentation shall include:

(a) the dates of all pre-licensure education courses that have been completed;

(b) registration and attendance logs of individuals who completed the pre-licensure education;

(c) the name of instructors for each education course provided as a part of the program; and

(d) pre-licensure education handouts and materials.

(11) Disciplinary Proceedings. As provided in Section 58-1-401 and Subsection 58-55-302(1)(e)(iii), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any pre-licensure education provider, if the pre-licensure education provider fails to meet any of the requirements of this section or the provider has engaged in other unlawful or unprofessional conduct.

(12) Exemptions. In accordance with Subsection 58-55-302(1)(e)(iii), the following persons are not required to complete the pre-licensure education program requirements:

(a) a person holding a four-year bachelor degree or a two-year associate degree in Construction Management from an accredited program;

(b) a person holding an active and unrestricted Utah professional engineer license who is applying for the E100 contractor license classification; or

(c) a person who;

(i) is a qualifier on an [existing]-active and unrestricted contractor license[who is];

~~(ii) became the qualifier on the license on or before October 9, 2014; and~~

~~(iii) is applying to:~~

~~(i)A [applying to] add additional contractor classifications to the license; or~~

~~(ii)B [applying to] become a qualifier on a new entity that is applying for initial licensure.~~

### **R156-55a-303b. Continuing Education - Standards.**

(1) Required Hours. Pursuant to Subsection 58-55-302.5, each licensee shall complete a total of six hours of continuing education during each two year license term ~~except that for the renewal term~~. A minimum of three hours shall be core education. The remaining three hours are to be professional education. Additional core education hours beyond the required amount may be substituted for professional education hours. A minimum of three hours shall consist of live in-class attendance. The remaining three hours may consist of courses provided through distance learning.

(a) "Core continuing education" is defined as construction codes, construction laws, job site safety, OSHA 10 or OSHA 30 safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices, finance and bookkeeping.

(b) "Professional continuing education" is defined as substantive subjects dealing with the practice of the construction trades, including land development, land use, planning and zoning, energy conservation, professional development, arbitration practices, estimating, ~~finance and bookkeeping,~~ marketing techniques, servicing clients, personal and property protection for the licensee and the licensee's clients and similar topics.

(c) The following course subject matter is not acceptable as core education or professional education hours: mechanical office and business skills, such as typing, speed reading, memory improvement and report writing; physical well-being or personal development, such as personal and business motivation, stress management, time management, dress for success, or similar subjects; presentations by a supplier or a supplier representative to promote a particular product or line of products; and meetings held in conjunction with the general business of the licensee or employer.

(d) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

(2) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes is to allow for breaks.

(b) Provider. The course provider shall be among those specified in Subsection 58-55-302.5(2)(b). ~~meet the requirements of this Section and shall be one of the following:~~

~~(i) a recognized accredited college or university;~~

~~(ii) a state or federal agency;~~

~~(iii) a professional association or organization involved in the construction trades; or~~

~~(iv) a commercial continuing education provider providing a program related to the construction trades.]~~

(c) Content. The content of the course shall be relevant to the practice of the construction trades and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course that is provided through Internet or home study may be recognized for continuing education if the course verifies registration and participation in the course by means of a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant. A home study course shall include no fewer than five variations of the final examination, distributed randomly to participants. Home study courses, including the five exam variations, shall be submitted in their entirety to the Division for review. Providers shall track the following:

~~(i) the amount of time each student has spent in the course;~~

~~(ii) what activities the student did or did not access; and~~

~~(iii) all of the student's test scores.~~

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide individuals completing the course a certificate that contains the following information:

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit and type of credit (core or professional);

(vi) the attendee's name; and

(v) the signature of the course provider.

(3) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(4) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (8). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(5) Licensees who lecture in continuing education courses meeting these requirements shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(6) The continuing education requirement for electricians, plumbers and elevator mechanics as established in Subsections 58-55-302.7[~~and 58-55-303(6), which is completed by an employee or owner of a contractor~~], if offered by a provider specified in Subsection 58-55-302.5(2)(b), shall satisfy the continuing education requirement for contractors as established in Subsection 58-55-302.5 and implemented herein. The contractor licensee shall assure that the course provider has submitted the verification of the electrician's, plumber's or elevator mechanic's attendance on behalf of the licensee to the continuing education registry as specified in Subsection (8).

(7) A course provider shall submit continuing education courses [~~for approval~~] to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(8) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this Section.

(9) As provided in Section 58-1-401 and Subsections 58-55-302.5(2) and 58-55-302.7(4)(a), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any course or provider, if the course or provider fails to meet any of the requirements of this section or the provider has engaged in unlawful or unprofessional conduct.

(10) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs that meet the standards set forth under this Section;

(ii) publish on their website listings of continuing education programs that have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. A continuing education registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

#### **R156-55a-501. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) failing to notify the Division with respect to any matter for which notification is required under this rule or Title 58,

Chapter 55, the Construction Trades Licensing Act, including a change in qualifier. Such failure shall be considered by the Division and the Commission as grounds for immediate suspension of the contractor's license;

(2) failing to continuously maintain insurance and registration as required by Subsection 58-55-302(2) and Section R156-55a-302d[~~, in coverage amounts and form as implemented by this chapter~~]; and

(3) failing, [~~upon~~] within 30 days of a request [~~by~~] from the Division or an upper tier contractor, to provide:

(a) proof of insurance coverage[~~within 30 days~~];

(b) copy of the licensee's public insurance policy; or

(c) any exclusions included in the licensee's public insurance policy.

**KEY: contractors, occupational licensing, licensing**

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

**Notice of Continuation: October 4, 2011**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-101; 58-55-308(1)(a); 58-55-102(39)(a)**

## Commerce, Real Estate **R162-2c** Utah Residential Mortgage Practices and Licensing Rules

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 39477  
FILED: 06/30/2015

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This filing corrects numbering errors and proposes substantive changes to existing sections regarding entity registration, instructor registration, licensee conduct, and administrative proceedings.

**SUMMARY OF THE RULE OR CHANGE:** The change in Section R162-2c-201 requires a registering entity to list all business and trade names used. The change in Section R162-2c-203 sets forth certification requirements for instructors of Division-approved courses. The change in Section R162-2c-205 requires a licensee to update the nationwide database as to any change in the licensee's residential address. The change in Section R162-2c-301a requires a lending manager to take corrective action for problems identified through the underwriting process; establishes vicarious liability for an entity whose sponsored licensees engage in unprofessional conduct; and requires a mortgage entity to remit appraisal fees within 30 days of receipt. The change in Section R162-2c-302 specifies that the record retention requirement applies to 1003 loan application forms. The change in Section R162-2c-401



establishes that adjudicative proceedings will be designated as informal or formal when filed and, thereafter, may be converted as provided for in statute.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2c-103 and Section 61-2c-201 and Section 61-2c-202 and Section 61-2c-203 and Section 61-2c-204.1 and Section 61-2c-205 and Section 61-2c-301 and Section 61-2c-302 and Section 61-2c-401 and Section 61-2c-509

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The division has the staff and budget in place to administer this proposed amendment. It is not anticipated that the proposed amendment will affect those resources or result in any additional cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: Local governments are not required to comply with or enforce the residential mortgage practices and licensing rules. No fiscal impact to local government is expected from the proposed amendment.

◆ SMALL BUSINESSES: The proposed amendment does not create new obligations to small business nor does it increase the cost associated with any existing obligation. No fiscal impact to small business is expected from the proposed amendment.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendment does not create new obligations to persons other than to licensees of the division nor does it increase the cost associated with any existing obligation. No fiscal impact from the proposed amendment is expected to persons other than small businesses, business, or local government entities with the possible exception of compliance costs for affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment does not create new obligations for affected persons, nor does it increase the cost associated with any existing obligation. No direct fiscal impact to affected persons is expected from the proposed amendments. To comply, affected persons must enter accurate, up-to-date information into the nationwide database and operate according to the professional standards set forth in the rules. A person who fails to do so may be subject to disciplinary action, with attendant costs, including fines. Such indirect costs will vary and cannot be anticipated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As explained in the rule analysis, this comprehensive filing amends multiple rule sections to improve clarity and to correct minor errors. To comply with these rules, affected individuals and businesses must provide accurate information to the Division and ensure that their staff and employees practice the profession of real estate ethically and competently. No direct fiscal impact to businesses is anticipated.

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

COMMERCE  
REAL ESTATE  
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:

◆ Justin Barney by phone at 801-530-6603, or by Internet E-mail at justinbarney@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: Jonathan Stewart, Director

**R162. Commerce, Real Estate.**

**R162-2c. Utah Residential Mortgage Practices and Licensing Rules.**

**R162-2c-201. Licensing and Registration Procedures.**

- (1) Mortgage loan originator.
  - (a) To obtain a Utah license to practice as a mortgage loan originator, an individual who is not currently and validly licensed in any state shall:
    - (i) evidence good moral character pursuant to R162-2c-202(1);
    - (ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);
    - (iii) evidence financial responsibility pursuant to R162-2c-202(3);
    - (iv) obtain a unique identifier through the nationwide database;
    - (v) successfully complete, within the 12-month period prior to the date of application, 15 hours of Utah-specific pre-licensing education as approved by the division;
      - (vi)(A) successfully complete 20 hours of pre-licensing education as approved by the nationwide database according to the nationwide database outline for national course curriculum; or
      - (B) if the individual previously passed the 20-hour national course, obtained a license, and thereafter allowed the license to expire, successfully complete continuing education:
        - (I) approved by the nationwide database; and
        - (II) in the number of hours that would have been required to renew the expired license in the year in which the individual allowed the license to expire;
      - (vii) take and pass the examinations that meet the requirements of Section 61-2c-204.1(4) and that:
        - (A) are approved and administered through the nationwide database; and
        - (B) consist of a national component and a Utah-specific state component;

(viii) request licensure as a mortgage loan originator through the nationwide database;

(ix) authorize a criminal background check and submit fingerprints through the nationwide database;

(x) authorize the nationwide database to provide the individual's credit report to the division for review;

(xi) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(xii) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(xiii) complete, sign, and submit to the division a social security verification form as provided by the division; and

(xiv) pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) To obtain a Utah license to practice as a mortgage loan originator, an individual who is currently and validly licensed in another state shall:

(i) evidence good moral character pursuant to R162-2c-202(1);

(ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii) evidence financial responsibility pursuant to R162-2c-202(3);

(iv)(A) successfully complete, within the 12-month period prior to the date of application, 15 hours of Utah-specific mortgage loan originator prelicensing education; and

(B) take and pass the Utah-specific state examination component;

(v) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(vi) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(vii) request licensure as a mortgage loan originator through the nationwide database;

(viii) authorize a criminal background check through the nationwide database;

(ix) authorize the nationwide database to provide the individual's credit report to the division for review;

(x) complete, sign, and submit to the division a social security verification form as provided by the division; and

(xi) pay all fees through the nationwide database as required by the division and by the nationwide database.

(2) Lending manager. To obtain a Utah license to practice as an LM, an individual shall:

(a) evidence good moral character pursuant to R162-2c-202(1);

(b) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(c) evidence financial responsibility pursuant to R162-2c-202(3);

(d) provide to the division:

(i) the individual's unique identifier as assigned through the nationwide database; and

(ii) evidence that the individual has taken and passed:

(A) the 20-hour national mortgage loan originator prelicensing course; and

(B) the mortgage loan originator examinations that:

(I) meet the requirements of Section 61-2c-204.1(4);

(II) are approved and administered through the nationwide database; and

(III) consist of a national component and a Utah-specific state component;

(e) obtain approval from the division to take the Utah-specific LM prelicensing education by evidencing that the applicant has satisfied, during the five-year period preceding the date of application, the experience requirement of Section 61-2c-206(1)(d) through:

(i)(A) three years full-time experience originating first-lien residential mortgages pursuant to Section 61-2c-102(1)(e)(i)(A):

(I) under a license issued by a state regulatory agency; or

(II) as an employee of a depository institution; and

(B) evidence of having originated a minimum of 45 first-lien residential mortgages;

(ii)(A)(I) two years full-time experience as described in this Subsection (2)(e)(i)(A); and

(II) additional full-time experience per the equivalency calculation in Subsection R162-2c-501a; and

(B)(I) evidence of having originated a minimum of 30 first-lien residential mortgages; and

(II) up to 15 additional points according to the experience points schedule in Subsection R162-2c-501b; or

(iii)(A) ten years of full-time experience providing direct supervision as a loan manager in the residential mortgage industry within the past 12 years;

(B) evidence of having directly supervised during the ten years described in this Subsection (2)(e)(iii)(A) no less than five licensed or registered loan originators;

(C) Although the five individuals licensed or registered as described in this Subsection (2)(e)(iii)(B) may have changed over time, the number of individuals being managed or supervised must have remained at a minimum of five individuals at all times during the ten years described in this Subsection (2)(e)(iii)(A); and

(D) evidence of having personally originated a minimum of 15 first-lien residential mortgages within the past five years.

(f) within the 12-month period preceding the date of application, successfully complete 40 hours of Utah-specific LM prelicensing education as certified by the division;

(g) take and pass a lending manager examination as approved by the commission;

(h) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(i) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(j)(i) register in the nationwide database by selecting the "lending manager" license type and completing the associated MU4 form; and

(ii) designate in the nationwide database whether the individual will be acting for the sponsoring entity as:

(A) the principal lending manager;  
 (B) an associate lending manager; or  
 (C) a branch lending manager;  
 (k) authorize a criminal background check and submit fingerprints through the nationwide database;  
 (l) authorize the nationwide database to provide the individual's credit report to the division for review;  
 (m) complete, sign, and submit to the division a social security verification form as provided by the division; and  
 (n) pay all fees through the nationwide database as required by the division and by the nationwide database.  
 (o) Notwithstanding the requirement in this Subsection 201(2)(e) that an applicant for licensure as a lending manager provide evidence of the required experience prior to obtaining approval from the division to take the Utah-specific lending manager preclicensing education, an applicant may request approval from the division for approval to take the preclicensing education upon applicant's written affirmation that:

(i) applicant's current employment status could be affected by documenting applicant's experience;  
 (ii) applicant requests approval to proceed with the Utah-specific preclicensing education despite not having documented the necessary experience; and  
 (iii) applicant understands that if division approval is granted, applicant assumes the risk of the time and expense of the preclicensing education, testing, and application fee with no assurance that applicant's experience will qualify applicant for licensure as a lending manager.

(3) Mortgage entity.  
 (a) To obtain a Utah license to operate as a mortgage entity, a person shall:

(i) establish that all control persons meet the requirements for moral character pursuant to R162-2c-202(1);  
 (ii) establish that all control persons meet the requirements for competency pursuant to R162-2c-202(2);  
 (iii) register any other trade name with the Division of Corporations and Commercial Code;  
 (iv) register the entity in the nationwide database by:  
 (A) submitting an MU1 form that includes:  
 (I) all required identifying information;  
 (II) the name of the PLM who, pursuant to Subsection R162-2c-301a(3)(a)(iv), will serve as the entity's qualifying individual;  
 (III) the name of any LM who, pursuant to Subsection R162-2c-301a(3)(a)(iv), will serve as a branch lending manager;  
 (IV) the name of any individuals who may serve as control persons;  
 (V) the entity's registered agent; and  
 (VI) any other assumed business name or trade name under which the entity will operate;  
 (B) submitting a license request for any assumed business name listed in the "Other Trade Name" section of the MU1 form; and  
 [(B)](C) creating a sponsorship through the nationwide database that identifies the mortgage loan originator(s) sponsored by the entity;  
 (v) register any branch office operating from a different location than the entity;  
 (vi) pay all fees through the nationwide database as required by the division and by the nationwide database;

(vii) provide to the division proof that any assumed business name or other trade name is registered with the Division of Corporations and Commercial Code;  
 (viii) provide to the division all court documents related to any criminal proceeding not disclosed through a previous application or renewal and involving any control person;  
 (ix) provide to the division complete documentation of any action taken by a regulatory agency against:  
 (A) the entity itself; or  
 (B) any control person; and  
 (C) not disclosed through a previous application or renewal;  
 and  
 (x) provide to the division a notarized letter on company letterhead, signed by the owner or president of the entity, authorizing the PLM to use the entity's name.  
 (b) Restrictions on entity name. No license may be issued by the division to an entity that proposes to operate under a name that closely resembles the name of another entity licensee, or that the division determines might otherwise be confusing or misleading to the public.  
 (4) Branch office.  
 (a) To register a branch office with the division, a person shall:  
 (i) obtain a Utah entity license for the entity under which the branch office will be registered;  
 (ii) submit to the nationwide database an MU3 form that includes:  
 (A) all required identifying information; and  
 (B) the name of the LM who will serve as the branch lending manager;  
 (iii) create a sponsorship through the nationwide database that identifies the mortgage loan originator(s) who will work from the branch office; and  
 (iv) pay all fees through the nationwide database as required by the division and by the nationwide database.  
 (b) A person who registers [~~another trade name and operates under that trade name from an address that is different from the address of the entity shall register the other trade name as~~] a branch office pursuant to this Subsection (4) shall ensure that any licensed trade names of the entity that are used from the branch office are listed in the "Other Name" section of the entity MU1 form.  
 (c)(i) A PLM may not simultaneously serve as a BLM if Subsection R162-2c-301a(3)(a)(iv)(B) applies.  
 (ii) An individual may not serve as the BLM for more than one branch at any given time.  
 (5) Licenses not transferable.  
 (a) A licensee shall not transfer the licensee's license to any other person.  
 (b) A licensee shall not allow any other person to work under the licensee's license.  
 (c) If a change in corporate structure of a licensed entity creates a separate and unique legal entity, that entity shall obtain a unique license, and shall not operate under any existing license.  
 (6) Expiration of test results.  
 (a) Scores for the mortgage loan originator licensing examination shall be valid for five years.  
 (b) Scores for the LM exam shall be valid for 90 days.  
 (7) Incomplete LM application.

(a) The division may grant a 30-day extension of the 90-day application window upon a finding that:

(i) an applicant has made a good faith attempt to submit a completed application; but

(ii) requires more time to provide missing documents or to obtain additional information.

(b) If the applicant does not supply the required documents or information within the 30-day extension, the division may deny the application as incomplete.

(8) Nonrefundable fees. All fees are nonrefundable, regardless of whether an application is granted or denied.

(9) Other trade names.

(a) The division shall not approve a license for any person operating under an assumed business name that poses a reasonable likelihood of misleading the public into thinking that the person is:

(i) endorsed by the division, the state government, or the federal government;

(ii) an agency of the state or federal government; or

(iii) not engaged in the business of residential mortgage loans.

(b) A mortgage entity that operates under another trade name shall register the other trade name by including it on the MUI form and obtaining the required registration.

**R162-2c-203. Utah-Specific Education Certification.**

(1) School certification.

(a) A school offering Utah-specific education shall certify with the division before providing any instruction.

(b) To certify, a school applicant shall prepare and supply the following information to the division:

(i) contact information, including:

(A) name, phone number, email address, and address of the physical facility;

(B) name, phone number, email address, and address of any school director;

(C) name, phone number, email address, and address of any school owner; and

(D) an e-mail address where correspondence will be received by the school;

(ii) evidence that all school directors and owners meet the moral character requirements outlined in R162-2c-202(1) and the competency requirements outlined in R162-2c-202(2);

(iii) school description, including:

(A) type of school;

(B) description of the school's physical facilities; and

(C) type of instruction method;

(iv) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;

(v) proof that each instructor:

(A) has been certified by the division; or

(B) is exempt from certification under Subsection 203(5)(f);

(vi) statement of attendance requirements as provided to students;

(vii) refund policy as provided to students;

(viii) disclaimer as provided to students; and

(ix) criminal history disclosure statement as provided to students.

(c) Minimum standards.

(i) The course schedule may not provide or allow for more than eight credit hours per student per day.

(ii) The attendance statement shall require that each student attend at least 90% of the scheduled class time.

(iii) The disclaimer shall adhere to the following requirements:

(A) be typed in all capital letters at least 1/4 inch high; and

(B) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school."

(iv) The criminal history disclosure statement shall:

(A) be provided to students while they are still eligible for a full refund; and

(B) clearly inform the student that upon application with the nationwide database, the student will be required to:

(I) accurately disclose the student's criminal history according to the licensing questionnaire provided by the nationwide database and authorized by the division; and

(II) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(C) clearly inform the student that the division will consider the applicant's criminal history pursuant to R162-2c-202(1) in making a decision on the application; and

(D) include a section for the student's attestation that the student has read and understood the disclosure.

(d) Within ten days after the occurrence of any material change in the information outlined in Subsection (1), the school shall provide to the division written notice of that change.

(2) School certification expiration and renewal. A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order for the school to remain in operation. To renew, a school applicant shall:

(a) complete a renewal application as provided by the division;

(b) pay a nonrefundable renewal fee;

(c) provide a list of all proposed courses with a projected schedule of days, times, and locations of classes; and

(d) provide the information specified in Subsection 3(c) for Utah-specific course certification for the division's evaluation of each proposed course.

(3) Utah-specific course certification.

(a) A school providing a Utah-specific course shall certify the course with the division before offering the course to students.

(b) Application shall be made at least 30 days prior to the date on which a course requiring certification is proposed to begin.

(c) To certify a course, a school applicant shall prepare and supply the following information:

(i) instruction method;

(ii) outline of the course, including:

(A) a list of subjects covered in the course;

(B) reference to the approved course outline for each subject covered;

(C) length of the course in terms of hours spent in classroom instruction;

(D) number of course hours allocated for each subject;

(E) at least three learning objectives for every hour of classroom time;

(F) instruction format for each subject; i.e., lecture or media presentation;

(G) name and credentials of any guest lecturer; and

(H) list of topic(s) and session(s) taught by any guest lecturer;

(iii) a list of the titles, authors, and publishers of all required textbooks;

(iv) copies of any workbook used in conjunction with a non-lecture method of instruction;

(v) a copy of each quiz and examination, with an answer key; and

(vi) the grading system, including methods of testing and standards of grading.

(d) Minimum standards.

(i) All texts, workbooks, supplement pamphlets and other materials shall be appropriate, current, accurate, and applicable to the required course outline.

(ii) The course shall cover all of the topics set forth in the associated outline.

(iii) The lecture method shall be used for at least 50% of course instruction unless the division gives special approval otherwise.

(iv) A school applicant that uses a non-lecture method for any portion of course instruction shall provide to the student:

(A) an accompanying workbook as approved by the division for the student to complete during the instruction; and

(B) a certified instructor available within 48 hours of the non-lecture instruction to answer student questions.

(v) The division shall not approve an online education course unless:

(A) there is a method to ensure that the enrolled student is the person who actually completes the course;

(B) the time spent in actual instruction is equivalent to the credit hours awarded for the course; and

(C) there is a method to ensure that the student comprehends the material.

(4) Course expiration and renewal.

(a) A prelicensing course expires at the same time the school certification expires.

(b) A prelicensing course certification is renewed automatically when the school certification is renewed.

(5) Education committee.

(a) The commission may appoint an education committee to:

(i) assist the division and the commission in approving course topics; and

(ii) make recommendations to the division and the commission about:

(A) whether a particular course topic is relevant to residential mortgage principles and practices; and

(B) whether a particular course topic would tend to enhance the competency and professionalism of licensees.

(b) The division and the commission may accept or reject the education committee's recommendation on any course topic.

(6) Instructor certification.

(a) Except as provided in this Subsection (6)(f), an instructor shall certify with the division before teaching a Utah-specific course.

(b) Application shall be made at least 30 days prior to the date on which the instructor proposes to begin teaching.

(c) To certify as an instructor of mortgage loan originator prelicensing courses, an individual shall provide evidence of:

(i) a high school diploma or its equivalent;

(ii)(A) at least five years of experience in the residential mortgage industry within the past ten years; or

(B) successful completion of appropriate college-level courses specific to the topic proposed to be taught;

(iii)(A) a minimum of twelve months of full-time teaching experience;

(B) part-time teaching experience that equates to twelve months of full-time teaching experience; or

(C) participation in instructor development workshops totaling at least two days in length; and

(iv) having passed, within the six-month period preceding the date of application, the lending manager licensing examination.

(d) To certify as an instructor of LM prelicensing courses, an individual shall:

(i) meet the general requirements of this Subsection 6(c); and

(ii) meet the specific requirements for any of the following courses the individual proposes to teach.

(A) Management of a Residential Mortgage Loan Office: at least two years practical experience in managing an office engaged in the business of residential mortgage loans.

(B) Mortgage Lending Law: two years practical experience in the field of real estate law; and either:

(I) current active membership in the Utah Bar Association; or

(II) degree from an American Bar Association accredited law school.

(C) Advanced Appraisal:

(I) at least two years practical experience in appraising; and

(II) current state-certified appraiser license.

(D) Advanced Finance:

(I) at least two years practical experience in real estate finance; and

(II) association with a lending institution as a loan originator.

(e) To act as an instructor of NMLS-approved continuing education courses, an individual shall certify through the nationwide database.

(f)(i) To act as an instructor of Division-approved continuing education courses, an individual shall complete the Division certification process at least 30 days prior to engaging in instruction.

(ii) To certify with the Division as an instructor, an applicant shall provide the following:

(A) applicant's name and contact information;

(B) evidence that the applicant meets the competency requirements of Subsection R162-2c-202;

(C) evidence that the applicant has graduated from high school or successfully completed equivalent education;

(D) evidence that the applicant understands the subject matter to be taught, as demonstrated through:

(I) a minimum of two years full-time experience as a mortgage licensee;

(II) college-level education related to the course subject; or

(III) demonstrated expertise in the subject proposed to be taught;

(E) evidence that the applicant has the ability to teach, as demonstrated through:

(F) a minimum of 12 months of full-time teaching experience; or

(I) part-time teaching experience equivalent to 12 months full-time teaching experience;

(II) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the Division or its representative;

(G) a signed statement agreeing not to market personal sales products;

(H) a signed statement certifying legal presence to work in the state;

(I) any other information the Division requires or requests; and

(J) a nonrefundable application fee.

~~(f)~~(g) The following instructors are not required to be certified by the division:

(i) a guest lecturer who:

(A) is an expert in the field on which instruction is given;

(B) provides to the division a resume or similar documentation evidencing satisfactory knowledge, background, qualifications, and expertise; and

(C) teaches no more than 20% of the course hours;

(ii) a college or university faculty member who evidences academic training, industry experience, or other qualifications acceptable to the division;

(iii) an individual who:

(A) evidences academic training, industry experience, or other qualifications satisfactory to the division; and

(B) receives approval from the commission; and

(iv) a division employee.

~~(g)~~(h) Renewal.

(i) An instructor certification for Utah-specific prelicensing education expires 24 months from the date of issuance and shall be renewed before the expiration date.

(ii) To renew an instructor certification for Utah-specific prelicensing education, an applicant shall submit to the division:

(A) evidence of having taught at least 20 hours of classroom instruction in a certified mortgage education course during the preceding two years;

(B) evidence of having attended an instructor development workshop sponsored by the division during the preceding two years; and

(C) a renewal fee as required by the division.

(iii) To renew an instructor certification for continuing education, an individual shall certify through the nationwide database.

~~(h)~~(i) Reinstatement.

(i) An instructor who is certified by the division may reinstate an expired certification within 30 days of expiration by:

(A) complying with this Subsection (6)(g); and

(B) paying an additional non-refundable late fee.

(ii) Until six months following the date of expiration, an instructor who is certified by the division may reinstate a certification that has been expired more than 30 days by:

(A) complying with this Subsection (6)(g);

(B) paying an additional non-refundable late fee; and

(C) completing six classroom hours of education related to residential mortgages or teaching techniques.

(7)(a) The division may monitor schools and instructors for:

(i) adherence to course content;

(ii) quality of instruction and instructional materials; and

(iii) fulfillment of affirmative duties as outlined in R162-2c-301a(5)(a) and R162-2c-301a(6)(a).

(b) To monitor schools and instructors, the division may:

(i) collect and review evaluation forms; or

(ii) assign an evaluator to attend a course and make a report to the division.

#### **R162-2c-204. License Renewal, Reinstatement, and Reapplication.**

(1) Deadlines.

(a) License renewal.

(i) To renew on time, a person who holds an active license as of October 31 shall renew by December 31 of the same calendar year.

(ii)(A) A person who obtains a license on or after November 1 shall renew by December 31 of the following calendar year.

(B) A person who is not required to renew in the first year of licensure pursuant to this Subsection (1)(a)(ii)(A) shall nevertheless complete, prior to December 31 of the first year of licensure, continuing education as required for renewal pursuant to Subsection R162-2c-204(3)(a) if the individual did not complete the mortgage loan originator national pre-licensing education during the calendar year.

(b) Reinstatement. The deadline to reinstate a license that expires on December 31 is February 28 of the year following the date of expiration.

(c) After the reinstatement deadline passes, a person shall reapply for licensure pursuant to Subsection R162-2c-204(3)(c).

(2) Qualification for renewal.

(a) Character.

(i) Individuals applying to renew or reinstate a license shall evidence that they maintain good moral character, honesty, integrity, and truthfulness as required for initial licensure.

(ii)(A) An individual applying for a renewed license may not have:

(I) a felony that resulted in a conviction or plea agreement during the renewal period; or

(II) a finding of fraud, misrepresentation, or deceit entered against the applicant by a court of competent jurisdiction or a government agency and occurring within the renewal period.

(B) A licensee shall submit a fingerprint background report in order to renew a license:

~~(A)~~(I) in the renewal period beginning November 1, 2015; and

~~(B)~~(II) every fifth year following the renewal period beginning November 1, 2015.

(iii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-2c-202(1)(b), of circumstances that reflect negatively on the applicant's character, honesty, integrity, or truthfulness and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iv) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standards for character, honesty, integrity, and truthfulness required of individual applicants.

~~\_\_\_\_\_ (c) Financial responsibility. A licensee shall submit a credit report in order to renew a license:~~

- ~~\_\_\_\_\_ (i) in the renewal period beginning November 1, 2015; and  
 \_\_\_\_\_ (ii) every fifth year following the renewal period beginning November 1, 2015.~~

] (b) Competency.

(i) Individual applicants and control persons shall evidence that they maintain the competency required for initial licensure.

(ii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-2c-202(2), of circumstances that reflect negatively on the applicant's competency and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iii) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standard for competency required of individual applicants.

(c) Financial responsibility. A licensee shall submit a credit report in order to renew a license:

- \_\_\_\_\_ (i) in the renewal period beginning November 1, 2015; and  
 \_\_\_\_\_ (ii) every fifth year following the renewal period beginning November 1, 2015.

(3) Education requirements for renewal, reinstatement, and reapplication.

(a) License renewal.

(i) Except as provided in this Subsection (3)(a)(ii), an individual who holds an active license as of January 1 of the calendar year shall complete, within the calendar year in which the individual's license is scheduled to expire, the following courses, none of which may be duplicative of courses taken in the same or preceding renewal period:

(A) beginning with the 2014 renewal, a division-approved course on Utah law, completed annually; and

(B) eight hours of continuing education approved through the nationwide database, as follows:

(I) three hours federal laws and regulations;

(II) two hours ethics (fraud, consumer protection, fair lending issues);

(III) two hours training related to lending standards for non-traditional mortgage products; and

(IV) one hour undefined instruction on mortgage origination.

(ii) An individual who completes the mortgage loan originator national pre-licensing education between January 1 and December 31 of the calendar year is exempt from continuing education, including the division-approved course on Utah law specified in Subsection (3)(a)(i)(A), for the renewal period ending December 31 of the same calendar year.

(b) Reinstatement. To reinstate an expired mortgage loan originator or lending manager license, an individual shall, by February 28 of the calendar year following the date on which the license expired, complete:

(i) the division-approved course on Utah law specified in Subsection (3)(a)(i)(A); and

(ii) eight hours of continuing education:

(A) in topics listed in this Subsection (3)(a)(i)(B); and

(B)(I) approved by the nationwide database as "continuing education" if completed prior to the date of expiration; or

(II) approved by the nationwide database as "late continuing education" if completed between the date of expiration and the deadline for reinstatement.

(c) Reapplication.

(i) To reapply for licensure after the reinstatement deadline passes and by or before December 31 of the calendar year following the date on which the license expired, an individual shall complete the division-approved course on Utah law and continuing education requirement outlined in this Subsection (3)(b).

(ii) To reapply for licensure after the deadline described in this Subsection (3)(c)(i) passes, an individual shall:

(A) complete eight hours of continuing education:

(I) in topics listed in this Subsection (3)(a)(i); and

(II) approved by the nationwide database as "late continuing education"; and

(B) within the 12-month period preceding the date of reapplication, take and pass:

(I) the 15-hour Utah-specific mortgage loan originator pre-licensing education, if the terminated license was a mortgage loan originator license; or

(II) the 40-hour Utah-specific lending manager pre-licensing education and associated examination, if the terminated license was a lending manager license; and

(C) complete the division-approved course on Utah law specified in Subsection (3)(a)(i)(A).

(4) Renewal, reinstatement, and reapplication procedures.

(a) An individual licensee shall:

(i) evidence having completed education as required by Subsection R162-2c-204(3);

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and

(iii) submit through the nationwide database:

(A) a request for renewal, if renewing or reinstating a license; or

(B) a request for a new license, if reapplying; and

(iv) pay all fees as required by the division and by the nationwide database, including all applicable late fees.

(b) An entity licensee shall:

(i) submit through the nationwide database a request for renewal;

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;

(iii) renew the registration of any branch office or other trade name registered under the entity license; and

(iv) pay through the nationwide database all fees, including all applicable late fees, required by the division and by the nationwide database.

#### **R162-2c-205. Notification of Changes.**

(1) An individual licensee who is registered with the nationwide database shall:

(a) enter into the national database any change in the following:

(i) name of licensee;

(ii) contact information for licensee, including:

(A) mailing address;

(B) residential address;

~~[(B)](C)~~ telephone number(s); and

~~[(C)](D)~~ e-mail address(es);

(iii) sponsoring entity; and  
 (iv) license status (sponsored or non-sponsored); and  
 (b) pay all change fees charged by the national database and the division.

(2) An entity licensee shall:

(a) enter into the national database any change in the following:

- (i) name of licensee;
- (ii) contact information for licensee, including:
  - (A) mailing address;
  - (B) telephone number(s);
  - (C) fax number(s); and
  - (D) e-mail address(es);
- (iii) sponsorship information;
- (iv) control person(s);
- (v) qualifying individual;
- (vi) license status (sponsored or non-sponsored); and
- (vii) branch offices or other trade names registered under the entity license; and

(b) pay any change fees charged by the national database and the division.

**R162-2c-301a. Unprofessional Conduct.**

(1) Mortgage loan originator.

(a) Affirmative duties. A mortgage loan originator who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator shall:

(i) solicit business and market products solely in the name of the mortgage loan originator's sponsoring entity;

(ii) conduct the business of residential mortgage loans solely in the name of the mortgage loan originator's sponsoring entity;

(iii) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

- (A) appraisal fees;
  - (B) inspection fees;
  - (C) credit reporting fees; and
  - (D) insurance premiums;
- (iv) turn all records over to the sponsoring entity for proper retention and disposal; and

(v) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. A mortgage loan originator who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator may not:

(i) charge for services not actually performed;

(ii) require a borrower to pay more for third party services than the actual cost of those services;

(iii) withhold, without reasonable justification, payment owed to a third party service provider in connection with the business of residential mortgage loans;

(iv) alter an appraisal of real property; or

(v) unless acting under a valid real estate license and not under a mortgage license, perform any act that requires a real estate license under Title 61, Chapter 2f, including:

(A) providing a buyer or seller of real estate with a comparative market analysis;

(B) assisting a buyer or seller to determine the offering price or sales price of real estate;

(C) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate;

(D) advertising the sale of real estate by use of any advertising medium;

(E) preparing, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property; or

(F) altering, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property.

(c) A mortgage loan originator does not engage in an activity requiring a real estate license where the mortgage loan originator:

(i) offers advice about the consequences that the terms of a purchase agreement might have on the terms and availability of various mortgage products;

(ii) owns real property that the mortgage loan originator offers "for sale by owner"; or

(iii) advertises mortgage loan services in cooperation with a "for sale by owner" seller where the advertising clearly identifies:

- (A) the owner's contact information;
- (B) the owner's role;
- (C) the mortgage loan originator's contact information; and
- (D) the specific mortgage-related services that the mortgage loan originator may provide to a buyer; or

(iv) advertises in conjunction with a real estate brokerage where the advertising clearly identifies the:

- (A) contact information for the brokerage;
- (B) role of the brokerage;
- (C) mortgage loan originator's contact information; and
- (D) specific mortgage-related services that the mortgage loan originator may provide to a buyer.

(2) Lending manager.

(a) Affirmative duties. A lending manager who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405.

(b) An LM who is designated in the nationwide database as the principal lending manager of an entity shall:

(i) be accountable for the affirmative duties outlined in Subsection (1)(a);

(ii) provide to all sponsored mortgage loan originators and unlicensed staff specific written policies as to their affirmative duties and prohibited activities, as established by:

- (A) federal law governing residential mortgage lending;
- (B) state law governing residential mortgage lending and including the Utah Residential Mortgage Practices Act; and
- (C) administrative rules promulgated by the division under authority of the Utah Residential Mortgage Practices Act;

(iii) if acting as a PLM or BLM, exercise reasonable supervision over all sponsored mortgage loan originators and over all unlicensed staff working from the licensee's office by:

- (A) directing the details and means of their work activities;
- (B) requiring that they read and agree to comply with the Utah Residential Mortgage Practices and Licensing Act and the rules promulgated thereunder;

(C) requiring that they conduct all residential mortgage loan business in the name of the sponsoring entity; and

(D) prohibiting unlicensed staff from engaging in any activity that requires licensure;



(iv) establish and enforce written policies and procedures for ensuring the independent judgment of any underwriter employed by the PLM's sponsoring entity;

(v) establish and follow procedures for responding to all consumer complaints;

(vi) personally review any complaint relating to conduct by a sponsored mortgage loan originator or unlicensed staff member that might constitute a violation of federal law, state law, or division administrative rules;

(vii) establish and maintain a quality control plan that:

(A) complies with HUD/FHA requirements;

(B) complies with Freddie Mac and Fannie Mae requirements; or

(C) includes, at a minimum, procedures for:

(I) performing pre-closing and post-closing audits of at least ten percent of all loan files; and

(II) taking corrective action for problems identified through the audit process;

(viii)(A) establish, maintain, and enforce written policies and procedures to ensure the independent judgment of any underwriter employed by the sponsoring entity, whether sponsored from the principal entity location or a branch office; and

(B) take corrective action for problems identified through the underwriting process; and

~~(viii)~~(ix) review for compliance with applicable federal and state laws all advertising and marketing materials and methods used by:

(A) the PLM's sponsoring entity; and

(B) the entity's sponsored mortgage loan originators; and

(ix)(A) actively supervise:

(I) any ALM sponsored by the entity; and

(II) any BLM who is assigned to oversee the mortgage loan origination activities of a branch office; and

(B) remain personally responsible and accountable for adequate supervision of all sponsored mortgage loan originators, unlicensed staff, and entity operations throughout all locations.

(c) An LM who is designated as a branch lending manager in the nationwide database shall:

(i) work from the branch office the LM is assigned to manage;

(ii) personally oversee all mortgage loan origination activities conducted through the branch office; and

(iii) personally supervise all mortgage loan originators and unlicensed staff affiliated with the branch office.

(d) Prohibited conduct. An LM who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An LM may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

(3) Mortgage entity.

(a) Affirmative duties. A mortgage entity that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage entity shall:

(i) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

(A) appraisal fees, which shall be remitted no later than 30 days following the date on which the fees are received by the mortgage entity;

(B) inspection fees;

(C) credit reporting fees; and

(D) insurance premiums;

(ii) retain and dispose of records according to R162-2c-302;

and

(iii) comply with a division request for information within 10 business days of the date of the request;

(iv)(A) notify the division of the location from which the entity's PLM will work; and

(B) if the entity originates Utah loans from a location where the PLM is not present to oversee and supervise activities related to the business of residential mortgage loans, assign a separate LM to serve as the BLM per Section 61-2c-102(1)(e);

(v) ensure that:

(I) each sponsored mortgage loan originator fulfills the affirmative duties set forth in this Subsection (1); and

(II) each sponsored LM fulfills the affirmative duties set forth in this Subsection (2); and

(vi) if using an incentive program, strictly comply with Subsection R162-2c-301b.

(b) Prohibited conduct. A mortgage entity shall be subject to discipline under Sections 61-2c-401 through 405 if:

(i) any sponsored mortgage loan originator or LM engages in any prohibited conduct; or

(ii) any unlicensed employee performs an activity for which licensure is required.

(4) Reporting unprofessional conduct.

(a) The division shall report in the nationwide database any final disciplinary action taken against a licensee for unprofessional conduct.

(b) A licensee may challenge the information entered by the division into the nationwide database pursuant to Section 63G-2-603.

(5) School.

(a) Affirmative duties. A school that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A school shall:

(i) within 15 calendar days of any material change in the information outlined in R162-2c-203(1)(b), provide to the division written notice of the change;

(ii) with regard to the criminal history disclosure required under R162-2c-203(1)(b)(ix),

(A) obtain each student's signature before allowing the student to participate in course instruction;

(B) retain each signed criminal history disclosure for a minimum of two years; and

(C) make any signed criminal history disclosure available to the division upon request;

(iii) maintain a record of each student's attendance for a minimum of five years after enrollment;

(iv) upon request of the division, substantiate any claim made in advertising materials;

(v) maintain a high quality of instruction;

(vi) adhere to all state laws and regulations regarding school and instructor certification;

(vii) provide the instructor(s) for each course with the required course content outline;

(viii) require instructors to adhere to the approved course content;

(ix) comply with a division request for information within 10 business days of the date of the request;

(x) upon completion of the course requirements, provide a certificate of completion to each student; and

(xi) ensure that the material is current in courses taught on:

- (A) Utah statutes;
- (B) Utah administrative rules;
- (C) federal laws; and
- (D) federal regulations.

(b) Prohibited conduct. A school that engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A school may not:

(i) accept payment from a student without first providing to that student the information outlined in R162-2c-203(1)(b)(vi) through (ix);

(ii) continue to operate after the expiration date of the school certification and without renewing;

(iii) continue to offer a course after its expiration date and without renewing;

(iv) allow an instructor whose instructor certification has expired to continue teaching;

(v) allow an individual student to earn more than eight credit hours of education in a single day;

(vi) award credit to a student who has not complied with the minimum attendance requirements;

(vii) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;

(viii) give valuable consideration to a person licensed with the division under Section 61-2c for referring students to the school;

(ix) accept valuable consideration from a person licensed with the division under Section 61-2c for referring students to a licensed mortgage entity;

(x) allow licensed mortgage entities to solicit prospective mortgage loan originators at the school during class time or during the 10-minute break that is permitted during each hour of instruction;

(xi) require a student to attend any program organized for the purpose of solicitation;

(xii) make a misrepresentation in its advertising;

(xiii) advertise in any manner that denigrates the mortgage profession;

(xiv) advertise in any manner that disparages a competitor's services or methods of operation;

(xv) advertise or teach any course that has not been certified by the division;

(xvi) advertise a course with language that indicates division approval is pending or otherwise forthcoming; or

(xvii) attempt by any means to obtain or to use in its educational offerings the questions from any mortgage examination unless the questions have been dropped from the current bank of exam questions.

(6) Instructor.

(a) Affirmative duties. An instructor who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. An instructor shall:

(i) adhere to the approved outline for any course taught; and

(ii) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. An instructor who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An instructor may not:

(i) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

(ii) continue to teach any course after the course has expired and without renewing the course certification.

#### **R162-2c-302. Requirements for Record Retention and Disposal.**

(1) Record Retention.

(a) An entity licensed under the Utah Residential Mortgage Practices Act shall maintain and safeguard for the period set forth in Section 61-2c-302 the following records:

(i) application forms, which include, but are not limited to:

(A) the initial 1003 form, signed and dated by the loan originator; and

(B) the final 1003 form, signed and dated by the loan originator;

(ii) disclosure forms;

(iii) truth-in-lending forms;

(iv) credit reports and the explanations therefor;

(v) conversation logs;

(vi) verifications of employment, paycheck stubs, and tax returns;

(vii) proof of legal residency, if applicable;

(viii) appraisals, appraisal addenda, and records of communications between the appraiser and the registrant, licensee, and lender;

(ix) underwriter denials;

(x) notices of adverse action;

(xi) loan approval;

(xii) name and contact information for the borrower in the transaction;

(xiii) pre-qualification and pre-approval letters; and

[~~(xiii)~~](xiv) all other records required by underwriters involved with the transaction or provided to a lender.

(b) Records may be maintained electronically if the storage system complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act.

(c) A licensed entity shall make all records available to the division pursuant to Section 61-2c-302(3).

(d) An individual who terminates sponsorship with an entity shall turn over to the entity any records in the individual's possession at the time of termination.

(2) Record Disposal. A person who disposes of records at the end of the retention period shall destroy personal information by shredding, erasing, or otherwise making the information indecipherable.

(3) Responsible Party.

(a) If a licensed entity is actively engaged in the business of residential mortgage loans, the PLM is responsible for proper retention, maintenance, safeguarding, and disposal of records.

(b) If a licensed entity ceases doing business in Utah, the control person(s) as of its last day of operation are responsible for proper retention, maintenance, safeguarding, and disposal of records.

#### **R162-2c-401. Administrative Proceedings.**

(1) Request for agency action.

(a) If completed in full and submitted in compliance with the rules promulgated by the division, the following shall be deemed a

request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq.:

- (i) an original or renewal application for a license;
- (ii) an original or renewal application for a school certification;
- (iii) an original or renewal application for a course certification; and
- (iv) an original or renewal application for an instructor certification.

(b) Any other request for agency action shall:

- (i) be in writing;
- (ii) be signed by the requestor; and
- (iii) comply with Utah Administrative Procedures Act, Section 63G-4-201(3).

(c) The following shall not be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq., even if submitted in compliance with this Subsection (1)(b):

- (i) a complaint against a licensee; and
- (ii) a request that the division commence an investigation or a disciplinary action against a licensee.

(2) ~~[Formal adjudicative proceedings.]~~An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.

(3) ~~[Informal]~~Other adjudicative proceedings.

(a) All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be ~~[conducted as informal adjudicative proceedings]~~designated as formal or informal in the Division's notice of agency action or notice of proceeding, as applicable. These ~~[informal]~~proceedings shall include:

- (i) a proceeding on an original or renewal application for a license;
- (ii) a proceeding on an original or renewal application for a school, instructor, or course certification; and
- (iii) except as provided in Section 63G-4-502, a proceeding for disciplinary action commenced by the division pursuant to Section 63G-4-201(2) following investigation of a complaint.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices and Licensing Act or by these rules.

(c) A party to a proceeding may move the presiding officer to convert the proceeding to a formal or informal adjudication pursuant to Utah Code Section 63G-4-202(3).

(4) Hearings not allowed. A hearing may not be held in the following informal adjudicative proceedings:

- (a) the issuance of an original or renewed license when the application has been approved by the division;
- (b) the issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the division;
- (c) the issuance of any interpretation of statute, rule, or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division;
- (d) the denial of an application for an original or renewed license on the ground that it is incomplete;

(e) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules; or

(f) a proceeding on an application for an exemption from a continuing education requirement.

(5) Hearings required. A hearing before the commission shall be held in the following circumstances:

(a) a proceeding commenced by the division for disciplinary action pursuant to Section 61-2c-402 and Section 63G-4-201(2);

(b) an appeal of a division order denying or restricting a license; and

(c) an application that presents unusual circumstances such that the division determines that the application should be heard by the commission.

(6) Procedures for hearings in informal adjudicative proceedings.

(a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to the chairperson of the commission or an administrative law judge.

(b) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Section R151-4 et seq.; and

(iii) the rules promulgated by the division.

(c) Except as provided in Subsection 7(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(d) In any proceeding under this Subsection, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(e) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage pre-paid delivery, mail to the address last provided to the division pursuant to Section 61-2c-106 or Subsection R162-2c-201, as applicable, written notice of the date, time, and place scheduled for the hearing.

(f) Formal discovery is prohibited.

(g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:

(i) on its own behalf; or

(ii) on behalf of a party where:

(A) the party makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to the witness.

(h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.

(j) The division may decline to provide a party with information that it has previously provided to that party.

(k) Intervention is prohibited.

(l) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(m) Upon filing a proper entry of appearance with the division pursuant to R151-4-110(1)(a), an attorney may represent a respondent.

(7) Additional procedures for disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.

(c) Witness and exhibit lists.

(i) The division shall provide its witness and exhibit list to the respondent at the time it mails its notice of hearing.

(ii) The respondent shall provide its witness and exhibit list to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.

(iii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from each witness.

(iv) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

**KEY:** residential mortgage, loan origination, licensing, enforcement

**Date of Enactment or Last Substantive Amendment:** ~~February 10, 2015~~

**Notice of Continuation:** March 31, 2015

**Authorizing, and Implemented or Interpreted Law:** 61-2c-103(3); 61-2c-402(4)(a)

## Crime Victim Reparations, Administration **R270-1-22** Sexual Assault Forensic Examinations

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 39463

FILED: 06/26/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to allow Crime Victim Reparations to pay a greater amount for sexual assault forensic examinations and costs related to pharmaceutical management and consultation provided for the purpose of obtaining free medications.

**SUMMARY OF THE RULE OR CHANGE:** The change allows Crime Victim Reparations to pay up to \$750 for full sexual assault forensic examinations, which must include photo documentation, and also allow for Crime Victim Reparations to pay for the cost of medication and/or pharmaceutical management and consultation provided for the purpose of obtaining free medications.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63M-7-506

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The amendment to the rule could have an affect on state budget as it relates to Crime Victim Reparations. The amendment allows for up to an additional \$450 paid by Crime Victim Reparations, above what was previously in the rule, as it relates to the sexual assault forensic examinations.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings that are expected. The amendment to the rule could affect only the Crime Victim Reparations' budget related to the payment for sexual assault forensic examinations.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings that are expected. The amendment to the rule could affect only the Crime Victim Reparations' budget related to the payment for sexual assault forensic examinations.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings that are expected. The amendment to the rule could affect only the Crime Victim Reparations' budget related to the payment for sexual assault forensic examinations.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no compliance costs. The amendment only allows Crime Victim Reparations to provide greater funding for sexual assault forensic examinations.

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 amendment to this rule simply allows Crime Victim Reparations to pay a greater amount for sexual assault forensic examinations.

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

CRIME VICTIM REPARATIONS  
ADMINISTRATION  
ROOM 200  
350 E 500 S  
SALT LAKE CITY, UT 84111-3347  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Gary Scheller by phone at 801-238-2362, by FAX at 801-533-4127, or by Internet E-mail at garys@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 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: Gary Scheller, Director

## **R270. Crime Victim Reparations, Administration.**

### **R270-1. Award and Reparation Standards.**

#### **R270-1-22. Sexual Assault Forensic Examinations.**

A. Pursuant to Subsections 63M-7-502(21) and 63M-7-511(4)(i), the cost of sexual assault forensic examinations for gathering evidence and providing treatment may be paid by CVR in the amount of [~~\$300.00 without photo documentation and ] up to ~~\$750.00~~[\$600.00 with a photo examination.] for a full examination which must include photo documentation. Pursuant to Section 63M-7-521.5, CVR may also pay for the cost of medication and/or pharmacological management and consultation provided for the purpose of obtaining free medications and 70% of the eligible hospital services and supplies. Payment to the hospital or other eligible facility for the rent or use of an examination room or space for the purpose of conducting a sexual assault forensic exam shall not exceed \$350.00. The following agency guidelines need to be adhered to when making payments for sexual assault forensic examinations:~~

1. A sexual assault forensic examination shall be reported by the health care provider who performs the examination to law enforcement.
2. Victims shall not be charged for sexual assault forensic examinations.
3. Victims shall not be required to participate in the criminal justice system or cooperate with law enforcement or prosecuting attorneys as a condition of being provided a sexual assault forensic examination or as a condition of payment being made pursuant to this rule.

4. The agency may reimburse any licensed health care facility that provides services for sexual assault forensic examinations.

5. The agency may reimburse licensed medical personnel trained to gather evidence of sexual assaults who perform sexual assault forensic examinations.

6. CVR may pay for the collection of evidence and not attempt to prove or disprove the allegation of sexual assault.

7. A request for reimbursement shall include the law enforcement case number or be signed by a law enforcement officer, victim/witness coordinator or medical provider.

8. The application or billing for the sexual assault forensic examination must be submitted to CVR within one year of the examination.

9. The billing for the sexual assault forensic examination shall:

- a. identify the victim by name, address, date of birth, Social Security number, telephone number, patient number;
- b. indicate the claim is for a sexual assault forensic examination; and
- c. itemize services and fees for services.

10. All collateral sources that are available for payment of the sexual assault forensic examination shall be considered before Crime Victim Reparations Trust Fund monies are used. Pursuant to Subsection 63M-7-513(5), the Director may determine that reimbursement for a sexual assault forensic examination will not be reduced even though a claim could be recouped from a collateral source.

11. Evidence will be collected only with the permission of the victim or the legal guardian of the victim.

12. Restitution for the cost of the sexual assault forensic examination may be pursued by CVR.

13. Payment for sexual assault forensic examinations shall be considered for the following:

- a. Fees for the collection of evidence, for forensic documentation only, to include:
  - i. history;
  - ii. physical; and
  - iii. collection of specimens and wet mount for sperm.
- b. Emergency department services to include:
  - i. emergency room, clinic room or office room fee;
  - ii. cultures for gonorrhea, chlamydia, trichomonas, and tests for other sexually transmitted disease;
  - iii. serum blood test for pregnancy;
  - iv. morning after pill or high dose oral contraceptives for the prevention of pregnancy; and
  - v. treatment for the prevention of sexually transmitted disease up to four weeks.

14. The victim of a sexual assault that is requesting payment by CVR for services needed or rendered beyond the sexual assault forensic examination needs to submit an application for compensation to the CVR office.

**KEY: victim compensation, victims of crimes**

**Date of Enactment or Last Substantive Amendment: [~~April 22, 2013~~2015]**

**Notice of Continuation: June 29, 2011**

**Authorizing, and Implemented or Interpreted Law: 63M-7-501 et seq.**

Education, Administration  
**R277-99**  
 Definitions for Utah State Board of  
 Education (Board) Rules

SALT LAKE CITY, UT 84111-3272  
 or at the Division of Administrative Rules.

**NOTICE OF PROPOSED RULE**

(New Rule)  
 DAR FILE NO.: 39488  
 FILED: 07/01/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose for this new rule is to provide uniform definitions that are used throughout Board rules under Title R277.

**SUMMARY OF THE RULE OR CHANGE:** This new rule provides a general definition section that applies to all rules under Title R277.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X, Section 3 and Subsection 53A-1-401(3)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The new rule provides general definitions that apply to all rules under Title R277, which likely will not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** The new rule provides general definitions that apply to all rules under Title R277, which likely will not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** The new rule provides general definitions that apply to all rules under Title R277, which likely will not result in a cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The new rule provides general definitions that apply to all rules under Title R277, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The new rule provides general definitions that apply to all rules under Title R277, 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

**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](mailto: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 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

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

**R277. Education, Administration.**

**R277-99. Definitions for Utah State Board of Education (Board) Rules.**

**R277-99. Authority and Purpose.**

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

(2) The purpose of this rule is to provide definitions that are used in the Board rules beginning with R277.

**R277-99-2. Definitions.**

(1) "Accreditation" means the formal process for internal and external review and approval under the standards of an accrediting entity adopted by the Board.

(2) "Audit" means an independent appraisal activity established by the Board as a control system to examine and evaluate the adequacy and effectiveness of internal control systems within an agency.

(3) "Board" means the State Board of Education.

(4) "Charter school" means a school established as a charter school by a charter school authorizer under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act, and rule.

(5) "District school" means a public school under the control of a local school board elected under Title 20A, Chapter 14, Nomination and Election of State and Local School Boards.

(6) "Educator" means an individual licensed under Section 53A-6-104 and who meets the requirements of R277-501.

(7) "Individualized education program" or "IEP" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 (2004), and rule.

(8) "Individuals with Disabilities Education Act" or "IDEA," 20 U.S.C. Section 1400 et seq. (2004), is a four part (A-D) piece of federal legislation that ensures a student with a disability is provided with a Free Appropriate Public Education (FAPE) that is tailored to the student's individual needs.

(9)(a) "LEA" or "local education agency" means a school district or charter school.

(b) For purposes of certain rules, "LEA" or "local education agency" may include the Utah Schools for the Deaf and the Blind (USDB) if indicated in the specific rule.

(10)(a) "LEA governing board" means:

(i) for a school district, a local school board; and

(ii) for a charter school, a charter school governing board.

(b) For purposes of certain rules, "LEA governing board" may include the State Board of Education as the governing board for the Utah Schools for the Deaf and the Blind if indicated in the specific rule.

(11) "Parent" means a parent or guardian who has established residency of a child under Sections 53A-2-201, 53A-2-202, or 53A-2-207 or another applicable Utah guardianship provision.

(12) "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:

(a) a written plan, updated annually, for a secondary student's (grades 7-12) education and occupational preparation;

(b) all Board, local board and local charter board graduation requirements;

(c) evidence of parent or guardian, student, and school representative involvement annually;

(d) attainment of approved workplace skill competencies, including job placement when appropriate; and

(e) identification of post secondary goals and approved sequence of courses.

(13) "State Charter School Board" or "SCSB" means the State Charter School Board created in Section 53A-1a-501.5.

(14) "Superintendent" mean the State Superintendent of Public Instruction or the Superintendent's designee.

(15) "USDB" means the Utah Schools for the Deaf and the Blind.

(16) "USOE" means the Utah State Office of Education.

(17) "USOR" means the Utah State Office of Rehabilitation.

**KEY: Board of Education, rules, definitions**

**Date of Enactment or Last Substantive Amendment: 2015**

**Authorizing, Implemented, or Interpreted Law: Art X Sec 3: 53A-1-401(3)**

Education, Administration  
**R277-107**  
Educational Services Outside of  
Educator's Regular Employment

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 39489

FILED: 07/01/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Based on this rule's five-year review, Rule R277-107 is amended to update terminology and provide technical changes throughout.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to this rule provide updated terminology and technical changes.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X, Section 3 and Section 53A-1-402.5 and Subsection 53A-1-401(3)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The amendments provide updated terminology and technical changes that likely will not result in a cost or savings to the state.

◆ **LOCAL GOVERNMENTS:** The amendments provide updated terminology and technical changes that likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The amendments provide updated terminology and technical changes that likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments provide updated terminology and technical changes that likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The amendments provide updated terminology and technical changes that 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](mailto: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 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

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

**R277. Education, Administration.**

**R277-107. Educational Services Outside of Educator's Regular Employment.**

**R277-107-1. Definitions.**

A. "Activity sponsor" means a private or public individual or entity that employs an employee in any program in which public school students participate.

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

C. "Extracurricular activit[ies]y" means [~~those~~an] activit[ies]y for students recognized or sanctioned by an [~~educational institution~~]LEA which may supplement or compliment, but [~~are~~]is not part of, [~~its~~]the LEA's required program or regular curriculum.

D. "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.

E. "Public education employee (employee)" means a person who is employed on a full-time, part-time, or contract basis by any LEA.

F[-](1) "Private, but public education-related activity" means any type of activity for which:

(a) [~~the~~]a public education employee receives compensation; and

(b) the principle clients are students at the school where the employee works.

(2) [~~Such activities~~] "Private, but public education-related activity" may include:

(1)a tutoring;

(2)b lessons;

(3)c clinics;

(4)d camps; or

(5)e travel opportunities.

**R277-107-2. 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-1-402.5 which directs the Board to make rules that establish basic ethical conduct standards for employees who provide public education-related services or activities outside of their regular employment, and 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide direction and parameters for employees who provide or participate in public education-related services or activities outside of their regular public education employment.

C. The Board recognizes that public school educators have expertise and training in various subjects and skills and should have the opportunity to enrich the community with their skills and expertise while still respecting the unique public trust that public educators have.

**R277-107-3. LEA Responsibility.**

An LEA may have policies providing for the following, consistent with the provisions of this R277-107 and the law:

A. sponsorship or specific non-sponsorship of extracurricular activities; or

B. opportunities for students~~consistent with the provisions of this rule and the law~~.

**R277-107-4. LEA Relationship to Activities Involving Educators.**

A[-](1) An LEA may sponsor extracurricular activities or opportunities for students.

(2) Extracurricular activities are subject to Utah's school fee laws and rules, fee waivers, procurement and all other applicable laws and rules.

B. An employee that participates in a private, but public education-related activity, is subject to the following:

(1) the employee's participation in the activity shall be separate and distinguishable from the employee's public employment as required by this rule;

(2) the employee may not, in promoting the activity:

(a) contact students at the public schools, except as permitted by this rule; or

(b) use education records, resources, or information obtained through [~~his~~]the employee's public employment unless the records, resources, or information are readily available to the general public[-];

(3) the employee may not use school time to discuss, promote, or prepare for:

(a) a [~~ny~~] private activity; or

(b) a private, but public education-related activity;

(4) the employee may:

(a) offer private, but public education-related services, programs or activities to students provided that they are not advertised or promoted by the employee during school time[-];

(b) discuss [~~the~~]a private, but public education-related activity with students or parents outside of the classroom and the regular school day;

(c) use student directories or online resources which are available to the general public; and

(d) use student or school publications in which commercial advertising is allowed, to advertise and promote the activity.

C. Credit and participation in a public school program or activity may not be conditioned on a student's participation in such activities as clinics, camps, private programs, or travel activities not equally and freely available to all students.

D. No employee may state or imply to any person that participation in a regular school activity or program is conditioned on participation in a private activity.

E. No provision of this rule shall preclude a student from requesting or petitioning a teacher or school for approval of credit based on an extracurricular educational experience consistent with LEA policy.

**R277-107-5. Advertising.**

A. An employee may purchase advertising space to advertise an activity or service in a publication, whether or not



sponsored by the public schools, that accepts paid or community advertising.

B. The advertisement may identify the activity, participants, and leaders or service providers by name, provide non-school contact information, and provide details of the employee's employment experience and qualification.

C. Posters or brochures may be posted or distributed in the same manner as could be done by a member of the general public, advertising an employee's services, consistent with LEA policy.

D. Unless an activity is sponsored by the LEA, the advertisement shall state clearly and distinctly that the activity is NOT sponsored by the LEA.

E. The name of an LEA ~~shall~~ may not be used in the advertisement except as the LEA's name may relate to the employee's employment history or if school facilities have been rented for the activity.

F. If the name of the employee offering the service or participating in the activity is stated in any advertisement sent to the employee's students, or is posted, distributed, or otherwise made available in the employee's school, the advertisement shall state that the activity is not school sponsored.

**R277-107-6. Public Education Employees.**

A. Public education employees shall comply with ~~[Section 63G-6-1001, Felony to accept emolument]~~ Title 63G, Chapter 6a, Utah Procurement Code.

B. Public education employees shall comply with Title 67, Chapter 16, ~~[Utah]~~ Public Officers' and Employees' Ethics Act.

C. ~~Except as provided in R277-107-6D,~~ ~~[E]~~ consistent with Section 63G-~~[6-1001]~~ 6a-2404 and Title 67, Chapter 16, Public Officers' and Employees' Ethics Act, a public education employee~~s shall~~ may not solicit or accept gifts, incentives, honoraria, or stipends from private sources:

(1) for the~~[r]~~ employee's personal or family use~~[unless the gift is of nominal value and is for birthdays, holidays or teacher appreciation occasions or is a public award in recognition of public service, consistent with school or LEA policies and the Utah Public Employees Ethics Act];~~

(2) in exchange or payment for advertising placed by the employee; or

(3) in exchange or payment for securing agreements, contracts or purchases between private company and public education employer, programs or teams.

~~D. A public education employee may accept a gift, incentive, honoraria, or stipend from a private source if the gift, incentive, honoraria, or stipend is:~~

~~(1)(a) of nominal value and is for birthdays, holidays, or teacher appreciation occasions; or~~

~~(b) a public award in recognition of public service; and~~

~~(2) consistent with school or LEA policies and the Utah Public Employees Ethics Act.~~

~~[D]~~ E. A [P] public education employee[s] who holds a Utah educator license[s] shall be subject to license discipline (including license suspension or revocation) for violation of this [rule] R277-107 and applicable provisions of Utah law.

**R277-107-7. Public Education Employee/Sponsor Agreements or Contracts.**

A. An agreement between an employee and an activity sponsor shall be signed by the employee and include a statement that reads substantially: I understand that this activity is not sponsored by an~~[y]~~ LEA, that my responsibilities to the activity sponsor are outside the scope of and unrelated to any public duties or responsibilities I may have as a public education employee, and I agree to comply with laws and rules of the state and policies regarding my advertising and participation.

B. ~~[The]~~ An employee shall provide the LEA business administrator, superintendent, or charter school director with a signed copy of all contracts between the employee and a private activity sponsor.

C. [The] An LEA shall maintain a copy of a contract described in R277-107-7B in the employee's personnel file.

**KEY: school personnel**

**Date of Enactment or Last Substantive Amendment: [May 8, 2012] 2015**

**Notice of Continuation: July 1, 2010**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402.5; 53A-1-401(3)**

Education, Administration

**R277-410**

Accreditation of Schools

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39490

FILED: 07/01/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to update procedures and responsibilities.

**SUMMARY OF THE RULE OR CHANGE:** The amendments: 1) provide a new definition of "Superintendent"; 2) change the responsibilities of the USOE to the Superintendent; 3) change accreditation procedures as necessary; and 4) provide minor technical changes.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X, Section 3 and Subsection 53A-1-401(3) and Subsection 53A-1-402(1)(c)(i)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** The changes to the rule provide for a more formal and structured process for a school to be granted accreditation which likely will not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: The changes to the rule provide for a more formal and structured process for a school to be granted accreditation which likely will not result in a cost or savings to local government.

♦ SMALL BUSINESSES: The changes to the rule provide for a more formal and structured process for a school to be granted accreditation which likely will not result in a cost or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The changes to the rule provide for a more formal and structured process for a school to be granted accreditation which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to the rule provide for a more formal and structured process for a school to be granted accreditation 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](mailto: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 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

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

## **R277. Education, Administration.**

### **R277-410. Accreditation of Schools.**

#### **R277-410-1. Definitions.**

A. "Accreditation" means the formal process for internal and external review and approval under the Standards for the Northwest Accreditation Commission, a division of Advance Education Inc., (AdvancED).

B. "AdvancED" means the provider of accreditation services based on standards, student performance and stakeholder

involvement and ~~[is a]~~ nonprofit resource offering school improvement and accreditation services to education providers.

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

D. "Elementary school" for the purpose of this rule means grades no higher than grade 6.

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

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

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

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

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

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

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

#### **R277-410-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board, by Subsection 53A-1-402(1)(c)(i), which directs the Board to adopt rules for school accreditation, and Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify accreditation procedures and responsibility for public schools for which accreditation is required or sought voluntarily and for nonpublic schools which voluntarily request AdvancED Northwest accreditation.

#### **R277-410-3. Accreditation of Public Schools.**

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

B. A Utah public secondary school[s], as defined in R277-410-1H and consistent with R277-481-3A(2), shall be a member[s] of AdvancED Northwest and be accredited by AdvancED Northwest.

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

D. ~~[A]~~An AdvancED Northwest accredited school[s] shall complete and file reports in accordance with AdvancED Northwest protocols.

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

#### **R277-410-4. Accreditation Status; Reports.**

A. The Board accepts the AdvancED Northwest Standards for Quality Schools as the basis for its accreditation standards for school accreditation.

B. ~~[The Board requires]~~ A Utah public school[s] seeking accreditation ~~[to satisfy]~~ shall meet additional specific Utah assurances in addition to required AdvancED Northwest standards.

C. A school shall complete reports as required by AdvancED Northwest and submit the report to the appropriate recipients.

D. A school shall have a complete school evaluation and site visit at least once every five years to maintain its accreditation.

E. The ~~[USOE]~~ Board or Superintendent may require on-site visits as often as necessary when ~~[#]~~ the Superintendent receives notice of accreditation problems, as determined by the ~~[USOE]~~ Superintendent, AdvancED Northwest, or its State Council.

F. The school's accreditation status is recommended by the State Council following a review of the report of the school's External Review. Final approval of the status is determined by the AdvancED Commission and approved by the Board.

#### **R277-410-5. Accreditation Procedures.**

A. The evaluation of secondary schools for the purpose of accreditation is a cooperative activity in which the school, the school district, the ~~[USOE]~~ Superintendent, and AdvancED Northwest share responsibilities. A school's internal review, development, and implementation of a school improvement plan are crucial steps toward accreditation.

B. A school seeking AdvancED Northwest accreditation for the first time shall submit a membership application to AdvancED. The accepted application shall be forwarded to the AdvancED ~~[State]~~ Managing Office Director.

(1) If a school's application for membership is accepted ~~by AdvancED, [the school is granted provisional accreditation status for two years and shall have an accreditation visit in year three of the school's operation]~~ the Utah AdvancED Managing Office shall schedule an on-site Readiness Review. Upon successful completion of the Readiness Review, the school may become a candidate for accreditation. Candidate schools are not accredited until such status is officially granted.

(2) A school may remain in candidacy for no more than two years prior to hosting an External Review Team accreditation visit. The External Review Team shall be staffed with [A school may request an accreditation visit prior to year three if the school has sufficient student and financial data.

~~(2) Following a visit by]~~ at least two qualified educators verifying a school's compliance with accreditation standards. Following [and] approval by both the Utah AdvancED Council and the AdvancED Commission, the school shall [then] receive accreditation. A school may request an External Review accreditation visit prior to year two if the school has sufficient student and financial data.

C. AdvancED Northwest accredited schools shall be subject to:

(1) compliance with AdvancED Northwest membership requirements;

(2) satisfactory review by the AdvancED State Council, AdvancED Northwest Commission and Board approval;

(3) a site visit at least every five years by an external review team to review the internal review materials, visit classes, and talk with staff and students as follows:

(a) The external review team shall present its finding in the form of a written report in a timely manner. The report shall be provided to the school, school district superintendent or local charter board chair, and other appropriate parties.

(b) AdvancED staff shall review the external review team report, and consult with the Utah AdvancED ~~[State]~~ Council. ~~[and~~ ~~†]~~ The AdvancED Commission shall grant accreditation status if appropriate.

D. Following review and acceptance, accreditation external review team reports are public information and are available upon request.

#### **R277-410-6. Elementary School Accreditation.**

A. Elementary schools desiring accreditation shall be members of AdvancED Northwest and meet the standards required for such accreditation as outlined in this rule.

B. The accreditation of Utah elementary schools is optional; interested elementary schools may apply to AdvancED Northwest for accreditation.

C. Accreditation shall take place under the direction of AdvancED Northwest.

#### **R277-410-7. Junior High and Middle School Accreditation.**

A. Junior high and middle schools desiring accreditation shall be members of AdvancED Northwest and meet the standards required for such accreditation as outlined in this rule.

B. The accreditation of Utah middle schools is optional; interested middle schools may apply to AdvancED Northwest for accreditation.

C. Public junior high and middle schools that include grade 9 shall be members of AdvancED Northwest and be visited and assigned status by AdvancED Northwest.

D. The AdvancED Northwest accreditation standards provided in this rule are applicable to a junior high ~~[and]~~ or middle school[s] in the ~~[#]~~ school's entirety if the school[s] includes grade 9 consistent with R277-410-6C.

#### **R277-410-8. Board Accreditation Standards.**

A. Board accreditation standards include AdvancED Standards for Quality Schools and Utah-specific requirements. Each standard requires the school to respond to a series of indicator statements and provide evidence of compliance as directed.

~~[~~ ~~—~~ ~~B. AdvancED Standards for Quality Schools:~~

~~(1) Purpose and Direction~~

~~(2) Governance and Leadership~~

~~(3) Teaching and Assessing for Learning~~

~~(4) Resources and Support Systems~~

~~(5) Using Results for Continuous Improvement~~

~~]~~ ~~[E]~~ B. Utah-specific assurances include essential information sought from schools to demonstrate alignment with

Utah law and Board rules. Utah-specific assurances are available from the USOE Teaching and Learning Section.

**R277-410-9. Transfer or Acceptance of Credit.**

A. Utah public schools shall accept transfer credits from accredited secondary schools consistent with R277-705-3.

B. Utah public schools may accept transfer credits from other credit sources consistent with R277-705-3.

**KEY: accreditation, public schools, nonpublic schools**

**Date of Enactment or Last Substantive Amendment:** ~~June 9, 2014~~2015

**Notice of Continuation:** July 1, 2015

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

## Education, Administration

### R277-500

## Educator Licensing Renewal, Timelines, and Required Fingerprint Background Checks

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39491

FILED: 07/01/2015

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-500 is amended in response to H.B. 124 from the 2015 General Session.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule provide: 1) new and updated definitions; 2) a new Section R277-500-6 that provides language requiring an applicant for an educator license to submit to a background check and ongoing monitoring as a condition of licensure; 3) language requiring consent of a currently licensed educator for an initial background check and ongoing monitoring on a form specified by the Board to be collected at the individual's next license renewal; and 4) minor terminology and technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Section 53A-6-104 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The amendments provide for additional processes for licensed educators and applicants for licensure, including background checks, which likely will not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: There may be some costs to LEAs resulting from the additional educator licensure and background check processes required in this rule. Costs are speculative at this time.

◆ SMALL BUSINESSES: The amendments provide for additional processes for licensed educators and applicants for licensure, including background checks, which likely will not result in a cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There may be some costs to individuals resulting from the additional educator licensure and background check processes required in this rule. Costs are speculative at this time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments provide for additional processes for licensed educators and applicants for licensure, including background checks, which may result in 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](mailto: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 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

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

### R277. Education, Administration.

#### R277-500. Educator Licensing Renewal, Timelines, and Required Fingerprint Background Checks.

##### R277-500-1. Definitions.

A. "Acceptable alternative professional learning [activities]activity" means an [activities]activity that may not fall within a specific category under R277-500-5 but ~~are~~is consistent with this rule.

B. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), ~~or~~ the Teacher Education Accreditation Council (TEAC), or the Council for the Accreditation of Educator Preparation (CAEP).

C. "Accredited school," for purposes of this rule, means a public or private school that has met standards considered to be essential for the operation of a quality school program and has received formal approval by the Northwest Accreditation Commission.

D. "Active educator," for purposes of this rule, means an individual holding a valid license issued by the Board who is employed by a Utah public LEA, accredited private school, or USOE, or who was employed by a Utah public LEA or accredited private school in a role covered by the license for at least three years in the individual's renewal period.

E. "Active educator license" means a license that is currently valid for employment in a position requiring an educator license.

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

G. "College/university course" means a course taken through an institution approved under Section 53A-6-108.

H. "Course work successfully completed" for purposes of this rule means the student earns a grade C or better in approved university or university level course work or USOE professional learning credit.

I. "Documentation of professional learning activities" means:

(1) an original student transcript of university/college courses;

(2) an LEA or USOE-sponsored electronic record of professional learning activities;

(3) a summary, explanation, or copy of the product of a professional learning activity signed by the educator's supervisor or a licensed administrator;

(4) a certificate of completion for an approved professional learning conference, workshop, institute, symposium, educational travel experience or staff development; or

(5) an agenda or conference program demonstrating sessions and duration of professional learning activities.

J. "Educational research" means conducting research on education issues or investigating education innovations.

K. "Inactive educator" means an individual;

(1) who holds ~~holding~~ a valid license issued by the Board;

(2) who is not currently employed by a Utah public LEA or accredited private school; and

(3) who was employed by a Utah public LEA or accredited private school in a role covered by the license for less than three years in the individual's renewal period.

L. "Inactive educator license" means a license issued by the Board, other than a suspended or revoked license, that is currently not valid due to the holder's failure to complete requirements for license renewal.

M. "LEA" or "local education agency" means a school district or a charter school.

~~[M]~~N. "Level 1 license" means a Utah professional educator license issued;

~~\_\_\_\_\_~~ (1) to an applicant upon completion of an approved preparation program or an alternative preparation program~~[-];~~ or

~~\_\_\_\_\_~~ (2) to an applicant that holds an educator license issued by another state or country that has also met all ancillary requirements established by law or rule.

~~[N]~~Q. "Level 2 license" means a Utah professional educator license issued to an applicant after the applicant ~~[satisfaction of]~~meets the following:

~~\_\_\_\_\_~~ (1) completion of all requirements for a Level 1 license~~[-and];~~

~~[+]~~(2) satisfaction of requirements under R277-522 for a teacher~~[s]~~ whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

~~[2]~~(3) completion of:

(a) at least three years of successful education experience in a Utah public LEA or accredited private school; or

(b)(i) one year of successful education experience in a Utah public LEA or accredited private school; and

(ii) at least three years of successful education experience in a public LEA or accredited private school outside of Utah; and

~~[3]~~(4) completion of any additional requirements established by law or rule.

~~[O]~~P. "Level 3 license" means a Utah professional educator license issued to an educator who:

(1) holds a current Utah Level 2 license; and ~~[has also]~~

(2)(a) received National Board Certification; ~~or~~

(b) received a doctorate in education or in a field related to a content area in a unit of;

(i) the public education system; or

(ii) an accredited private school~~[-];~~ or

(c) holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

~~[P]~~Q. "License" means an authorization which permits the license holder to serve in a professional capacity in a public LEA or accredited private school.

~~[Q]~~R. "Licensed administrator" means:

(1) an individual holding an active educator license that is valid for employment in a public school administrative position; or

(2) an individual currently employed by a Utah charter school in an administrative position.

~~[R]~~S. "License renewal points" means the points accumulated by a Utah license holder through activities approved under this rule for the purpose of satisfying requirements of Section 53A-6-104.

~~[S]~~T. "National Board Certification" means the successful completion of the National Board for Professional Teaching Standards (NBPTS) process, a three-year process, that may include:

(1) national content-area assessment~~[-];~~

(2) an extensive portfolio~~[-];~~ and

(3) assessment of video-taped classroom teaching experience.

~~[F]~~U. "Professional growth plan" means a plan created and reviewed annually by an active educator and the educator's direct supervisor that details the professional goals of the educator based on the Utah Effective Teaching and Educational Leadership Standards consistent with R277-520 and related to the educator's

self-assessment and formal evaluation required under Section 53A-8a-301.

[H]V. "Professional learning" means engaging in activities that improve or enhance an educator's practice.

[Y]W. "Professional learning plan" means a document prepared by a Utah educator consistent with this rule.

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

[W]Y. "University level course" means a course;

(1) ~~that has~~[having] the same academic rigor and requirements ~~[similar to]~~of a university~~[f]~~ or college course;~~and~~

(2) ~~taught by appropriately trained individuals~~[-The final determination of]; ~~and~~

(3) ~~designated as a university level course~~[-is made] by the [USOE]Superintendent.

[X]Z. "UPPAC" means the Utah Professional Practices Advisory Commission under Section 53A-6-301 through 307.

[Y]AA. "USOE" means the Utah State Office of Education.

[Z]BB. "USOE professional learning credit" means a course[s], approved by the [USOE]Superintendent under R277-519-3, ~~[in which]~~that educators may participate in to:

(1) renew a license[-];

(2) teach in another subject area[-]; or

(3) teach at another grade level.

[AA]CC. "Verification of employment" means official documentation of employment as an educator listing the educator's assignment and years of service, signed by the supervising administrator.

#### **R277-500-2. 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-6-104 which requires the Board to make rules requiring participation in professional learning activities in order for educators to retain Utah licensure, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions and requirements for an educator to renew a Utah educator license. This rule requires verification of employment, development of a professional learning plan, and documentation of activities consistent with Title 53A, Chapter 6.

#### **R277-500-3. Educator License Renewal Requirements.**

A. Professional Learning Plan for Active Educators

(1) An active educator, in collaboration with ~~[his]~~the active educator's supervisor, shall develop and maintain a professional learning plan as a subset of the active educator's professional growth plan.

(2) The professional learning plan shall outline the professional learning activities in which the educator will participate during the educator's current license renewal cycle;

(3) The professional learning plan shall be developed by taking into account:

(a) the educator's professional goals;

(b) curriculum relevant to the educator's current or anticipated assignment;

(c) goals and priorities of the LEA and school;

(d) available student data relevant to the educator's current or anticipated assignment;

(e) feedback from the educator's yearly evaluation required under Section 53A-8a-301;

(f) the requirements under R277-522 if the educator is a Level 1 licensed educator.

(4) The professional learning plan for active educators shall include two hours of professional learning on youth suicide prevention consistent with Section 53A-1-603.

(5) The professional learning plan shall be reviewed and signed annually by the educator and supervisor and may be adjusted as appropriate.

(6) The educator is responsible for creation of the professional learning plan in collaboration with the designated supervisor.

(7) The educator is responsible for maintaining documentation associated with the plan and the annual review of the plan.

(8) The LEA may create tools or policies or both to assist educators in meeting this responsibility.

B. Professional Learning Plan for Inactive Educators

(1) All inactive educators intending to renew an educator license shall, in collaboration with a licensed administrator, develop and maintain a professional learning plan.

(2) The professional learning plan shall outline the professional learning activities in which the educator will participate during the educator's current license renewal cycle.

(3) The plan shall take into account:

(a) the educator's professional goals;

(b) current license areas of concentration and endorsements;

(c) current trends relevant to the educator's current license areas of concentration and endorsements;

(d) the Utah Core ~~[Curriculum]~~Standards relevant to the educator's current license areas of concentration and endorsements;

(4) The professional learning plan shall be reviewed and signed by the educator and a licensed administrator at the beginning of the license renewal cycle and again at the end of the license renewal cycle.

(5) The educator ~~[is responsible for]~~shall develop~~[ing]~~ the professional learning plan and maintain~~[ing]~~ documentation of the plan.

C. License Renewal Points

(1) To be valid for renewal, the professional learning plan shall document that the educator has earned the appropriate number of license renewal points as defined in R277-500-3.

(2) License holders may accrue license renewal points beginning with the date of each new license renewal.

(3) A Level 1 license holder shall earn at least 100 license renewal points in each three year period. A Level 1 license may only be renewed consistent with R277-504-3~~[(D)]~~.

(4) A Level 2 license holder shall earn at least 200 license renewal points in each 5 year period.

(5) A Level 3 license holder shall earn at least 200 license renewal points in each 7 year period.

D. Documentation

(1) Each Utah license holder shall be responsible for maintaining documentation supporting completion of the professional learning plan.

(2) It is the educator's responsibility to retain documentation of professional learning activities with appropriate signatures.

(3) All documentation relevant to the professional learning plan shall be retained by the educator for a minimum of two years from the designated renewal date.

E. ~~[Fingerprint Background Check and]~~ Educator Ethics Review

~~\_\_\_\_\_ (1) A fingerprint background check shall be required for the renewal of any Utah educator license beginning July 1, 2009 consistent with Section 53A-6-401.~~

~~\_\_\_\_\_ (2) No license may be renewed until the completion of the background check and receipt and review of the report by the USOE.~~

~~\_\_\_\_\_ (3) The background check shall be completed within one calendar year prior to the date of license renewal.~~

~~\_\_\_\_\_ (4) If an educator license holder's fingerprint background check is incomplete or under review by the Utah Professional Practices Advisory Commission (UPPAC), the educator license holder's CACTUS file will direct the reviewer of the file to the USOE for further information. An educator license cannot be renewed until the background check process is complete.~~

[ (5) Completion of the USOE Educator Ethics Review shall be required for the renewal of a Utah educator license beginning January 1, 2011.

(6) No license may be renewed prior to the completion of the USOE Educator Ethics Review.

(7) The Ethics Review shall be completed within one calendar year prior to license renewal.

F. The Superintendent may renew an educator's license if:

(1) the educator's background check is complete; and

(2) the educator is currently enrolled in ongoing monitoring through registration with the systems described in Section 53A-15-1505.

#### **R277-500-4. Educator License Renewal Procedures.**

A. An active educator license holder shall satisfy the final review and obtain the appropriate signatures regarding completion of the professional learning plan between January 1 and June 30 of the educator's assigned renewal year.

(1) A Level 2 or 3 educator license holder who has completed all additional requirements for renewal shall complete the online renewal provided by USOE between January 1 and June 30 of the educator's assigned renewal year.

(2) A Level 1 educator license holder who has completed all additional requirements for renewal shall submit the Professional Learning Plan Completion Form to the USOE between January 1 and June 30 of the educator's assigned renewal year. Forms that are not complete or do not bear original signatures shall not be processed.

(3) An educator's failure to complete the online process or submit the completion form consistent with deadlines in this rule shall result in beginning anew the administrative licensure process, including all attendant fees and criminal background checks.

B. An inactive educator license holder shall satisfy the final review and obtain the appropriate signatures regarding completion of the professional learning plan within one calendar year prior to the date on which the inactive educator license holder is directed/scheduled to renew the license.

(1) A Level 2 or 3 educator license holder who has completed all additional requirements for renewal shall complete the online renewal process provided by USOE between January 1 and June 30 of the educator's assigned renewal year.

(2) A Level 1 educator license holder who has completed all additional requirements for renewal shall submit the Professional Learning Plan Completion Form to the USOE between January 1 and June 30 of the educator's assigned renewal year. Forms that are not complete or do not bear original signatures shall not be processed.

(3) An educator's failure to complete the online process or submit the completion form consistent with deadlines shall result in beginning anew the licensure process, including all attendant fees and criminal background checks.

C.(1) An educator shall obtain the signature of the educator's direct administrative supervisor on the educator's renewal form.

(2) The educator's direct administrative supervisor described in R277-500-4C(1) shall be a licensed administrator.

(3) If an educator's supervisor is not a licensed administrator then the form shall be signed by the next highest administrative supervisor who is a licensed administrator.

(4) If the educator is the highest administrative authority in the LEA then the form shall be signed by the president or chairperson of the LEA's governing board.

D. An educator who is seeking a license renewal shall obtain the signature of a licensed administrator on the educator's license renewal form.

[E.]E.(1) The Superintendent shall charge a fee, set by the Superintendent, to an educator[~~Educators~~] seeking renewal from an inactive status or requesting level changes[~~shall be charged a fee set by the USOE~~].

(2) The Superintendent shall charge an educator [Educators] with an active license[s ~~shall be charged a~~] renewal fee consistent with R277-502

[F.]E. The [USOE]Superintendent shall audit a random sample of approximately ten percent of the annual online renewals.

G. An educator[Educators] selected for an audit described in R277-500-4F:

(1) shall submit the Professional Learning Plan Completion Form with the appropriate signatures to the USOE in a timely manner.

(2) shall receive a warning letter and may be referred to UPPAC if documentation is not submitted as requested.

(3) shall be referred to UPPAC for possible license discipline if the documentation reveals fraudulent or unprofessional actions.

[H.]H. The [USOE]Superintendent may[~~at its own discretion~~] review or audit renewal transactions including the professional learning plan, signatures, and documentation of professional learning activities.

#### **R277-500-5. Categories of Acceptable Activities for License Renewal.**

A.:(1) An [Active]educator[s] may earn licensure renewal points based on [their]the educator's employment in a position requiring a Utah educator license during [their]the educator's license cycle.

~~(1)~~<sup>(2)</sup> ~~Only~~ An educator may only count years of employment with satisfactory performance evaluations ~~may be counted~~ for license renewal points.

~~(2)~~<sup>(3)</sup> A Level 1 license holder may earn 25 license renewal points per year of employment to a maximum of 50 points per license cycle.

~~(3)~~<sup>(4)</sup> A Level 2 or 3 license holder may earn 35 license renewal points per year of employment to a maximum of 105 points per license cycle.

~~B~~<sup>(1)</sup> An educator shall complete a college ~~f~~ or university course ~~:~~

~~(1)~~ shall be successfully completed with a C or better, or a pass, to have the course apply to the educator's license.

~~(2)~~ Each semester hour of university or college credit, as recorded on an official transcript, equals 18 license renewal points.

~~C~~<sup>(1)</sup> USOE professional learning credit:

~~(1)~~<sup>(a)</sup> shall be ~~State-~~approved as described in ~~under~~ R277-519-3; and

~~(2)~~<sup>(b)</sup> shall be successfully completed through attendance and through completion of required project(s).

~~(3)~~<sup>(2)</sup> Each semester credit hour equals 15 license renewal points.

~~(4)~~<sup>(3)</sup> ~~Approval may be requested from the USOE by LEAs through a request submitted~~ An LEA may request approval of USOE professional learning credit by submitting a request to the Superintendent through the USOE-sponsored online professional learning tracking system.

~~(5)~~<sup>(4)</sup> ~~Approval~~ An LEA shall ~~be requested~~ request approval from the ~~USOE~~ Superintendent at least four weeks prior to the beginning date of the scheduled professional learning activity ~~and~~.

~~(5)~~ The professional learning credit may be denied if ~~not~~ the LEA does not seek approval from the Superintendent ~~approved~~ in advance.

~~D.~~ An LEA-sponsored or approved professional learning ~~activities-~~ activity:

(1) shall be approved by the LEA at least four weeks prior to the scheduled activity; and

(2) may include LEA or school based professional learning such as:

(a) participating in professional learning communities;

(b) development of LEA or school curriculum;

(c) planning and implementation of a school improvement plan;

(d) mentoring a Level 1 teacher;

(e) engaging in instructional coaching;

(f) conducting action research;

(g) studying student work with colleagues to inform instruction.

~~(3)~~<sup>E.</sup> Each clock hour of scheduled professional learning activity time equals one license renewal point, not to exceed 25 points per activity per year.

~~E.~~<sup>F(1)</sup> Acceptable alternative professional learning activities for an educator include ~~:~~

~~(1)~~ Acceptable activities ~~are those~~ that enhance or improve education, yet may not fall into a specific category ~~:~~

~~(2)~~ These if the activities ~~shall be~~ are approved by:

(a) the educator's supervisor ~~:~~;

~~(b)~~ by a licensed administrator if the educator is an inactive educator ~~:~~; or

~~(c)~~ the Superintendent, with prior written approval by the ~~USOE~~ Superintendent.

~~(3)~~<sup>(2)</sup> Each clock hour of participation equals one license renewal point, not to exceed 25 points per activity.

~~F~~<sup>G.</sup> Conferences, workshops, institutes, symposia, or staff-development programs:

(1) Acceptable workshops and programs shall be approved by the educator's supervisor, by a licensed administrator if the educator is an inactive educator, or with prior written approval by the ~~USOE~~ Superintendent.

(2) Each clock hour of participation equals one license renewal point, not to exceed 25 points per activity.

G. Content and pedagogy testing:

(1) Acceptable tests include those approved by the Board.

(2) Each Board-approved test score report submitted, with a passing score, equals 25 license renewal points.

(3) Each test must be related to the educator's current or potential license area(s) or endorsement(s).

(4) No more than two test score reports may be submitted in a license cycle.

H. Utah university sponsored cooperating teachers:

(1) An educator working as a cooperating teacher with one or more student teachers may earn license renewal points.

(2) Each clock hour spent supervising, collaborating with, and mentoring assigned student teachers equals one license renewal point not to exceed 25 points per license renewal cycle.

I. Service in a leadership role in a national, state-wide, or LEA-recognized professional education organization:

(1) Acceptable service shall be approved by the educator's supervisor or by a licensed administrator if the educator is an inactive educator.

(2) Each clock hour of participation equals one license renewal point, not to exceed 10 points per year.

J. Educational research and innovation that results in a final, demonstrable product:

(1) Acceptable activities shall be approved by the educator's supervisor or by a licensed administrator if the educator is an inactive educator.

(2) The research activity shall be consistent with school and LEA policy.

(3) Each clock hour of participation equals one license renewal point, not to exceed 35 points per activity.

K. Substituting in a Utah public LEA or accredited private school:

(1) shall be considered an acceptable professional learning activity only for inactive educators paid and authorized as substitutes.

(2) Two hours of documented substitute time equals one license renewal point, not to exceed 25 points per year or 50 points per license cycle.

(3) Verification of hours shall be documented on LEA or school letterhead, list dates of employment, and signed by the supervising administrator.

L. Paraprofessional or volunteer service in a Utah public LEA or accredited private school:



(1) shall be considered an acceptable professional learning activity only for inactive educators.

(2) Three hours of documented paraprofessional or volunteer service equals one license renewal point, not to exceed 25 points per year or 50 points per license cycle.

(3) Verification of hours shall be documented on LEA or school letterhead, list dates of service, and signed by the supervising administrator.

M. Credit for LEA lane change or other purposes is determined by the LEA and is awarded at the LEA's discretion. USOE professional learning credit should not be assumed to be credit for LEA purposes, such as salary or lane change credit.

**R277-500-6. Board Directive to Educator License Holders for Fingerprint Background Check.**

A(1) The Superintendent shall require a licensed educator or license applicant to submit to a fingerprint background check and ongoing monitoring by the Superintendent through registration with the systems described in Section 53A-15-1505 as a condition of licensure in Utah.

(2) A licensed educator shall submit a new fingerprint background check for ongoing monitoring within one calendar year prior to the date of the educator's next license renewal after July 1, 2015.

(3) A license applicant shall submit a new fingerprint background check for ongoing monitoring by the Superintendent.

(a) If a license applicant submits a new fingerprint background check on or after July 1, 2015, the Superintendent shall require the license applicant to be enrolled in ongoing monitoring before the Superintendent may issue a new license to the license applicant.

(b) The Superintendent may issue a new license to a license applicant without enrolling the license applicant in ongoing monitoring if the license applicant's background check was cleared:

(i) less than three years prior to the issue date of the license; and

(ii) prior to July 1, 2015.

(4) The Superintendent shall discontinue monitoring an individual through the systems described in Section 53A-15-1505:

(a) for a licensed educator, one year after the expiration of the most recently issued license; or

(b) for a license applicant, five years after the submission of the background check.

(5) If the fingerprint background check for a licensed educator or a license applicant is incomplete or under review by the Utah Professional Practices Advisory Commission (UPPAC), the individual's CACTUS file will direct the reviewer of the file to the Superintendent for further information.

~~[A]~~B. The ~~[USOE]~~Superintendent may direct a Utah educator license holder to have a criminal fingerprint background check under Section 53A-6-401 for good cause shown.

~~[B]~~C. If an educator license holder fails to comply with the directive in a reasonable time, following reasonable notice, and adequate due process, the educator license holder's license may be put into a pending status in the educator's CACTUS file subject to the educator license holder's compliance with the directive.

~~[C]~~D. The Board or its designee may review an educator license holder's compliance with the directive prior to the final decision about the educator license holder's license status.

~~[D. The provisions and requirements of this rule shall apply to educators seeking licensure renewal beginning July 1, 2012.~~

]

**R277-500-7. Exceptions or Waivers to this Rule.**

A. The ~~[USOE]~~Superintendent may make exceptions to the provisions of this rule for unique and compelling circumstances~~[-~~

~~\_\_\_\_\_B. Exceptions may only be made] if the exception is granted~~ consistent with the purposes of this rule and the authorizing statutes.

B. An educator may request an exception described in R277-500-7A.

~~C. [Requests for exceptions shall be made]~~An educator shall submit a request to the Superintendent for an exception described in R277-500-7C in writing at least 30 days prior to the license holder's renewal date[~~to the Coordinator of Educator Licensure, USOE.~~

~~D. [Approval or disapproval of the]~~The Superintendent shall approve or deny a request for an exception described in R277-500-7C[~~shall be made~~] in a timely manner.

~~\_\_\_\_\_E. A denial of a request described in R277-500-7D [and]~~ is not subject to administrative appeal.

**KEY: educator license renewal, professional learning, fingerprint background check**

**Date of Enactment or Last Substantive Amendment: ~~[July 9, 2012]~~2015**

**Notice of Continuation: July 1, 2015**

**Authorizing, and Implemented or Interpreted Law: 53A-6-104; 53A-1-401(3)**

Education, Administration  
**R277-516**

Education Employee Required Reports of Arrests and Required Background Check Policies for Non-licensed Employees

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 39492

FILED: 07/01/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-516 is amended in response to H.B. 124 from the 2015 General Session.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to this rule: 1) add and update definitions; 2) provide that local education agencies (LEAs) require employees, volunteers, and charter school governing board members to submit to a background check and ongoing monitoring; 3)

provide that LEAs complete a background check and submit for ongoing monitoring all individuals appointed or hired prior to 07/01/2015 by 09/01/2018; 4) provide that the Utah State Board of Education (Board) notify the employing LEA or qualifying private school of a licensed educator of any criminal history information reported to the Board; and 5) provide technical changes as necessary.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Subsection 53A-1-301(3)(a) and Subsection 53A-1-301(3)(d)(x) and Subsection 53A-1-402(1)(a)(i) and Title 53A, Chapter 15, Part 15

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The amendments provide for additional processes for background checks and reporting which will likely not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: There may be some costs to LEAs resulting from the additional background check processes required in this rule. Costs are speculative at this time.

◆ SMALL BUSINESSES: The amendments provide for additional processes for background checks and reporting which likely will not result in a cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There may be some costs to individuals resulting from the additional background check processes required in this rule. Costs are speculative at this time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments provide for additional processes for background checks and reporting which may result in 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 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

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

**R277. Education, Administration.**

**R277-516. Education Employee Required Reports of Arrests and Required Background Check Policies for Non-licensed Employees.**

**R277-516-1. Definitions.**

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

B. "Charter school governing board" means a board designated by a charter school to make decisions for the operation of the charter school.

C. "Charter school board member" means a current member of a charter school governing board.

[B]D. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the database maintained on all licensed Utah educators [~~The database~~], which includes information such as:

- (1) personal directory information;
- (2) educational background;
- (3) endorsements;
- (4) employment history;
- (5) professional development information;
- (6) completion of employee background checks; and
- (7) a record of disciplinary action taken against the educator.

E. "Contract employee" means an employee of a staffing service who works at a public school under a contract between the staffing service and the public school.

[C]E. "DPS" means the Department of Public Safety.

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

[D]H(1) "Licensed educator" means an individual who holds a valid Utah educator license and has satisfied all requirements to be a licensed educator in the Utah public school system (examples are traditional public school teachers, charter school teachers, school administrators, USOE and school district specialists).

(2) A licensed educator may or may not be employed in a position that requires an educator license.

(3) A [~~L~~]licensed educator[s] includes an individual[s] who:

(a) [~~are~~]is student teaching[~~;~~];

(b) [~~who are~~]is in an alternative route[s] to licensing program[s] or position[s]; [~~and~~]or

(c) an individual[s] who holds an [~~district or charter school~~]LEA-specific competency-based license[s].

I. "Non-licensed public education employee" means an employee of an LEA who:

(1) does not hold a current Utah educator license issued by the Board under Title 53A, Chapter 6, Educator Licensing and Professional Practices; or

(2) a contract employee.

[E]L. "Public education employer" means the education entity that hires and employs an individual, including public school districts, the Utah State Office of Education, Regional Service Centers, and charter schools.

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

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

M. "Volunteer" means a volunteer who may be given significant unsupervised access to children in connection with the volunteer's assignment.

#### **R277-516-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3, which vests the general control and supervision of the public schools in the Board, by Subsections 53A-1-301(3)(a) and 53A-1-301(3)(d)(x), which instruct[s] the [State] Superintendent[ ~~of Public Instruction (Superintendent)~~] to perform duties assigned by the Board that include presenting to the Governor and the Legislature each December a report of the public school system for the preceding year that includes investigation of all matters pertaining to the public schools, and statistical and financial information about the school system which the Superintendent considers pertinent; ~~and~~ by Subsections 53A-1-402(1)(a)(i) and (iii), which direct the Board to establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and the evaluation of instructional personnel[-]; and by Title 53A, Chapter 15, Part 15, Background Checks, which directs the Board to require educator license applicants to submit to background checks and provide ongoing monitoring of licensed educators.

B. The purpose of this rule is ensure that all students who are compelled by law to attend public schools, subject to release from school attendance consistent with Section 53A-11-102, are instructed and served by public school teachers and employees who have not violated laws that would endanger students in any way.

#### **R277-516-3. Licensed Public Education Employee Personal Reporting of Arrests.**

A. A licensed educator who is arrested, cited or charged with the following alleged offenses shall report the arrest, citation, or charge within 48 hours or as soon as possible to the licensed educator's district superintendent, charter school director or designee:

- (1) any matters involving an alleged sex offense;
- (2) any matters involving an alleged drug-related offense;
- (3) any matters involving an alleged alcohol-related offense;
- (4) any matters involving an alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person;
- (5) any matters involving an alleged felony offense under Title 76, Chapter 6, Offenses Against Property;
- (6) any matters involving an alleged crime of domestic violence under Title 77, Chapter 36, Cohabitant Abuse Procedures Act; and
- (7) any matters involving an alleged crime under federal law or the laws of another state comparable to the violations listed in R277-516-3A(1)-(6).

B. A licensed educator shall report convictions, including pleas in abeyance and diversion agreements within 48 hours or as soon as possible upon receipt of notice of the conviction, plea in abeyance or diversion agreement.

C. ~~[The district]~~ An LEA superintendent, ~~[charter school] director,~~ or designee shall report conviction, arrest or offense information received from a licensed educator[s] to the [USOE] Superintendent within 48 hours of receipt of information from a licensed educator[s].

D. The [USOE] Superintendent shall develop an electronic reporting process on the USOE website.

[D]E. ~~[The]~~ A licensed educator shall report for work following ~~[the]~~ an arrest and provide notice to the licensed educator's employer unless directed not to report for work by the employer, consistent with school district or charter school policy.

#### **R277-516-4. Non-licensed Public Education Employee, Volunteer, and Charter School Board Member Background Check Policies.**

A. ~~[School districts and charter schools]~~ An LEA shall adopt a polic[ies]y for non-licensed public education employee, volunteer, and charter school board member background checks that include at least the following components:

(1) ~~[periodic background checks of non-licensed employees]~~ a requirement that the individual submit to a background check and ongoing monitoring through registration with the systems described in Section 53A-15-1505 as a condition of employment or appointment; and

(2) ~~[non-licensed employees shall submit to criminal background checks at least every six years;]~~ identification of the appropriate privacy risk mitigation strategy that will be used to ensure that the LEA only receives notifications for individuals with whom the LEA maintains an authorizing relationship.

B. ~~[School district and charter school]~~ An LEA polic[ies]y shall ~~[determine]~~ describe the background check process necessary based on the ~~[non-licensed employee's assignment]~~ individual's duties.

~~[C. School districts and charter schools shall submit to the Utah Department of Public Safety a complete list of non-licensed employees including names, dates of birth, and social security numbers.]~~

#### **R277-516-5. Non-licensed Public Education Employee or Charter School Board Member Arrest Reporting Policy Required from ~~[School Districts and Charter Schools]~~ LEAs.**

A. An ~~[School districts/charter schools]~~ LEA shall have a policy requiring ~~[reporting of designated offenses by]~~ non-licensed public employees, charter school board members, and all employees who drive motor vehicles as an employment responsibility to report offenses specified in R277-516-5C.

B. ~~[School districts/charter schools shall have an employee reporting policy for non-licensed employees adopted in an open board meeting no later than September 15, 2009.]~~ An LEA shall post [F]the policy described in R277-516-5A ~~[shall be available]~~ on the ~~[school district/charter school]~~ LEA's website ~~[or provided to the USOE or both].~~

C. ~~[The]~~ An LEA's policy described in R277-516-5A shall include the following minimum components:

- (1) reporting of the following:
- (a) convictions, including pleas in abeyance and diversion agreements;
  - (b) any matters involving arrests for alleged sex offenses;
  - (c) any matters involving arrests for alleged drug-related offenses;
  - (d) any matters involving arrests for alleged alcohol-related offenses; and
  - (e) any matters involving arrests for alleged offenses against the person under Title 76, Chapter 5, Offenses Against the Person.
- (2) a timeline for receiving reports from non-licensed public education employees;
- (3) immediate suspension from student supervision responsibilities for alleged sex offenses and other alleged offenses which may endanger students during the period of investigation;
- (4) immediate suspension from transporting students or public education vehicle operation or maintenance for alleged offenses involving alcohol or drugs during the period of investigation;
- (5) adequate due process for the accused employee consistent with Subsection 53A-3-410(10);
- (6) a process to review arrest information and make employment or appointment decisions that protect both the safety of students and the confidentiality and due process rights of employees and charter school board members; and
- (7) timelines and procedures for maintaining records of arrests and convictions of non-licensed public education employees and charter school board members.

D. An LEA shall ensure that the [R]records described in R277-516-5C(7) [shall]:

- (a) include final administrative determinations and actions following investigation; and
- (b) ~~be~~are maintained:
  - (i) only as necessary to protect the safety of students; and
  - (ii) with strict requirements for the protection of confidential employment information.

**R277-516-6. Public Education Employer Responsibilities Upon Receipt of Arrest Information [from Employees].**

A. A public education employer that receives arrest information about a licensed public education employee shall review the arrest information and assess the employment status consistent with Section 53A-6-501, Rule R277-515, and the ~~school district/charter school's~~ LEA's policy.

B. A public education employer that receives arrest information about a non-licensed public education employee, volunteer, or charter school board member shall review the arrest information and assess the ~~employee's~~ individual's employment or appointment status:

- (1) considering the ~~non-licensed public education employee's~~ individual's assignment and duties; and
- (2) consistent with a local board-approved policy for ethical behavior of non-licensed employees, volunteers, and charter school board members.

C. A local board shall provide appropriate training to non-licensed public education employees, volunteers, and charter school board members about the provisions of the local board's policy for self-reporting and ethical behavior of non-licensed public

education employees, volunteers, and charter school board members.

D. A public education employer shall cooperate with the [USOE]Superintendent in investigations of licensed educators.

~~[R277-516-7. USOE Responsibility for Review of Arrest/Conviction Information Regarding Current or Prospective Licensees.~~

~~A. The USOE shall review self-disclosure reports received from public education employers who received the information from licensed educators pursuant to this rule, or reports from DPS regarding arrests/convictions of current or prospective licensees in a timely manner.~~

~~B. The USOE shall:~~

- (1) require the current or prospective licensee to immediately submit his fingerprints to DPS for a background check;
- (2) place a flag on the licensee's CACTUS file indicating a background check issue;
- (3) evaluate, after consultation with the public education employer and consistent with procedures under Section 53A-6-401 and R686-100, for potential licensing action.

**]KEY: school employees, self reporting**

**Date of Enactment or Last Substantive Amendments: [June 8,] 2015**

**Notice of Continuation: June 10, 2014**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-301(3)(a); 53A-1-301(3)(d)(x); 53A-1-402(1)(a)(i); 53A-1-402(1)(a)(iii)**

**Education, Administration**  
**R277-609**  
**Standards for LEA Discipline Plans**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39493

FILED: 07/01/2015

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide protections for all Utah students regarding the use of emergency safety interventions by school personnel.

SUMMARY OF THE RULE OR CHANGE: The amendments to the rule provide: 1) new and updated definitions; and 2) procedures and criteria for local education agencies (LEAs) to develop, implement and monitor policies for the use of emergency safety interventions in all schools and for all students within each LEA's jurisdiction.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Section 53A-11-901 and Section 53A-15-603 and Subsection 53A-1-401(3) and Subsection 53A-1-402(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The amendments to the rule provide procedures and criteria for LEAs to develop policies, which likely will not result in a cost or savings to the state.
- ◆ LOCAL GOVERNMENTS: The amendments to the rule provide procedures and criteria for LEAs to develop policies, which likely will not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: The amendments to the rule provide procedures and criteria for LEAs to develop policies, which likely will not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to the rule provide procedures and criteria for LEAs to develop policies, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The new Section R277-609-8 in this rule permits the State Superintendent of Public Instruction to disrupt state aid or impose any other sanction authorized by law for an LEA not complying with this rule. It is anticipated that LEAs will comply with the requirements of this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: 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](mailto: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 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

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

**R277. Education, Administration.**  
**R277-609. Standards for LEA Discipline Plans and Emergency Safety Interventions.**  
**R277-609-1. Definitions.**

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

B. "Discipline" ~~means~~ includes:  
(1) imposed discipline; and  
(2) self-discipline.  
~~[(1) Imposed discipline: Code of conduct prescribed for the highest welfare of the individual and of the society in which the individual lives; and~~  
~~(2) Self-Discipline: A personal system of organized behavior designed to promote self-interest while contributing to the welfare of others.~~

] C. "Disruptive student behavior" includes:  
(1) the grounds for suspension or expulsion described in Section 53A-11-904; and  
(2) the conduct described in Subsection 53A-11-908(2)

(b). D. "Emergency safety intervention" means the use of seclusionary time out or physical restraint when a student presents an immediate danger to self or others, and the intervention is not for disciplinary purposes.

E. "Functional Behavior Assessment (FBA)" means a systematic process of identifying problem behaviors and the events that reliably predict occurrence and non-occurrence of those behaviors and maintain the behaviors across time.

F. "Immediate danger" means the imminent danger of physical violence/aggression towards self or others likely to cause serious physical harm.

G. "Imposed discipline" means a code of conduct prescribed for the highest welfare of the individual and of the society in which the individual lives.

~~[D]H. "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.~~

I. "Physical restraint" means personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, body, or head freely.

~~[E]J. "Plan" means a school district-wide and school-wide written model for prevention and intervention for student behavior management and discipline procedures for students[who habitually disrupt school environments and processes].~~

K. "Program" means instructional or behavioral programs including those provided by contract private providers under the direct supervision of public school staff, that receives public funding or for which the USOE has regulatory authority.

~~[F]L. "Policy" means standards and procedures that include the provisions of Section 53A-11-901 and additional standards, procedures, and training adopted in an open meeting by a local board of education or charter school board that defines hazing, bullying, cyber-bullying, and harassment, prohibits hazing and bullying, requires annual discussion and training designed to prevent hazing, bullying, cyber-bullying, discipline, emergency safety interventions, and harassment among school employees and students, and provides for enforcement through employment action or student discipline.~~

~~[G]M. "Qualifying minor" means a school-age minor who:~~  
~~(1) is at least nine years old; or~~  
~~(2) turns nine years old at any time during the school year.~~

[H]N. "School" means any public elementary or secondary school or charter school.

[F]Q. "School board" means:

- (1) a local school board; or
- (2) a local charter board.

[F]P. "School employee" means:

- (1) a school teacher[s];
- (2) a school staff member;
- (3) a school administrators; ~~and~~ or

(4) ~~all~~any other[s] person employed, directly or indirectly, by ~~the~~an LEA.

Q. "Seclusionary time out" means that a student is:

(1) placed in a safe enclosed area:

(a) by school personnel; and

(b) in accordance with the requirements of R392-200 and R710-4-3;

(2) purposefully isolated from adults and peers; and

(3) prevented from leaving, or reasonably believes that the student will be prevented from leaving, the enclosed area.

R. "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.

S. "Self-Discipline" means a personal system of organized behavior designed to promote self-interest while contributing to the welfare of others.

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

T. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

### **R277-609-2. 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, Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities, Subsection 53A-1-402(1)(b) which requires the Board to establish rules concerning discipline and control, Section 53A-15-603, which requires the Board to adopt rules that require a local school board or governing board of a charter school to enact gang prevention and intervention policies for all schools within the board's jurisdiction, and Section 53A-11-901, which directs local school boards and charter school governing boards to adopt conduct and discipline policies and directs the Board to develop model policies to assist local school boards and charter school governing boards.

B. The purpose of this rule is to outline requirements for school discipline plans and policies. The written policies shall include direction to ~~which~~LEAs ~~shall meet~~to develop, implement, and monitor the policies for the use of emergency safety interventions in all schools and for all students within each LEA's jurisdiction.

### **R277-609-3. LEA Responsibility to Develop Plans.**

A. Each LEA or school shall develop and implement a board approved comprehensive LEA plan or policy for student and classroom management, and school discipline.

B. The plan described in R277-609-3A shall include:

- (1) the definitions of Section 53A-11-910;

(2) written standards for student behavior expectations, including school and classroom management;

(3) effective instructional practices for teaching student expectations, including self-discipline, citizenship, civic skills, and social skills;

(4) systematic methods for reinforcement of expected behaviors and uniform methods for correction of student behavior;

(5) uniform methods for at least annual school level data-based evaluations of efficiency and effectiveness;

(6) an ongoing staff development program related to development of:

(a) student behavior expectations[?];

(b) effective instructional practices for teaching and reinforcing behavior expectations[?];

(c) effective intervention strategies[?]; and

(d) effective strategies for evaluation of the efficiency and effectiveness of interventions;

(7) procedures for ongoing training of appropriate school personnel in:

(a) crisis intervention training;

(b) emergency safety intervention professional development; and

(c) LEA policies related to emergency safety interventions consistent with evidence-based practice;

([7]8) policies and procedures relating to the use and abuse of alcohol and controlled substances by students;~~and~~

([8]9) policies and procedures related to bullying, cyberbullying, harassment, hazing, and retaliation consistent with requirements of R277-613[?]; and

(10) policies and procedures for the use of emergency safety interventions for all students consistent with evidence-based practices including prohibition of:

(a) subject to the requirements of R277-609C, physical restraint except when a student:

(i) presents a danger of serious physical harm to self or others; or

(ii) is destroying property;

(b) prone, or face-down, physical restraint; supine, or face-up, physical restraint;

(c) physical restraint that obstructs the airway of a student, or any physical restraint that adversely affects a student's primary mode of communication;

(d) mechanical restraint, except those protective, stabilizing or required by law, any device used by a law enforcement officer in carrying out law enforcement duties, including seatbelts or any other safety equipment when used to secure students during transportation;

(e) chemical restraint, except as:

(i) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law, for the standard treatment of a student's medical or psychiatric condition; and

(ii) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under state law;

(f) subject to the requirements of R277-609, seclusionary time out, except when a student presents an immediate danger of serious physical harm to self or others.

(g) for a student with a disability, emergency safety interventions written into a student's individualized education program (IEP), as a planned intervention, unless school personnel, the family, and the IEP team agree less restrictive means which meet circumstances described in R277-608-4 have been attempted, a FBA has been conducted, and a positive behavior intervention plan based on data analysis has been written into the plan and implemented; and

(11) the policies and procedures explicitly include all the requirements in this rule.

C(1) All physical restraint must be immediately terminated when student is no longer an immediate danger to self or others, or if student is in severe distress.

(2) The use of physical restraint shall be for the minimum time necessary to ensure safety and a release criteria (as outlined in LEA policies) must be implemented.

(3) If a public education employee physically restrains a student:

(a) the school or the public education employee shall immediately notify the student's parent or guardian and school administration; and

(b) the public education employee may not use physical restraint on a student for more than 30 minutes.

(4) In addition to the notice described in R277-609-3C(3), if a public education employee physically restrains a student for more than fifteen minutes, the school or the public education employee shall immediately notify:

(a) the student's parent or guardian; and

(b) school administration.

(5) An LEA may not use physical restraint as a means of discipline or punishment.

D(1) If a public education employee uses seclusionary time out, the public education employee shall:

(a) use the minimum time necessary to ensure safety;

(b) use a release criteria (as outlined in LEA policies);

(c) ensure that any door remains unlocked; and

(d) maintain the student within line of sight of the public education employee.

(2) If a student is placed in seclusionary time out:

(a) the school or the public education employee shall immediately notify:

(i) the student's parent or guardian; and

(ii) school administration; and

(b) the public education employee may not place a student in a seclusionary timeout for more than 30 minutes.

(3) In addition to the notice described in R277-609-3D(2), if a public education employee places a student in seclusionary time out for more than fifteen minutes, the school or the public education employee shall immediately notify:

(a) the student's parent or guardian; and

(b) school administration.

(4) Seclusionary time may only be used for maintaining safety and a public education employee may not use seclusionary time out as a means of discipline or punishment.

[B]E. [The]A plan described in R277-609-3A shall also:

(1) provide direction for dealing with bullying and disruptive students[-. This part of the plan shall-];

([+])2) direct schools to determine the range of behaviors and establish the continuum of administrative procedures that may

be used by school personnel to address the behavior of habitually disruptive students;

([2])3) provide for identification, by position[(-)], of an individual[(-)] designated to issue notices of disruptive and bullying student behavior;

([3])4) designate to whom notices of disruptive and bullying student behavior shall be provided;

([4])5) provide for documentation of disruptive student behavior prior to referral of disruptive students to juvenile court;

([5])6) include strategies to provide for necessary adult supervision;

([6])7) require that policies be clearly written and consistently enforced;[-and]

([7])8) include administration, instruction and support staff, students, parents, community council and other community members in policy development, training and prevention implementation so as to create a community sense of participation, ownership, support and responsibility; and

([8])9) provide notice to employees that violation of this rule may result in employee discipline or action.

[E]E. A [P]plan[s] required under this R277-609-3;

(1) shall include gang prevention and intervention policies[-];

([+])2) [The required plans-]shall account for an individual LEA's or school's unique needs or circumstances including the role of law enforcement and emergency medical services (EMS);[-]

([2])3) [The required plans-]may include the provisions of Subsection 53A-15-603(2)[-]; and

([3])4) [The required plans may-]shall provide for publication of notice to parents and school employees of policies by reasonable means.

#### **R277-609-4. Implementation.**

A. An LEA[s] shall implement strategies and policies consistent with [their plans]the LEA's plan required in R277-609-3A.

B. An LEA[s] shall develop, use and monitor a continuum of intervention strategies to assist students, including students whose behavior in school falls repeatedly short of reasonable expectations, [including]by teaching student behavior expectations, reinforcing student behavior expectations, re-teaching behavior expectations, followed by effective, evidence-based interventions matched to student needs prior to administrative referral.

C. An LEA shall implement positive behavior interventions and supports as part of the LEA's continuum of behavior interventions strategies. (Least Restricted Behavioral Interventions Technical Assistance Manual).

[(-)]D(1) [As]An LEA shall provide a formal written assessment of a habitually disruptive student as part of [any]a student's suspension or expulsion process that results in court involvement, once an LEA receives information from the court[s] that disruptive student behavior will result in court action[-the LEA shall provide a formal written assessment of habitually disruptive students].

(2) An LEA shall use [A]assessment information[-shall be used] to connect parents and students with supportive school and community resources.

~~(D)~~E. Nothing in state law or this rule restricts an LEA[s] from implementing policies to allow for suspension of students of any age consistent with due process requirements and consistent with all requirements of the Individuals with Disabilities Education Act 2004.

F. An LEA shall establish an Emergency Safety Intervention (ESI) Committee before September 1, 2015.

G. The LEA ESI Committee:

(1) shall include:

(a) at least two administrators;

(b) at least one parent or guardian of a student enrolled in the LEA, appointed by the LEA; and

(c) at least two certified educational professionals with behavior training and knowledge in both state rules and LEA discipline policies;

(2) shall meet often enough to monitor the use of emergency safety intervention in the LEA;

(3) shall determine and recommend professional development needs; and

(4) shall develop policies for local dispute resolution processes to address concerns regarding disciplinary actions.

H. An LEA shall have procedures for the collection, maintenance, and periodic review of documentation or records of the use of emergency safety interventions at schools within the LEA.

I. The Superintendent shall define the procedures for the collection, maintenance, and review of records described in R277-609-4H.

J. An LEA shall provide documentation of any school, program or LEA's use of emergency safety interventions to the Superintendent annually.

#### **R277-609-5. Special Education Exception(s) to this Rule.**

A. An LEA shall have in place, as part of its LEA special education policies, procedures, or practices, criteria and steps for using emergency safety interventions consistent with state and federal law.

B. The Superintendent shall periodically review:

(1) all LEA special education behavior intervention plans, procedures, or manuals; and

(2) emergency safety intervention data as related to IDEA eligible students in accordance with Utah's Program Improvement and Planning System (UPIPS).

#### **R277-609-[5]6. Parent/Guardian Notification and Court Referral.**

A. Through school administrative and juvenile court referral consequences, LEA policies shall provide procedures for qualifying minors and their parents to participate in decisions regarding consequences for disruptive student behavior.

B. An LEA shall establish [P]olicies [shall] that:

(1) provide[~~for~~] notice to parents and information about resources available to assist a parent[s] in resolving the parent's school-age minors' disruptive behavior[-];

[C-](2) [Policies shall] provide for notices of disruptive behavior to be issued by schools to qualifying minor(s) and parent(s) consistent with:

([+])a) numbers of disruptions and timelines in accordance with Section 53A-11-910;

([2]b) school resources available;[~~and~~]

([3]c) cooperation from the appropriate juvenile court in accessing student school records, including attendance, grades, behavioral reports and other available student school data[-]; and

[D-](d) [Policies shall] provide due process procedures for minors and parents to contest allegations and citations of disruptive student behavior.

C(1) When a crisis situation occurs that requires the use of an emergency safety intervention to protect the student or others from harm, a school shall notify the LEA and the student's parent or guardian as soon as possible and no later than the end of the school day.

(2) If a crisis situation occurs and an emergency safety intervention is used, a school shall immediately notify:

(a) a student's parent or guardian; and

(b) school administration.

(3) In addition to the notice described in R277-609-6C(2), if a crisis situation occurs for more than fifteen minutes, the school shall immediately notify:

(a) the student's parent or guardian; and

(b) school administration.

(4) A notice described in R277-609-6C2 shall be documented within student information systems (SIS) records.

D(1) A school shall provide a parent or guardian with a copy of any notes or additional documentation taken during a crisis situation upon request of the parent or guardian.

(2) Within 24 hours of a crisis situation, a school shall notify a parent or guardian that the parent or guardian may request a copy of any notes or additional documentation taken during a crisis situation.

(3) A parent or guardian may request a time to meet with school staff and administration to discuss the crisis situation.

#### **R277-609-[6]7. [USOE-]Model Policies.**

A. The [USOE]Superintendent shall develop, review regularly, and provide to LEA boards model policies to address disruptive student behavior and appropriate consequences.

B. The Superintendent shall develop model policies required under R277-609-3A(10) to assist LEAs.

C. The Superintendent shall provide technical assistance to LEAs in developing and implementing policies and training employees in the appropriate use of physical force and emergency safety interventions to the extent of resources available.

#### **R277-609-8. LEA Compliance.**

If an LEA fails to comply with this rule, the Superintendent may disrupt state aid or impose any other sanction authorized by law.

**KEY: disciplinary actions, disruptive students, emergency safety interventions**

**Date of Enactment or Last Substantive Amendment: [October 8, 2013]2015**

**Notice of Continuation: August 2, 2013**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(b); 53A-15-603; 53A-11-901**



**Education, Administration**  
**R277-700**  
**The Elementary and Secondary School**  
**Core Curriculum**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 39494  
 FILED: 07/01/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-700 is amended in response to S.B. 60, American Civics Education Initiative; H.B. 360, Utah Education Amendments; and S.B. 196, Math Competency Initiative from the 2015 General Session.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to Rule R277-700 provide: 1) procedures for the Civics Education Initiative; 2) procedures relating to academic standards established by the Board; 3) provisions relating to public school mathematics competency standards; and 4) numerous technical and conforming changes throughout the rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Article X, Section 3 and Section 53A-1-402.6 and Section 53A-13-109.5 and Subsection 53A-1-401(3) and Subsection 53A-1-402(1) and Title 53A, Chapter 1, Part 12

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The amendments to the rule provide changes to the elementary and secondary school general core which likely will not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** The amendments to the rule provide changes to the elementary and secondary school general core which may result in some undetermined compliance costs for school districts and charter schools.
- ◆ **SMALL BUSINESSES:** The amendments to the rule provide changes to the elementary and secondary school general core which likely will not result in a cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to the rule provide changes to the elementary and secondary school general core which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The amendments to the rule provide changes to the elementary and secondary school general core which may result in some 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 to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 EDUCATION  
 ADMINISTRATION  
 250 E 500 S  
 SALT LAKE CITY, UT 84111-3272  
 or at the 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 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

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

**R277. Education, Administration.**  
**R277-700. The Elementary and Secondary School General Core Curriculum.**

**R277-700-[2]1. Authority and Purpose.**  
 [A-](1) This rule is authorized by:  
 (a) Article X, Section 3, of the Utah Constitution, which places general control and supervision of the public schools under the Board;  
 (b) Subsection 53A-1-402(1)[(b) and (c)], which directs the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements;  
 (c) Section 53A-1-402.6, which directs the Board to establish [a-]Core [Curriculum]Standards in consultation with LEA boards and superintendents and directs LEA boards to [design]adopt local curriculum and to design programs to help students master the General Core[Curriculum];  
 (d) Title 53A, Chapter 1, Part 12, Career and College Readiness Mathematics Competency, which directs the Board to establish college and career mathematics competency standards;  
 (e) Section 53A-13-109.5, which requires the Board to provide rules related to a basic civics test; and  
 (f) Subsection 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.  
 [B-](2) The purpose of this rule is to specify the minimum [Core Curriculum and]Core Standards and General Core requirements for the public schools, [to give directions to LEAs about providing the Core Curriculum and Core Standards for the benefit of students,]and to establish responsibility for mastery of Core Standard requirements.

**R277-700-1.2. Definitions.**

For purposes of this rule:

~~A. "Accredited" means evaluated and approved under the Standards for Accreditation of the Northwest Accreditation Commission or the accreditation standards of the Board, available from the USOE Accreditation Specialist.~~

~~B.(1)(a) "Applied course[s]" means a public school course[s] or class[es] that appl[y]ies the concepts of a Core subject[s].~~

~~(b) "Applied course" includes a [C]course[s] may be offered through Career and Technical Education or through other areas of the curriculum.~~

~~Q.(2) "[Student]Assessment[—of Growth and Excellence (SAGE)]" means a summative computer adaptive assessment for:~~

~~(a) English language arts grades 3 through 11;~~

~~(b) mathematics grades 3 through 8, and Secondary I, II, and III; or~~

~~(c) science grades 4 through 8, earth science, biology, physics and chemistry.~~

~~C. "Basic skills course" means a subject which requires mastery of specific functions, including skills that prepare students for the future, and was identified as a course to be assessed under Section 53A-1-602.~~

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

~~E.(3) "Career and Technical Education(CTE)" means an organized educational program[s] or course[s] which directly or indirectly prepares students for employment, or for additional preparation leading to employment, in an occupation[s], where entry requirements generally do not require a baccalaureate or advanced degree.~~

~~F.(4) "Core Standard" means a statement of what a student[s] enrolled in a public school[s] are is expected to know and be able to do at a specific grade level[s] or following completion of an identified course[s].~~

~~G.(5) "Core subject[s]" means a course[s] for which there is a declared set of Core Standards as approved by the Board.~~

~~H. "Demonstrated competence" means subject mastery as determined by LEA standards and review. Review may include such methods and documentation as: tests, interviews, peer evaluations, writing samples, reports or portfolios.~~

~~I.(6) "Elementary school" for purposes of this rule means a school that serves grades K-6 in whatever kind of school the grade levels exist.~~

~~P.(7) "[State Core Curriculum (Core Curriculum)]General Core" means the courses, content, instructional elements, materials, resources and pedagogy that are used to teach the Core Standards, [as well as]including the ideas, knowledge, practice and skills that support the Core Standards.~~

~~J.(8) "High school" for purposes of this rule means a school that serves grades 9-12 in whatever kind of school the grade levels exist.~~

~~K. "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).~~

~~L.(9) "LEA" or "local education agency" includes [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.~~

~~M.(10) "Life Skills document" means a companion document to the Core [curriculum]Standards that describes the knowledge, skills, and dispositions essential for all students; the life skills training helps students transfer academic learning into a comprehensive education.~~

~~N.(11) "Middle school" for purposes of this rule means a school that serves grades 7-8 in whatever kind of school the grade levels exist.~~

~~O. "SEOP/Plan for College and Career Readiness" means a student education occupation plan. An SEOP/Plan for College and Career Readiness 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 and LEA 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.~~

~~R.(12) "Summative adaptive assessment[s]" means an assessment[s] that:~~

~~(a) is administered upon completion of instruction to assess a student's achievement[. The assessments];~~

~~(b) [are]is administered online under the direct supervision of a licensed educator[ and];~~

~~(c) [are]is designed to identify student achievement on the Core [s]Standards for the respective grade and course[. The assessments]; and~~

~~(d) measures the full range of student ability by adapting to each student's responses, selecting more difficult questions when a student answers correctly and less difficult questions when a student answers incorrectly.~~

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

**R277-700-3. General Core[Curriculum] and Core Standards.**

~~A.(1) The Board establishes minimum course description standards[and objectives] for each course in the required [g]General [e]Core[, which is commonly referred to as part of the Core Curriculum].~~

~~B.(2)(a) The Superintendent shall develop, in cooperation with LEAs, [C]course descriptions for required and elective courses[shall be developed cooperatively by LEAs and the USOE].~~

~~(b) The Superintendent shall provide parents and the general public an[with] opportunity[for public and parental]to participat[ion]e in the development process of the course descriptions described in Subsection (2)(a).~~

~~C.(3)(a) The [descriptions shall]Superintendent shall ensure that the courses described in Subsection (2):~~

~~(i) contain mastery criteria for the courses[, shall]; and~~

~~(ii) stress mastery of the course material, [and]Core Standards, and life skills consistent with the General Core [Curriculum]and Life Skills document.~~

~~(b) [Mastery shall be stressed] The Superintendent shall place a greater emphasis on a student's mastery of course material~~

rather than completion of predetermined time allotments for courses.

~~[D-](4) [Implementation of] An LEA board shall administer the General Core[Curriculum] and comply with student assessment procedures[are the responsibility of LEA boards] consistent with state law.~~

#### **R277-700-4. Elementary Education Requirements.**

~~[A-](1) The [Board shall establish] Core Standards and a General Core[Curriculum] for elementary school[s] students in[.] grades K-6 are described in this section.~~

~~[B-](2) The following are the Elementary School Education Core Subject[Area] Requirements:~~

~~[(1) Grades K-2:~~

~~[(a) Reading/Language Arts;~~

~~[(b) Mathematics;~~

~~[(c) Integrated Curriculum.~~

~~[(2) Grades 3-6:~~

~~[(a) [Reading/English] Language Arts;~~

~~[(b) Mathematics;~~

~~[(c) Science;~~

~~[(d) Social Studies;~~

~~[(e) Arts:~~

~~[(i) Visual Arts;~~

~~[(ii) Music;~~

~~[(iii) Dance; or~~

~~[(iv) Theatre[.];~~

~~[(f) Health Education;~~

~~[(g) Physical Education;~~

~~[(h) Educational Technology; and~~

~~[(i) Library Media.~~

~~[C-](3) [It is the responsibility of-] An LEA board[s to] shall provide access to the General Core[Curriculum] to all students within the LEA.~~

~~[D-](4) [Student mastery of the Core Standards is the responsibility of-] An LEA board[s] is responsible for student mastery of the Core Standards.~~

~~[E-](5) An LEA shall conduct [F]informal assessments [should occur-] on a regular basis to ensure continual student progress.~~

~~[F-](6) An LEA shall use Board-approved summative adaptive assessments[shall be used] to assess student mastery of the following:~~

~~[(1)a] reading;~~

~~[(2)b] language arts;~~

~~[(3)c] mathematics;~~

~~[(4)d] science; and~~

~~[(5)e] effectiveness of written expression in grades five~~

~~and eight.~~

~~[G-](7) [Provision for] An LEA shall provide remediation [for all] to elementary students who do not achieve mastery of the subjects described in this section[is the responsibility of LEA boards].~~

#### **R277-700-5. Middle School Education Requirements.**

~~[A-](1) The [Board shall establish] Core Standards and a General Core[Curriculum] for middle school [education] students are described in this section.~~

~~[B-](2) A [S]student[s] in grades 7-8 [shall] is required to earn a minimum of 12 units of credit to be properly prepared for instruction in grades 9-12.~~

~~[C-](3) In addition to the Board requirements described in this section, an LEA board[s] may require a student to complete additional units of credit.~~

~~[D-](4) The following are the Grades 7-8 General Core [Curriculum] Requirements and units of credit:~~

~~[(1)a] Language Arts (2.0 units of credit);~~

~~[(2)b] Mathematics (2.0 units of credit);~~

~~[(3)c] Science ([1-5] 2.0 units of credit);~~

~~[(4)d] Social Studies (1.5 units of credit);~~

~~[(5)e] The Arts (1.0 units of credit from the following):~~

~~[(a)i] Visual Arts;~~

~~[(b)ii] Music;~~

~~[(e)iii] Dance; or~~

~~[(d)iv] Theatre.~~

~~[(6)f] Physical Education (1.0 units of credit);~~

~~[(7)g] Health Education (0.5 units of credit); and~~

~~[(8)h] Career and Technical Education, Life, and Careers (1.0 units of credit).~~

~~[E-](5) An LEA shall use evidence-based [B]best practices, technology, and other instructional media[shall be used] in middle school curricula to increase the relevance and quality of instruction.~~

~~[F-](6) An LEA shall use Board-approved summative adaptive assessments[shall be used] to assess student mastery of the following:~~

~~[(1)a] reading;~~

~~[(2)b] language arts;~~

~~[(3)c] mathematics; and~~

~~[(4)d] science in grades 7 and 8.~~

#### **R277-700-6. High School Requirements.**

~~[A-](1) The [Board shall establish] General Core and Core Standards[and a Core Curriculum] for students in grades 9-12 are described in this section.~~

~~[B-](2) A [S]student[s] in grades 9-12[shall] is required to earn a minimum of 24 units of credit through course completion or through competency assessment consistent with R277-705 to graduate.~~

~~[C-](3) [Grades 9-12] The General Core[Curriculum] credit[s] requirements from courses approved by the Board[as specified] are described in Subsections (4) through (18).[.]~~

~~[(1)4] Language Arts (4.0 units of credit from the following):~~

~~(a) [Ninth-g]Grade 9 level (1.0 unit of credit);~~

~~(b) [Tenth-g]Grade 10 level (1.0 unit of credit);~~

~~(c) [Eleventh-g]Grade 11 level (1.0 unit of credit); and~~

~~(d) [Twelfth-g]Grade 12 level (1.0 Unit of credit)~~

~~consisting of applied or advanced language arts credit from the list of Board-approved courses using the following criteria and consistent with the student's SEOP/Plan for College and Career Readiness:~~

~~(i) courses are within the field/discipline of language arts with a significant portion of instruction aligned to language arts content, principles, knowledge, and skills;[and]~~

(ii) courses provide instruction that leads to student understanding of the nature and disposition of language arts;~~and~~

(iii) courses apply the fundamental concepts and skills of language arts;~~and~~

(iv) courses provide developmentally appropriate content; and

(v) courses develop skills in reading, writing, listening, speaking, and presentation[;].

~~(2)5~~ Mathematics (3.0 units of credit)~~[met minimally through successful completion of a combination of the foundation or foundation honors courses, Algebra I, Geometry, Algebra 2, Secondary Mathematics I, Secondary Mathematics II, Secondary Mathematics III as determined in the student's SEOP/Plan for College and Career Readiness. After the 2014-2015 school year Mathematics (3.0 units of credit)]~~ shall be met minimally through successful completion of a combination of the foundation or foundation honors courses, Secondary Mathematics I, Secondary Mathematics II, and Secondary Mathematics III.

~~(a)6(a)~~ A [S]student[s] may opt out of~~[Algebra 2 or] Secondary Mathematics III [with written]if the student's parent [legal guardian] submits a written request to the school.~~

~~(b)~~ If a student's parent requests an opt out ~~[is requested]described in Subsection (6)(a), the student is required to complete a third math credit [shall come from the advanced and applied courses on]from the Board-approved mathematics list.~~

~~(b)7~~ A 7th ~~and~~or 8th grade student[s] may earn credit for a mathematics foundation course before ~~[ninth]9th~~ grade, consistent with the student's SEOP/Plan for College and Career Readiness ~~and~~ if ~~at least one of the following criteria is met~~:

~~(i)a~~ the student is identified as gifted in mathematics on at least two different USOE-approved assessments;

~~(ii)b~~ the student is dual enrolled at the middle school/junior high school and the high school;

~~(iii)c~~ the student qualifies for promotion one or two grade levels above the student's age group and is placed in 9th grade;~~or~~

~~(iv)d~~ the student takes the USOE competency test in the summer prior to 9th grade and earns high school graduation credit for the course[s].

~~(e)8~~ ~~[Other]~~A student[s] who successfully completes a mathematics foundation course before ~~[ninth]9th~~ grade ~~[shall still]is required to earn 3.0 units of additional mathematics credit by:~~

~~(a)~~ taking the other mathematics foundation courses described in Subsection (5); and

~~(b)~~ an additional course from the ~~advanced and applied~~ Board-approved mathematics list consistent with:

~~(i)~~ the student's SEOP/Plan for College and Career Readiness; and

~~(ii)~~ the following criteria:

~~(i)A~~ courses are within the field/discipline of mathematics with a significant portion of instruction aligned to mathematics content, principles, knowledge, and skills;

~~(ii)B~~ courses provide instruction that lead to student understanding of the nature and disposition of mathematics;

~~(iii)C~~ courses apply the fundamental concepts and skills of mathematics;

~~(iv)D~~ courses provide developmentally appropriate content; and

~~(v)E~~ courses include the five process skills of mathematics: problem solving, reasoning, communication, connections, and representation.

~~(e)~~ Students who are gifted and students who are advanced may also:

~~(i)~~ Take the honors courses at the appropriate grade level; and

~~(ii)~~ Continue taking higher level mathematics courses in sequence through grade 11, resulting in a higher level of mathematics proficiency and increased college and career readiness.

~~(d)9~~ A student who successfully completes a Calculus course with a "C" grade or higher has completed mathematics graduation requirements, regardless of the number of mathematics credits earned.

~~(e)~~ Students should consider taking additional credits during their senior year that align with their postsecondary career or college expectations. Students who desire a four year college degree in a science, technology, engineering or mathematics (STEM) career area should take a calculus course.

~~(3)10~~ Science (3.0 units of credit):

~~(a)~~ ~~[at a minimum,]shall be met minimally through successful completion of two courses from the following science foundation areas:~~

~~(i)~~ Earth~~Systems~~ Science (1.0 units of credit);

~~(ii)~~ Biological Science (1.0 units of credit);

~~(iii)~~ Chemistry (1.0 units of credit);

~~(iv)~~ Physics (1.0 units of credit);~~or~~

~~(v)~~ one of the following Computer Science courses (.5 or 1.0 units of credit):

~~(A)~~ Advanced Placement Computer Science;

~~(B)~~ Computer Science Principles; or

~~(C)~~ Computer Programming II; and

~~(b)~~ one additional unit of credit from:

~~(i)~~ the foundation courses described in Subsection(10)(a);

or

~~(ii)~~ the applied or advanced science list determined by the LEA board and approved by the Board using the following criteria and consistent with the student's SEOP/Plan for College and Career Readiness:

~~(i)A~~ courses are within the field/discipline of science with a significant portion of instruction aligned to science content, principles, knowledge, and skills;~~and~~

~~(ii)B~~ courses provide instruction that leads to student understanding of the nature and disposition of science;~~and~~

~~(iii)C~~ courses apply the fundamental concepts and skills of science;~~and~~

~~(iv)D~~ courses provide developmentally appropriate content;~~and~~

~~(v)E~~ courses include the areas of physical, natural, or applied sciences; and

~~(vi)E~~ courses develop students' skills in scientific inquiry.

~~(4)11~~ Social Studies (3.0 units of credit) shall be met minimally through successful completion of:

~~(a)~~ 2.5 units of credit from the following courses:

~~(a)i~~ Geography for Life (0.5 units of credit);

~~(b)ii~~ World Civilizations (0.5 units of credit);

~~(e)iii~~ U.S. History (1.0 units of credit);~~and~~

(~~(d)~~iv) U.S. Government and Citizenship (0.5 units of credit);

~~[(5)]~~(e) General Financial Literacy (0.5 units of credit).

(b) Social Studies (0.5 units of credit per LEA discretion); and

(c) a basic civics test or alternate assessment described in R277-700-8.

(~~(5)]~~12) The Arts (1.5 units of credit from any of the following performance areas):

(a) Visual Arts;

(b) Music;

(c) Dance; or

(d) Theatre[;].

(~~(6)]~~13) Physical and Health Education (2.0 units of credit from any of the following):

(a) Health (0.5 units of credit);

(b) Participation Skills (0.5 units of credit);

(c) Fitness for Life (0.5 units of credit);

(d) Individualized Lifetime Activities (0.5 units of credit); or

(e) team sport/athletic participation (maximum of 0.5 units of credit with school approval).

(~~(7)]~~14 Career and Technical Education (1.0 units of credit from any of the following):

(a) Agriculture;

(b) Business;

(c) Family and Consumer Sciences;

(d) Health Science and Technology;

(e) Information Technology;

(f) Marketing;

(g) Technology and Engineering Education; or

(h) Trade and Technical Education.

(~~(8)]~~15) Educational Technology (0.5 units of credit from one of the following):

(a) ~~[Computer Technology]~~Digital Literacy (0.5 units of credit from a Board-approved list of courses); or

(b) successful completion of a Board-approved competency examination (credit may be awarded at the discretion of the LEA).

(~~(9)]~~16) Library Media Skills (integrated into the subject areas).

(17) General Financial Literacy (0.5 units of credit).

(~~(10)]~~18) Electives (~~(6-0)]~~5.5 units of credit).

~~(D-)]~~(19) An LEA shall use Board-approved summative adaptive assessments~~[shall be used]~~ to assess student mastery of the following subjects:

(~~(1)]~~a) reading;

(~~(2)]~~b) language arts through grade 11;

(~~(3)]~~c) mathematics as defined ~~[under R277-700-6C(2)]~~in Subsection (5); and

(~~(4)]~~d) science as defined ~~[under R277-700-6C(3)]~~in Subsection (10).

~~(E-)]~~(20) An LEA board[s] may require a student[s] to earn credits for graduation that exceed the minimum Board requirements described in this rule.

~~(F-)]~~(21) An LEA board may establish and offer ~~[A]additional elective course offerings[ may be established and offered]~~ at the discretion of ~~[an]the~~ LEA board.

~~(G-)]~~(22)(a) An LEA may modify a student's graduation requirements to meet the unique educational needs of a student if:

(i) the ~~[S]student[s with disabilities served by special education programs may have changes made]~~ has a disability; and

(ii) the modifications to the student's graduation requirements are made through the student's individual IEP~~[s to meet unique educational needs. A student's IEP]~~.

(b) An LEA shall document the nature and extent of a modification~~[s and]~~, substitution[s], or exemption[s] made to ~~[accommodate a student with disabilities]~~a student's graduation requirements described in Subsection (22)(a) in the student's IEP.

~~(H-)]~~(23) The Board and ~~[USOE]Superintendent~~ may review an LEA board's~~[']~~ list[s] of approved courses for compliance with this rule.

~~(I-)]~~(24) An LEA may modify ~~(G)]~~graduation requirements ~~[may be modified]~~ for an individual student[s] to achieve an appropriate route to student success ~~[when such]~~if the modification[s]:

(~~(1)]~~a) ~~[are]is~~ consistent with;

(i) the student's IEP; or

(ii) SEOP/Plan for College and Career Readiness~~[or both]~~;

(~~(2)]~~b) ~~[are]is~~ maintained in the student's file; ~~[and]~~

(c) includes the parent's ~~[guardian's]~~ signature; and

(~~(3)]~~d) maintains the integrity and rigor expected for high school graduation, as determined by the Board.

#### **R277-700-7. Student Mastery and Assessment of Core Standards.**

~~(A-)]~~(1) ~~[Student mastery of]~~An LEA shall ensure students master the Core ~~[Curriculum]Standards~~ at all levels~~[is the responsibility of LEA boards of education]~~.

~~(B-)]~~(2) ~~[Provisions for]~~An LEA shall provide remediation ~~[of]for~~ secondary students who do not achieve mastery~~[is the responsibility of LEA boards of education]~~ under Section 53A-13-104.

~~(C-)]~~(3) An LEA shall provide remedial assistance to ~~[S]students~~ who are found to be deficient in basic skills through ~~[U-PASS]a statewide assessment [shall receive remedial assistance according to]~~in accordance with the provisions of Subsection 53A-1-606(1).

~~(D-)]~~(4) If a parent[s] objects to a portion[s] of a course[s] or to a course[s] in ~~[their]its~~ entirety under provisions of ~~[law- (]Section 53A-13-101.2[)]~~ and ~~[rule- (]R277-105[)]~~, ~~[students and]the~~ parent[s] shall be responsible for the student's mastery of Core ~~[objectives]Standards~~ to the satisfaction of the school prior to the student's promotion to the next course or grade level.

~~[(E-)]~~Students with disabilities:

~~(1)]~~(5)(a) A~~(H)]~~ student[s] with a disability~~[ies]~~y served by a special education program~~[s shall]~~ is required to demonstrate mastery of the Core Standards.

(~~(2)]~~b) If a student's ~~[disabling condition]disability~~ precludes the student from successfully mastering the Core Standards~~[successful demonstration of mastery]~~, the student's IEP team, on a case-by-case basis, may provide the student an accommodation[s] for, or modify the mastery demonstration to accommodate, the student's disability.

~~[F.](6) A [S]student[s] may demonstrate competency to satisfy course requirements consistent with R277-705-3.~~

~~[G. All Utah public school students shall participate in state-mandated assessments, as specified in R277-404.~~

~~[H.](7) LEAs are ultimately responsible for and shall comply with all assessment procedures, policies and ethics as described in R277-473.~~

**R277-700-8. Civics Education Initiative.**

(1) For purposes of this section:

(a) "Student" means:

(i) a public school student who graduates on or after January 1, 2016; or

(ii) a student enrolled in an adult education program who receives an adult education secondary diploma on or after January 1, 2016.

(b) "Basic civics test" means the same as that term is defined in Section 53A-13-109.5.

(2) Except as provided in Subsection (3), an LEA shall:

(a) administer a basic civics test in accordance with the requirements of Section 53A-13-109.5; and

(b) require a student to pass the basic civics test as a condition of receiving:

(i) a high school diploma; or

(ii) an adult education secondary diploma.

(3) An LEA may require a student to pass an alternate assessment if:

(a)(i) the student has a disability; and

(ii) the alternate assessment is consistent with the student's IEP; or

(b) the student is within six months of intended graduation.

(4) Except as provided in Subsection (5), the alternate assessment shall be given:

(a) in the same manner as an exam given to an unnaturalized citizen; and

(b) in accordance with 8 C.F.R. Sec. 312.2.

(5) An LEA may modify the manner of the administration of an alternate assessment for a student with a disability in accordance with the student's IEP.

(6) If a student passes a basic civics test or an alternate assessment described in this section, an LEA shall report to the Superintendent that the student passed the basic civics test or alternate assessment.

(7) If a student who passes a basic civics test or an alternate assessment transfers to another LEA, the LEA may not require the student to re-take the basic civics test or alternate assessment.

**R277-700-9. College and Career Readiness Mathematics Competency.**

(1) For purposes of this section, "senior student with a special circumstance" means a student who:

(a) is pursuing a college degree after graduation; and

(b) has not met one of criteria described in Subsection (2) (a) before the beginning of the student's senior year of high school.

(2) Except as provided in Subsection (4), in addition to the graduation requirements described in R277-700-6, beginning with the 2016-17 school year, a student pursuing a college degree after graduation shall:

(a) receive one of the following:

(i) a score of 3 or higher on an Advanced Placement (AP) calculus AB or BC exam;

(ii) a score of 3 or higher on an Advanced Placement (AP) statistics exam;

(iii) a score of 5 or higher on an International Baccalaureate (IB) higher level math exam;

(iv) a score of 50 or higher on a College Level Exam Program (CLEP) pre-calculus or calculus exam;

(v) a score of 26 or higher on the mathematics portion of the American College Test (ACT) exam;

(vi) a score of 640 or higher on the mathematics portion of the Scholastic Aptitude Test (SAT) exam; or

(vii) a "C" grade in a concurrent enrollment mathematics course that satisfies a state system of higher education quantitative literacy requirement; or

(b) if the student is a senior student with a special circumstance, take a full year mathematics course during the student's senior year of high school.

(3) Except as provided in Subsection (4), in addition to the graduation requirements described in R277-700-6, beginning with the 2016-17 school year, a non-college and degree-seeking student shall complete appropriate math competencies for the student's career goals as described in the student's SEOP/Plan for College and Career Readiness.

(4) An LEA may modify a student's college or career readiness mathematics competency requirement under this section if:

(a) the student has a disability; and

(b) the modification to the student's college or career readiness mathematics competency requirement is made through the student's IEP.

(5)(a) Beginning with the 2016-17 cohort, an LEA shall report annually to the LEA's governing board the number of students within the LEA who:

(i) meet the criteria described in Subsection (2)(a);

(ii) take a full year of mathematics as described in Subsection (2)(b);

(iii) meet appropriate math competencies as established in the students' career goals as described in Subsection (3); and

(iv) meet the college or career readiness mathematics competency requirement established in the students' IEP as described in Subsection (4).

(b) An LEA shall provide the information described in Subsection (5)(a) to the Superintendent by October 1 of each year.

**KEY:** ~~[curricula]standards, graduation requirements~~

**Date of Enactment or Last Substantive Amendment:** ~~[December 8, 2014]2015~~

**Notice of Continuation:** July 1, 2015

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-1-402(1)(b); 53A-1-402.6; 53A-1-401(3)

**Environmental Quality, Solid and  
Hazardous Waste  
R315-15-18  
Polychlorinated Biphenyls (PCBs)**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39459

FILED: 06/23/2015

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reasons for the changes are: 1) to correct PCB concentration limits to reflect concentration limits found under federal rules; 2) to remove option to use generator knowledge for Dielectric oil that is not allowed in federal rule; 3) to require testing or generator knowledge for all other oils as required by federal rule; and 4) to reword some sections of the rule to make them clearer.

SUMMARY OF THE RULE OR CHANGE: Rule changes PCB concentration limit allowed to be present in used oil from 2 ppm to 50 ppm. The option to use generator knowledge for Dielectric oil is removed. The rule change clarifies that testing or generator knowledge is required to certify PCB concentrations in all other oils. The rule change also changes the wording of the generator certification to make it clearer.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-704

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There will not be any affect on the state budget as this change does not change how the used oil program is administered. The change that requires testing for Dielectric oil is a correction of the rule to bring it in line with federal rule and has no cost as the requirement existed and the change only aligns the Utah rule with federal rules.

◆ LOCAL GOVERNMENTS: Local governments that generate used oil will not change their activities and will not have any cost increase or savings. The change that requires testing for Dielectric oil is a correction of the rule to bring it in line with federal rule and has no cost as the requirement existed and the change only aligns the Utah rule with federal rules.

◆ SMALL BUSINESSES: Small businesses that generate used oil will not change their activities and will not have any cost increase or savings. The change that requires testing for Dielectric oil is a correction of the rule to bring it in line with federal rule and has no cost as the requirement existed and the change only aligns the Utah rule with federal rules.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Others that generate used oil will not change their activities and will not have any cost increase or savings. The change that requires testing for Dielectric oil is a correction of the rule

to bring it in line with federal rule and has no cost as the requirement existed and the change only aligns the Utah rule with federal rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule change will not affect the handling of used oil by any person and will have no cost increase or savings. The change that requires testing for Dielectric oil is a correction of the rule to bring it in line with federal rule and has no cost as the requirement existed and the change only aligns the Utah rule with federal rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule change will not affect the handling of used oil by any person and will have no cost increase or savings. The change that requires testing for Dielectric oil is a correction of the rule to bring it in line with federal rule and has no cost as the requirement existed in federal rule and the change only aligns the Utah rule with federal rules.

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

ENVIRONMENTAL QUALITY  
SOLID AND HAZARDOUS WASTE  
SECOND FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3097  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/05/2015

THIS RULE MAY BECOME EFFECTIVE ON: 11/12/2015

AUTHORIZED BY: Scott Anderson, Director

**R315. Environmental Quality, Solid and Hazardous Waste.**

**R315-15. Standards for the Management of Used Oil.**

**R315-15-18. Polychlorinated Biphenyls (PCBs).**

(a) Used oil containing polychlorinated biphenyl (PCB) concentrations of 50 ppm and above is subject to TSCA regulations in 40 CFR 761. Used oil containing PCB concentrations greater than or equal to 2 ppm but less than 50 ppm is subject to both R315-15 and 40 CFR 761.

(b) Used oil transporter PCB testing. Used oil transporters shall determine ~~whether~~ the PCB content of used oil being transported is less than ~~[2]~~50 ppm prior to transferring the oil into the transporter's vehicles. The transporter shall make this determination as follows:

(1) Used dielectric oil. Dielectric oil used in transformers and other high voltage devices shall be certified to be less than ~~[2]~~50 ppm prior to loading to the transporter's vehicle through ~~either~~:

~~\_\_\_\_\_ (A) Laboratory~~ laboratory testing following the procedures described in R315-15-18(d) ~~below, or~~

~~\_\_\_\_\_ (B) Written certification from the generator that the PCB content of the used oil is less than 2 ppm PCBs based on manufacturing specifications and process knowledge].~~

(2) Other used oils ~~[historically containing PCBs. Used oils that have historically contained PCBs, including high pressure hydraulic oils, capacitors, heat transfer fluids, oil-cooled electric motors, and lubricants]~~ shall be certified to be less than ~~[2]~~ 50 ppm prior to transfer through either:

(A) Laboratory testing following the procedures described in R315-15-18(d) below, or

(B) Written certification from the generator that the PCB content of the used oil is less than 50 ppm ~~[2 ppm PCBs]~~ based on manufacturing specifications and process knowledge.

~~\_\_\_\_\_ (3) Used oils not falling into categories described under (1) and (2) above are not required to be tested for PCBs under R315-15-18(b).~~

(c) Used oil marketer PCB testing. To ensure that used oil destined to be burned for ~~[burning]~~ energy recovery is not a regulated waste under the TSCA regulations, used oil fuel marketers shall ~~[also]~~ determine whether the PCB content of used oil being burned for energy recovery is below 2 ppm. A marketer shall make this determination in a manner consistent with the used oil marketer's sampling and analysis plan.

(d) Laboratory testing for PCBs. Used oil testing for total PCBs shall include the following Aroclors ~~[(registered trademark)]~~: 1016, 1221, 1232, 1242, 1248, 1254, and 1260. If plasticizers (used in polyvinyl chloride plastic, neoprene, chlorinated rubbers, laminating adhesives, sealants and caulk and joint compounds etc.) are present, then the used oil shall also be analyzed for Aroclors ~~[(registered trademark)]~~ 1262 and 1268. If other Aroclors ~~[(registered trademark)]~~ are known or suspected to be present, then the used oil shall be analyzed for those additional Aroclors ~~[(registered trademark)]~~.

(e) The following Utah Certified Laboratory SW-846 methodologies shall be used for PCBs:

(1) Preparation method 3580A, clean up method 3665A, and analytical method 8082A.

(2) Individual Aroclors ~~[(registered trademark)]~~ shall be reported with a reporting limit of 1 ppm or less.

(3) If the source of the PCBs is known to be an Aroclor ~~[(registered trademark)]~~, and the Aroclor ~~[(registered trademark)]~~ is unlikely to be significantly altered in homologue composition such as weathering, Aroclors ~~[(registered trademark)]~~ listed in R315-15-18(d) shall be reported. Analytical results from all 209 individual congeners or ten homologue groups shall be submitted for any sample that has an altered homologue composition such as weathering unless prior approval is obtained from the Director.

**KEY: hazardous waste, used oil**

**Date of Enactment or Last Substantive Amendment: ~~[October 3, 2014]~~ 2015**

**Notice of Continuation: May 17, 2012**

**Authorizing, and Implemented or Interpreted Law: 19-6-704**

## 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

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39450

FILED: 06/17/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule expired and this filing proposes to put it back into the Administrative Code.

**SUMMARY OF THE RULE OR CHANGE:** This rule outlines the procedures for the calculation and distribution of funds to reimburse county correctional facilities housing state probationary inmates or state parole inmates.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 64-13e-104

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** No anticipated cost or savings because rule is just being put back in place.
- ◆ **LOCAL GOVERNMENTS:** There will be no anticipated affect on local government because rule is just being put back in place.
- ◆ **SMALL BUSINESSES:** There will be no anticipated affect on small businesses because rule is just being put back in place.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no anticipated affect on persons other than small businesses, businesses, or local government entities because rule is just being put back in place.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** No anticipated compliance costs for affected persons because rule is just being put back in place.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule has no affect on businesses.



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

GOVERNOR  
 CRIMINAL AND JUVENILE JUSTICE (STATE COMMISSION ON)  
 ROOM SUITE 330 SENATE BUILDING  
 STATE CAPITOL COMPLEX  
 420 N STATE STREET  
 SALT LAKE CITY, UT 84114  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Ronald Gordon by phone at 801-538-1432, by FAX at 801-538-1024, or by Internet E-mail at rbgordon@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: Ronald Gordon, Executive Director

**R356. 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.**

**R356-1-1. Authority and Purpose.**

(1) This rule is authorized in accordance with Subsection 64-13e-104(5)(b).

(2) The purpose of this rule is to establish procedures to reimburse counties for incarcerating state probationary inmates or state parole inmates and to determine the rate at which the counties shall be reimbursed.

**R356-1-2. Definitions.**

In addition to terms defined in Section 64-13e-102:

(1) "Total Inmate Days" means the total number of eligible probationary and state parole inmate incarceration days.

(2) "Business Day" means Monday through Friday excluding holidays.

**R356-1-3. Conditions for Reimbursement of State Probationary Inmates.**

Counties shall be eligible for reimbursement for days served in county correctional facilities under the following conditions:

(1) The inmate has been convicted of a felony and as a condition of probation, has been sentenced to a county correctional facility for a period not exceeding one year. The reimbursement period will begin with the sentencing date.

(2) Days served under Subsection 1 which are eligible for reimbursement may include:

(a) Consecutive felony probation jail sentences, pursuant to Section 76-3-401;

(b) The inmate is sentenced by the courts to a county correctional facility following a violation of felony probation (Order to

Show Cause). If the inmate's probation has been terminated it must be reinstated for the county to be eligible for reimbursement;

(c) The inmate is sentenced by the courts to a county correctional facility after a court has formally entered a guilty plea that had been held in abeyance as a conviction.

**R356-1-4. Conditions Not Eligible for Reimbursement of State Probationary Inmates.**

Counties are not eligible for reimbursement for incarcerating inmates in the following circumstances:

(1) Time served in a county correctional facility prior to sentencing, notwithstanding an order from the court for credit for time served;

(2) Time served in a county correctional facility following an unsuccessful termination of probation;

(3) Time served in a county correctional facility under a Plea in Abeyance agreement prior to the entering of the guilty plea as a conviction in the case;

(4) Time served on a felony probation sentence outside a correctional facility on electronic monitoring;

(5) Time served in a county correctional facility on a federal Immigration and Customs Enforcement hold beyond the number of days sentenced to jail by the Courts, even if probation is still in effect;

(6) Time served in a county correctional facility under the jurisdiction of the Juvenile Court;

(7) Time served in a county correctional facility on a probationary 3-day hold.

**R356-1-5. Conditions for Reimbursement of State Parole Inmates.**

(1) Counties shall be eligible for reimbursement for days served in county correctional facilities by state parole inmates when the inmate is being held on a 3-day hold issued by the Board of Pardons and Parole.

(2) Counties shall be reimbursed for state parole inmates on a 3-day hold for up to 3 business days plus weekends and holidays for a maximum of 6 days of reimbursement per 3 day hold.

**R356-1-6. Monthly Billing Invoices.**

(1) Counties requesting reimbursement for incarcerating state probationary inmates or state parole inmates shall submit, on a monthly basis, the following information in the format specified below in an MS Excel file to CCJJ:

(a) Inmate name (last, first, middle initial);

(b) Inmate date of birth (mm/dd/yyyy);

(c) Sentencing date (mm/dd/yyyy);

(d) Court case number(s) authorizing jail as a condition of probation;

(e) Court location identified by Originating Agency Identifier;

(f) Name of judge assigned to case;

(g) Whether the requested reimbursement is for a 72 hour hold;

(h) UDC offender number if the requested reimbursement is for a 72 hour hold;

(i) Incarceration start date (mm/dd/yyyy);

(j) Release date from correctional facility (mm/dd/yyyy);

(k) Length (number of days) of court-ordered sentence;

(l) Total number of state probationary inmate days of incarceration and total number of state parole inmate days of incarceration for which the county is requesting reimbursement; and

(m) Total number of state inmates (probation and parole) for which the county is requesting reimbursement.

(2) Counties shall be reimbursed for all inmate incarceration days (felony probation and felony parole) beginning on the first day of incarceration after sentencing (day of sentencing shall be included), but never the last day of incarceration (day of release). Counties incarcerating inmates beyond eligible sentence days shall only be reimbursed for those days the inmate was eligible for reimbursement.

(3) Monthly billing invoices shall be submitted to CCJJ by the 10th business day of each month unless prior approval has been authorized by the Executive Director of CCJJ or designee. Invoices shall be submitted by email to the following email address: jailreimburse@utah.gov.

(4) CCJJ shall audit each billing invoice for accuracy, using Utah State Courts X-Change program and Department of Corrections OTrack-FTrack data systems to verify information. When necessary, CCJJ shall contact the correctional facility or sentencing court to verify accuracy of information.

(5) Back billings or late billings are eligible for reimbursement within the same fiscal year period. The 10th business day of August shall be the final day to submit late billings for the previous fiscal year.

(6) For each monthly billing invoice submitted, CCJJ shall return to the county a copy of the original billing invoice with any corrections that were made to the original billing.

(7) CCJJ may request counties to submit additional information regarding inmate booking and release when necessary to complete invoice audits.

**R356-1-7. Calculation of Payments to Counties for Reimbursement for Housing State Probationary Inmates and State Parole Inmates.**

To ensure compliance with Subsection 64-13e-104(5)(c), CCJJ shall prepare two calculations of payment for counties. CCJJ shall determine which calculation to use based upon funds appropriated by the Legislature for payment.

(1) When funds appropriated by the Legislature are sufficient to reimburse counties at a rate of 50% of the final daily incarceration rate for the preceding fiscal year established pursuant to Section 64-13e-105, the Division of Finance shall reimburse each county that houses a state probationary inmate or state parole inmate at a rate of 50% of the state daily incarceration rate multiplied by the average inmate days of incarceration established in the Administrative Rule Section R356-1-6 for the preceding five fiscal years.

(2) When funds appropriated by the Legislature are not sufficient to reimburse counties under Subsection 64-13e-104(2), each county that houses a state probationary inmate or state parole inmate shall be reimbursed by a rate calculated on a pro rata basis, based on the total inmate days of incarceration that were approved for each county for the preceding five fiscal years. The funds appropriated by the legislature will be divided by the total of inmate days of incarceration of all counties during the previous five years to establish a pro rata rate. Each county shall be reimbursed by multiplying the pro rata rate established under this subsection by the total inmate days of incarceration for each county established in this Administrative Rule Section R356-1-6 for the preceding five fiscal years.

**KEY: jail reimbursement, state probationary inmates, state parole inmates**

**Date of Enactment or Last Substantive Amendment: 2015**

**Authorizing, and Implemented or Interpreted Law: 64-13e-104**

**Health, Family Health and  
Preparedness, Children with Special  
Health Care Needs  
R398-3  
Children's Hearing Aid Pilot Program**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39451

FILED: 06/17/2015

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to update the rule from changes of the program going from a pilot program to a full program and includes minor administrative corrections.

SUMMARY OF THE RULE OR CHANGE: On 05/14/2013, H.B. 157 (from the 2015 General Session) became Section 26-10-11 as the Children's Hearing Aid Pilot program. On 07/01/2015, the pilot program will be superseded by the full program of Children's Hearing Aid Program. This rule is being updated with the full program information including minor administrative updates.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-10-11

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The bureau will incur a minimal cost to reprint the rule and to notify audiologist and the Utah School of the Deaf and Blind.
- ◆ LOCAL GOVERNMENTS: The proposed rule does not affect local government.
- ◆ SMALL BUSINESSES: The proposed rule clarifies statutory changes to a full program and updates requirements already in place and therefore should not have an additional fiscal impact.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed rule clarifies statutory changes to a full program and updates requirements already in place and therefore should not have an additional fiscal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule clarifies statutory changes to a full program and updates requirements already in place and therefore should not have an additional fiscal impact.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no impact on businesses because it does not propose additional requirements that are not currently in rule.

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

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
CHILDREN WITH SPECIAL HEALTH CARE NEEDS  
44 N MARIO CAPECCHI DR  
SALT LAKE CITY, UT 84113  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Joyce McStotts by phone at 801-584-8239, by FAX at 801-584-8488, or by Internet E-mail at jmcstotts@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

**R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.**

**R398-3. Children's Hearing Aid [Pilot] Program.**

**R398-3-1. Definitions.**

[~~\_\_\_\_\_~~ a. "UDOH" is Utah Department of Health.  
] a.[~~b-~~] "Hearing aid" is any traditional non-surgical device providing acoustic amplification.  
b.[~~e-~~] [~~"CHAPP"~~]~~"CHAP"~~ is Children's Hearing Aid [Pilot] Program.  
c.[~~d-~~] "CSHCN" is the Department's Bureau of Children with Special Health Care Needs.  
d.[~~e-~~] "L and D" is loss and damage, referring to warranty or insurance coverage for hearing aids.  
e.[~~f-~~] "Managing audiologist" is a non-Department[UDOH] licensed audiologist with expertise in pediatric audiology who is responsible for the provision of hearing aids and follow-up care to eligible children.

**R398-3-2. Purpose and Authority.**

The purpose of this rule is to set forth the process to identify children who are financially eligible to receive services under the [~~pilot~~] program and describe how the department will review and pay for services provided to a child under the [~~pilot~~] program.

This rule is authorized by Section 26-10-11(5) which provides that the department shall make rules regarding implementation of the hearing aid [~~pilot~~] program.

**R398-3-3. Process to Identify Children Who Are Financially Eligible for Services.**

(1) Participant financial eligibility  
a. Children younger than [~~three~~]six years old, with hearing loss who do not yet own a hearing aid or for whom current

amplification is no longer appropriate may be eligible for hearing aids under this [~~pilot~~] program.

b. Participant must complete and submit CSHCN Financial Form (PFR) with application to the managing audiologist.

c. Upon request, the family must provide a copy of the most recent federal income tax filing to [~~CHAPP~~]~~CHAP~~ to verify family income as reported by the child's parents. If the federal income tax filing is unavailable, the parents may submit the prior three months' check stubs to extrapolate annual income.

d. Family must be at or below 300% of Federal Poverty Level.

e. This is a one-time per ear benefit per child.

**R398-3-4. Process to Review and Pay for Services Provided to a Child.**

(1) Applications

a. Participant application

i. Must be completed by parent or guardian.

ii. If a child is under three years of age, the child[~~Child~~] shall participate in a Part C Early Intervention program.

iii. Application must be submitted to managing audiologist with:

1. Proof of denial for Medicaid or evidence that family is ineligible for Medicaid.

2. Evidence of non-coverage[~~Proof of denial for coverage~~] by current insurance provider.

i. Family/guardian shall provide coverage for all out-of-warranty repairs.

ii. If L and D is claimed during the warranty period, the family shall provide supplemental hearing aid insurance including L and D.

iii. Child will receive hearing aids directly from managing audiologist.

a. Audiologist qualifications and application

i. Hearing aid must be fit[~~dispensed~~] by a licensed audiologist.

ii. A separate application must be submitted for each child.

(2) Review of applications

a. All applications will be reviewed for completeness and eligibility by the Advisory Committee chair or UDOH designee.

b. Eligibility shall be communicated to the managing audiologist.

(3) Payment process

a. Within 30 days of hearing aid fitting, the managing audiologist will submit the Payment Request Cover Sheet with all supporting documentation.

b. UDOH will review documentation to assure that managing audiologist has submitted all items listed in payment request.

c. Payments will go directly to the managing audiologist or their designee.

**KEY: hearing aids**

**Date of Enactment or Last Substantive Amendment: [~~October 15, 2013~~]2015**

**Authorizing, and Implemented or Interpreted Law: 26-10-11**

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-1-5  
Incorporations by Reference**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39460

FILED: 06/23/2015

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 26-18-3(2)(a) requires the Medicaid program to implement policy through administrative rules. The Department, in order to draw down federal funds, must have an approved State Plan with the Centers for Medicare and Medicaid Services (CMS). The purpose of this change, therefore, is to incorporate the most current Medicaid State Plan by reference and to implement by rule ongoing Medicaid policy described in the Medical Supplies Utah Medicaid Provider Manual, and the manual's attachment for Donor Human Milk Request Form; Hospital Services Utah Medicaid Provider Manual, with its attachments; Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid; Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual; Hospice Care Utah Medicaid Provider Manual, and the manual's attachment for the Utah Medicaid Prior Authorization Request for Hospice Services; Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments; Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual; Personal Care Utah Medicaid Provider Manual, and the manual's attachment for the Request for Prior Authorization: Personal Care and Capitated Programs; Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual; Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual; Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual; Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual; Office of Inspector General (OIG) Administrative Hearings Procedures Manual; Pharmacy Services Utah Medicaid Provider Manual with its attachments; Coverage and Reimbursement Code Look-up Tool; CHEC Services Utah Medicaid Provider Manual with its attachments; Chiropractic Medicine Utah Medicaid Provider Manual; Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual; General Attachments (All

Providers) for the Utah Medicaid Provider Manual; Indian Health Utah Medicaid Provider Manual; Laboratory Services Utah Medicaid Provider Manual with its attachments; Medical Transportation Utah Medicaid Provider Manual; Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with its attachments; Licensed Nurse Practitioner Utah Medicaid Provider Manual; Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables; Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual with its attachments; Podiatric Services Utah Medicaid Provider Manual; Primary Care Network Utah Medicaid Provider Manual with its attachments; Psychology Services Utah Medicaid Provider Manual; Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual; Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual; School-Based Skills Development Services Utah Medicaid Provider Manual; Section I: General Information Utah Medicaid Provider Manual; Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual; Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual; Vision Care Services Utah Medicaid Provider Manual; and Women's Services Utah Medicaid Provider Manual.

SUMMARY OF THE RULE OR CHANGE: Section R414-1-5 is changed to incorporate the Utah Medicaid State Plan and an approved State Plan Amendment (SPA) by reference to 07/01/2015. This SPA includes: SPA 15-0006-UT Reimbursement for Home Health Services, which updates the effective date of rates for home health services to 07/01/2015; SPA 15-0008-UT Reimbursement for Optometry Services, which updates the effective date of rates for optometry services to 07/01/2015; SPA 15-0009-UT Reimbursement for Speech Pathology Services, which updates the effective date of rates for speech pathology services to 07/01/2015; SPA 15-0010-UT Reimbursement for Audiology Services, which updates the effective date of rates for audiology services to 07/01/2015; SPA 15-0011-UT Reimbursement for Chiropractic Services, which updates the effective date of rates for chiropractic services to 07/01/2015; SPA 15-0012-UT Reimbursement for Eyeglasses Services, which updates the effective date of rates for eyeglasses services to 07/01/2015; SPA 15-0014-UT Reimbursement for Physical Therapy and Occupational Therapy, which updates the effective date of rates for physical therapy and occupational therapy to 07/01/2015; SPA 15-0015-UT Reimbursement for Rehabilitative Mental Health Services, which updates the effective date of rates for rehabilitative mental health services to 07/01/2015; SPA 15-0016-UT Reimbursement for Licensed Practitioner Services, which updates the effective date of rates for licensed practitioner services to 07/01/2015; SPA 15-0017-UT Reimbursement for Transportation Services, which updates the effective date of rates for transportation services to 07/01/2015; and SPA 15-0018-UT Medicaid Eligibility Marriage Policy, which recognizes same-sex couples as spouses, if legally married, in regard to income determination

and other post-eligibility issues for both Modified Adjusted Gross Income (MAGI) and non-MAGI groups. This rule change also incorporates by reference the Medical Supplies Utah Medicaid Provider Manual, and the manual's attachment for Donor Human Milk Request Form, effective 07/01/2015; incorporates by reference the Hospital Services Utah Medicaid Provider Manual with its attachments, effective 07/01/2015; incorporates by reference the Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid, effective 07/01/2015; incorporates by reference the Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the Hospice Care Utah Medicaid Provider Manual, and the manual's attachment for the Utah Medicaid Prior Authorization Request for Hospice Services, effective 07/01/2015; incorporates by reference the Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual, with its attachments, effective 07/01/2015; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the Personal Care Utah Medicaid Provider Manual, and the manual's attachment for the Request for Prior Authorization: Personal Care and Capitated Programs effective 07/01/2015; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual, effective 07/01/2015; Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the Office of Inspector General (OIG) Administrative Hearings Procedures Manual, effective 07/01/2015; incorporates by reference the Pharmacy Services Utah Medicaid Provider Manual with its attachments, effective 07/01/2015; incorporates by reference the Coverage and Reimbursement Code Look-up Tool, effective 07/01/2015; incorporates by reference the CHEC Services Utah Medicaid Provider Manual with its attachments, effective 07/01/2015; incorporates by reference the Chiropractic Medicine Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the General Attachments (All Providers) for the

Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the Indian Health Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the Laboratory Services Utah Medicaid Provider Manual with its attachments, effective 07/01/2015; incorporates by reference the Medical Transportation Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with its attachments, effective 07/01/2015; incorporates by reference the Licensed Nurse Practitioner Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables, effective 07/01/2015; incorporates by reference the Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual with its attachments, effective 07/01/2015; incorporates by reference the Podiatric Services Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the Primary Care Network Utah Medicaid Provider Manual with its attachments, effective 07/01/2015; incorporates by reference the Psychology Services Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the School-Based Skills Development Services Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference Section I: General Information Utah Medicaid Provider Manual, effective 07/01/2015; incorporates by reference the Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual, effective 07/01/2015; Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual, effective 07/01/2015; Vision Care Services Utah Medicaid Provider Manual, effective 07/01/2015; and Women's Services Utah Medicaid Provider Manual, effective 07/01/2015.

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

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Vision Care Services, published by Health Care Financing, 07/01/2015
- ◆ Updates Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals, published by Health Care Financing, 07/01/2015
- ◆ Updates Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions, published by Health Care Financing, 07/01/2015
- ◆ Updates Home Health Agencies and Private Duty Nursing Acuity Grid att., published by Health Care Financing, 07/01/2015

- ◆ Updates Medical Transportation, published by Health Care Financing, 07/01/2015
  - ◆ Updates General Attachments (All Providers) for the Utah Medicaid Provider Manual, published by Health Care Financing, 07/01/2015
  - ◆ Updates Utah Home and Community-Based Waiver Services Medicaid Autism Waiver, published by Health Care Financing, 07/01/2015
  - ◆ Updates Hospital Services with attachments, published by Health Care Financing, 07/01/2015
  - ◆ Updates Targeted Case Management for Early Childhood (Ages 0-4), published by Health Care Financing, 07/01/2015
  - ◆ Updates Speech-Language Pathology and Audiology Services, published by Health Care Financing, 07/01/2015
  - ◆ Updates Non-Traditional Medicaid Plan with its attachments, published by Health Care Financing, 07/01/2015
  - ◆ Updates Rural Health Clinics and Federally Qualified Health Centers Services, published by Health Care Financing, 07/01/2015
  - ◆ Updates Utah Medicaid State Plan, published by Health Care Financing, 07/01/2015
  - ◆ Updates Med. Supp. and Donor Human Milk Request Form att., published by Health Care Financing, 07/01/2015
  - ◆ Updates Licensed Nurse Practitioner, published by Health Care Financing, 07/01/2015
  - ◆ Updates Coverage and Reimbursement Code Look-up Tool, published by Health Care Financing, 07/01/2015
  - ◆ Updates School-Based Skills Development Services, published by Health Care Financing, 07/01/2015
  - ◆ Updates Section I: General Information, published by Health Care Financing, 07/01/2015
  - ◆ Updates Targeted Case Management for Individuals with Serious Mental Illness, published by Health Care Financing, 07/01/2015
  - ◆ Updates Podiatric Services, published by Health Care Financing, 07/01/2015
  - ◆ Updates Pharmacy Services with attachments, published by Health Care Financing, 07/01/2015
  - ◆ Updates CHEC Services with attachments, published by Health Care Financing, 07/01/2015
  - ◆ Updates Utah Home and Community-Based Waiver Services New Choices Waiver, published by Health Care Financing, 07/01/2015
  - ◆ Updates Rehabilitative Mental Health and Substance Use Disorder Services, published by Health Care Financing, 07/01/2015
  - ◆ Updates Women's Services, published by Health Care Financing, 07/01/2015
  - ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury, published by Health Care Financing, 07/01/2015
  - ◆ Updates Long Term Care Services in Nursing Facilities with attachments, published by Health Care Financing, 07/01/2015
  - ◆ Updates Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older, published by Health Care Financing, 07/01/2015
  - ◆ Updates Physical Therapy and Occupational Therapy Services and Physical Therapy and Occupational Therapy Decision Tables att., published by Health Care Financing, 07/01/2015
  - ◆ Updates Physician Services, Anesthesiology and Laboratory Services with attachments, published by Health Care Financing, 07/01/2015
  - ◆ Updates Office of Inspector General Administrative Hearings Procedures Manual, published by Office of the Medicaid Inspector General, 07/01/2015
  - ◆ Updates Primary Care Network with attachments, published by Health Care Financing, 07/01/2015
  - ◆ Updates Indian Health, published by Health Care Financing, 07/01/2015
  - ◆ Updates Hospice Care and Prior Authorization Request for Hospice Services att., published by Health Care Financing, 07/01/2015
  - ◆ Updates Personal Care and attachment for the Request for Prior Authorization: Personal Care and Capitated Programs, published by Health Care Financing, 07/01/2015
  - ◆ Updates Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities, published by Health Care Financing, 07/01/2015
  - ◆ Updates Dental, Oral Maxillofacial, and Orthodontia Services, published by Health Care Financing, 07/01/2015
  - ◆ Updates Psychology Services, published by Health Care Financing, 07/01/2015
  - ◆ Updates Laboratory Services with attachments, published by Health Care Financing, 07/01/2015
  - ◆ Updates Chiropractic Medicine, published by Health Care Financing, 07/01/2015
- ANTICIPATED COST OR SAVINGS TO:
- ◆ THE STATE BUDGET: There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to the Department or other state agencies.
  - ◆ LOCAL GOVERNMENTS: There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to local governments.

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

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

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

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

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the 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](mailto:cdevashrayee@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

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

**R414-1. Utah Medicaid Program.**

**R414-1-5. Incorporations by Reference.**

The Department incorporates the ~~April~~ July 1, 2015, versions of the following by reference:

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

(2) Medical Supplies Utah Medicaid Provider Manual, Section 2, Medical Supplies, as applied in Rule R414-70, and the manual's attachment for Donor Human Milk Request Form;

(3) Hospital Services Utah Medicaid Provider Manual with its attachments;

(4) Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;

(5) Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual;

(6) Hospice Care Utah Medicaid Provider Manual, and the manual's attachment for the Utah Medicaid Prior Authorization Request for Hospice Services;

(7) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;

(8) Personal Care Utah Medicaid Provider Manual and the manual's attachment for the Request for Prior Authorization: Personal Care and Capitated Programs;

(9) Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual;

(10) Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual;

(11) Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;

(12) Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities Utah Medicaid Provider Manual;

(13) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;

(14) Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;

(15) Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual;

(16) Office of Inspector General Administrative Hearings Procedures Manual;

(17) Pharmacy Services Utah Medicaid Provider Manual with its attachments;

(18) Coverage and Reimbursement Code Look-up Tool found at <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>;

(19) CHEC Services Utah Medicaid Provider Manual with its attachments;

(20) Chiropractic Medicine Utah Medicaid Provider Manual;

- (21) Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual;
- (22) General Attachments (All Providers) for the Utah Medicaid Provider Manual;
- (23) Indian Health Utah Medicaid Provider Manual;
- (24) Laboratory Services Utah Medicaid Provider Manual with its attachments;
- (25) Medical Transportation Utah Medicaid Provider Manual;
- (26) Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with its attachments;
- (27) Licensed Nurse Practitioner Utah Medicaid Provider Manual;
- (28) Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables;
- (29) Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual with its attachments;
- (30) Podiatric Services Utah Medicaid Provider Manual;
- (31) Primary Care Network Utah Medicaid Provider Manual with its attachments;
- (32) Psychology Services Utah Medicaid Provider Manual;
- (33) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;
- (34) Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual;
- (35) School-Based Skills Development Services Utah Medicaid Provider Manual;
- (36) Section I: General Information Utah Medicaid Provider Manual;
- (37) Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual;
- (38) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual;
- (39) Vision Care Services Utah Medicaid Provider Manual; and
- (40) Women's Services Utah Medicaid Provider Manual.

**KEY: Medicaid**

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

**Notice of Continuation:** March 2, 2012

**Authorizing, and Implemented or Interpreted Law:** 26-1-5; 26-18-3; 26-34-2

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**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-1-12  
Utilization Review**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 39452  
FILED: 06/17/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to remove the Superior System Waiver as the source for hospital utilization review and replace it with the Hospital Services Utah Medicaid Provider Manual, based on direction from the Centers for Medicare and Medicaid Services.

**SUMMARY OF THE RULE OR CHANGE:** This amendment removes the Superior System Waiver as the source for hospital utilization review and replaces it with the Hospital Services Utah Medicaid Provider Manual.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 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 this amendment only changes the source for hospital utilization review but not the procedures themselves.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because this amendment only changes the source for hospital utilization review but not the procedures themselves.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this amendment only changes the source for hospital utilization review but not the procedures themselves.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because this amendment only changes the source for hospital utilization review but not the procedures themselves.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because this amendment only changes the source for hospital utilization review but not the procedures themselves.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This amendment has no fiscal impact on business because it does not change hospital utilization review procedures.

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.

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 39453  
 FILED: 06/17/2015

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to incorporate by reference changes to the New Choices Waiver, Community Supports Waiver, and the Aging Waiver effective 07/01/2015.

**SUMMARY OF THE RULE OR CHANGE:** This amendment incorporates by reference changes to the New Choices Waiver, Community Supports Waiver, and the Aging Waiver effective 07/01/2015. Changes to these waivers implement new quality assurance standards that revise all performance measures to further safeguard waiver participants.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-5 and Section 26-18-3 and Subsection 1915(c) of the Social Security Act

**MATERIALS INCORPORATED BY REFERENCES:**

- ♦ Updates New Choices Waiver, published by Centers for Medicare and Medicaid Services, 07/01/2015
- ♦ Updates Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, published by Centers for Medicare and Medicaid Services, 07/01/2015
- ♦ Updates Waiver for Individuals Age 65 or Older, published by Centers for Medicare and Medicaid Services, 07/01/2015

**ANTICIPATED COST OR SAVINGS TO:**

- ♦ **THE STATE BUDGET:** There is no impact to the state budget because waiver services remain unaffected by this update.
- ♦ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide waiver services for Medicaid recipients.
- ♦ **SMALL BUSINESSES:** There is no impact to small businesses because waiver services remain unaffected by this update.
- ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because waiver services remain unaffected by this update.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because waiver services remain unaffected by this update.

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

**R414-1. Utah Medicaid Program.**

**R414-1-12. Utilization Review.**

(1) The Department conducts hospital utilization review as outlined in the [~~Superior System Waiver~~]Hospital Services Utah Medicaid Provider Manual in effect at the time service [~~was~~]is rendered.

(2) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation.

(3) The standards in the InterQual Criteria shall not apply to services in which a determination has been made to utilize criteria customized by the Department or that are:

- (a) excluded as a Medicaid benefit by rule or contract;
- (b) provided in an intensive physical rehabilitation center as described in Rule R414-2B; or
- (c) organ transplant services as described in Rule R414-10A.

In these exceptions, or where InterQual is silent, the Department shall approve or deny services based upon appropriate administrative rules or its own criteria as incorporated in the Medicaid provider manuals.

**KEY: Medicaid**

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

**Notice of Continuation:** March 2, 2012

**Authorizing, and Implemented or Interpreted Law:** 26-1-5; 26-18-3; 26-34-2

**Health, Health Care Financing,  
 Coverage and Reimbursement Policy  
 R414-61-2  
 Incorporation by Reference**

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment has no impact on business because existing waiver services are unaffected by the update.

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 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

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

**R414-61. Home and Community-Based Services Waivers.**

**R414-61-2. Incorporation by Reference.**

The Department incorporates by reference the following home and community-based services waivers:

- (1) Waiver for Technology Dependent/Medically Fragile Individuals, effective July 1, 2013;
- (2) Waiver for Individuals Age 65 or Older, effective July 1, 201[0]5;
- (3) Waiver for Individuals with Acquired Brain Injuries, effective July 1, 2014;
- (4) Waiver for Individuals with Physical Disabilities, effective July 1, 2011;
- (5) Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, effective July 1, 201[0]5;
- (6) New Choices Waiver, effective July 1, 201[0]5.

These documents are available for public inspection during business hours at the Utah Department of Health, Division of Medicaid and Health Financing, located at 288 North 1460 West, Salt Lake City, UT, 84114-3102.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** [September 26, 2014]2015

**Notice of Continuation:** October 30, 2014

**Authorizing, and Implemented or Interpreted Law:** 26-18-3

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-302-8  
Application for Other Possible Benefits**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39483

FILED: 06/30/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to clarify that a Medicaid applicant or recipient who may be eligible for a Veterans Assistance (VA) apportionment payment must apply for those benefits.

**SUMMARY OF THE RULE OR CHANGE:** This amendment clarifies that all non-modified adjusted gross income (MAGI) Medicaid applicants or recipients who may be eligible for a VA apportionment payment must apply for those benefits.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Pub. L. No. 111-148 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 this amendment only clarifies when an individual must apply for a VA apportionment payment. It does not affect current appropriations for Medicaid services.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because this amendment only clarifies when an individual must apply for a VA apportionment payment.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this amendment only clarifies when an individual must apply for a VA apportionment payment. It neither affects current appropriations for Medicaid services nor imposes new business requirements.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because this amendment only clarifies when an individual must apply for a VA apportionment payment. It does not affect current appropriations for Medicaid services, impose new provider requirements, or create out-of-pocket expenses.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no impact to a single Medicaid provider or to a Medicaid recipient because this amendment only clarifies when an individual must apply for a VA apportionment payment. It does not affect current appropriations for Medicaid services, impose new provider requirements, or create out-of-pocket expenses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because the amendment clarifies requirements for Medicaid recipients and has no impact on providers or other payees of Medicaid funds.

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 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 09/01/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

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

##### **R414-302. Eligibility Requirements.**

##### **R414-302-8. Application for Other Possible Benefits.**

(1) The Department adopts and incorporates by reference 42 CFR 435.608, October 1, 2012 ed., which requires applicants for and recipients of medical assistance to apply for and take all reasonable steps to receive other possible benefits.

(2) The Department may not require an applicant for or recipient of medical assistance to apply for an income benefit if the applicant's or recipient's income is not counted for the purpose of determining eligibility for medical assistance for either that individual or any other household member.

(3) Individuals who may be eligible for Medicare Part B benefits must apply for Medicare Part B and, if eligible, become enrolled in Medicare Part B to be eligible for Medicaid. The state pays the applicable monthly premium and cost-sharing expenses for Medicare Part B for individuals who are eligible for both Medicaid and Medicare Part B.

(4) Individuals whose eligibility is determined using non-Modified Adjusted Gross Income (MAGI) methodologies and who may be eligible for a Veterans Administration (VA) apportionment payment of benefits, as defined by the VA, must apply for those benefits.

**KEY: state residency, citizenship, third party liability, Medicaid Date of Enactment or Last Substantive Amendment: [January 1, 2014]2015**

**Notice of Continuation: January 23, 2013**

**Authorizing, and Implemented or Interpreted Law: 26-18-3**

## Health, Health Care Financing, Coverage and Reimbursement Policy **R414-304** Income and Budgeting

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39484

FILED: 06/30/2015

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to clarify when the Department of Workforce Services (DWS) may count Veterans Administration (VA) payments as income toward Medicaid eligibility.

**SUMMARY OF THE RULE OR CHANGE:** This amendment clarifies when DWS may count VA payments as income toward Medicaid eligibility.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Pub. L. No. 111-148 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 this amendment only clarifies Medicaid eligibility in regard to VA payments. It does not affect current appropriations for Medicaid services.

♦ **LOCAL GOVERNMENTS:** There is no impact to local governments because this amendment only clarifies Medicaid eligibility in regard to VA payments.

♦ **SMALL BUSINESSES:** There is no impact to small businesses because this amendment only clarifies Medicaid eligibility in regard to VA payments. It neither affects current appropriations for Medicaid services nor imposes new business requirements.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because this amendment only clarifies Medicaid eligibility in regard to VA payments. It does not affect current appropriations for Medicaid services, impose new provider requirements, or create out-of-pocket expenses.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no impact to a single Medicaid provider or to a Medicaid recipient because this amendment only clarifies Medicaid eligibility in regard to VA payments. It does not affect current appropriations for Medicaid services, impose new provider requirements, or create out-of-pocket expenses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no impact to business because it does not require anything additional from medical assistance providers.

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 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 09/01/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

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

**R414-304. Income and Budgeting.**

**R414-304-3. Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Unearned Income Provisions.**

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831, October 1, 2012 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1124, 416.1140 through 416.1148, 416.1150, 416.1151, 416.1157, 416.1163 through 416.1166, and Appendix to Subpart K of 416, April 1, 2012 ed. The Department also adopts and incorporates by reference Subsections 404(h)(4) and 1612(b)(24) and (25) of the Compilation of the Social Security Laws in effect January 1, 2013, to determine income and income deductions for Medicaid eligibility. The Department may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency may not count Veteran[']s Administration (VA) payments for aid and attendance or the portion of a VA payment that an individual [makes]receives because of unusual medical expenses. Other VA income based on need is countable income, but is not subject to the \$20 general income disregard.

(3) The eligibility agency may only count as income the portion of a VA check to which the [client]individual is legally entitled. [~~If the payment includes an amount for a dependent family member as determined by the VA, that amount counts as income for the dependent. If the dependent does not live with the veteran or surviving spouse, the portion for the dependent counts as the dependent's income unless the dependent applies to VA to receive the payment directly, VA denies that request, and the dependent does not receive the payment.~~]

~~In that case, the eligibility agency shall also count the amount for a dependent as income of the veteran or surviving spouse who receives the payment.]~~

(4) The eligibility agency may not count as income Social Security Administration (SSA) reimbursements of Medicare premiums.

(5) The eligibility agency may not count as income the value of special circumstance items if the items are paid for by donors.

(6) For aged, blind and disabled Medicaid, the eligibility agency shall count as income two-thirds of current child support that an individual receives in a month for the disabled child. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-kind. If there is more than one child for whom the payment is made, the amount is divided equally among the children unless a court order indicates a different division.

(7) The eligibility agency shall count as income of the child, child support payments received from a parent or guardian for past months or years.

(8) The agency shall use countable income of the parent to determine the amount of income that will be deemed from the parent to the child to determine the child's eligibility.

(9) For aged, blind and disabled Institutional Medicaid, court-ordered child support payments collected by the Office of Recovery Services (ORS) for a child who resides out-of-home in a Medicaid 24-hour care facility are not counted as income to the child. If ORS allows the parent to retain up to the amount of the personal needs allowance for the child's personal needs, that amount is counted as income for the child. All other current child support payments received by the child or guardian that are not subject to collection by ORS count as unearned income to the child.

(10) The eligibility agency shall count as unearned income the interest earned from a sales contract on either or both the lump sum and installment payments when the interest is received or made available to the client.

(11) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(12) Payments under a contract that provide for payments at set intervals or after completion of the contract period are not lump sum payments. The payments are subject to regular income counting rules. Retroactive payments from SSI and SSA reimbursements of Medicare premiums are not lump sum payments.

(13) The eligibility agency may not count as income educational loans, grants, and scholarships received from Title IV programs of the Higher Education Act or from Bureau of Indian Affairs educational programs, and may not count any other grants, scholarships, fellowships, or gifts that a client uses to pay for education. The eligibility agency shall count as income, in the month that the client receives them, any amount of grants, scholarships, fellowships, or gifts that the client uses to pay for non-educational expenses. Allowable educational expenses include:

(a) tuition;

- (b) fees;
- (c) books;
- (d) equipment;
- (e) special clothing needed for classes;
- (f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount; and
- (g) child care necessary for school attendance.

(14) The eligibility agency may not count as income, payments from a qualified long-term care insurance partnership plan as defined in 42 U.S.C. 1396p(b)(1)(C)(iii), paid directly to a long-term care provider or collected by the Office of Recovery Services as a third-party liability source.

(15) Except for an individual eligible for the Medicaid Work Incentive (MWI) program, the following provisions apply to non-institutional medical assistance:

(a) For aged, blind and disabled Medicaid, the eligibility agency may not count income of a spouse or a parent to determine Medicaid eligibility of a person who receives SSI or meets 1619(b) criteria. SSI recipients and 1619(b) status individuals who meet all other Medicaid eligibility factors are eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind or disabled person has more income after deductions than the allocation for a spouse, the eligibility agency shall deem the spouse's income to the aged, blind or disabled spouse to determine eligibility.

(c) The eligibility agency shall determine household size and whose income counts for aged, blind and disabled Medicaid as described below.

- (i) If only one spouse is aged, blind or disabled:

(A) The eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. The eligibility agency shall compare the combined income to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, the eligibility agency shall compare the combined income, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the eligibility agency may not count the ineligible spouse's income and may not include the ineligible spouse in the household size. Only the eligible spouse's income is compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it is compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged, blind or disabled, the eligibility agency shall combine the income of both spouses and compare to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount and one spouse receives SSI, the eligibility agency may only compare the income of the non-SSI spouse, after allowable deductions, to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds 100% of the federal poverty guideline, the eligibility agency shall compare the income of both spouses, after allowable deductions, to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, the eligibility agency shall deem income of the non-covered spouse to the covered spouse when

that income exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, the eligibility agency may only count the covered spouse's income. In both cases, the countable income is compared to 100% of the two-person poverty guideline. If the countable income exceeds the limit, the eligibility agency shall compare the income, after allowable deductions, to the BMS.

(I) If the non-covered spouse has income to deem to the covered spouse, the eligibility agency shall compare the countable income, after allowable deductions, to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have income to deem to the covered spouse, the eligibility agency may only compare the covered spouse's income, after allowable deductions, to a one-person BMS to calculate the spenddown.

(iii) In determining eligibility under (c) for an aged or disabled person whose spouse is blind, both spouses' income is combined.

(A) If the combined income after allowable deductions is under 100% of the federal poverty guideline, the aged or disabled spouse will be eligible under the 100% poverty group defined in 1902(a)(10)(A)(ii) of the Social Security Act, and the blind spouse is eligible without a spenddown under the medically needy group defined in 42 CFR 435.301.

(B) If the combined income after allowable deductions is over 100% of poverty, both spouses are eligible with a spenddown under the medically needy group defined in 42 CFR 435.301.

(iv) If one spouse is disabled and working, the other is aged, blind or disabled and not working, and neither spouse is an SSI recipient nor a 1619(b) eligible individual, the working disabled spouse may choose to receive coverage under the MWI program. If both spouses want coverage, however, the eligibility agency shall first determine eligibility for them as a couple. If a spenddown is owed for them as a couple, they must meet the spenddown to receive coverage for both of them.

(d) Except when determining countable income for the 100% poverty-related Aged and Disabled Medicaid programs, the eligibility agency shall not deem income from a spouse who meets 1619(b) protected group criteria.

(e) The eligibility agency shall determine household size and whose income counts for QMB, SLMB, and QI assistance as described below:

(i) If both spouses receive Part A Medicare and both want coverage, the eligibility agency shall combine income of both spouses and compare it to the applicable percentage of the poverty guideline for a two-person household.

(ii) If one spouse receives Part A Medicare and the other spouse is aged, blind or disabled and does not receive Part A Medicare or does not want coverage, then the eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that income exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse is counted. In both cases, the eligibility agency shall compare the countable income to the applicable percentage of the federal poverty guideline for a two-person household.

(iii) If one spouse receives Part A Medicare and the other spouse is not aged, blind or disabled, the eligibility agency shall deem income of the ineligible spouse to the eligible spouse when that

income exceeds the allocation for a spouse. The agency shall combine countable income to the applicable percentage of the federal poverty guideline for a two-person household. If the deemed income of the ineligible spouse does not exceed the allocation for a spouse, only the eligible spouse's income is counted and compared to the applicable percentage of the poverty guideline for a one-person household.

(iv) The eligibility agency may not count SSI income to determine eligibility for QMB, SLMB or QI assistance.

(f) If any parent in the home receives SSI or is eligible for 1619(b) protected group coverage, the eligibility agency may not count the income of either parent to determine a child's eligibility for B or D Medicaid.

(g) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

(16) For Institutional Medicaid, the eligibility agency may only count the client in the household size. Only the client's income and deemed income from an alien client's sponsor is counted to determine the cost of care contribution. The provisions in Rule R414-307 govern who to include in the household size and whose income is counted to determine eligibility for home and community-based waiver services and the cost-of-care contribution.

(17) The eligibility agency shall deem any unearned and earned income from an alien's sponsor and the sponsor's spouse when the sponsor signs an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997.

(a) The eligibility agency shall end sponsor deeming when the alien becomes a naturalized United States (U.S.) citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act, or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(b) The eligibility agency may not apply sponsor deeming to applicants who are eligible for Medicaid for emergency services only.

(18) If retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the eligibility agency may only count as income the amount that is paid to the individual.

(19) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(20) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives in accordance with the requirements of Sec. 6409, Pub. L. 112 240.

(21) The eligibility agency may not count income that is derived from an ownership interest in certain property and rights of federally-recognized American Indians and Alaska Natives including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties, or usage rights related to natural resources that include extraction of natural resources; and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional, or cultural significance, and rights that support subsistence or traditional

lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

**R414-304-6. Unearned Income Provisions for Medically Needy Family, Child and Pregnant Woman Non-Institutional and Institutional Medicaid.**

(1) The Department adopts and incorporates by reference 42 CFR 435.811 and 435.831, October 1, 2012 ed., 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(vi)(A), 233.20(a)(4)(ii), October 1, 2012 ed., and Subsection 404(h)(4) of the Compilation of the Social Security Laws, in effect January 1, 2013. The eligibility agency may not count as income any payments from sources that federal laws specifically prohibit from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The eligibility agency may not count as income money loaned to the individual if the individual proves the money is from a loan that the individual is expected to repay.

(3) The eligibility agency may not count as income support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services.

(4) The eligibility agency may not count as income the value of food stamp assistance, USDA food donations or WIC vouchers received by members of the household.

(5) The eligibility agency may not count income that is received too irregularly or infrequently to count as regular income, such as cash gifts, up to \$30 a calendar quarter per household member. Any amount that exceeds \$30 a calendar quarter per household member counts as income when received. Irregular or infrequent income may be divided equally among all members of the household.

(6) The eligibility agency may not count as income the amount deducted from benefit income to repay an overpayment.

(7) The eligibility agency may not count as income the value of special circumstance items paid for by donors.

(8) The eligibility agency may not count as income payments for home energy assistance.

(9) The eligibility agency may not count payments from any source that are to repair or replace lost, stolen or damaged exempt property. If the payments include an amount for temporary housing, the eligibility agency may only count the amount that the client does not intend to use or that is more than what is needed for temporary housing.

(10) The eligibility agency may not count as income SSA reimbursements of Medicare premiums.

(11) The eligibility agency may not count as income payments from the Department of Workforce Services under the Family Employment program, the Working Toward Employment Program, and the Refugee Cash Assistance program. To determine eligibility for medically needy Medicaid, the eligibility agency shall count income that the client receives to determine the amount of these payments, unless the income is an excluded income for medical assistance programs under other laws or regulations.

(12) The eligibility agency may not count as income interest or dividends earned on countable resources. The eligibility agency may not count as income interest or dividends earned on resources that are specifically excluded by federal laws from being counted as available resources to determine eligibility for federally-funded, means-tested medical assistance programs, other than resources excluded by 42 U.S.C. 1382b(a).

(13) The eligibility agency may not count as income the increase in pay for a member of the armed forces that is called "hostile fire pay" or "imminent danger pay," which is compensation for active military duty in a combat zone.

(14) The eligibility agency shall count as income SSI and State Supplemental payments received by children who are included in the coverage under medically needy Medicaid programs for families, pregnant women and children.

(15) The eligibility agency shall count unearned rental income. The eligibility agency shall deduct \$30 a month from the rental income. If the amount charged for the rental is consistent with community standards, the eligibility agency shall deduct the greater of either \$30 or the following actual expenses that the client can verify:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property, including utility costs paid by the applicant or recipient;

(c) interest paid on a loan or mortgage made for upkeep or repair; and

(d) the value of a one-person food stamp allotment, if meals are provided to a boarder.

(16) The eligibility agency shall count deferred income when the client receives the income, the client does not defer the income by choice, and the client reasonably expects to receive the income. If the client defers the income by choice, the agency shall count the income according to when the client could receive the income. The eligibility agency shall count as income the amount deducted from income to pay for benefits like health insurance, medical expenses or child care in the month that the client could receive the income.

(17) The eligibility agency shall count the amount deducted from income to pay an obligation of child support, alimony or debts in the month that the client could receive the income.

(18) The eligibility agency shall count payments from trust funds as income in the month the payment is received by the individual or made available for the individual's use.

(19) The eligibility agency may only count as income the portion of a VA check to which the [client]individual is legally entitled. [~~If the payment includes an amount for a dependent family member as determined by the VA, that amount counts as income for the dependent. If the dependent does not live with the veteran or surviving spouse, the portion for the dependent counts as the dependent's income unless the dependent applies to VA to receive the payment directly, VA denies that request, and the dependent does not receive the payment. In that case, the eligibility agency shall also count the amount for a dependent as income of the veteran or surviving spouse who receives the payment.~~]

(20) The eligibility agency shall count as income deposits to financial accounts jointly-owned between the client and one or more other individuals, even if the deposits are made by a non-household member. If the client disputes ownership of the deposits and provides adequate proof that the deposits do not represent income to the client, the eligibility agency may not count those funds as income. The eligibility agency may require the client to terminate access to the jointly-held accounts.

(21) The eligibility agency shall count as unearned income the interest earned from a sales contract on lump sum payments and

installment payments when the interest payment is received by or made available to the client.

(22) The eligibility agency shall count current child support payments as income to the child for whom the payments are being made. If a payment is for more than one child, the agency shall divide that amount equally among the children unless a court order indicates otherwise. Child support payments received by a parent or guardian to repay amounts owed for past months or years are countable income to determine eligibility of the parent or guardian who receives the payments. If ORS collects current child support, the eligibility agency shall count the child support as current even if ORS mails the payment to the client after the month it is collected.

(23) The eligibility agency shall count payments from annuities as unearned income in the month that the client receives the payments.

(24) If retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, the eligibility agency may only count the amount paid to the individual.

(25) The eligibility agency shall deem both unearned and earned income from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act after December 18, 1997.

(a) The eligibility agency shall stop deeming income from a sponsor when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. After December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(b) The eligibility agency may not apply sponsor deeming to applicants who are eligible for emergency services only.

(26) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(27) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives in accordance with the requirements of Sec. 6409 of the American Taxpayer Relief Act of 2012, Pub. L. No. 112 240, 126, Stat. 2313.

(28) The eligibility agency may not count income that is derived from an ownership interest in certain property and rights of federally-recognized American Indians and Alaska Natives including:

(a) certain tribal lands held in trust which are located on or near a reservation, or allotted lands located on a previous reservation;

(b) ownership interests in rents, leases, royalties, or usage rights related to natural resources that include extraction of natural resources; and

(c) ownership interests and usage rights in personal property which has unique religious, spiritual, traditional, or cultural significance, and rights that support subsistence or traditional lifestyles, as defined in Section 5006(b)(1) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115.

**KEY: financial disclosures, income, budgeting**

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

**Notice of Continuation: January 23, 2013**

**Authorizing, and Implemented or Interpreted Law: 26-18-3**

Health, Family Health and  
Preparedness, Emergency Medical  
Services

**R426-2**

Emergency Medical Services Provider  
Designations, Critical Incident Stress  
Management and Quality Assurance  
Reviews

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39467

FILED: 06/29/2015

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update and re-organize the designation of pre-hospital emergency medical service providers, critical incident stress management, and quality assurance review rules.

SUMMARY OF THE RULE OR CHANGE: The changes clarify terms and designation requirements for EMS providers. The amendment is for the designation of pre-hospital emergency medical service providers, and includes critical incident stress management team and quality assurance review updates.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: No effect on state budget. There is no effect because the rule amendments clarify past requirements, standardize wording, and provide consistency with other sections of rule pertaining to Title R426. The changes did not affect state processes or change current staff workload for designation procedures.

◆ LOCAL GOVERNMENTS: No effect on local government. There is no effect because the rule amendments clarify past requirements, standardize wording, and provide consistency with other sections of rule pertaining to Title R426. The changes did not add any additional workload or costs to local governments who provide designated pre-hospital services.

◆ SMALL BUSINESSES: Possible fiscal impacts for small businesses because patient transports may decrease in distance. Positive impacts are expected as small business may receive more patients.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Possible fiscal impacts for other persons because patient transports may decrease in distance. Patients may be transported to other destination decreasing costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for affected persons should not be negatively affected. The amended rule changes do not add any additional requirements for people acquiring services from designated pre-hospital providers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be some fiscal impact to business in that the proposed changes may decrease the need for long distance ambulance transport.

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

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
EMERGENCY MEDICAL SERVICES  
3760 S HIGHLAND DR  
SALT LAKE CITY, UT 84106  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at [gdansie@utah.gov](mailto:gdansie@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

**R426. Health, Family Health and Preparedness, Emergency Medical Services.**

**R426-2. Emergency Medical Services Provider Designations for Pre-Hospital Providers, Critical Incident Stress Management and Quality Assurance Reviews.**

**R426-2-100. Authority and Purpose.**

(1) This rule establishes ~~standards for the designation~~ types of ~~emergency medical service~~ providers ~~that require a designation, the application process for a obtaining a designation and minimum designation requirements.~~ The rule also ~~establishes~~ criteria for critical incident stress management ~~and the process for quality assurance reviews.~~

~~(2) The definitions in Title 26, Chapter 8a are adopted and incorporated by reference into this rule.~~

**R426-2-200. Pre-hospital Provider Designation Types.**

The following type of provider shall obtain a designation from the Department:

(1) Quick Response Unit ~~[An entity that responds to 911 EMS calls for assistance from the public, but that does not provide ambulance transport or paramedic service, shall obtain a designation from the Department as a quick response unit.]~~

(2) Emergency Medical Service Dispatch Center ~~[An entity that accepts calls for 911 EMS assistance from the public, and dispatches emergency medical units or field EMS personnel must first~~



~~obtain a designation from the Department as an emergency medical dispatch center.~~

~~(3) A hospital that provides on-line medical control for prehospital emergency medical care must first obtain a designation from the Department as a resource hospital.]~~

**R426-2-300. [Service Levels.]Quick Response Unit Minimum Designation Requirements.**

~~[(1) A quick response unit may only operate and perform the skills at the service level at which it is designated. The Department may issue designations for the following types of service at the given levels: quick response unit;~~

- ~~(a) emergency medical responder;~~
- ~~(b) emergency medical technician; or~~
- ~~(c) advanced emergency medical technician.~~
- ~~(2) emergency medical dispatch center; and~~
- ~~(3) resource hospital.~~

**R426-2-400. Scope of Operations.**

~~(1) A designated quick response unit may only provide service in its specific geographical service area except as provided by R426-3-800 Aid Agreements.~~

~~(2) A designated quick response unit may only provide emergency medical services for its category of designation that corresponds to the certification levels in R426-5.~~

**R426-2-500. Quick Response Unit Minimum Designation Requirements.**

~~A person requesting designation must meet the following minimum requirements:~~

~~] A quick response unit shall meet the following minimum designation requirements:~~

~~(1) Have vehicle(s), equipment, and supplies that meet the current requirements of [R426-4-900]the Department for licensed and designated providers as found on the Bureau of EMS and Preparedness' web-site to carry out its responsibilities under its designation;~~

~~(2) Have location(s) for stationing its vehicle(s), equipment and supplies;~~

~~(3) Have a current dispatch agreement with a designated Emergency Medical Service Dispatch Center[-];~~

~~(4) Have a Department-certified training officer;~~

~~(5) Have a current plan of operations, which shall include:~~

~~(a) the names, EMS ID Number, and certification level of all personnel;~~

~~(b) operational procedures; and~~

~~(c) a description of how the designee proposes to interface with other EMS agencies;~~

~~(6) Have a current agreement with a Department-certified off-line medical director who will perform the following:~~

~~(a) develop and implement patient care standards which include written standing orders and triage, treatment, pre-hospital protocols, and/or pre-arrival instructions to be given by designated emergency medical dispatch centers;~~

~~(b) ensure the qualification of field EMS personnel involved in patient care and dispatch through the provision of ongoing continuing medical education programs and appropriate review and evaluation;~~

(c) develop and implement an effective quality improvement program, including medical audit, review, and critique of patient care;

(d) annually review triage, treatment, and transport protocols and update them as necessary;

(e) suspend from patient care, pending Department review, a field EMS personnel or dispatcher who does not comply with local medical triage, treatment and transport protocols, pre-arrival instruction protocols, or who violates any of the EMS rules, or who the medical director determines is providing emergency medical service in a careless or unsafe manner. The medical director must notify the Department within one business day of the suspension; and

(f) attend meetings of the local EMS Council, if one exists, to participate in the coordination and operations of local EMS providers.

(7) Have current treatment protocols approved by the agencies off-line medical director for the designated service level;

(8) Provide the Department with a copy of its certificate of insurance;

(9) Provide the Department with a letter of support from the licensed provider(s) in the geographical service area; and

(10) Not be disqualified for any of the following reasons:

(a) violation of Subsection 26-8a-504; or

(b) a history of disciplinary action relating to an EMS license, permit, designation or certification in this or any other state.

**R426-2-[600]400. Emergency Medical Service Dispatch Center Minimum Designation Requirements.**

An emergency medical service dispatch center [~~must~~]shall meet the following minimum designation requirements:

(1) Have in effect a selective medical dispatch system approved by the off-line medical director[~~s and the Department,~~] which includes:

(a) systemized caller interrogation questions;

(b) systemized pre-arrival instructions; and

(c) protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration;

(2) Provide pre-hospital arrival instructions by a certified Emergency Medical Dispatcher.

~~([2]3)~~ Have a current updated plan of operations, which shall include:

~~(a) plan of operations to be used in a disaster or emergency;~~

~~(b) communication systems, and~~

~~(c) aid agreements with other designated medical service dispatch centers.~~

~~[(a) the names, training, and certification of Emergency Medical Dispatch personnel;~~

~~(b) operational procedures which at a minimum include~~

~~(i) a description of how the designee proposes to communicate with EMS agencies;~~

~~(ii) a copy of the disaster and disaster recovery plans.~~

~~([3]4)~~ Have a current agreement with a Department-certified off-line medical director.

~~([4]5)~~ Have an ongoing medical call review quality assurance program; and

~~[(5) Provide pre-hospital arrival instructions by a certified Emergency Medical Dispatcher at all times.~~

~~](6) Have a certified emergency medical dispatcher roster, which shall include:~~

~~(a) certified staff names, Department certification numbers and expiration dates; and~~

~~(b) national certification number and expiration dates.~~

**~~[R426-2-700. Resource Hospital Minimum Requirements.~~**

~~A resource hospital must meet the following minimum requirements:~~

~~(1) be licensed in Utah or another state as a general acute hospital or be a Veteran's Administration hospital operating in Utah.~~

~~(2) have the ability to communicate with other EMS providers operating in the area.~~

~~(3) provide on-line medical control for all prehospital EMS providers who request assistance for patient care, 24 hours a day, seven days a week. A resource hospital must also:~~

~~(a) create and abide by written prehospital emergency patient care protocols for use in providing on-line medical control for prehospital EMS providers;~~

~~(b) train new staff on the protocols before the new staff is permitted to provide on-line medical control; and annually review with physician and nursing staff~~

~~(c) annually provide in-service training on the protocols to all physicians and nurses who provide on-line medical control; and~~

~~(d) make the protocols immediately available to staff for reference.~~

~~(4) The on-line medical control shall be by direct voice-communication with a physician or a registered nurse or physician's assistant licensed in Utah who is in voice contact with a physician.~~

~~(5) A resource hospital must establish and actively implement a quality improvement process. This process will include:~~

~~(a) a medical control committee.~~

~~(i) the committee must meet at least quarterly to review and evaluate prehospital emergency runs, continuing medical education needs, and EMS system administration problems;~~

~~(ii) committee members must include an emergency physician representative, hospital nurse representative, hospital administration representative, and ambulance and emergency services representatives; and~~

~~(iii) the hospital must keep minutes of the medical control committee's meetings and make them available for Department review.~~

~~(b) the hospital must appoint a quality review coordinator for the prehospital quality improvement process.~~

~~(c) the hospital must cooperate with the prehospital EMS providers' off-line medical directors in the quality review process, including granting access to hospital medical records of patients served by the particular prehospital EMS provider.~~

~~(d) the hospital must assist the Department in evaluating EMS system effectiveness by submitting to the Department, in an electronic format specified by the Department, quarterly data specified by the Department.~~

**~~R426-2-710. Stroke Treatment and Stroke Receiving Center Designation Requirements.~~**

~~A hospital desiring to be a Stroke Treatment Center (Primary or Comprehensive) must be accredited as such by the Joint Commission on Accreditation of Healthcare Organizations (JACHO) or other nationally recognized accrediting body. A hospital desiring to be designated as a Stroke Receiving Center for receiving stroke patients~~

~~via Emergency Medical Services shall meet the following requirements:~~

~~(1) Be licensed as an acute care hospital in Utah.~~

~~(2) Have an emergency department staffed by a Registered Nurse at all time.~~

~~(3) Require physician response to the emergency department in less than thirty (30) minutes for treatment of stroke patients.~~

~~(4) Maintain the ability of physician and nursing staff to utilize a standardized assessment tool for ischemic stroke patients.~~

~~(5) Maintain, have readily available and utilize approved thrombolytic medications for treatment of patients meeting criteria for administration of thrombolytic therapy.~~

~~(6) Have a standardized acute stroke protocol in place and provide authority of appropriate emergency department staff to implement the protocol when appropriate.~~

~~(7) Maintain availability of ancillary equipment and personnel to diagnose and treat acute stroke patients in a timely manner.~~

~~(8) Have in place patient transport protocols with designated stroke treatment centers.~~

~~(9) Have an active and functioning performance improvement program for acute stroke care and report required data to the Utah Department of Health as required by the Department.~~

~~(10) Submit to a formal survey by representatives of the Department~~

~~(11) Upon successful designation, the Department may, in consultation with off-line EMS medical direction and protocol, recommend direct transport of stroke patients to a Stroke Receiving Center or a Stroke Treatment Center by an EMS agency.~~

**~~R426-2-720. Percutaneous Coronary Intervention (PCI) Center Requirements.~~**

~~A hospital desiring to be designated as a Percutaneous Coronary Intervention (PCI) Center for the purpose of receiving acute ST-elevation myocardial infarction (STEMI) patients via EMS shall meet to following requirements:~~

~~(1) Be licensed as an acute care hospital in Utah.~~

~~(2) Have an emergency department staffed by at least one (1) Physician and one (1) Registered Nurse at all times.~~

~~(3) Have the ability to receive 12-lead EKG data from EMS agencies transporting patients to the hospital for treatment of ST-Segment Elevation Myocardial Infarction (STEMI).~~

~~(4) Have and maintain the ability to provide cardiac catheterization and PCI of STEMI patients within ninety (90) minutes of patient arrival in the emergency department 24/7.~~

~~(5) Have an active and functioning performance improvement program for STEMI care and report required data to the Utah Department of Health as required by the Department.~~

~~(6) Submit to a formal survey by representatives of the Department.~~

~~(7) Upon successful designation, the Department may, in consultation with off-line EMS medical direction and protocol, recommend direct transport of STEMI patients to a STEMI Treatment Center by an EMS agency.~~

**~~R426-2-800. Designation Application.~~**

~~An entity desiring a designation or a renewal of its designation shall submit:~~

~~(a) applicable fees and an application on Department-approved forms to the Department;~~

~~(b) documentation that it meets the minimum requirements for the designation listed in this rule;~~

~~(c) other information the Department determines to be necessary for processing the application and oversight of the designated entity and the following:~~

~~(2) Quick Response Unit;~~

~~(a) identifying information about the entity and its principals, if a resourcee hospital the name of the hospital;~~

~~(b) the name of the person or governmental entity financially and otherwise responsible for the service provided by the designee and documentation from that entity accepting the responsibility;~~

~~(c) identifying information about the entity that will provide the service and its principals;~~

~~(d) if the applicant is not a governmental entity, a statement of type of entity and certified copies of the documents creating the entity;~~

~~(e) a description of the geographical area that it will serve; and~~

~~(f) demonstrate a need for said service.~~

~~(3) Emergency Medical Dispatch Center;~~

~~(a) documentation of the on-going medical call review and quality assurance program; and~~

~~(b) documentation of any modifications to the medical dispatch protocols;~~

~~(4) Resourcee Hospital;~~

~~(a) the hospital's address;~~

~~(b) the name and phone number of the individual who supervises the hospital's responsibilities as a designated resourcee hospital.~~

#### **R426-2-810. Stroke Designation Application.**

A hospital desiring to be designated as a Stroke Receiving Center shall submit the applicable fees and an application on Department-approved forms to the Department. As part of the application, the applicant shall provide:

(1) The name of the hospital to be designated.

(2) The hospital address

(3) The name and phone number of the person responsible for supervision of the hospital's stroke care.

(4) Other information that the department deems necessary for processing of the application and oversight of the designated entity.

(5) Hospitals desiring designation must be verified by hosting a site visit by the Department.

(6) The Department and its consultants may conduct observation, review and monitor activities with any designated stroke center to verify ongoing compliance with designation requirements.

(7) Submit performance improvement data to the Department as required.

#### **R426-2-820. Percutaneous Coronary Intervention (PCI) Center Application.**

A hospital desiring to be designated as a ST Segment Elevation Myocardial Infarction (STEMI) Treatment Center shall submit the applicable fees and an application on Department-approved forms to the Department. As part of the application, the applicant shall provide:

(1) The name of the hospital to be designated.

(2) The hospital address

(3) The name and phone number of the person responsible for supervision of the hospital's STEMI care.

(4) Other information that the department deems necessary for processing of the application and oversight of the designated entity.

(5) Hospitals desiring designation must be verified by hosting a site visit by the Department.

(6) The Department and its consultants may conduct observation, review and monitor activities with any designated stroke center to verify ongoing compliance with designation requirements.

(7) Submit performance improvement data to the Department as required.

#### **R426-2-500. Designation Applications.**

Any provider applying for designation shall submit to the Department: applications fees, complete application on Department approved forms, and documentation verifying that the provider meets the minimum requirements for the designation, as listed in this rule. The Department may determine other information is necessary for processing, and will provide a list of those requirements to the applicant. Additional items specific to the designation type are required as outlined below. A provider applying for re-designation shall submit an application as described above 90 days prior to the expiration of its designation.

#### **R426-2-600. Quick Response Unit Designation Applications.**

A Quick Response Unit shall provide:

(1) Name of the organization and its principles.

(2) Name of the person or organization financially responsible for the service and documentation from that entity accepting responsibility.

(3) If the applicant is privately owned, they shall submit certified copies of the document creating the entity.

(4) A description of the geographical area of service.

(5) A demonstrated need for the service.

#### **R462-2-700. Emergency Medical Service Dispatch Center Designation Applications.**

An Emergency Medical Service Dispatch Center shall provide:

(1) Name of the organization and its principles.

(2) Name of the person or organization financially responsible for the service provided by the designee and documentation from that entity accepting responsibility.

(3) If the applicant is privately owned, they shall submit certified copies of the document creating the entity.

(4) A description of the geographical area of service.

(5) A demonstrated need for the service.

#### **R426-2-[900]800. Criteria for Denial or Revocation of Designation.**

(1) The Department may deny an application for a designation for any of the following reasons:

(a) failure to meet requirements as specified in the rules governing the service;

(b) failure to meet vehicle, equipment, or staffing requirements;

(c) failure to meet requirements for renewal or upgrade;  
 (d) conduct during the performance of duties relating to its responsibilities as an EMS provider that is contrary to accepted standards of conduct for EMS personnel described in Sections 26-8a-502 and 26-8a-504;

(e) failure to meet agreements covering training standards or testing standards;

(f) a history of disciplinary action relating to a license, permit, designation, or certification in this or any other state;

(g) a history of criminal activity by the licensee or its principals while licensed or designated as an EMS provider or while operating as an EMS service with permitted vehicles;

(h) falsifying or misrepresenting any information required for licensure or designation or by the application for either;

(i) failure to pay the required designation or permitting fees or failure to pay outstanding balances owed to the Department;

(j) failure to submit records and other data to the Department as required by statute or rule;

(k) misuse of grant funds received under Section 26-8a-207; and

(l) violation of OSHA or other federal standards that it is required to meet in the provision of the EMS service.

(2) An applicant who has been denied a designation may request a Department review by filing a written request for reconsideration within thirty calendar days of the issuance of the Department's denial.

**R426-2-[1000]900. Application Review and Award.**

(1) If the Department finds that an application for designation is complete and that the applicant meets all requirements, it may approve the designation.

(2) Issuance of a designation by the Department is contingent upon the applicant's demonstration of compliance with all applicable rules and a successful Department quality assurance review.

(3) A designation may be issued for up to a four-year period. The Department may alter the length of the designation to standardize renewal cycles.

**R426-2-[1100]1000. Change in Designated Service Level.**

(1) A quick response unit may apply to provide a higher designated level of service by:

(a) submitting the applicable fees; and

(b) submitting an application on Department-approved forms to the Department.

(2) As part of the application, the applicant shall provide:

(a) a copy of the new treatment protocols for the higher level of service approved by the off-line medical director;

(b) an updated plan of operations demonstrating the applicant's ability to provide the higher level of service;

(c) a written assessment of the performance of the applicant's field performance by the applicant's off-line medical director; and

(d) provide the Department with a letter of support from the licensed provider(s) in the geographical service area.

(3) If the Department finds that the applicant has demonstrated the ability to provide the upgraded service, it shall issue a new designation reflecting the higher level of service.

**R426-2-[1200]1100. Critical Incident Stress Management.**

(1) The Department may establish a critical incident stress management (CISM) team to meet its public health responsibilities under Utah Code Section 26-8a-206.

(2) The CISM team may conduct stress debriefings, ~~and~~ defusings, demobilizations, education, and other critical incident stress interventions upon request for persons who have been exposed to one or more stressful incidents in the course of providing emergency services.

(3) Individuals who serve on the CISM team must complete initial and ongoing training.

(4) While serving as a CISM team member, the individual is acting on behalf of the Department. All records collected by the CISM team are Department records. CISM team members shall maintain all information in strict confidence as provided in Utah Code Title 26, Chapter 3.

(5) The Department may reimburse a CISM team member for ~~mileage~~ travel expenses incurred in performing his or her duties in accordance with state finance mileage reimbursement policy.

**R426-2-[1300]1200. Quality Assurance Reviews.**

(1) The Department may conduct quality assurance reviews of licensed and designated organizations and training programs on an annual basis or more frequently as necessary to enforce this rule;

(2) The Department shall conduct a quality assurance review prior to issuing a new license or designation.

(3) The Department may conduct quality assurance reviews on all personnel, vehicles, facilities, communications, equipment, documents, records, methods, procedures, materials and all other attributes or characteristics of the organization, which may include audits, surveys, and other activities as necessary for the enforcement of the Emergency Medical Services System Act and the rules promulgated pursuant to it.

(a) The Department shall record its findings and provide the organization with a copy.

(b) The organization must correct all deficiencies within 30 days of receipt of the Department's findings.

(c) The organization shall immediately notify the Department on a Department-approved form when the deficiencies have been corrected.

**[R426-2-1400. Penalties.**

~~As required by Subsection 63G-3-201(5): Any person that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6 and/or revocation of designation.~~

**[KEY: emergency medical services**

**Date of Enactment or Last Substantive Amendment: [October 18, 2013]2015**

**Authorizing, and Implemented or Interpreted Law: 26-8a**

**Health, Family Health and  
Preparedness, Emergency Medical  
Services  
R426-9  
Statewide Trauma System Standards**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39468

FILED: 06/29/2015

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update the required trauma center data elements and the addition of other designated patient destinations formerly contained in Rule R426-2. (DAR NOTE: The proposed amendment to Rule R426-2 is under DAR No. 39467 in this issue, July 15, 2015, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The updates to trauma center designations reflect new national standards. Other designated patient destinations were updated by the EMS Rules Task Force and approved by the EMS Committee previously found in Rule R426-2.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: No anticipated fiscal impact to the state budget because there are no changes in the rule requirements that are imposed by these amendments.
- ◆ LOCAL GOVERNMENTS: Fiscal impacts may include a reduction in long distance ambulance transports and associated patient billing for mileage. Patients in specific situations may now be allowed to travel to closer designated patient receiving facilities as proposed in the amended rule. This may be a positive or negative impact depending on the location of the patient destination.
- ◆ SMALL BUSINESSES: Possible cost savings to businesses because patient destinations may be changed due to new types of designated patient destinations.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Possible cost savings to businesses because patient destinations may be changed due to new types of designated patient destinations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Patients may potentially save money due to proper initial patient destinations thereby decreasing the need for additional ambulance transfers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be some fiscal impact to business in that the proposed changes may decrease the need for long distance ambulance transport.

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

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
EMERGENCY MEDICAL SERVICES  
3760 S HIGHLAND DR  
SALT LAKE CITY, UT 84106  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at [gdansie@utah.gov](mailto:gdansie@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

**R426. Health, Family Health and Preparedness, Emergency Medical Services.**

**R426-9. [Statewide]Trauma [System Standards]and EMS System Facility Designations.**

**R426-9-100. Authority and Purpose for Trauma System Standards.**

(1) Authority - This rule is established under Title 26, Chapter 8a, 252, Statewide Trauma System, which authorizes the Department to:

- (a) establish and actively supervise a statewide trauma system;
- (b) establish, by rule, trauma center designation requirements and model state guidelines for triage, treatment, transport, and transfer of trauma patients to the most appropriate health care facility; and

(c) designate trauma care facilities consistent with the trauma center designation requirements and verification process established by the Department and applicable statutes.

(2) This rule provides standards for the categorization of all hospitals and the voluntary designation of Trauma Centers to assist physicians in selecting the most appropriate physician and facility based upon the nature of the patient's critical care problem and the capabilities of the facility.

(3) It is intended that the categorization process be dynamic and updated periodically to reflect changes in national standards, medical facility capabilities, and treatment processes. Also, as suggested by the Utah Medical Association, the standards are in no way to be construed as mandating the transfer of any patient contrary

to the wishes of his attending physician, rather the standards serve as an expression of the type of facilities and care available in the respective hospitals for the use of physicians requesting transfer of patients requiring skills and facilities not available in their own hospitals.

**R426-9-200. Trauma System Advisory Committee.**

(1) The trauma system advisory committee, created pursuant to 26-8a-251, shall:

(a) be a broad and balanced representation of healthcare providers and health care delivery systems; and

(b) conduct meetings in accordance with committee procedures ~~established by the Department and applicable statutes~~.

(2) The Department shall appoint committee members to serve terms from one to four years.

(3) The Department may re-appoint committee members for one additional term in the position initially appointed by the Department.

(4) Causes for removal of a committee member include the following:

(a) more than two unexcused absences from meetings within 12 calendar months;

(b) more than three excused absences from meetings within 12 calendar months;

(c) conviction of a felony; or

(d) change in organizational affiliation or employment which may affect the appropriate representation of a position on the committee for which the member was appointed.

**R426-9-300. Trauma Center Categorization Guidelines.**

The Department adopts as criteria for Level I, Level II, Level III, IV and Pediatric trauma center designation, compliance with national standards published in the American College of Surgeons document: Resources for Optimal Care of the Injured Patient ~~[2006]2014. [~~The Department adopts as criteria for Level IV and Level V trauma center designation the American College of Surgeons document: Resources for Optimal Care of the Injured Patient 1999, except that a Level V trauma center need not have a general surgeon on the medical staff and may be staffed by nurse practitioners or certified physician assistants.~~]~~

**R426-9-400. Trauma Center Review Process.**

(1) The Department shall ~~[evaluate]~~ conduct a quality review site visit of trauma centers and applicants to verify compliance with standards set in R426-9-300. In conducting each evaluation, the Department ~~[shall]~~ may consult with experts from the following disciplines:

(a) trauma surgery;

(b) emergency medicine;

(c) emergency or critical care nursing; and

(d) hospital administration.

(2) A consultant shall not assist the Department in evaluating a facility in which the consultant is employed, practices, or has any financial interest.

**R426-9-500. Trauma Center Categorization Process.**

The Department shall:

(1) Develop a survey document based upon the Trauma Center Criteria described in R426-9-300.

(2) Periodically survey all Utah hospitals which provide emergency trauma care to determine the maximum level of trauma care which each is capable of providing.

(3) Disseminate survey results to all Utah hospitals, and as appropriate, to state EMS agencies.

**R426-9-600. Trauma Center Designation Process.**

(1) Hospitals seeking voluntary designation and all designated Trauma Centers desiring to remain designated, shall apply for designation by submitting the following information to the Department at least 30 days prior to the date of the scheduled site visit:

(a) A completed and signed application and appropriate fees for trauma center verification;

(b) a letter from the hospital administrator of continued commitment to comply with current trauma center designation standards as applicable to the applicant's designation level;

(c) the data specified under R426-9-700 are current;

(d) Level I and Level II Trauma Centers must submit a copy of the Pre-review Questionnaire (PRQ) from the American College of Surgeons in lieu of the application in 1a above.

(e) Level III Level IV and Level V trauma centers must submit a complete Department approved application.

(2) Hospitals desiring to be designated as Level I and Level II Trauma Centers must be verified by the American College of Surgeons (ACS) within three (3) months of the expiration date of previous designation and must submit a copy of the full ACS report detailing the results of the ACS site visit. A Department representative must be present during the entire ACS verification or consultation visit. Hospitals desiring to be Level III[;] or Level IV [~~or Level V~~] Trauma Centers must be designated by hosting a formal site visit by the Department.

(3) The Department and its consultants may conduct observation, review and monitoring activities with any designated trauma center to verify compliance with designation requirements.

(4) Trauma centers shall be designated for a period of three years unless the designation is rescinded by the Department for non-compliance to standards set forth in R426-9-600 or adjusted to coincide with the American College of Surgeons verification timetable.

(5) The Department shall disseminate a list of designated trauma centers to all Utah hospitals, and state EMS agencies, and as appropriate, to hospitals in nearby states which refer patients to Utah hospitals.

**R426-9-700. Data Requirements for an Inclusive Trauma System.**

(1) All hospitals shall collect, and monthly submit to the Department, Trauma Registry information necessary to maintain an inclusive trauma system. Designated trauma centers shall provide such data in an electronic format. The Department shall provide funds to hospitals, excluding designated trauma centers, for the data collection process. The inclusion criteria for a trauma patient are as follows:

(a) ICD9 Diagnostic Codes between 800 and 959.9 (trauma); and

(b) At least one of the following patient conditions: ~~[Admitted to the hospital for 24 hours or longer; transferred in or out of your hospital via EMS transport (including air ambulance); death resulting from the traumatic injury (independent of hospital admission or hospital transfer status; all air ambulance transports (including death in transport and patients flown in but not admitted to the hospital).]~~

(i) Injury resulted in death;

~~(ii) Admitted to the hospital for 24 hours or longer;~~  
~~(iii) Patient transferred in or out of reporting hospital via EMS transport; and~~

~~(iv) Patient transported via air ambulance, independent of hospital admission or hospital transfer status.~~

~~(c) Exclusion criteria are ICD9 Diagnostic Codes:~~

~~(i) 930-939.9 (foreign bodies)~~

~~(ii) 905-909.9 (late effects of injury)~~

~~(iii) 910-924.9 (superficial injuries, including blisters, contusions, abrasions, and insect bites)~~

~~(2) The information shall be in a National Trauma Data Standard standardized electronic format [specified by the Department which includes] and include the following NTDS data elements:~~

~~(i)a Demographic Data:~~

~~Tracking Number~~

~~Hospital Number~~

~~Date of Birth~~

~~Age~~

~~Age Unit~~

~~Sex~~

~~Race~~

~~Other Race~~

~~Ethnicity~~

~~Medical Record Number~~

~~Social Security Number~~

~~Patient Home Zip Code~~

~~Patient's Home Country~~

~~Patient's Home State~~

~~Patient's Home County~~

~~Patient's Home City~~

~~Patient's Home Zip Code~~

~~Alternate Home Residence~~

~~(ii) Event Data:~~

~~Injury Time~~

~~Injury Date~~

~~Cause Code~~

~~Trauma Type~~

~~Work Related~~

~~Patient's Occupational Industry~~

~~Patient's Occupation~~

~~ICD-9/10 Primary E-Code~~

~~ICD-9/10 Location E-Code~~

~~Protective Devices~~

~~Child Specific Restraint~~

~~Airbag Deployment~~

~~Incident Country~~

~~Incident Location Zip Code~~

~~Incident State~~

~~Incident County~~

~~Incident City~~

~~Location Code~~

~~Injury Details~~

~~(iii) Referring Hospital:~~

~~Hospital Transfer~~

~~Transport Mode into Referring Hospital~~

~~Referring Hospital~~

~~Referring Hospital Arrival Time~~

~~Referring Hospital Arrival Date~~

~~Referring Hospital Discharge Time~~

~~Referring Hospital Discharge Date~~

~~Referring Hospital Admission Type~~

~~Referring Hospital Pulse~~

~~Referring Hospital Respiratory Rate~~

~~Referring Hospital Systolic Blood Pressure~~

~~Referring Hospital GCS - Eye~~

~~Referring Hospital GCS - Verbal~~

~~Referring Hospital GCS - Motor~~

~~Referring Hospital GCS Assessment Qualifiers~~

~~Referring Hospital GCS Total~~

~~Referring Hospital Procedures~~

~~(iv) Prehospital:~~

~~Transport Mode Into Hospital~~

~~Other Transport Mode~~

~~EMS Agency~~

~~EMS Origin~~

~~EMS Notify Time~~

~~EMS Notify Date~~

~~EMS Respond Time~~

~~EMS Respond Date~~

~~EMS Unit Arrival on Scene Time~~

~~EMS Unit Arrival on Scene Date~~

~~EMS Unit Scene Departure Time~~

~~EMS Unit Scene Departure Date~~

~~EMS Destination Arrival Time~~

~~EMS Destination Arrival Date~~

~~EMS Destination~~

~~EMS Trip Form Received~~

~~Initial Field Pulse Rate~~

~~Initial Field Respiratory Rate~~

~~Initial Field Systolic Blood Pressure~~

~~Initial Field Oxygen Saturation~~

~~Initial Field GCS - Eye~~

~~Initial Field GCS - Verbal~~

~~Initial Field GCS - Motor~~

~~Initial Field GCS Assessment Qualifiers~~

~~Initial Field GCS Total~~

~~(v) Emergency Department/Hospital Information:~~

~~Admit Type~~

~~Admit Service~~

~~ED/Hospital Arrival Time~~

~~ED/Hospital Arrival Date~~

~~ED Admission Time~~

~~ED Admission Date~~

~~ED Discharge Time~~

~~ED Discharge Date~~

~~Inpatient Admission Time~~

~~Inpatient Admission Date~~

~~Hospital Discharge Time~~

~~Hospital Discharge Date~~

~~ED Discharge Disposition~~

~~ED Transferring EMS Agency~~

~~ED Discharge Destination Hospital~~

~~Transfer Reason~~

~~Hospital Discharge Disposition~~

~~Hospital Discharge Destination Hospital~~

~~DC Transferring EMS Agency~~

~~Outcome~~

~~Initial ED/Hospital Pulse Rate~~

<del>Initial ED/Hospital Respiratory Rate</del>	<del>I_13 Incident Country</del>
<del>Initial ED/Hospital Respiratory Assistance</del>	<del>I_14 Incident State</del>
<del>Initial ED/Hospital Systolic Blood Pressure</del>	<del>I_15 Incident County</del>
<del>Initial ED/Hospital Temperature</del>	<del>I_16 Incident City</del>
<del>Initial ED/Hospital Oxygen Saturation</del>	<del>I_17 Protective Devices</del>
<del>Initial ED/Hospital Supplemental Oxygen</del>	<del>I_18 Child Specific Restraint</del>
<del>Initial ED/Hospital GCS-Eye</del>	<del>I_19 Airbag Deployment</del>
<del>Initial ED/Hospital GCS-Verbal</del>	<del>I_20 Report Of Physical Abuse</del>
<del>Initial ED/Hospital GCS-Motor</del>	<del>I_21 Investigation Of Physical Abuse</del>
<del>Initial ED/Hospital GCS Assessment Qualifiers</del>	<del>I_22 Caregiver At Discharge</del>
<del>Initial ED/Hospital GCS-Total</del>	<del>(c) Pre-Hospital Information</del>
<del>Alcohol Use Indicator</del>	<del>P_01 EMS Dispatch Date</del>
<del>Drug Use Indicator</del>	<del>P_02 EMS Dispatch Time</del>
<del>Inpatient Length of Stay</del>	<del>P_03 EMS Unit Arrival Date At Scene Or Transferring Facility</del>
<del>Total ICU Length of Stay</del>	<del>P_04 EMS Unit Arrival Time At Scene Or Transferring Facility</del>
<del>Total Ventilator Days</del>	<del>P_05 EMS Unit Departure Date From Scene Or Transferring Facility</del>
<del>Primary Method of Payment</del>	<del>P_06 EMS Unit Departure Time From Scene Or Transferring Facility</del>
<del>Hospital Complications</del>	<del>P_07 Transport Mode</del>
<del>Initial ED/Hospital Height</del>	<del>P_08 Other Transport Mode</del>
<del>Initial ED/Hospital Weight</del>	<del>P_09 Initial Field Systolic Blood Pressure</del>
<del>Signs of Life</del>	<del>P_10 Initial Field Pulse Rate</del>
<del>(vi) Hospital Procedures</del>	<del>P_11 Initial Field Respiratory Rate</del>
<del>ICD-9/10 Hospital Procedures</del>	<del>P_12 Initial Field Oxygen Saturation</del>
<del>Hospital Procedure Start Time</del>	<del>P_13 Initial Field GCS -Eye</del>
<del>Hospital Procedure Start Date</del>	<del>P_14 Initial Field GCS -Verbal</del>
<del>(vii) Diagnosis:</del>	<del>P_15 Initial Field GCS -Motor</del>
<del>Co-Morbid Conditions</del>	<del>P_16 Initial Field GCS -Total</del>
<del>Injury Diagnosis Codes</del>	<del>P_17 Inter-Facility Transfer</del>
<del>(viii) Injury Severity Information</del>	<del>P_18 Trauma Center Criteria</del>
<del>Abbreviated Injury Scale (AIS) Score</del>	<del>P_19 Vehicular, Pedestrian, Other Risk Injury</del>
<del>AIS Predot Code</del>	<del>(d) Emergency Department Information</del>
<del>ISS Body Region</del>	<del>ED_01 ED/Hospital Arrival Date</del>
<del>AIS Version</del>	<del>ED_02 ED/Hospital Arrival Time</del>
<del>Locally Calculated Injury Severity Score</del>	<del>ED_03 Initial ED/Hospital Systolic Blood Pressure</del>
<del>] D_01 Patient's Home Zip Code</del>	<del>ED_04 Initial ED/Hospital Pulse Rate</del>
<del>D_02 Patient's Home Country</del>	<del>ED_05 Initial ED/Hospital Temperature</del>
<del>D_03 Patient's Home State</del>	<del>ED_06 Initial ED/Hospital Respiratory Rate</del>
<del>D_04 Patient's Home County</del>	<del>ED_07 Initial ED/Hospital Respiratory Assistance</del>
<del>D_05 Patient's Home City</del>	<del>ED_08 Initial ED/Hospital Oxygen Saturation</del>
<del>D_06 Alternate Home Residence</del>	<del>ED_09 Initial ED/Hospital Supplemental Oxygen</del>
<del>D_07 Date of Birth</del>	<del>ED_10 Initial ED/Hospital GCS -Eye</del>
<del>D_08 Age</del>	<del>ED_11 Initial ED/Hospital GCS -Verbal</del>
<del>D_09 Age Unit</del>	<del>ED_12 Initial ED/Hospital GCS -Motor</del>
<del>D_10 Race</del>	<del>ED_13 Initial ED/Hospital GCS -Total</del>
<del>D_11 Ethnicity</del>	<del>ED_14 Initial ED/Hospital GCS Assessment Qualifiers</del>
<del>D_12 Sex</del>	<del>ED_15 Initial ED/Hospital Height</del>
<del>(b) Injury Information:</del>	<del>ED_16 Initial ED/Hospital Weight</del>
<del>I_01 Injury Incident Date</del>	<del>ED_17 Alcohol Use Indicator</del>
<del>I_02 Injury Incident Time</del>	<del>ED_18 Drug Use Indicator</del>
<del>I_03 Work-Related</del>	<del>ED_19 ED Discharge Disposition</del>
<del>I_04 Patient's Occupational Industry</del>	<del>ED_20 Signs Of Life</del>
<del>I_05 Patient's Occupation</del>	<del>ED_21 ED Discharge Date</del>
<del>I_06 ICD-9 Primary External Cause Code</del>	<del>ED_22 ED Discharge Time</del>
<del>I_07 ICD-10 Primary External Cause Code</del>	<del>(e) Hospital Procedure Information</del>
<del>I_08 ICD-9 Place Of Occurrence External Cause Code</del>	<del>HP_01 ICD-9 Hospital Procedures</del>
<del>I_09 ICD-10 Place Of Occurrence External Cause Code</del>	
<del>I_10 ICD-9 Additional External Cause Code</del>	
<del>I_11 ICD-10 Additional External Cause Code</del>	
<del>I_12 Incident Location Zip Code</del>	



HP\_02 ICD-10 Hospital Procedures  
HP\_03 Hospital Procedure Start Date  
HP\_04 Hospital Procedure Start Time  
(f) Diagnosis Information  
DG\_01 Co-Morbid Conditions  
DG\_02 ICD-9 Injury Diagnoses  
DG\_03 ICD-10 Injury Diagnoses  
(g) Injury Severity Information  
IS\_01 AIS Predot Code  
IS\_02 AIS Severity  
IS\_03 ISS Body Region  
IS\_04 AIS Version  
IS\_05 Locally Calculated ISS  
(h) Outcome Information  
O\_01 Total ICU Length Of Stay  
O\_02 Total Ventilator Days  
O\_03 Hospital Discharge Date  
O\_04 Hospital Discharge Time  
O\_05 Hospital Discharge Disposition  
(i) Financial Information  
F\_01 Primary Method Of Payment  
(x) Quality Assurance Information  
Q\_01 Hospital Complications  
(3) Additional data elements, not included in the NTDS, to be submitted include:  
(a) Demographic Information  
A.1 Tracking Number  
A.2 Hospital Number  
A.10 Medical Record Number  
A.11 Social Security Number  
(b) Injury Information  
B.3 Injury Cause Code  
B.4 Trauma Type  
B.19 Injury Details  
(c) Pre-hospital Information  
D.3 EMS Agency  
D.4 EMS Origin  
D.8 EMS Respond Date  
D.7 EMS Respond Time  
D.14 EMS Destination Arrival Date  
D.13 EMS Destination Arrival Time  
D.15 EMS Destination  
D.16 EMS Trip Form Received  
D.24 Initial Field GCS Assessment Qualifiers  
(d) Referring Hospital Information  
C.1 Hospital Transfer  
C.2 Transport Mode into Referring Hospital  
C.3 Referring Hospital  
C.4 Referring Hospital Arrival Date  
C.5 Referring Hospital Arrival Time  
C.6 Referring Hospital Discharge Date  
C.7 Referring Hospital Discharge Time  
C.8 Referring Hospital Admission Type  
C.9 Referring Hospital Pulse  
C.10 Referring Hospital Respiratory Rate  
C.11 Referring Hospital Systolic Blood Pressure  
C.12 Referring Hospital GCS -Eye  
C.13 Referring Hospital GCS -Verbal  
C.14 Referring Hospital GCS -Motor

C.15 Referring Hospital GCS Assessment Qualifiers  
C.16 Referring Hospital GCS Total  
C.17 Referring Hospital Procedures  
(e) Emergency Department Information  
E.1 ED Admit Type  
E.2 ED Admit Service  
E.6 ED Admission Date  
E.5 ED Admission Time  
E.14 ED Transferring EMS Agency  
E.15 ED Discharge Destination Hospital  
(f) Inpatient Information  
E.10 Inpatient Admission Date  
E.9 Inpatient Admission Time  
E.12 Hospital Discharge Date  
E.11 Hospital Discharge Time  
E.16 Transfer Reason  
E.18 Hospital Discharge Destination Hospital  
E.19 DC Transferring EMS Agency  
(vii) Outcome Information  
E.20 Outcome

**R426-9-800. Trauma Triage and Transfer Guidelines.**

The Department adopts by reference the 2009 Resources and Guidelines for the Triage and Transfer of Trauma Patients published by the Utah Department of Health as model guidelines for triage, transfer, and transport of trauma patients. The guidelines do not mandate the transfer of any patient contrary to the judgment of the attending physician. They are a resource for pre-hospital and hospital providers to assist in the triage, transfer and transport of trauma patients to designated trauma centers or acute care hospitals which are appropriate to adequately receive trauma patients.

**R426-9-900. Noncompliance to Trauma Standards.**

(1) The Department may warn, reduce, deny, suspend, revoke, or place on probation a facility designation, if the Department finds evidence that the facility has not been or will not be operated in compliance to standards adopted under R426-9-300.

(2) A hospital, clinic, health care provider, or health care delivery system may not profess or advertise to be designated as a trauma center if the Department has not designated it as such pursuant to this rule.

**~~R426-9-10. Statutory Penalties.~~**

~~As required by Section 63G-3-201(5): Any person or agency who violates any provision of this rule, per incident, may be assessed a penalty as provided in Section 26-23-6.~~

**R426-9-1000. Resource Hospital Minimum Designation Requirements.**

A Resource Hospital shall meet the following minimum requirements for designation:

(1) Be licensed in Utah or another state as a general acute hospital or be a Veteran's Administration hospital operating in Utah;

(2) Have the ability to communicate with other EMS providers operating in the area;

(3) Provide on-line medical control for all pre-hospital EMS providers who request assistance for patient care, 24 hours-a-day, seven days a week;

(4) Create and abide by written pre-hospital emergency patient care protocols for use in providing on-line medical control for pre-hospital EMS providers;

(5) Train new staff on the protocols before the new staff is permitted to provide on-line medical control and annually review protocols with physician and nursing staff;

(6) Annually provide in-service training on the protocols to all physicians and nurses who provide on-line medical control;

(7) Make the protocols immediately available to staff for reference;

(8) Provide on-line medical control which shall include:

(a) direct voice communication with a physician; or

(b) a registered nurse or physician's assistant, who shall to be licensed in Utah, who is in voice contact with a physician;

(9) Implement a quality improvement process which shall include:

(a) representatives from local EMS providers that routinely transport patients to the resource hospital;

(b) quarterly meetings; and

(c) minutes of the quality improvement meetings which are available for Department review;

(10) Identify a coordinator for the pre-hospital quality improvement process;

(11) Cooperate with the pre-hospital EMS providers' off-line medical directors in the quality review process, including granting access to hospital medical records of patients served by the particular pre-hospital EMS provider;

(12) Participate in local and regional forums for performance improvement; and

(13) Assist the Department in evaluating EMS system effectiveness by submitting to the Department, in an electronic format quarterly data specified by the Department.

**R426-9-1100. Stroke Treatment and Stroke Receiving Facility Minimum Designation Requirements.**

(1) A Primary or Comprehensive Stroke Treatment Center or an Acute Stroke Ready Hospital shall be accredited by the Joint Commission or other nationally recognized accrediting body.

(2) A hospital designated as a Stroke Receiving Facility for receiving stroke patients via Emergency Medical Services shall meet the following requirements:

(a) Be licensed as an acute care hospital in Utah;

(b) Require physician response to the emergency department in less than thirty (30) minutes for treatment of stroke patients;

(c) Maintain the ability of physician and nursing staff to utilize a standardized assessment tool for ischemic stroke patients;

(d) Maintain and utilize approved thrombolytic medications for treatment of patients meeting criteria for administration of thrombolytic therapy;

(e) Establish a standardized acute stroke protocol and authorize appropriate emergency department staff to implement the protocol when appropriate;

(f) Have ancillary equipment and personnel available to diagnose and treat acute stroke patients in a timely manner;

(g) Establish patient transport protocols with designated stroke treatment centers;

(h) Have a performance improvement program for acute stroke care and report data as required by the Department; and

(i) Submit to a site visit by representatives of the Department.

(3) Upon designation, the Department may, in consultation with off line EMS medical direction and protocol, recommend direct transport of stroke patients to a Stroke Receiving Center or a Stroke Treatment Center by an EMS agency.

**R426-9-1200. Percutaneous Coronary Intervention Center Minimum Designation Requirements.**

(1) A Percutaneous Coronary Intervention (PCI) Center, for the purpose of receiving acute ST-elevation myocardial infarction (STEMI) patients via EMS, shall meet the following minimum designation requirements:

(a) Be licensed as an acute care hospital in Utah;

(b) Maintain an emergency department staffed by at least one (1) Physician and one (1) Registered Nurse at all times;

(c) Have the ability to receive 12 lead EKG data from EMS agencies transporting patients to the hospital for treatment of ST Segment Elevation Myocardial Infarction (STEMI);

(d) Maintain the ability to provide cardiac catheterization and PCI of STEMI patients within ninety (90) minutes of patient arrival in the emergency department twenty four (24) hours a day and seven (7) days a week;

(e) Maintain a performance improvement program for STEMI care and report data to the Department as required by the Department; and

(f) Submit to a site visit by representatives of the Department.

(2) Upon designation, the Department may, in consultation with offline EMS medical direction and protocol, recommend direct transport of STEMI patients to a STEMI Treatment Center by an EMS agency.

(3) The PCI designation and re-designation period shall be for a period of three years.

**R426-9-1300. Patient Receiving Facility Minimum Designation Requirements.**

(1) A Patient Receiving Facility shall meet the following minimum designation requirements:

(a) Have the ability to communicate with pre-hospital EMS providers;

(b) Be staffed or have on-call physician, physician assistant, or nurse practitioner availability during designated hours with a response time of less than 20 minutes;

(c) Have and maintain ACLS and PALS certification;

(d) Attend meetings of the local EMS council, if one exists, to participate in the coordination and operations of local EMS providers;

(e) Abide by off-line protocols approved by the EMS provider's off-line medical director;

(f) Train staff on protocols used by the EMS providers who transport patients to the Patient Receiving Facility;

(g) Implement a quality improvement process of all patients received at the patient receiving facility with the local resource hospital or trauma center including access to medical records for patients transported by ambulance;

(h) Maintain equipment, services and medications on-site to provide Advanced Life Support (ALS) intervention and appropriate treatment. Equipment and services shall include:

- (i) ECG;
- (ii) ACLS medications;
- (iii) laboratory services;
- (iv) radiology services;
- (v) oxygen delivery systems;
- (vi) airway support equipment and supplies;
- (vii) suction equipment and supplies; and,
- (i) Submit to a yearly site visit by representatives of the Department; and
- (j) Submit monthly data reports to the Department on all patients received by an ambulance, and in an electronic format provided by the Department.
- (2) The Department may recommend the preferential transportation of STEMI patients by ambulance to a Patient Receiving Facility.

**KEY: emergency medical services, trauma, reporting, trauma center designation**  
**Date of Enactment or Last Substantive Amendment: [~~October 18, 2013~~2015]**  
**Authorizing, and Implemented or Interpreted Law: 26-8a-252**

## Health, Family Health and Preparedness, Child Care Licensing **R430-6** Background Screenings

### NOTICE OF PROPOSED RULE (Amendment) DAR FILE NO.: 39465 FILED: 06/26/2015

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended to be in compliance with the legal requirements of S.B. 12 from the 2015 General Session.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to this rule include language to address exempt facilities and the legal requirements of S.B. 12 (2015).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 39

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This rule is being amended to be in compliance with the legal requirements of S.B. 12 (2015). Based on the stipulations in the bill, the additional child care providers for whom background checks will be processed by the Department will generate enough revenue to compensate for the costs of adding this workload to the Child Care Licensing Program. Since the Department does not know the exact number of providers this rule will affect, the income generated by these changes may not be estimated.

◆ **LOCAL GOVERNMENTS:** This rule requires some currently license exempt child care programs to begin conducting background screenings through the Department of Health. If a local government operates an exempt child care program, this rule will apply to them. Previously, the statute required exempt providers to conduct their own background screenings. If the exempt programs were doing this, and were paying for both the Department of Public Safety and FBI fingerprint screenings themselves, then there should not be an increased cost for these facilities because they will now pay those fees to the Department rather than to Public Safety and the FBI. If exempt programs were not previously conducting both of these screenings, then there will be additional costs to them for the screenings. The cost of the Public Safety screening is \$15. The cost of the FBI fingerprint screening is \$34.75. Because the Department does not know how many local governments operate license exempt child care program, or, if they do, to what extent they already pay for background screenings, the Department cannot estimate the costs to local government.

◆ **SMALL BUSINESSES:** This rule requires some currently license exempt child care programs to begin conducting background screenings through the Department of Health. If an exempt child care program is operated by a local business that falls under S.B. 12 (2015), this rule will apply to them. Previously, the statute required exempt providers to conduct their own background screenings. If the exempt programs were doing this, and were paying for both the Public Safety and FBI fingerprint screenings themselves, then there should not be an increased cost for these facilities because they will now pay those fees to the Department rather than to Public Safety and the FBI. If exempt programs were not previously conducting both of these screenings, then there will be additional costs to them for the screenings. The cost of the Public Safety screening is \$15. The cost of the FBI fingerprint screening is \$34.75. Because the Department does not know how many small businesses operate a license exempt child care program, or, if they do, to what extent they already pay for background screenings, the Department cannot estimate the costs to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule requires some currently license exempt child care programs to begin conducting background screenings through the Department of Health. If an exempt child care program is operated by a business or person that is not a small business and falls under S.B. 12 (2015), this rule will apply to them. Previously, the statute required exempt providers to conduct their own background screenings. If the exempt programs were doing this, and were paying for both the Public Safety and FBI fingerprint screenings themselves, then there should not be an increased cost for these facilities because they will now pay those fees to the Department rather than to Public Safety and the FBI. If exempt programs were not previously conducting both of these screenings, then there will be additional costs to them for the screenings. The cost of the Public Safety screening is \$15. The cost of the FBI fingerprint screening is \$34.75. Because the Department does not know how many small businesses

operate a license exempt child care program, or, if they do, to what extent they already pay for background screenings, the Department cannot estimate the costs to these entities and individuals.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:**  
License exempt facilities affected by the amendments of this rule will have to pay the Department \$15 for each covered individual's background screening, and if required by this rule, \$34.75 for each individual's fingerprints. However, the Department does not know if the license exempt child care facilities covered in S.B. 12 (2015) were already paying for these screenings themselves, or requiring their staff to pay for them. Therefore, the Department does not know if this will represent an increased cost for any individual person.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**  
This amendment will have a fiscal impact between \$15 and \$50 for each license-exempt child care provider who will now be subject to background screen requirements.

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

HEALTH  
FAMILY HEALTH AND PREPAREDNESS,  
CHILD CARE LICENSING  
3760 S HIGHLAND DR  
SALT LAKE CITY, UT 84106  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Simon Bolivar by phone at 801-803-4618, by FAX at 801-237-0786, or by Internet E-mail at sbolivar@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/30/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

**R430. Health, Family Health and Preparedness, Child Care Licensing.**

**R430-6. Background Screening.**

**R430-6-2. Definitions.**

Terms used in this rule are defined in Title 26, Chapter 39.

In addition:

(1) "Applicant" means a person who has applied for a new child care license~~[-or]~~, residential, certificate, or license exemption from the Department, or a currently licensed, ~~[-or]~~certified, or license exempt child care provider who is applying for a renewal of their child care license, ~~[-or]~~certificate, or exemption.

(2) "Background finding" means a determination by the Department that an individual:

(a) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor~~[-]~~;

(b) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor~~[-]~~; or

(c) is listed on the Utah or national sex offender registry.

(3) "Covered individual" means:

(a) owners;

(b) directors;

(c) members of the governing body;

(d) employees;

(e) providers of care, including children residing in a home where child care is provided;

(f) volunteers, excluding parents of children enrolled in the program;

(g) all individuals age 12 and older residing in a residence where child care is provided; and

(h) anyone who has unsupervised contact with a child in care.

(4) "Department" means the Utah Department of Health.

(5) "Exempt Child Care Provider" means a person who provides care as described in the Utah Code 26-39-403(2).

~~[(5)](6)~~ "Involved with child care" means to do any of the following at or for a facility with a child care license, ~~[-or]~~certificate, or exemption issued by the Department:

(a) provide child care;

(b) volunteer at a child care facility;

(c) own, operate, direct, or be employed at a child care facility;

(d) reside at a facility where care is provided;

(e) function as a member of the governing body of a child care facility; or

(e) be present at a facility while care is being provided, except for parents dropping off or picking up their child, or attending a scheduled event at the child care facility.

~~[(6)](7)~~ "Supported finding" means an individual is listed on the Licensing Information System child abuse and neglect database maintained by the Utah Department of Human Services, or listed on the Utah or national sex offender registry.

~~[(7)](8)~~ "Unsupervised Contact" means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or employee who has passed a background screening.

~~[(8)](9)~~ "Volunteer" means an individual who receives no form of direct or indirect compensation for providing care.

**R430-6-3. Submission of Background Screening Information.**

(1) Each applicant requesting a new or renewal child care license, ~~[-or]~~residential certificate, or exemption must submit to the Department the name and other required identifying information on all covered individuals.

(a) Unless an exception is granted under Subsection (4) below, the applicant shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.

(b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.

~~(c) If fingerprints are submitted via life scan, the provider processing the fingerprints shall be in compliance with the Department's guidelines.~~

(2) The applicant shall state~~[-in writing]~~, based upon the applicant's information and belief, whether each covered individual:

(a) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

(b) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor;

(c) has ever had a supported finding by the Department of Human Services, or a substantiated finding from a juvenile court, of abuse or neglect of a child.

(3) Within ten working days of a new covered individual beginning work at a licensed, certified, or exempt child care facility or moving into a licensed or certified home, or a child turning 12 who resides in the facility where care is provided, the licensee, ~~or~~ certificate holder, or exempt child care provider must submit to the Department the name and other required identifying information for that individual.

(a) Unless an exception is granted under Subsection (4) below, the licensee or certificate holder shall ensure that the identifying information submitted for all individuals age 18 and older includes a fingerprint card and fee.

(b) The fingerprint card must be prepared either by a local law enforcement agency or an agency approved by local law enforcement.

~~(4) Fingerprint cards are not required if:~~  
~~[-(4)(a) Fingerprint cards are not required if:~~  
~~](+) (a) the covered individual has resided in Utah continuously for the past five years, or [is less than 23 years of age and has resided in Utah continuously]-] since the individual's 18th birthday; and~~

~~(b) [F]the covered individual will only be involved with child care in a facility that was licensed or certified prior to 1 July 2013[-]; or~~

~~(c) [A]the covered individual [who]-]has previously submitted to the Department a fingerprint card under this section for a national criminal history record check and has resided in Utah continuously since that time[-is not required to submit a fingerprint card].~~

(5) Each year, before the last day of the expiration month on the covered individual's background screening card, the licensee, certificate holder, or exempt child care provider shall submit to the Department the required information and fees to renew each covered individual's background screening.

**R430-6-4. Criminal Background Screening.**

(1) Regardless of any exception under R430-6-4(4), if an in-state criminal background screening indicates that a covered individual age 18 or older has a background finding, the Department may require that individual to submit a fingerprint card and fee from which the Department may conduct a national criminal background screening on that individual.

(2) Except for the offenses listed under Subsection (3), if a covered individual has a background finding, that individual may not

be involved with child care. If such a covered individual resides in a home where child care is provided, the Department shall revoke an existing license or certificate or refuse to issue a new license or certificate.

(3) A background finding for any of the following offenses does not prohibit a covered individual from being involved with child care:

(a) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for an offense under section 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, that is punishable as a Class A misdemeanor under subsection 41-6a-503(1) (b);

(c) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for:

(i) 76-4-401, Enticing a Minor;

(g) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 6, Offenses Against Property;

(h) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 6a, Pyramid Scheme Act;

(i) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 8, Offenses Against the Administration of Government;

(k) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 9, Offenses Against Public Order and Decency, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 10, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor.

(4) A covered individual with a Class A misdemeanor background finding may be involved with child care if either of the following conditions is met:

(a) if the Class A misdemeanor background finding is for any of the excluded misdemeanor offenses in Subsection (3), and:

(i) ten or more years have passed since the Class A misdemeanor offense; and

(ii) there is no other background finding for the individual in the past ten years; or

(b) if the Class A misdemeanor background finding is for any of the excluded misdemeanor offenses in Subsection (3) and five or more years have passed, but ten years have not passed since the Class A misdemeanor offense, and there is no other background finding since the Class A misdemeanor offense, then the individual may be involved with child care as an employee of an existing licensed, ~~or~~-certified, or exempt child care program for up to six months if:

(i) the individual provides documentation for an active petition for expungement of the disqualifying offense within 30 days of the notice of the disqualifying background finding; and

(ii) the licensee, ~~or~~-certificate holder, or exempt child care provider ensures that another employee who has passed the background screening is always present in the same room as the individual, and ensures that the individual has no unsupervised contact with any child in care.

(5) If the court denies a petition for expungement from an individual who has petitioned for expungement and continues to be involved with child care as an employee under Subsection (4)(b), that individual may no longer be employed in an existing licensed, ~~or~~-certified, or exempt child care program, even if six months have not passed since the notice of the disqualifying background finding.

(6) The Department may rely on the criminal background screening as conclusive evidence of the arrest warrant, arrest, charge, or conviction, and the Department may revoke or deny a license, certificate, or employment based on that evidence.

(7) If a covered individual is denied a license, certificate or employment based upon the criminal background screening and the covered individual disagrees with the information provided by the Department of Public Safety, the covered individual may challenge the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

(8) If the Department takes an action adverse to any covered individual based upon the criminal background screening, the Department shall send a written decision to the licensee or certificate holder and the covered individual explaining the action and the right of appeal.

(9) All licensees, certificate holders, exempt child care providers, and covered individuals must report to the Department any felony or misdemeanor arrest, charge, or conviction of a covered individual within 48 hours of becoming aware of the arrest warrant, arrest, charge, or conviction. Failure to notify the Department within

48 hours may result in disciplinary action, including revocation of the license or certificate.

(10) The Executive Director of the Department of Health may consider and exempt individual cases under the following conditions:

(a) the background finding is not for a felony; and

(b) the Executive Director determines that the nature of the background finding, or mitigating circumstances related to the background finding, are such that the individual with the background finding does not pose a risk to children.

#### **R430-6-5. Covered Individuals with Arrests or Pending Criminal Charges.**

(1) If a covered individual has an outstanding arrest warrant for, or has been arrested or charged with a felony or a misdemeanor that would not be excluded under R430-6-4(3), the Department may revoke or suspend any license or certificate of a provider, or deny employment, if necessary to protect the health and safety of children in care.

(2) If the Department denies or revokes a license or certificate or denies employment based upon the arrest warrant, arrest, or charge, the Department shall send a written decision to the licensee, ~~or~~-certificate holder, exempt child care provider, and the covered individual notifying them that a hearing with the Department may be requested.

(3) The Department may hold the license, certificate, or employment denial in abeyance until the arrest warrant, arrest, or felony or misdemeanor charge is resolved.

#### **R430-6-6. Child Abuse and Neglect Background Screening.**

(1) If the Department finds that a covered individual has a supported finding on the Department of Human Services Licensing Information System, that individual may not be involved with child care.

(a) If such a covered individual resides in a home where child care is provided the Department shall revoke the license or certificate for the child care provided in that home.

(b) If such a covered individual resides in a home for which an application for a new license or certificate has been made, the Department shall refuse to issue a new license or certificate.

(2) If the Department denies or revokes a license, certificate, or employment based upon the Licensing Information System maintained by the Utah Department of Human Services, the Department shall send a written decision to the licensee, ~~or~~-certificate holder, or exempt child care provider, and the covered individual.

(3) If the covered individual disagrees with the supported finding on the Licensing Information System, the individual cannot appeal the supported finding to the Department of Health but must direct the appeal to the Department of Human Services and follow the process established by the Department of Human Services.

(4) All licensees, certificate holders, exempt child care providers, and covered individuals must report to the Department any supported finding on the Department of Human Services Licensing Information System concerning a covered individual within 48 hours of becoming aware of the supported finding. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

**R430-6-7. Emergency Providers.**

(1) In an emergency, not anticipated in the licensee or certificate holder's emergency plan, a licensee or certificate holder may assign a person who has not had a criminal background screening to provide emergency care for and have unsupervised contact with children for no more than 24 hours per emergency incident.

(a) Before the licensee or certificate holder may leave the children in the care of the emergency provider, the licensee or certificate holder must first obtain a signed, written declaration from the emergency provider that the emergency provider has not been convicted of, pleaded no contest to, and is not currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, ~~and~~ does not have a supported finding from the Department of Human Services, and is not listed on the Utah or national sex offender registry.

(b) During the term of the emergency, the emergency provider may be counted as a provider of care for purposes of maintaining the required care provider to child ratios.

(c) The licensee or certificate holder shall make reasonable efforts to minimize the time that the emergency provider has unsupervised contact with children.

**KEY: child care facilities, background screenings**  
**Date of Enactment or Last Substantive Amendment: [~~August 15, 2014~~2015]**  
**Notice of Continuation: August 3, 2012**  
**Authorizing, and Implemented or Interpreted Law: 26-39**

Health, Family Health and  
 Preparedness, Licensing  
**R432-2**  
 General Licensing Provisions

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 39464  
 FILED: 06/26/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to clearly define what qualifies as branch location for a Home Health Agency, Personal Care Agency, or a Hospice Agency.

**SUMMARY OF THE RULE OR CHANGE:** The changes added Section R432-2-6 that lists the requirements for a location to qualify as a branch location and the process to obtain the license for a Home Health Agency, Personal Care Agency, or a Hospice Agency branch. The Health Facility Committee reviewed and approved these rule amendments on 02/11/2015.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 21

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because the changes in this rule only clarify the current requirements and there is no change in current practice.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because the changes in this rule only clarify the current requirements and there is no change in current practice.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because the changes in this rule only clarify the current requirements and there is no change in current practice.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to businesses, individuals, local governments, and persons that are not small businesses because the changes in this rule only clarify the current requirements and there is no change in current practice.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no impact to affected persons because the changes in this rule only clarify the current requirements and there is no change in current practice.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This has no fiscal impact on business as it is not a new requirement but clarifies current requirements and makes no change to current practice.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 HEALTH  
 FAMILY HEALTH AND PREPAREDNESS,  
 LICENSING  
 3760 S HIGHLAND DR  
 SALT LAKE CITY, UT 84106  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ◆ Carmen Richins by phone at 801-273-2802, by FAX at 801-274-0658, or by Internet E-mail at carmenrichins@utah.gov  
 ◆ Joel Hoffman by phone at 801-273-2804, by FAX at 801-274-0658, or by Internet E-mail at jhoffman@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015**

**THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015**

**AUTHORIZED BY: David Patton, PhD, Executive Director**

**R432. Health, Family Health and Preparedness, Licensing.****R432-2. General Licensing Provisions.****R432-2-6. Requirements for a Branch Location.**

(1) A "Branch Location" is a licensed Home Health, Personal Care or Hospice agency location which:

(a) is administered by a parent agency within the scope of the parent agency's current license;

(b) is located no further than 150 miles from the licensed parent agency or within a designated geographical service area as determined by the Department; and

(c) is approved by the Department as a branch location under the parent agency's license.

(2) An applicant for a branch location license shall submit a narrative of the program for Department review. The narrative shall include the following:

(a) street address of the parent and branch;

(b) license category of the parent agency;

(c) service(s) to be provided at the branch location, which must be a service authorized under the parent agency license; and

(d) ancillary administrative and support services to be provided at the branch location.

(3) Upon receipt of the branch location program narrative, the Department shall make a determination of the applicable licensing requirements including the need for licensing the service. The Department shall verify at least the following items:

(a) the service provided at the remote site falls within the scope of the parent agency license; and

(b) all necessary administrative and support services are available, on a continuous basis during the hours of operation, to insure the health, safety, and welfare of the clients.

(4) If a location qualifies as a branch location the Department shall issue a separate license identifying the agency as a "Branch Location" of the licensed parent agency. This license shall be subject to all requirements set forth in R432-2 of the Health Facility Rules.

**R432-2-[6]7. Applications for License Actions.**

(1) An applicant for a license shall file a Request for Agency Action/License Application with the Utah Department of Health on a form furnished by the Department.

(2) Each applicant shall comply with all zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:

(a) A certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes is required with initial and renewal application, change of ownership, and at any time new construction or substantial remodeling has occurred.

(b) A satisfactory Food Services Sanitation Clearance report by a local or state sanitarian is required for facilities providing food service at initial application and upon a change of ownership.

(c) Certificate of Occupancy from the local building official at initial application, change of location and at the time of any new construction or substantial remodeling.

(3) The applicant shall submit the following:

(a) a list of all officers, members of the boards of directors, trustees, stockholders, partners, or other persons who have a greater than 25 percent interest in the facility;

(b) the name, address, percentage of stock, shares, partnership, or other equity interest of each person; and

(c) a list, of all persons, of all health care facilities in the state or other states in which they are officers, directors, trustees, stockholders, partners, or in which they hold any interest;

(4) The applicant shall provide the following written assurances on all individuals listed in R432-2-6(3):

(a) None of the persons has been convicted of a felony;

(b) None of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a health care facility; and

(c) None of the persons who has currently or within the five years prior to the date of application had previous interest in a licensed health care facility that has been any of the following:

(i) subject of a patient care receivership action;

(ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation;

(iii) involuntarily terminated from participation in either Medicaid or Medicare programs; or

(iv) convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse.

(5) The requirements contained in Utah Code Section 26-21-23(5)(a) shall be met if a nursing care facility filed a notice of intent or application with the Department and paid a fee relating to a proposed nursing care facility prior to March 1, 2007.

(6) The requirements contained in Utah Code Section 26-21-23(5)(b) shall be met if a nursing care facility complies with the requirements of R432-4-14(4) and R432-4-16 on or before July 1, 2008.

**R432-2-[7]8. License Fee.**

In accordance with Subsection 26-21-5(1)(c), the applicant shall submit a license fee with the completed application form. A current fee schedule is available from the Bureau of Health Facility Licensing upon request. Any late fees is assessed according to the fee schedule.

**R432-2-[8]9. Additional Information.**

The Department may require additional information or review other documents to determine compliance with licensing rules. These include:

(1) architectural plans and a description of the functional program.

(2) policies and procedures manuals.

(3) verification of individual licenses, registrations or certification required by the Utah Department of Commerce.

(4) data reports including the submission of the annual report at the Departments request.

(5) documentation that sufficient assets are available to provide services: staff, utilities, food supplies, and laundry for at least a two month period of time.



**R432-2-9[10]. Initial License Issuance or Denial.**

(1) The Department shall render a decision on an initial license application within 60 days of receipt of a complete application packet or within six months of the date the first component of an application packet is received; provided, in either case, a minimum of 45 days is allowed for the initial policy and procedure manual review.

(2) Upon verification of compliance with licensing requirements the Department shall issue a provisional license.

(3) The Department shall issue a written notice of agency decision under the procedures for adjudicative proceedings (R432-30) denying a license if the facility is not in compliance with the applicable laws, rules, or regulations. The notice shall state the reasons for denial.

(4) An applicant who is denied licensing may reapply for initial licensing as a new applicant and shall be required to initiate a new request for agency action as described in R432-2-6.

(5) The Department shall assess an administrative fee on all denied license applications. This fee shall be subtracted from any fees submitted as part of the application packet and a refund for the balance returned to the applicant.

**R432-2-1[0]1. License Contents and Provisions.**

(1) The license shall document the following:

- (a) the name of the health facility,
- (b) licensee,
- (c) type of facility,
- (d) approved licensed capacity including identification of operational and banked beds,
- (e) street address of the facility,
- (f) issue and expiration date of license,
- (g) variance information, and
- (h) license number.

(2) The license is not assignable or transferable.

(3) Each license is the property of the Department. The licensee shall return the license within five days following closure of a health care facility or upon the request of the Department.

(4) The licensee shall post the license on the licensed premises in a place readily visible and accessible to the public.

**R432-2-1[1]2. Expiration and Renewal.**

(1) Each standard license shall expire at midnight on the day designated on the license as the expiration date, unless the license is revoked or extended under subsection (2) or (4) by the Department.

(2) If a facility is operating under a conditional license for a period extending beyond the expiration date of the current license, the Department shall establish a new expiration date.

(3) The licensee shall submit a Request for Agency Action/License Application form, applicable fees, clearances, and the annual report for the previous calendar year (if required by the Department under R432-2-8) 15 days before the current license expires.

(4) A license shall expire on the date specified on the license unless the licensee requests and is granted an extension from the Department.

(5) The Department shall renew a standard license upon verification that the licensee and facility are in compliance with all applicable license rules.

(6) Facilities no longer providing patient care or client services may not have their license renewed.

**R432-2-1[2]3. New License Required.**

(1) A prospective licensee shall submit a Request for Agency Action/License Application, fees, and required documentation for a new license at least 30 days before any of the following proposed or anticipated changes occur:

- (a) occupancy of a new or replacement facility.
- (b) change of ownership.

(2) Before the Department may issue a new license, the prospective licensee shall provide documentation that:

(a) all patient care records, personnel records, staffing schedules, quality assurance committee minutes, in-service program records, and other documents required by applicable rules remain in the facility and have been transferred to the custody of the new licensee.

(b) the existing policy and procedures manual or a new manual has been approved by the Department and adopted by the facility governing body before change of ownership occurs.

(c) new contracts for professional or other services not provided directly by the facility have been secured.

(d) new transfer agreements have been drafted and signed.

(e) written documentation exists of clear ownership or lease of the facility by the new owner.

(3) Upon sale or other transfer of ownership, the licensee shall provide the new owner with a written accounting, prepared by an independent certified public accountant, of all patient funds being transferred, and obtain a written receipt for those funds from the new owner.

(4) A prospective licensee is responsible for all uncorrected rule violations and deficiencies including any current plan of correction submitted by the previous licensee unless a revised plan of correction, approved by the Department, is submitted by the prospective licensee before the change of ownership becomes effective.

(5) If a license is issued to the new owner the previous licensee shall return his license to the Department within five days of the new owners receipt of the license.

(6) Upon verification that the facility is in compliance with all applicable licensing rules, the Department shall issue a new license effective the date compliance is determined as required by R432-2-9.

**R432-2-1[3]4. Change in Licensing Status.**

(1) A licensee shall submit a Request for Agency Action/License Application to amend or modify the license status at least 30 days before any of the following proposed or anticipated changes:

- (a) increase or decrease of licensed capacity.
- (b) change in name of facility.
- (c) change in license category.
- (d) change of license classification.
- (e) change in administrator.

(2) An increase of licensed capacity may incur an additional license fee if the increase exceeds the maximum number of units in the fee category division of the existing license. This fee shall be the difference in license fee for the existing and proposed capacity according to the license fee schedule.

(3) Upon verification that the licensee and facility are in compliance with all applicable licensing rules, the Department shall issue an amended or modified license effective the date that the Department determines that the licensee is in compliance.

**R432-2-1[4]5. Facility Ceases Operation.**

(1) A licensee that voluntarily ceases operation shall complete the following:

- (a) notify the Department and the patients or their next of kin at least 30 days before the effective date of closure.
- (b) make provision for the safe keeping of records.
- (c) return all patients' monies and valuables at the time of discharge.
- (d) The licensee must return the license to the Department within five days after the facility ceases operation.

(2) If the Department revokes a facility's license or if it issues an emergency closure order, the licensee shall document for Department review the following:

- (a) the location and date of discharge for all residents,
- (b) the date that notice was provided to all residents and responsible parties to ensure an orderly discharge and assistance with placement; and
- (c) the date and time that the facility complied with the closure order.

**R432-2-1[5]6. Provisional License.**

(1) A provisional license is an initial license issued to an applicant for a probationary period of six months.

(a) In granting a provisional license, the Department shall determine that the facility has the potential to provide services and be in full compliance with licensing rules during the six month period.

(b) A provisional license is nonrenewable. The Department may issue a provisional license for no longer than six months. ~~It may issue no more than one provisional license to any health facility in any 12-month period.~~

(c) If the licensee fails to meet terms and conditions of licensing before the expiration date of the provisional license, the license shall automatically expire.

**R432-2-1[6]7. Conditional License.**

(1) A conditional license is a remedial license issued to a licensee if there is a determination of substandard quality of care, immediate jeopardy or a pattern of violations which would result in a ban on admissions at the facility or if the licensee is found to have:

- (a) a Class I violation or a Class II violation that remains uncorrected after the specified time for correction;
- (b) more than three cited repeat Class I or II violations from the previous year; or
- (c) fails to fully comply with administrative requirements for licensing.

(2) A standard license is revoked by the issuance of a conditional license.

(3) The Department may not issue a conditional license after the expiration of a provisional license.

(4) In granting a conditional license, the Department shall be assured that the lack of full compliance does not harm the health, safety, and welfare of the patients.

(5) The Department shall establish the period of time for the conditional license based on an assessment of the nature of the existing violations and facts available at the time of the decision.

(6) The Department shall set conditions whereby the licensee must comply with an accepted plan of correction.

(7) If the licensee fails to meet the conditions before the expiration date of the conditional license, the license shall automatically expire.

**R432-2-1[7]8. Standard License.**

A standard license is a license issued to a licensee if:

- (1) the licensee meets the conditions attached to a provisional or conditional license;
- (2) the licensee corrects the identified rule violations; or
- (3) when the facility assures the Department that it complies with R432-2-11 to R432-2-12.

**R432-2-1[8]9. Variances.**

(1) A health facility may submit a request for agency action to obtain a variance from state rules at any time.

(a) An applicant requesting a variance shall file a Request for Agency Action/Variance Application with the Utah Department of Health on forms furnished by the Department.

(b) The Department may require additional information from the facility before acting on the request.

(c) The Department shall act upon each request for variance in writing within 60 days of receipt of a completed request.

(2) If the Department grants a variance, it shall amend the license in writing to indicate that the facility has been granted a variance. The variance may be renewable or non-renewable. The licensee shall maintain a copy of the approved variance on file in the facility and make the copy available to all interested parties upon request.

(a) The Department shall file the request and variance with the license application.

(b) The terms of a requested variance may be modified upon agreement between the Department and the facility.

(c) The Department may impose conditions on the granting of a variance as it determines necessary to protect the health and safety of the residents or patients.

(d) The Department may limit the duration of any variance.

(3) The Department shall issue a written notice of agency decision denying a variance upon determination that the variance is not justified.

(4) The Department may revoke a variance if:

(a) The variance adversely affects the health, safety, or welfare of the residents.

(b) The facility fails to comply with the conditions of the variance as granted.

(c) The licensee notifies the Department in writing that it wishes to relinquish the variance and be subject to the rule previously varied.

(d) There is a change in the statute, regulations or rules.

**R432-2-[19]20. Change In Ownership.**

(1) As used in this section, an "owner" is any person or entity:

(a) ultimately responsible for operating a health care facility; or

(b) legally responsible for decisions and liabilities in a business management sense or that bears the final responsibility for operating decisions made in the capacity of a governing body.

- (2) The owner of the health care facility does not need to own the real property or building where the facility operates.
- (3) A property owner is also an owner of the facility if he:
  - (a) retains the right or participates in the operation or business decisions of the enterprise;
  - (b) has engaged the services of a management company to operate the facility; or
  - (c) takes over the operation of the facility.
- (4) A licensed provider whose ownership or controlling ownership interest has changed must submit a Request for Agency Action/License Application and fees to the department 30 days prior to the proposed change
- (5) Changes in ownership that require action under subsection (4) include any arrangement that:
  - (a) transfers the business enterprise or assets to another person or firm, with or without the transfer of any real property rights;
  - (b) removes, adds, or substitutes an owner or part owner; or
  - (c) in the case of an incorporated owner:
    - (i) is a merger with another corporation if the board of directors of the surviving corporation differs by 20 percent or more from the board of the original licensee; or
    - (ii) creates a separate corporation, including a wholly owned subsidiary, if the board of directors of the separate corporation differs by 20 percent or more from the board of the original licensee.
- (6) A person or entity that contracts with an owner to manage the enterprise, subject to the owner's general approval of operating decisions it makes is not an owner, unless the parties have agreed that the managing entity is also an owner.
- (7) A transfer between departments of government agencies for management of a government-owned health care facility is not a change of ownership under this section.

**KEY: health care facilities**  
**Date of Enactment or Last Substantive Amendment: [February 6, 2015]**  
**Notice of Continuation: August 12, 2013**  
**Authorizing, and Implemented or Interpreted Law: 26-21-9; 26-21-11; 26-21-12; 26-21-13**

Human Services, Administration  
**R495-878**  
 Americans With Disabilities Act  
 Grievance Procedures

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 39480  
 FILED: 06/30/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Changes are needed to provide an appeal process and clarify the rule. This will better inform the public of process and increase accountability.

**SUMMARY OF THE RULE OR CHANGE:** The rule changes will clarify terminology, add a TTY phone number, and provide a more definitive time frame for investigations to be completed and provide a clear appeal process.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 28 CFR 35.107 and 29 USC 794 et seq. and 42 USC 12131 et seq. and 42 USC 2000d et seq. and Section 62A-1-111 and Subsection 63G-3-201(3)

- ANTICIPATED COST OR SAVINGS TO:**
- ◆ **THE STATE BUDGET:** This rule will clarify procedure and time frames, but will not require any additional staff or resources and will not have any fiscal impact on the state budget.
  - ◆ **LOCAL GOVERNMENTS:** This rule will clarify procedure and time frames, but will not require any additional staff or resources and will not have any fiscal impact on the local government.
  - ◆ **SMALL BUSINESSES:** This rule will clarify procedure and time frames, but will not require any additional staff or resources and will not have any fiscal impact on the small businesses.
  - ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule will clarify procedure and time frames, but will not require any additional staff or resources and will not have any fiscal impact on the grievance procedure.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule will clarify procedure and time frames, but will not require any additional staff or resources and will not have any fiscal impact on affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule amendment will have no fiscal 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](mailto:janellhall@utah.gov)
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at [jhonesrobbins@utah.gov](mailto:jhonesrobbins@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015**

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: Ann Williamson, Executive Director

**R495. Human Services, Administration.**

**R495-878. Americans with Disabilities Act and Civil Rights [Constituent]Grievance Procedures.**

**R495-878-1. Authority and Purpose.**

(1) This rule is authorized by Section 62A-1-111.

(2) The purpose of this rule is to provide for the prompt and equitable resolution of [constituent]complaints alleging any violation of the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, or the Age Discrimination Act of 1975, by employees of the Department.

**R495-878-2. Definitions.**

(1) "ADA" means Title II of the Americans with Disabilities Act of 1990.

(2) "ADA/Civil Rights/LEP/Section 504 Coordinator" means the employee assigned by the executive director to facilitate the prompt and equitable resolution of [constituent]complaints alleging discrimination by employees of the Department.

~~(2) "Department" means the Department of Human Services created by Section 62A-1-102, and includes the divisions and offices created by Section 62A-1-105.~~

(3) "[Constituent]Complainant" means an individual who has applied to receive services, is currently receiving services, or who has received services from the Department, ~~[and includes]or~~ that individual's authorized representative.

(4) "Department" means the Department of Human Services created by Section 62A-1-102, and includes the divisions and offices created by Section 62A-1-105.

~~(4)~~(5) "Division Coordinator" means an individual ~~[appointed]assigned~~ by the executive director to investigate allegations of discrimination by employees of the Department.

~~(5)~~(6) "Director" means the head of the division or office of the Department affected by a complaint filed under this rule.

~~(6)~~(7) "Executive Director" means the executive director of the department.

(8) "LEP" means Limited English Proficiency.

(9) "Section 504" means Section 504 of the Rehabilitation Act of 1973.

**R495-878-3. Filing of Complaints.**

(1) A [constituent]complainant may file a complaint alleging the violation of the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, or the Age Discrimination Act of 1975, by employees of the Department.

(2) A [constituent]complainant shall file a complaint with the Department's ADA/Civil Rights/LEP/Section 504 Coordinator, unless the complaint includes allegations against the ADA/Civil Rights/LEP/Section 504 Coordinator, in which case the complaint shall be filed with the executive director.

(3) A [constituent]complainant may file a written, oral, or electronic complaint to:

ADA/Civil Rights/LEP/Section 504 Coordinator  
Department of Human Services  
Executive Directors Office-4th floor  
195 North 1950 West  
Salt Lake City, Utah 84116; or  
dhscivilrightscomplaint@utah.gov; or  
(801) 538-4187 (TTY) or Utah Relay 711.

(4) To facilitate a thorough investigation, the [constituent]complainant should file a written, oral, or electronic complaint with the Department ADA/Civil Rights/LEP/Section 504 Coordinator no later than thirty (30) days from the date of the alleged circumstances giving rise to the complaint. A complaint should include the following information (complaint form available online at <http://hs.utah.gov/>):

(a) A detailed description of the alleged circumstances which caused the complaint, including dates and locations;

(b) The names and contact information of any and all persons involved in those circumstances;

(c) A detailed description of any actions taken by the [constituent]complainant to address the complaint; and

(d) The desired result or outcome that the [constituent]complainant is seeking from the Department.

**R495-878-4. Investigation of Complaints.**

(1) Within ten (10) days after receipt of the complaint, the ADA/Civil Rights/LEP/Section 504 Coordinator will assign the investigation of the complaint to the applicable Division Coordinator.

(a) The ADA/Civil Rights/LEP/Section 504 Coordinator will retain a copy of the complaint in a central ~~[file and provide deadlines for the Division Coordinator to conclude the investigation of the complaint]~~.

(b) Investigations ~~[will generally]~~shall be completed within sixty (60) days after receipt of the complaint by the applicable Division Coordinator.

(2) Within ten (10) days after receipt of the complaint from the ADA/Civil Rights/LEP/Section 504 Coordinator, the Division Coordinator will notify the [constituent]complainant in writing or electronically that an investigation of the complaint has commenced and will provide the deadline upon which the [constituent]complainant should receive correspondence regarding the outcome of the investigation.

(a) The ADA/Civil Rights/LEP/Section 504 Coordinator shall be provided a copy of this correspondence from the Division Coordinator.

(b) A copy of all correspondence will be included in the ADA/Civil Rights/LEP/Section 504 Coordinator's central file.

(3) The Division Coordinator, or designee under the direction of the Division Coordinator, will conduct the investigation into the complaint and draft a proposed response to the complaint.

(a) The Division Coordinator shall gather and document all available relevant information.

(b) If the Division Coordinator is unable to complete the investigation and make a recommendation within the ~~deadline established by the ADA/Civil Rights/LEP Coordinator]~~, the [constituent]complainant and the ADA/Civil Rights/LEP/Section 504 Coordinator shall be notified of the reason and how much additional time is needed.

**R495-878-5. Recommendation and Decision.**

(1) Completion of the investigation will result in a ~~[finding]~~decision that the alleged circumstances occurred, did not occur, or could not be substantiated.

(a) If the alleged circumstances did occur, then the recommendation will also include suggestions to address barriers in the future involving similar circumstances.

(b) If the alleged circumstances could not be substantiated, but the Division Coordinator is able to identify areas where DHS practices may be improved, then suggestions may be made to address barriers in the future involving similar alleged circumstances.

(c) The Division Coordinator will be responsible for drafting the initial correspondence to the complainant.

(2) The correspondence will be sent by the Division Coordinator to the Director for final approval and mailing to the ~~[constituent]~~complainant.

(a) A copy of the correspondence will be sent to the ADA/Civil Rights/LEP/Section 504 Coordinator, and included in a central file.

(3) Within ten (10) business days after the conclusion of the investigation, the Division Coordinator will notify the ~~[constituent]~~complainant in writing concerning the outcome of the investigation.

(a) The Division Coordinator will log in the date that the written response is sent to the ~~[constituent]~~complainant to indicate that the complaint is completed.

(4) The Director shall take all reasonable steps to implement the recommendation, including the suggestions to ameliorate barriers in the future involving similar circumstances.

(5) Any of the foregoing deadlines may be reasonably extended for extenuating circumstances. Any extensions of time will be confirmed in writing to the ~~[constituent]~~complainant.

**R495-878-6. Appeals.**

(1) The ~~[outcome]~~Director's decision to the Executive Director within ten working days after the complainant's receipt of the Director's decision ~~[of the investigation to the Office of Administrative Hearings in accordance with Rule R497-100 Adjudicative Proceedings.]~~

(2) The appeal shall be in writing.

(3) The Executive Director may name a designee to assist on the appeal. The ADA/Civil Rights/LEP/Section 504 Coordinator, Division Coordinator, Director, and Director's designee may not be the Executive Director's designee for the appeal.

(4) In the appeal the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(5) The Executive Director or designee shall review the Division Coordinator's recommendation, the Director's decision, and the points raised on appeal prior to reaching a decision. The Executive Director or designee may direct additional investigation as necessary. The Executive Director shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Management and Budget, the Division of Risk Management, the Division of Facilities

Construction Management, and the Office of the Attorney General before making any decision that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation; or

(b) require facility modifications;

(6) The Executive Director or designee shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, and shall be delivered to the complainant.

(7) If the Executive Director or designee is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing why the final decision is being delayed and the additional time needed to reach a final decision.

**R495-878-7. Relationship to Other Laws.**

This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Section 34A-5-107 and Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or

(c) any other Utah State or federal law that provides equal or greater protection for the civil rights of individuals, including but not limited to Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973

**KEY: grievance procedures, disabled persons**

**Date of Enactment or Last Substantive Amendment: 2015**

**Notice of Continuation: January 23, 2012**

**Authorizing, and Implemented or Interpreted Law: 62A-1-111; 63G-3-201(3); 28 CFR 35.107**

Lieutenant Governor, Elections  
**R623-1-4**  
 Registration/License Application  
 Procedure

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39457

FILED: 06/22/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to clarify the deadline for completing the required training.

**SUMMARY OF THE RULE OR CHANGE:** This rule requires lobbyist applicants to pay and train before the license becomes effective. The change will clarify the deadline for completing the required training in the first and second years of a two-year license period.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 36-11-404

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The clarification of the deadline for completing the training in both years of a two-year license period will not have any impact on the state budget.
- ◆ LOCAL GOVERNMENTS: The clarification of the deadline for completing the training in both years of a two-year license period will not have any impact on local government.
- ◆ SMALL BUSINESSES: The clarification of the deadline for completing the training in both years of a two-year license period will not have any impact on small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The clarification of the deadline for completing the training in both years of a two-year license period will not have any impact on any other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The clarification of the deadline for completing the training in both years of a two-year license period will not have any impact on compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The clarification of the deadline for completing the training in both years of a two-year license period will not have any impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
LIEUTENANT GOVERNOR  
ELECTIONS  
ROOM 220 UTAH STATE CAPITOL  
350 N STATE STREET  
SALT LAKE CITY, UT 84114  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Spencer Hadley by phone at 801-538-1041, by FAX at 801-538-1133, or by Internet E-mail at spencerhadley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/24/2015

AUTHORIZED BY: Mark Thomas, Chief Deputy

**R623. Lieutenant Governor, Elections.**

**R623-1. Lieutenant Governor's Procedure for Regulation of Lobbyist Activities.**

**R623-1-4. Registration/License Application Procedure.**

- A. In order to register and obtain a license, a lobbyist shall:
  1. Pay the registration fee as required by 36-11-103 and successfully complete the training as required by 36-11-307.

(a) The training for the first year of a two-year license period must be completed before the registration can be approved.

(b) To maintain the license for the second year in a two-year license period, the training for that year must be completed within the first 60 days of the second year or before engaging in lobbying activity whichever is first.

2. File a registration/license application statement in compliance with the provisions of Section 36-11-103. The lieutenant governor's office shall make available forms that comply with Section 36-11-103. The lobbyist may either:

(a) Submit the completed form to the lieutenant governor's office; or

(b) File the lobbyist registration/license application by completing the electronic form available on the Utah Lobbyist Online system; and submit the completed signature authorization form to the lieutenant governor's office.

B. Upon receipt of a completed lobbyist registration/license application form the lieutenant governor's office shall:

1. Review the registration form for accuracy, completeness and compliance with the law;

2. Approve or disapprove the registration/license application; and

3. Notify the lobbyist in writing within 30 days of approval or disapproval.

C. An applicant who has not been convicted of any of the offenses listed in Section 36-11-103(4)(a)(i), and who has not had a civil penalty imposed as described in Section 36-11-103(4)(a)(ii), may commence lobbying activities upon filing of a completed registration/license application form with the lieutenant governor's office and payment of the registration fee.

D. By applying for a license, the lobbyist certifies that the lobbyist intends to engage in lobbying activities under the circumstances stated in the application or supplements filed with the lieutenant governor's office during the time the registration and license are valid.

1. If a lobbyist intends to cease all lobbying activities for the remainder of the period of licensure, the lobbyist shall notify the lieutenant governor's office in writing and surrender the license.

2. If the lobbyist has a change in circumstances that affects the lobbyist's activities, the lobbyist shall notify the lieutenant governor's office in writing.

3. If a lobbyist has surrendered the license and then decides to reengage in lobbying activities, a reissued license without a fee may be requested, if it is within the 2-year period of the original registration.

4. The lobbyist must submit a written request to the lieutenant governor's office in order to have the license reissued.

5. A reissued license expires on December 31 of each even numbered year in accordance with Section 36-11-103(3)(b).

E. A lobbyist may add and delete principals and provide other notices electronically as prescribed by the lieutenant governor's office.

**KEY: lobbyists, lobbyist registration**

**Date of Enactment or Last Substantive Amendment: ~~July 11, 2014~~ 2015**

**Notice of Continuation: March 26, 2014**

**Authorizing, and Implemented or Interpreted Law: 36-11-404**

**Natural Resources, Parks and  
Recreation  
R651-602  
Aircraft and Powerless Flight**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39497

FILED: 07/01/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule modification is to allow for powerless paragliding and hang gliding launching and landing at the Flight Park State Recreation Area. Currently, the rule states that all powerless flight launching and landing is prohibited except by special use permit. Launching and landing of hang gliders and paragliders already occurs at the Flight Park State Recreation Area. This rule amendment would reflect that.

**SUMMARY OF THE RULE OR CHANGE:** This rule modification is to allow for powerless paragliding and hang gliding launching and landing at the Flight Park State Recreation Area. Currently, the rule states that all powerless flight launching and landing is prohibited except by special use permit. Launching and landing of hang gliders and paragliders already occurs at the Flight Park State Recreation Area. This rule amendment would reflect that.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 79-4-501

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** None--People are already hang gliding and paragliding at the flight park, and have been doing this since it became a state recreation area.
- ◆ **LOCAL GOVERNMENTS:** None--People are already hang gliding and paragliding at the flight park, and have been doing this since it became a state recreation area.
- ◆ **SMALL BUSINESSES:** None--People teaching and giving tandem rides at the flight park are doing so through a Special Use Permit.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to this rule. It is an amendment to allow people that are enjoying recreation through paragliding and hang gliding to continue to do so legally.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected people. There is no day-use fee at the flight park. There is a cost for the special use permits and it does allow the permittee to conduct commercial business at the flight park.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There should be no effect or impact on businesses.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at [tammywright@utah.gov](mailto:tammywright@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: Fred Hayes, Director

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**R651. Natural Resources, Parks and Recreation.**

**R651-602. Aircraft and Powerless Flight.**

**R651-602-1. Landing or Taking Off.**

The landing or taking off of aircraft within the park system other than at designated lakes, reservoirs or landing areas is prohibited.

**R651-602-2. Air Delivery or Pickup.**

Except in emergencies, the air delivery or pickup of any person or thing without advanced permission from the park manager is prohibited.

**R651-602-3. Powerless Flight Launching and Landing.**

The launching or landing of gliders, hot-air balloons, hang gliders, and other devices designed to carry persons or objects through the air in powerless flight is prohibited except by Special Use Permit (see R651-608).

**R651-602-4. Lakes and Reservoirs Designated as Open.**

The following lakes and reservoirs are designated as open to the landing of aircraft: (1) Deer Creek; (2) Jordanelle; (3) Rockport, (4) Starvation (5) Willard Bay.

**R651-602-5. Aircraft Prohibited from Landing on Lakes or Reservoirs.**

Except as outlined in R651-602-2, aircraft are prohibited from landing or taking off on "designated as open" lakes or reservoirs when any one of the following conditions exists. (1) On a Friday, Saturday, Sunday, or during a holiday period between May 1 to September 30; or (2) Anytime the aircraft cannot maintain a distance of at least 500 feet from any person, vessel, vehicle or structure during landing or takeoff.

**R651-602-6. Aircraft on the Water Operation Requirements.**

A person operating an aircraft on the water: (1) shall not approach within 500 feet of a marina, launch ramp, boat dock, vessel or a beach occupied by person(s), when using the aircraft's primary propulsion system(s); (2) shall comply with Federal Aviation Regulations, Section 91.115, Right-of-way rules: Water operations.

**R651-602-7. Parks Designated Open to Gliders.**

The following parks are designated as open to launching and landing powerless paragliders and hang gliders: Flight Park State Recreation Area.

**KEY:** parks

**Date of Enactment or Last Substantive Amendment:** [~~April 1, 2003~~]**August 21, 2015**

**Notice of Continuation:** June 25, 2013

**Authorizing, and Implemented or Interpreted Law:** 79-4-501

## Transportation, Motor Carrier **R909-1** Safety Regulations for Motor Carriers

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39479

FILED: 06/30/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to incorporate by reference and adopt final rule changes in the Federal Motor Carrier Safety Regulations (FMCSR) as of 10/01/2014, and the Federal Register as of 04/23/2015; and to add enforcement provisions authorized by statute. This amendment also deletes Section R909-1-8, which was deleted by an earlier emergency rule amendment made to bring Rule R909-1 into compliance with federal regulation due to a change made to the federal regulations.

**SUMMARY OF THE RULE OR CHANGE:** This rule amendment adopts the current Code of Federal Regulations Title 49, Parts 350-384, Parts 387-399 and Part 40; and ensures that intrastate carriers are subject to the same requirements as interstate carriers. It also deletes Section R909-1-8 to bring the rule into compliance with federal regulations.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-9-103 and Section 72-9-301

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates 79 FR 63057 - Amendment to Emergency Relief Exemptions Pursuant to the Reliable Home Heating (RHH) Act, published by Office of the Federal Register, 10/22/2014

- ◆ Updates 79 FR 63057 - Amendment to Emergency Relief Exemptions Pursuant to the Reliable Home Heating (RHH) Act, published by Office of the Federal Register, 10/22/2014
- ◆ Updates 49 CFR, Subtitle B, Chapter III, Federal Motor Carrier Safety Regulations, Subchapter B, Parts 350 through 384, and 387 through 399, published by Office of the Federal Register, National Archives and Records Administration, 10/01/2014
- ◆ Updates 80 FR 22789 - Medical Examiner's Certification Integration, published by Office of the Federal Register, 04/23/2015
- ◆ Updates 79 FR 75437 - Inspection, Repair, and Maintenance; Driver-Vehicle Inspection Report (DVIR), published by Office of the Federal Register, 12/18/2014

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There may be a cost savings to the state budget due to reduced injuries, hazardous material spills, and highway property damage caused by crashes at a highway-rail crossing because the changes require a driver of a commercial motor vehicle to leave sufficient space to drive completely through a highway-rail crossing. However, such cost savings are not assured.
- ◆ **LOCAL GOVERNMENTS:** No additional costs or savings to local governments are anticipated because the amendment only affects the Utah Department of Transportation and the motor carriers it regulates.
- ◆ **SMALL BUSINESSES:** No additional costs or savings to small businesses are anticipated because the amendment only affects the Utah Department of Transportation and the motor carriers it regulates.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No additional costs or savings are anticipated for persons other than small businesses, businesses, or local government entities because the amendment only affects the Utah Department of Transportation and the motor carriers it regulates.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:**

Affected persons will experience some implementation costs to train drivers to allow sufficient space to drive completely through highway-rail crossings. These final rules also add costs for freight forwarders and brokers for coming into compliance with provisions of Moving Ahead for Progress in the 21st Century Act (MAP-21). With the revision of the definition of "gross combination weight rating (GCWR)", drivers of a single-unit truck towing trailers that previously did not meet the definition of a motor carrier will now be required to comply with the Federal Motor Carrier Safety Regulations. Certain for-hire motor carriers of property and of passengers will see certain cost savings because the new federal regulations eliminate quarterly financial reporting requirements. The new federal regulations also rescind the requirement for drivers of motor carrier vehicles to complete a daily vehicle inspection report (DVIR) when the vehicle has



no defects or deficiencies. The elimination of this regulation is estimated to reduce hourly labor cost by \$37 annually.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment is necessary to bring the Department of Transportation's rules into compliance with federal regulations. The Department hopes the change will lead to fewer accidents at highway-rail crossings that result in personal injuries, hazardous waste spills, and other property damage.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/24/2015

AUTHORIZED BY: Carlos Braceras, Executive Director

## **R909. Transportation, Motor Carrier.**

### **R909-1. Safety Regulations for Motor Carriers.**

#### **R909-1-1. Authority and Purpose.**

This Rule is enacted under the authority of Section 72-9-103 to enable the department to enforce the Federal Motor Carrier Safety Regulations as contained in Title 49, Code of Federal Regulations related to the operation of a motor carrier within the state, as required by Section 72-9-301.

#### **R909-1-2. Adoption of Federal Regulations.**

(1) Safety Regulations for Motor Carriers, 49 CFR Parts 350 through 384, Parts 387 through 399, and Part 40, (October 1, 2011<sup>[2]</sup><sup>[4]</sup>), as amended by the Federal Register through [~~August 23, 2013~~ April 23, 2015] are incorporated by reference, except for Parts 391.11(b)(1) and 391.49 as it applies to intrastate drivers only. These requirements apply to all motor carrier(s) as defined in 49 CFR Part 390.5, excluding commercial motor vehicles which are designed or used to transport more than 8 and less than 15 passengers (including the driver) for compensation and Section 72-9-102(2) engaged in intrastate commerce.

(2) Intrastate trucking operations in which the carriers operate double trailer combinations only are not required to comply with 49 CFR Part 380.203(a)(2).

(3) Exceptions to Part 391.41, Physical Qualification may be granted under the rules of Department of Public Safety, Driver's

License Division, Section 53-3-303.5 for intrastate drivers under R708-34.

(4) Drivers involved wholly in intrastate commerce shall be at least 18 years old. However, if they are transporting placarded amounts of hazardous materials or carrying 16 or more passengers, including the driver, they must be 21 years old.

(5) Licensed child care providers operating a passenger vehicle with a seating capacity of not more than 30 passengers, and wholly in intrastate commerce, are exempt from 49 CFR Part 387 Subpart B but are subject to the minimum coverage requirements in Section 72-9-103.

### **R909-1-3. Insurance for Private Intrastate/Interstate Motor Carriers.**

(1) "Private Motor Carrier" means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier.

(2) All intrastate private motor carriers shall have a minimum amount of \$750,000 liability.

(3) All intrastate for-hire and private motor carriers transporting any quantities of oil listed in 49 CFR 172.101; hazardous waste, hazardous material and hazardous substances defined in 49 CFR 171.101, shall have \$1,000,000 minimum level of financial responsibility and a MCS-90 endorsement maintained at the principal place of business.

### **R909-1-4. Implements of Husbandry.**

"Implements of Husbandry" is defined in Section 41-1a-102(23) and must be in compliance with all provisions of Chapter 6, Title 41, Utah Code Annotated. Vehicles meeting this definition are exempt from 49 CFR Part 393 - Parts and Accessories Necessary for Safe Operations.

### **R909-1-5. Cease and Desist Order - Registration Sanctions.**

As authorized by Section 72-9-303, the department may issue cease and desist orders to any motor carrier that fails or neglects to comply with State and Federal Motor Carrier Safety Regulations or any part of this rule.

### **R909-1-6. Penalties and Fines.**

Any motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations or any part of this rule is subject to a civil penalty as authorized by Sections 72-9-701 and 72-9-703.

### **R909-1-7. Motor Carriers Delinquent in Paying Civil Penalties; Prohibition on Transportation.**

Pursuant to Section 72-9-303, a motor carrier that has failed to pay civil penalties imposed by the department, or has failed to abide by a payment plan, may be prohibited from operating commercial motor vehicles in intrastate or interstate commerce.

### **[R909-1-8. MCS-150 Update Required.**

~~Utah participates in the federal Performance and Registration Information Systems Management (PRISM) program which enforces the motor vehicle maintenance and requires updates to the USDOT number associated with the carrier responsible for the safety of each motor vehicle being registered. Utah-based carriers are required to update their USDOT number information (MCS-150) at~~

~~the time of vehicle registration with the Utah State Tax Commission, or at least every 12 months.~~

**]KEY: trucks, transportation safety, implements of husbandry**  
**Date of Enactment or Last Substantive Amendment: [November 7, 2013]2015**

**Notice of Continuation: November 1, 2011**

**Authorizing, and Implemented or Interpreted Law: 72-9-103; 72-9-104; 72-9-101; 72-9-301; 72-9-303; 72-9-701; 72-9-703.**

## Transportation, Operations, Traffic and Safety **R920-1** Utah Manual on Uniform Traffic Control Devices

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39481

FILED: 06/30/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to incorporate by reference and adopt updates to the 2009 edition of the Utah Manual on Uniform Traffic Control Devices (Utah MUTCD) published 06/30/2015. The Utah Department of Transportation (UDOT) has performed a thorough review of the 2009 edition of Part 7 of the Utah MUTCD and made approximately 168 edits to previously text. Almost all of the edits are to correct typographic and grammatical errors, which are clearly nonsubstantive changes. However, some of the edits change requirements for placement of the flashing beacons on a reduced speed school zone. These beacons were formerly required to be placed horizontally, and are now required to be mounted vertically. This change in placement does not change the requirement to use flashing beacons. Sign designs are also updated to current federal requirements, but the requirement to use them has not changed either. This updated version of the Utah MUTCD places no additional burden on the state or local government authorities.

**SUMMARY OF THE RULE OR CHANGE:** This amendment is to incorporate by reference and adopt updates to the 2009 edition of Part 7 of the Utah Manual on Uniform Traffic Control Devices (Utah MUTCD) published 06/30/2015.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 41-6a-301

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates The Utah Manual on Uniform Traffic Control Devices, published by UDOT, 06/30/2015

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This amendment will not affect the state budget because it is made only for the purpose of updating requirements already in place and making technical corrections to material that Rule R920-1 incorporates by reference.
- ◆ **LOCAL GOVERNMENTS:** This amendment will not affect local government budgets because it is made only for the purpose of updating requirements already in place and making technical corrections to material that Rule R920-1 incorporates by reference.
- ◆ **SMALL BUSINESSES:** This amendment will not cause any additional costs of savings for small businesses because it is made only for the purpose of updating requirements already in place and making technical corrections to material that Rule R920-1 incorporates by reference.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment will not cost or save the general public anything because it is made only for the purpose of updating requirements already in place and making technical corrections to material that Rule R920-1 incorporates by reference.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Affected persons will not experience any additional costs because the updates only change the way flashing beacons are installed and the design of signs that are installed going forward. Part 7 of the Utah MUTCD already requires placement of the flashing beacons and signs.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** UDOT has performed a thorough review of the 2009 edition of Part 7 of the Utah MUTCD and edited this part of the manual to conform to current federal requirements and make technical corrections. The Department performs similar reviews of IRS regulatory materials periodically to assure that its regulations conform to current federal law. This amendment to Rule R920-1 places no additional burden on the state or local government authorities, small businesses, or the general public.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at [jimpalmer@utah.gov](mailto:jimpalmer@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015**

THIS RULE MAY BECOME EFFECTIVE ON: 08/24/2015

AUTHORIZED BY: Carlos Braceras, Executive Director

**R920. Transportation, Operations, Traffic and Safety.**

**R920-1. Utah Manual on Uniform Traffic Control Devices.**

**R920-1-1. Purpose and Authority.**

The purpose of this rule is to adopt standards and establish specifications for a uniform system of traffic-control devices used on all highways open to public travel, to establish criteria and specifications for the establishment, location, and operation of school crosswalks, school zones, and reduced speed school zones, and to establish specifications for uniform signage or markings to clearly identify school bus parking zones. This rule is authorized and required by Sections 41-6a-301, 41-6a-303 and 41-6a-1307.

**R920-1-2. Incorporation.**

Incorporated by reference is the Utah Manual on Uniform Traffic Control Devices, 2009 Edition with revisions through ~~[December 2011]~~ June 30, 2015 (Utah MUTCD). This manual was determined to be in substantial conformance with the 2009 MUTCD by the Federal Highway Administrator which, in accordance with Title 23, U.S. Code, Section 655, is the standard for all highways open to public travel in accordance with Title 23, U.S. Code, Sections 109(d) and 402(a). Included in Part 7 of the Utah MUTCD is the Utah Traffic Controls for School Zones establishing the criteria and specifications authorized and required by Sections 41-6a-303 and 41-6a-1307.

**R920-1-3. Authority of Executive Director or Designee.**

All authority shall rest with the Utah Department of Transportation Executive Director or his designee to develop or modify the Utah MUTCD, including the Utah Traffic Controls for School Zones, as the standard for all highways open to public travel in Utah.

**KEY:** traffic control, pedestrians, school zones, traffic signs

**Date of Enactment or Last Substantive Amendment:** ~~[October 23, 2012]~~ 2015

**Notice of Continuation:** August 1, 2012

**Authorizing, and Implemented or Interpreted Law:** 41-6a-301; 41-6a-303; 41-6a-1307

Transportation, Operations, Traffic and  
Safety

**R920-2**

Rural Conventional Road Definition

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 39495

FILED: 07/01/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Section 72-7-504 was amended by H.B. 269, the Tourist-Oriented Signing Program Program, 2015 Utah Laws Ch. 402. Among other things, the amendment requires the adoption of a rule that defines the phrase, "rural conventional roads". The purpose of this new rule is to comply with the new requirement.

**SUMMARY OF THE RULE OR CHANGE:** This rule is being made to comply with the requirements of H.B. 269 (2015), and the amendment it makes to Section 72-7-504, by providing a definition for the phrase "rural conventional roads".

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 72-7-504(3)(ii)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This new rule should not have any impact on the state budget because all it does is define a phrase that the Department of Transportation will use to determine where tourist-oriented directional signs that display logo advertising and information of interest to the traveling public may be placed.

♦ **LOCAL GOVERNMENTS:** This new rule should not have any impact on the budget of local governments because all it does is define a phrase that the Department of Transportation will use to determine where tourist-oriented directional signs that display logo advertising and information of interest to the traveling public may be placed.

♦ **SMALL BUSINESSES:** This new rule should not have any impact on the state budgets of small businesses because all it does is define a phrase that the Department of Transportation will use to determine where tourist-oriented directional signs that display logo advertising and information of interest to the traveling public may be placed.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new rule should not have any impact on the budgets of the general citizenry because all it does is define a phrase that the Department of Transportation will use to determine where tourist-oriented directional signs that display logo advertising and information of interest to the traveling public may be placed.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This new rule should not cost affected persons anything because all it does is define a phrase that the Department of Transportation will use to determine where tourist-oriented directional signs that display logo advertising and information of interest to the traveling public may be placed.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The Department makes this new rule to comply with the

requirements of Section 72-7-504, which was amended during the 2015 General Session of the Legislature to require the Department to make a rule that defines the phrase, "rural conventional roads". Enactment of the new rule should not have any fiscal impact on the budgets of the state, local governments, small businesses, or the general public.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/24/2015

AUTHORIZED BY: Carlos Braceras, Executive Director

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**R920. Transportation, Operations, Traffic and Safety.**

**R920-2. Rural Conventional Road Definition.**

**R920-2-1. Purpose and Authority.**

The purpose of this rule is to adopt standards and establish specifications for the definition of rural conventional roads as required in Section 72-7-504 (amended 2015).

**R920-2-2. Definitions.**

Rural conventional roads are roads that are in rural areas.

Rural areas are communities and unincorporated county not within the boundaries of urbanized areas and urban clusters as identified by the Department.

**R920-2-3. Authority of Executive Director or Designee.**

All authority shall rest with the Utah Department of Transportation Executive Director or his designee to develop or modify the definition in R920-2-2.

**KEY: rural conventional roads, unincorporated county, tourist-oriented directional signs, urbanized areas**

**Date of Enactment or Last Substantive Amendment: 2015**

**Authorizing, and Implemented or Interpreted Law: 72-7-504**

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

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 39496

FILED: 07/01/2015

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct some errors in earlier amendments.

SUMMARY OF THE RULE OR CHANGE: The Department will now pay child care providers directly and filed proposed rule changes to accomplish that on 05/15/2015. The Department has since learned computer programing will not be ready to support the requirement that providers certify attendance each month so that requirement has been taken out for the time being. It is anticipated this will be added in the near future and the rule will be changed again. The provider is still required to notify the Department of changes within ten days. Also, a couple of changes are nonsubstantive and a 12-month time limit for repayment of any overpayment is added.

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

ANTICIPATED COST OR SAVINGS TO:

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

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

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

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

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

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

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

WORKFORCE SERVICES  
EMPLOYMENT DEVELOPMENT

140 E 300 S  
SALT LAKE CITY, UT 84111-2333  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: Jon Pierpont, Executive Director

### **R986. Workforce Services, Employment Development.**

#### **R986-700. Child Care Assistance.**

##### **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.

(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 without good cause, 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.

(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 and there may be a disqualification period and/or criminal prosecution.

(6) CCL will keep a list of all providers that have been disqualified as a provider 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 and in the Portal;

(c) view child care payment information;

(d) manage Provider Portal user access to ensure only those users with authority to make changes can do so. The provider is liable for all changes made and information provided through the Provider Portal. ~~[-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]~~ 25th of the month, 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-]~~ financial institution account information for direct deposit.

(9) Providers ~~[are required to]~~ must submit a W-9 Form if required by the Department and ~~[the Department will issue]~~ a 1099 will be issued 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.

##### **R986-700-714. CC Payment Method.**

(1) The ~~[Department will issue payment to the]~~ provider must provide a valid financial account and routing number to allow for payment 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) Under unusual or extraordinary circumstances, the Department can issue payment by check. If a provider cannot

obtain a ~~[bank-]~~financial 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, the provider 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. 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 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, 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 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 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) 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.

(3) All CC overpayments must be repaid to the Department.

(a) Client overpayments 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.

(4) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(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.

(8) If a provider fails to enter into a payment plan to repay the overpayment or abide by the terms of the payment plan for 12 consecutive months, the provider will be taken off the approved provider list until all overpayments are paid in full or the arrearage on the payment plan is brought current. This is true even if there is only one overpayment.

**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

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After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends August 14, 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 November 12, 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.

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**The Changes in Proposed Rules Begin on the Following Page**

**Environmental Quality, Radiation  
Control  
R313-19-13  
Exemptions**

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR FILE NO.: 39280  
FILED: 06/30/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The State of Utah entered into an agreement with the U.S. Nuclear Regulatory Commission (NRC) to establish and maintain a compatible program for the control of radioactive material in Utah. To maintain compatibility with NRC requirements, the State of Utah is required to modify the Utah Radiation Control Rules in order to incorporate the appropriate regulations published by the NRC in 77 FR 43666.

**SUMMARY OF THE RULE OR CHANGE:** This rulemaking addresses the adoption of appropriate requirements found in 79 FR 43666. This rule change amends regulations in Rule R313-19 to make requirements for distributors of radioactive material clearer, less prescriptive, and more risk-informed and up-to-date. This amendment also redefines categories of devices to be used under exemptions, adding explicit provisions regarding the sealed source and device registration process, and adding flexibility to the licensing of users of sealed sources and devices. This amendment is primarily intended to make the licensing process more efficient and effective. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the May 1, 2015, issue of the Utah State Bulletin, on page 27. 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:** Section 19-3-104 and Section 19-3-108

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The proposed changes do not add or remove significant requirements that affect radiation. The proposed rule changes are adopting required federal regulations to maintain compatibility as an agreement state. These changes do not add new requirements that would cause the state budget to incur any changes in compliance costs beyond those identified by the Nuclear Regulatory Commission.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to the local government. The proposed changes do not add or remove significant requirements that affect radiation. The proposed rule changes are adopting required federal regulations to maintain compatibility as an agreement state. These changes do not add new requirements that would cause local government to incur any changes in compliance costs beyond those identified by the Nuclear Regulatory Commission.

◆ **SMALL BUSINESSES:** Small businesses may hold a radioactive material license, but there is no anticipated cost or savings for small businesses. The proposed rule changes are adopting required federal regulations to maintain compatibility as an agreement state. These changes do not add new requirements that would cause small businesses to incur any changes in compliance costs beyond those identified by the Nuclear Regulatory Commission.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Small businesses and persons other than businesses may hold a radioactive material license, but there is no anticipated cost or savings for small businesses and persons other than businesses. The proposed rule changes are adopting required federal regulations to maintain compatibility as an agreement state. These changes do not add new requirements that would cause local government to incur any changes in compliance costs beyond those identified by the Nuclear Regulatory Commission.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated costs for affected persons since the proposed rule changes are adopting required federal regulations to maintain compatibility as an agreement state. These changes do not add new requirements that would cause affected persons to incur any changes in compliance costs beyond those identified by the Nuclear Regulatory Commission.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The proposed changes to the rule are necessary for the Utah Radiation Control Rules to be compatible with NRC requirements, and to ensure that the Division's program activities are adequate to protect the public health and safety. The Division is not aware of any business that would be impacted fiscally due to the proposed rule changes.

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

ENVIRONMENTAL QUALITY  
RADIATION CONTROL  
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:

♦ Spencer Wickham by phone at 801-536-0082, by FAX at 801-533-4097, or by Internet E-mail at swickham@utah.gov

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: Rusty Lundberg, Director

**R313. Environmental Quality, Radiation Control.****R313-19. Requirements of General Applicability to Licensing of Radioactive Material.****R313-19-13. Exemptions.**

(1) Source material.

(a) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses, owns, or transfers source material in a chemical mixture, compound, solution or alloy in which the source material is by weight less than 1/20 of one percent (0.05 percent) of the mixture, compound, solution, or alloy.

(b) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers unrefined and unprocessed ore containing source material; provided, that, except as authorized in a specific license, such person shall not refine or process the ore.

(c) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers:

(i) any quantities of thorium contained in:

(A) incandescent gas mantles,

(B) vacuum tubes,

(C) welding rods,

(D) electric lamps for illuminating purposes: provided that, each lamp does not contain more than 50 milligrams of thorium,

(E) germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting provided that each lamp does not contain more than two grams of thorium,

(F) rare earth metals and compounds, mixtures, and products containing not more than 0.25 percent by weight thorium, uranium, or any combination of these, or

(G) personnel neutron dosimeters provided that each dosimeter does not contain more than 50 milligrams of thorium;

(ii) source material contained in the following products:

(A) glazed ceramic tableware, provided that the glaze contains not more than 20 percent by weight source material,

(B) piezoelectric ceramic containing not more than two percent by weight source material, or

(C) glassware containing not more than ten percent by weight source material, but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass or ceramic used in construction;

(iii) photographic film, negatives and prints containing uranium or thorium;

(iv) a finished product or part fabricated of, or containing, tungsten-thorium or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed four percent by weight and that this exemption shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of the product or part;

(v) uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of the counterweights, provided that:

(A) the counterweights are manufactured in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission authorizing distribution by the licensee pursuant to 10 CFR Part 40,

(B) each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "DEPLETED URANIUM",

(C) each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED",

(D) The requirements specified in Subsections R313-19-13(1)(c)(v)(B) and (C) need not be met by counterweights manufactured prior to December 31, 1969, provided that such counterweights are impressed with the legend, "CAUTION - RADIOACTIVE MATERIAL - URANIUM", as previously required by the rules, and

(E) the exemption contained in Subsection R313-19-13(1)(c)(v) shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of counterweights other than repair or restoration of any plating or other covering;

(vi) natural or depleted uranium metal used as shielding constituting part of a shipping container which is conspicuously and legibly impressed with the legend "CAUTION - RADIOACTIVE SHIELDING - URANIUM" and the uranium metal is encased in mild steel or equally fire resistant metal of minimum wall thickness of one eighth inch (3.2 mm);

(vii) thorium contained in finished optical lenses, provided that each lens does not contain more than 30 percent by weight of thorium, and that this exemption shall not be deemed to authorize either:

(A) the shaping, grinding, or polishing of a lens or manufacturing processes other than the assembly of such lens into optical systems and devices without alteration of the lens, or

(B) the receipt, possession, use, or transfer of thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments;

(viii) uranium contained in detector heads for use in fire detection units, provided that each detector head contains not more than 0.005 microcurie (185.0 Bq) of uranium; or

(ix) thorium contained in a finished aircraft engine part containing nickel-thoria alloy, provided that:

(A) the thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide), and

(B) the thorium content in the nickel-thoria alloy does not exceed four percent by weight.

(d) The exemptions in Subsection R313-19-13(1)(c) do not authorize the manufacture of any of the products described.

(2) Radioactive material other than source material.

(a) Exempt concentrations.

(i) Except as provided in Subsection R313-19-13(2)(a)(iii) a person is exempt from Rules R313-19, R313-21 and R313-22 to the extent that the person receives, possesses, uses, transfers, owns or acquires products or materials containing:

(A) radioactive material introduced in concentrations not in excess of those listed in Section R313-19-70, or

(B) diffuse sources of natural occurring radioactive materials containing less than 15 picocuries per gram radium-226.

(ii) A manufacturer, processor, or producer of a product or material is exempt from the requirements for a license set forth in Rules R313-19, R313-21 and R313-22 and Rules R313-32, R313-34, R313-36, and R313-38 to the extent that the person transfers:

(A) radioactive material contained in a product or material in concentrations not in excess of those specified in R313-19-70; and

(B) introduced into the product or material by a licensee holding a specific license issued by the U.S. Nuclear Regulatory Commission authorizing the introduction.

(C) The exemption in R313-19-13-2(a)(ii)(A) and R313-19-13-2(a)(ii)(B) does not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(iii) A person may not introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under Subsection R313-19-13(2)(a)(i) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except in accordance with a specific license issued pursuant to Subsection R313-22-75(1).

(b) Exempt quantities.

(i) Except as provided in Subsections R313-19-13(2)(b)(ii) through (iv) a person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires radioactive material in individual quantities which do not exceed the applicable quantity set forth in Section R313-19-71.

(ii) Subsection R313-19-13(2)(b) does not authorize the production, packaging or repackaging of radioactive material for purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution.

(iii) A person may not, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in Section R313-19-71, knowing or having reason to believe that the quantities of radioactive material will be transferred to persons exempt under Subsection R313-19-13(2)(b) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, pursuant to 10 CFR Part 32 or by the Director pursuant to Subsection R313-22-75(2), which license states that the radioactive material may be transferred by the licensee to persons exempt under Subsection R313-19-13(2)(b) or the equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State.

(iv) A person who possesses radioactive material received or acquired prior to September 25, 1971, under the general license formerly provided in 10 CFR Part 31.4 or equivalent regulations of a State is exempt from the requirements for a license set forth in Rule R313-19 to the extent that the person possesses, uses, transfers or owns radioactive material. This exemption does not apply for diffuse sources of radium-226.

(v) No person may, for purposes of producing an increased radiation level, combine quantities of radioactive material covered by this exemption so that the aggregate quantity exceeds the limits set forth in R313-19-71, except for radioactive material combined within a

device placed in use before May 3, 1999, or as otherwise provided by these rules.

(c) Exempt items.

(i) Certain items containing radioactive material. Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, a person is exempt from these rules to the extent that person receives, possesses, uses, transfers, owns or acquires the following products:

(A) Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

(I) 25 millicuries (925.0 MBq) of tritium per timepiece;

(II) five millicuries (185.0 MBq) of tritium per hand;

(III) 15 millicuries (555.0 MBq) of tritium per dial. Bezels when used shall be considered as part of the dial;

(IV) 100 microcuries (3.7 MBq) of promethium-147 per watch or 200 microcuries (7.4 MBq) of promethium-147 per any other timepiece;

(V) 20 microcuries (0.74 MBq) of promethium-147 per watch hand or 40 microcuries (1.48 MBq) of promethium-147 per other timepiece hand;

(VI) 60 microcuries (2.22 MBq) of promethium-147 per watch dial or 120 microcuries (4.44 MBq) of promethium-147 per other timepiece dial. Bezels when used shall be considered as part of the dial;

(VII) the radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

for wrist watches, 0.1 millirad (1.0 uGy) per hour at ten centimeters from any surface;

for pocket watches, 0.1 millirad (1.0 uGy) per hour at one centimeter from any surface;

for other timepieces, 0.2 millirad (2.0 uGy) per hour at ten centimeters from any surface;

(VIII) one microcurie (37.0 kBq) of radium-226 per timepiece in timepieces manufactured prior to November 30, 2007.

(B)(I) Static elimination devices which contain, as sealed source or sources, radioactive material consisting of a total of not more than 18.5 MBq (500 uCi) of polonium-210 per device.

(II) Ion generating tubes designed for ionization of air that contain, as a sealed source or sources, byproduct material consisting of a total of not more than 18.5 MBq (500 uCi) of polonium-210 per device or of a total of not more than 1.85 GBq (50 mCi) of hydrogen-3 (tritium) per device.

(III) Such devices authorized before October 23, 2012 for use under the general license then provided in ~~[R313-21-22+(a)]10 CFR 31.3~~ (January 1, 2012) or equivalent regulations of the Commission or an Agreement State and manufactured, tested, and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the Commission or Agreement State.

(C) Precision balances containing not more than one millicurie (37.0 MBq) of tritium per balance or not more than 0.5 millicurie (18.5 MBq) of tritium per balance part manufactured before June 9, 2010.

(D) Marine compasses containing not more than 750 millicuries (27.8 GBq) of tritium gas and other marine navigational instruments containing not more than 250 millicuries (9.25 GBq) of tritium gas manufactured before June 9, 2010.

(E) Ionization chamber smoke detectors containing not more than 1 microcurie (37 kBq) of americium-241 per detector in the form of a foil and designed to protect life and property from fires.

(F) Electron tubes, including spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes, and other completely sealed tubes that are designed to conduct or control electrical currents; provided that each tube does not contain more than one of the following specified quantities of radioactive material:

(I) 150 millicuries (5.55 GBq) of tritium per microwave receiver protector tube or ten millicuries (370.0 MBq) of tritium per any other electron tube;

(II) one microcurie (37.0 kBq) of cobalt-60;

(III) five microcuries (185.0 kBq) of nickel-63;

(IV) 30 microcuries (1.11 MBq) of krypton-85;

(V) five microcuries (185.0 kBq) of cesium-137;

(VI) 30 microcuries (1.11 MBq) of promethium-147;

(VII) one microcurie (37.0 kBq) of radium-226;

and provided further, that the radiation dose rate from each electron tube containing radioactive material will not exceed one millirad (10.0 uGy) per hour at one centimeter from any surface when measured through seven milligrams per square centimeter of absorber.

(G) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material, provided that:

(I) each source contains no more than one exempt quantity set forth in Section R313-19-71; and

(II) each instrument contains no more than ten exempt quantities. For purposes of this requirement, an instrument's source(s) may contain either one type or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of exempt quantities in Section R313-19-71, provided that the sum of the fractions shall not exceed unity;

(III) for purposes of Subsection R313-19-13(2)(c)(i)(G), 0.05 microcurie (1.85 kBq) of americium-241 is considered an exempt quantity under Section R313-19-71.

(ii) Self-luminous products containing radioactive material.

(A) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147, and except as provided in R313-19-13(2)(c)(ii)(C), any person is exempt from the requirements for a license set forth in Section 274 b. of the Atomic Energy Act of 1954 and from the regulations in R313-15, R313-19, R313-32, R313-34, R313-36, R313-37, and R313-38 to the extent that such a person receives, possesses, uses, transfers, owns, or acquires tritium, krypton-85, or promethium-147 in self-luminous products manufactured, processed, produced, or initially transferred in accordance with a specific license issued pursuant to 10 CFR 32.22 (2015), which license authorizes the initial transfer of the product for use.

(B) Any person who desires to manufacture, process, or produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147 for use under R313-19-13(2)(c)(ii)(A), should apply for a license under 10 CFR 32.22 (2015) and for a certificate of registration in accordance with 10 CFR 32.210 (2015).

(C) The exemption in R313-19-13(2)(c)(ii)(A) does not apply to tritium, krypton-85, or promethium-147 used in products primarily for frivolous purposes or in toys or adornments.

(D) Radium-226. A person is exempt from these rules, to the extent that such person receives, possesses, uses, transfers, or owns articles containing less than 0.1 microcurie (3.7 kBq) of radium-226 which were acquired prior to the effective date of these rules.

(iii) Gas and aerosol detectors containing radioactive material.

(A) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing radioactive material, any person is exempt from the requirements for a license set forth in Section 274 b. of the Atomic Energy Act of 1954 and from the regulations in parts R313-18, R313-15, R313-19, R313-21, R313-22, R313-32, R313-34, R313-36, R313-37, and R313-38 to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material in gas and aerosol detectors designed to protect health, safety, or property, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued under 10 CFR 32.26 (2015), which license authorizes the initial transfer of the product for use under this section. This exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007, in accordance with a specific license issued by a State under comparable provisions to 10 CFR 32.26 (2015) authorizing distribution to persons exempt from regulatory requirements.

(B) Any person who desires to manufacture, process, or produce gas and aerosol detectors containing byproduct material, or to initially transfer such products for use under paragraph (a) of this section, should apply for a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR Part 32.26 (2015) and for a certificate of registration in accordance with R313-22-210 or equivalent regulations of an Agreement State.

(iv) Capsules containing carbon-14 urea for "in vivo" diagnostic use for humans.

(A) Except as provided in Subsection R313-19-13(2)(c)(iv) (B), any person is exempt from the requirements in Rules R313-19 and R313-32 provided that the person receives, possesses, uses, transfers, owns, or acquires capsules containing 37 kBq (1 uCi) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in vivo" diagnostic use for humans.

(B) Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to Rule R313-32.

(C) Nothing in Subsection R313-19-13(2)(c)(iv) relieves persons from complying with applicable United States Food and Drug Administration, other Federal, and State requirements governing receipt, administration, and use of drugs.

(v) Certain industrial devices.

(A) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing radioactive material designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing an ionized atmosphere, any person is exempt from the requirements for a license set forth in Section 274 b. of the Atomic Energy Act of 1954 and from the regulations in parts R313-18, R313-15, R313-18, R313-15, R313-19, R313-21, R313-22, R313-32, R313-34, R313-36, R313-37, and R313-38 to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material, in these certain detecting, measuring, gauging, or controlling devices and certain devices for

producing an ionized atmosphere, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued under 10 CFR 32.30 (2015), which license authorizes the initial transfer of the device for use under this rule. This exemption does not cover sources not incorporated into a device, such as calibration and reference sources.

(B) Any person who desires to manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material for use under R313-19-13(2)(c)(v)(A), should apply for a license under 10 CFR 32.30 (2015) and for a certificate of registration in accordance with R313-22-210.

(vi) With respect to Subsections R313-19-13(2)(b)(iii), R313-19-13(2)(c)(i), (iii) and (iv), the authority to transfer possession or control by the manufacturer, processor, or producer of equipment, devices, commodities, or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons is exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

**KEY: licenses, reciprocity, transportation, exemptions**

**Date of Enactment or Last Substantive Amendment: 2015**

**Notice of Continuation: September 23, 2011**

**Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108**

**Environmental Quality, Radiation  
Control  
R313-21-22  
General Licenses\*--Radioactive  
Material Other Than Source Material**

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR FILE NO.: 39278

FILED: 06/30/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The State of Utah entered into an agreement with the U.S. Nuclear Regulatory Commission (NRC) to establish and maintain a compatible program for the control of radioactive material in Utah. To maintain compatibility with NRC requirements, the State of Utah is required to modify the Utah Radiation Control rules in order to incorporate the appropriate regulations published by the NRC in 77 FR 43666.

**SUMMARY OF THE RULE OR CHANGE:** This rulemaking addresses the adoption of appropriate requirements found in 79 FR 43666. This rule change amends regulations in Section R313-21-22 to make requirements for distributors of radioactive material clearer, less prescriptive, and more risk-informed and up-to-date. This change also redefines categories of devices to be used under exemptions, adding explicit provisions regarding the sealed source and device

registration process, and adding flexibility to the licensing of users of sealed sources and devices. This change is primarily intended to make the licensing process more efficient and effective. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the May 1, 2015, issue of the Utah State Bulletin, on page 34. 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: Section 19-3-104**

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The proposed changes do not add or remove significant requirements that affect radiation. The proposed rule changes are adopting required federal regulations to maintain compatibility as an agreement state. These changes do not add new requirements that would cause the state budget to incur any changes in compliance costs beyond those identified by the Nuclear Regulatory Commission.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to the local government. The proposed changes do not add or remove significant requirements that affect radiation. The proposed rule changes are adopting required federal regulations to maintain compatibility as an agreement state. These changes do not add new requirements that would cause local government to incur any changes in compliance costs beyond those identified by the Nuclear Regulatory Commission.

◆ **SMALL BUSINESSES:** Small businesses may hold a radioactive material license, but there is no anticipated cost or savings for small businesses. The proposed rule changes are adopting required federal regulations to maintain compatibility as an agreement state. These changes do not add new requirements that would cause small businesses to incur any changes in compliance costs beyond those identified by the Nuclear Regulatory Commission.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Small businesses and persons other than businesses may hold a radioactive material license, but there is no anticipated cost or savings for small businesses and persons other than businesses. The proposed rule changes are adopting required federal regulations to maintain compatibility as an agreement state. These changes do not add new requirements that would cause local government to incur any changes in compliance costs beyond those identified by the Nuclear Regulatory Commission.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated costs for affected persons since the proposed rule changes are adopting required federal

regulations to maintain compatibility as an agreement state. These changes do not add new requirements that would cause affected persons to incur any changes in compliance costs beyond those identified by the Nuclear Regulatory Commission.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes to the rule are necessary for the Utah Radiation Control Rules to be compatible with NRC requirements, and to ensure that the Division's program activities are adequate to protect the public health and safety. The Division is not aware of any business that would be impacted fiscally due to the proposed rule changes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 RADIATION CONTROL  
 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:  
 ♦ Spencer Wickham by phone at 801-536-0082, by FAX at 801-533-4097, or by Internet E-mail at swickham@utah.gov

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2015

AUTHORIZED BY: Rusty Lundberg, Director

**R313. Environmental Quality, Radiation Control.**  
**R313-21. General Licenses.**  
**R313-21-22. General Licenses\*--Radioactive Material Other Than Source Material.**

NOTE: \*Different general licenses are issued in this section, each of which has its own specific conditions and requirements.

- (1) ~~[Reserved.]~~RESERVED.  
~~[(a) Static Elimination Devices. Devices designed for use as static eliminators which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 18.5 megabecquerel (500 uCi) of polonium-210 per device.~~  
~~[(b) Ion Generating Tube. Devices designed for ionization of air which contain, as a sealed source or sources, radioactive material consisting of a total of not more than 18.5 megabecquerel (500 uCi) of polonium-210 per device or a total of not more than 1.85 gigabecquerel (50 mCi) of hydrogen-3 (tritium) per device.~~  
 ] (2) Certain items and self-luminous products containing radium-226.

(a) A general license is hereby issued to a person to acquire, receive, possess, use, or transfer, in accordance with the provisions of Subsections R313-21-22(2)(b), R313-21-22(2)(c), and R313-21-22(2)(d), radium-226 contained in the following products manufactured prior to November 30, 2007.

(i) Antiquities originally intended for use by the general public. For the purposes of Subsection R313-21-22(2)(a), antiquities mean products originally intended for use by the general public and

distributed in the late 19th and early 20th centuries, such as radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts, and healing pads.

(ii) Intact timepieces containing greater than 37 kilobecquerels (1 uCi), nonintact timepieces, and timepiece hands and dials no longer installed in timepieces.

(iii) Luminous items installed in air, marine, or land vehicles.

(iv) All other luminous products provided that no more than 100 items are used or stored at the same location at one time.

(v) Small radium sources containing no more than 37 kilobecquerels (1 uCi) of radium-226. For the purposes of Subsection R313-21-22(2)(a), "small radium sources" means discrete survey instrument check sources, sources contained in radiation measuring instruments, sources used in educational demonstrations such as cloud chambers and spinthariscopes, electron tubes, static eliminators, or as designated by the Director.

(b) Persons who acquire, receive, possess, use, or transfer radioactive material under the general license issued in Subsection R313-21-22(2)(a) are exempt from the provisions of Rules R313-15, R313-18, and Sections R313-12-51 and R313-19-50, to the extent that the receipt, possession, use, or transfers of radioactive material is within the terms of the general license; provided, however, that this exemption shall not be deemed to apply to a person specifically licensed under Rule R313-22.

(c) A person who acquires, receives, possesses, uses, or transfers radioactive material in accordance with the general license in Subsection R313-21-22(2)(a):

(i) Shall notify the Director should there be an indication of possible damage to the product so that it appears it could result in a loss of the radioactive material. A report containing a brief description of the event, and the remedial action taken, must be furnished to the Director within 30 days.

(ii) Shall not abandon products containing radium-226. The product, and radioactive material from the product, may only be disposed of according to Section R313-15-1008 or by transfer to a person authorized by a specific license to receive the radium-226 in the product or as otherwise approved by the Director.

(iii) Shall not export products containing radium-226 except in accordance with 10 CFR Part 110.

(iv) Shall dispose of products containing radium-226 at a disposal facility authorized to dispose of radioactive material in accordance with Federal or State solid or hazardous waste laws, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005, by transfer to a person authorized to receive radium-226 under Rule R313-22 or equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State or as otherwise approved by the Director.

(v) Shall respond to written requests from the Director to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the Director a written justification using the method stated in Section R313-12-110.

(d) The general license in R313-21-22(2)(a) does not authorize the manufacture, assembly, disassembly, repair, or import of products containing radium-226, except that timepieces may be disassembled and repaired.

(3) RESERVED.

(4) Certain detecting, measuring, gauging or controlling devices and certain devices for producing light or an ionized atmosphere.\*

NOTE: \*Persons possessing radioactive material in devices under a general license in R313-21-22(4) before January 15, 1975, may continue to possess, use, or transfer that material in accordance with the labeling requirements of R313-21-22(4) in effect on January 14, 1975.

(a) A general license is hereby issued to commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and state or local government agencies to own, acquire, receive, possess, use or transfer, in accordance with the provisions of R313-21-22(4)(b), (c) and (d), radioactive material, excluding special nuclear material, contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere.

(b)(i) The general license in R313-21-22(4)(a) applies only to radioactive material contained in devices which have been manufactured or initially transferred and labeled in accordance with the specifications contained in:

(A) a specific license issued by the Director pursuant to R313-22-75(4); or

(B) an equivalent specific license issued by the Nuclear Regulatory Commission or an Agreement State; or

(C) An equivalent specific license issued by a State with provisions comparable to R313-22-75.\*

NOTE: \*Regulations under the Federal Food, Drug, and Cosmetic Act authorizing the use of radioactive control devices in food production require certain additional labeling thereon which is found in 21 CFR 179.21.

(ii) The devices must have been received from one of the specific licensees described in R313-21-22(4)(b)(i) or through a transfer made under R313-21-22(4)(c)(ix).

(c) Any person who owns, acquires, receives, possesses, uses or transfers radioactive material in a device pursuant to the general license in R313-21-22(4)(a):

(i) shall assure that all labels affixed to the device at the time of receipt and bearing a statement that removal of the label is prohibited are maintained thereon and shall comply with all instructions and precautions provided by the labels;

(ii) shall assure that the device is tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at no longer than six-month intervals or at other intervals as are specified in the label; however:

(A) Devices containing only krypton need not be tested for leakage of radioactive material, and

(B) Devices containing only tritium or not more than 3.7 megabecquerel (100 uCi) of other beta, gamma, or both, emitting material or 0.37 megabecquerel (10 uCi) of alpha emitting material and devices held in storage in the original shipping container prior to initial installation need not be tested for any purpose;

(iii) shall assure that other testing, installation, servicing, and removal from installation involving the radioactive materials, its shielding or containment, are performed:

(A) in accordance with the instructions provided by the labels; or

(B) by a person holding a specific license pursuant to R313-22 or from the Nuclear Regulatory Commission, an Agreement State, or a Licensing State to perform such activities;

(iv) shall maintain records showing compliance with the requirements of R313-21-22(4)(c)(ii) and (iii). The records shall show the results of tests. The records also shall show the dates of performance of, and the names of persons performing, testing, installation, servicing, and removal from the installation the radioactive material and its shielding or containment. The licensee shall retain these records as follows:

(A) Each record of a test for leakage of radioactive material required by R313-21-22(4)(c)(ii) shall be retained for three years after the next required leak test is performed or until the sealed source is transferred or disposed of;

(B) Each record of a test of the on-off mechanism and indicator required by R313-21-22(4)(c)(ii) shall be retained for three years after the next required test of the on-off mechanism and indicator is performed or until the sealed source is transferred or disposed of;

(C) Each record that is required by R313-21-22(4)(c)(iii) shall be retained for three years from the date of the recorded event or until the device is transferred or disposed of;

(v) shall immediately suspend operation of the device if there is a failure of, or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 185 becquerel (0.005 uCi) or more removable radioactive material. The device may not be operated until it has been repaired by the manufacturer or other person holding a specific license to repair the device that was issued by the Director, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State. The device and any radioactive material from the device may only be disposed of by transfer to a person authorized by a specific license to receive the radioactive material in the device or as otherwise approved by the Director, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State. A report containing a brief description of the event and the remedial action taken; and, in the case of detection of 185 becquerel (0.005 uCi) or more removable radioactive material or failure of or damage to a source likely to result in contamination of the premises or the environs, a plan for ensuring that the premises and environs are acceptable for unrestricted use, must be furnished to the Director within 30 days. Under these circumstances, the criteria set out in R313-15-402 may be applicable, as determined by the Director on a case-by-case basis;

(vi) shall not abandon the device containing radioactive material;

(vii) shall not export the device containing radioactive materials except in accordance with 10 CFR 110;

(viii)(A) shall transfer or dispose of the device containing radioactive material only by export as provided by R313-21-22(4)(c)(vii), by transfer to another general licensee as authorized in R313-21-22(4)(c)(ix), to a person authorized to receive the device by a specific license issued under R313-22, to an authorized waste collector under R313-25, or equivalent regulations of the Nuclear Regulatory Commission, an Agreement State, or a Licensing State, or as otherwise approved under R313-21-22(4)(c)(viii)(C);

(B) shall furnish a report to the Director within 30 days after transfer of a device to a specific licensee or export. The report must contain:

(I) the identification of the device by manufacturer's or initial transferor's name, model number, and serial number;

(II) the name, address, and license number of the person receiving the device, the license number is not applicable if exported; and

(III) the date of the transfer;

(C) shall obtain written approval from the Director before transferring the device to any other specific licensee not specifically identified in R313-21-22(4)(c)(viii)(A); however, a holder of a specific license may transfer a device for possession and use under its own specific license without prior approval, if the holder:

(I) verifies that the specific license authorizes the possession and use, or applies for and obtains an amendment to the license authorizing the possession and use;

(II) removes, alters, covers, or clearly and unambiguously augments the existing label (otherwise required by R313-21-22(4)(c)(i)) so that the device is labeled in compliance with R313-15-904; however, the manufacturer, model number, and serial number must be retained;

(III) obtains the manufacturer's or initial transferor's information concerning maintenance that would be applicable under the specific license (such as leak testing procedures); and

(IV) reports the transfer under R313-21-22(4)(c)(viii)(B);

(ix) shall transfer the device to another general licensee only if:

(A) the device remains in use at a particular location. In this case, the transferor shall give the transferee a copy of R313-21-22(4), R313-12-51, R313-15-1201, and R313-15-1202, and any safety documents identified in the label of the device. Within 30 days of the transfer, the transferor shall report to the Director:

(I) the manufacturer's or initial transferor's name;

(II) the model number and serial number of the device transferred;

(III) the transferee's name and mailing address for the location of use; and

(IV) the name, title, and phone number of the responsible individual identified by the transferee in accordance with R313-21-22(4)(c)(xii) to have knowledge of and authority to take actions to ensure compliance with the appropriate regulations and requirements; or

(B) the device is held in storage by an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee;

(x) shall comply with the provisions of R313-15-1201 and R313-15-1202 for reporting radiation incidents, theft or loss of licensed material, but shall be exempt from the other requirements of R313-15 and R313-18;

(xi) shall respond to written requests from the Director to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by submitting a letter to the Director and provide written justification as to why it cannot comply;

(xii) shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in this regard;

(xiii)(A) shall register, in accordance with R313-21-22(4)(c)(xiii)(B) and (C), devices containing at least 370 megabecquerel (ten mCi) of cesium-137, 3.7 megabecquerel (0.1 mCi) of strontium-90, 37 megabecquerel (one mCi) of cobalt-60, 3.7 megabecquerel (0.1 mCi) of radium-226, or 37 megabecquerel (one mCi) of americium-241 or any other transuranic, (elements with atomic number greater than uranium-92), based on the activity indicated on the label. Each address for a location of use, as described under R313-21-22(4)(c)(xiii)(C)(IV) represents a separate general licensee and requires a separate registration and fee;

(B) if in possession of a device meeting the criteria of R313-21-22(4)(c)(xiii)(A), shall register these devices annually with the Director and shall pay the fee required by R313-70. Registration shall include verifying, correcting, or adding, as appropriate, to the information provided in a request for registration received from the Director. The registration information must be submitted to the Director within 30 days of the date of the request for registration or as otherwise indicated in the request. In addition, a general licensee holding devices meeting the criteria of R313-21-22(4)(c)(xiii)(A) is subject to the bankruptcy notification requirement in R313-19-34(5) and (6);

(C) in registering devices, the general licensee shall furnish the following information and any other information specifically requested by the Director:

(I) name and mailing address of the general licensee;

(II) information about each device: the manufacturer or initial transferor, model number, serial number, the radioisotope and activity as indicated on the label;

(III) name, title, and telephone number of the responsible person designated as a representative of the general licensee under R313-21-22(4)(c)(xii);

(IV) address or location at which the device(s) are used, stored, or both. For portable devices, the address of the primary place of storage;

(V) certification by the responsible representative of the general licensee that the information concerning the device(s) has been verified through a physical inventory and checking of label information; and

(VI) certification by the responsible representative of the general licensee that they are aware of the requirements of the general license; and

(D) persons generally licensed by the Nuclear Regulatory Commission, an Agreement State, or Licensing State with respect to devices meeting the criteria in R313-21-22(4)(c)(xiii)(A) are not subject to registration requirements if the devices are used in areas subject to Division jurisdiction for a period less than 180 days in any calendar year. The Director will not request registration information from such licensees;

(xiv) shall report changes to the mailing address for the location of use, including changes in the name of a general licensee, to the Director within 30 days of the effective date of the change. For a portable device, a report of address change is only required for a change in the device's primary place of storage; and

(xv) may not hold devices that are not in use for longer than 2 years. If devices with shutters are not being used, the shutter must be locked in the closed position. The testing required by R313-21-22(4)(c)(ii) need not be performed during the period of storage only. However, when devices are put back into service or transferred to another person, and have not been tested within the required test

interval, they must be tested for leakage before use or transfer and the shutter tested before use. Devices kept in standby for future use are excluded from the two-year time limit if the general licensee performs quarterly physical inventories of these devices while they are in standby.

(d) The general license in R313-21-22(4)(a) does not authorize the manufacture or import of devices containing radioactive material.

(e) The general license provided in R313-21-22(4)(a) is subject to the provisions of R313-12-51 through R313-12-53, R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100.

(5) Luminous safety devices for aircraft.

(a) A general license is hereby issued to own, receive, acquire, possess and use tritium or promethium-147 contained in luminous safety devices for use in aircraft, provided:

(i) each device contains not more than 370.0 gigabecquerel (10 Ci) of tritium or 11.1 gigabecquerel (300 mCi) of promethium-147; and

(ii) each device has been manufactured, assembled or initially transferred in accordance with a specific license issued by the Nuclear Regulatory Commission or an Agreement State, or each device has been manufactured or assembled in accordance with the specifications contained in a specific license issued by the Director or an Agreement State to the manufacturer or assembler of the device pursuant to licensing requirements equivalent to those in R313-22-75(5).

(b) Persons who own, receive, acquire, possess or use luminous safety devices pursuant to the general license in R313-21-22(5) are exempt from the requirements of R313-15 and R313-18, except that they shall comply with the provisions of R313-15-1201 and R313-15-1202.

(c) This general license does not authorize the manufacture, assembly, repair, or import of luminous safety devices containing tritium or promethium-147.

(d) This general license does not authorize the export of luminous safety devices containing tritium or promethium-147.

(e) This general license does not authorize the ownership, receipt, acquisition, possession or use of promethium-147 contained in instrument dials.

(f) This general license is subject to the provisions of R313-12-51 through R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100.

(6) Ownership of radioactive material. A general license is hereby issued to own radioactive material without regard to quantity. Notwithstanding any other provisions of R313-21, this general license does not authorize the manufacture, production, transfer, receipt, possession, use, import, or export of radioactive material except as authorized in a specific license.

(7) Calibration and reference sources.

(a) A general license is hereby issued to own, receive, acquire, possess, use and transfer, in the form of calibration or reference sources, americium-241, plutonium or radium-226 in accordance with the provisions of Subsections R313-21-22(7)(b) and (c), to a person who holds a specific license issued by the Director which authorizes that person to receive, possess, use and transfer radioactive material.

(b) The general license in Subsection R313-21-22(7)(a) applies only to calibration or reference sources which have been manufactured or initially transferred in accordance with the specifications contained in a specific license issued by the Nuclear Regulatory Commission pursuant to 10 CFR 32.57 or 10 CFR 70.39 or which have been manufactured in accordance with the specifications contained in a specific license issued to the manufacturer by the Director, or an Agreement State which authorizes manufacture of the sources for distribution to persons generally licensed, or in accordance with a specific license issued by a State with requirements equivalent to 10 CFR 32.57 or 10 CFR 70.39.

(c) The general license provided in Subsection R313-21-22(7)(a) is subject to the provisions of Sections R313-12-51 through R313-12-53, R313-12-70, and Rules R313-14, R313-19-34, R313-19-41, R313-19-61, R313-19-100, R313-15 and R313-18. In addition, persons who own, receive, acquire, possess, use or transfer one or more calibration or reference sources pursuant to the general license in Subsection R313-21-22(7)(a):

(i) shall not possess at any one time, at any one location of storage or use, more than 185.0 kilobecquerel (5 uCi) of americium-241, 185.0 kilobecquerel (5 uCi) of plutonium, or 185.0 kilobecquerel (5 uCi) of radium-226 in such sources;

(ii) shall not receive, possess, use or transfer a source unless the source, or the storage container, bears a label which includes one of the following statements or a substantially similar statement which contains the information called for in the following statement:

The receipt, possession, use and transfer of this source, Model No. ...., Serial No. ...., are subject to a general license and the regulations of the United States Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label.

CAUTION - RADIOACTIVE MATERIAL  
THIS SOURCE CONTAINS (AMERICIUM-241)  
(PLUTONIUM)(RADIUM-226)\*

DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

.....  
Typed or printed name of the manufacturer or initial transferor

NOTE: \*Show the name of the appropriate material.

(iii) shall not transfer, abandon, or dispose of a source except by transfer to a person authorized by a license issued by the Director, the Nuclear Regulatory Commission, or an Agreement State to receive the source;

(iv) shall store a source, except when the source is being used, in a closed container adequately designed and constructed to contain americium-241, plutonium, or radium-226 which might otherwise escape during storage; and

(v) shall not use a source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(d) A general license issued pursuant to Subsection R313-21-22(7)(a) does not authorize the manufacture, import, or export of calibration or reference sources containing americium-241, plutonium, or radium-226.

(8) RESERVED.



(9) General license for use of radioactive material for certain in vitro clinical or laboratory testing.\*

NOTE: \*The New Drug provisions of the Federal Food, Drug and Cosmetic Act also govern the availability and use of any specific diagnostic drug in interstate commerce.

(a) A general license is hereby issued to any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital to receive, acquire, possess, transfer or use, for the following stated tests, in accordance with the provisions of R313-21-22(9) (b), (c), (d), (e), and (f) the following radioactive materials in prepackaged units for use in in-vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals:

- (i) iodine-125, in units not exceeding 370.0 kilobecquerel (10 uCi) each;
- (ii) iodine-131, in units not exceeding 370.0 kilobecquerel (10 uCi) each;
- (iii) carbon-14, in units not exceeding 370.0 kilobecquerel (10 uCi) each;
- (iv) hydrogen-3 (tritium), in units not exceeding 1.85 megabecquerel (50 uCi) each;
- (v) iron-59, in units not exceeding 740.0 kilobecquerel (20 uCi) each;
- (vi) cobalt-57, in units not exceeding 370.0 kilobecquerel (10 uCi) each;
- (vii) selenium-75, in units not to exceed 370.0 kilobecquerel (10 uCi) each; or
- (viii) mock iodine-125, reference or calibration sources, in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 185.0 becquerel (0.005 uCi) of americium-241 each.

(b) A person shall not receive, acquire, possess, use or transfer radioactive material pursuant to the general license established by R313-21-22(9)(a) until that person has filed form DRC-07, "Registration Form-In Vitro Testing with Radioactive Material Under General License," with the Director and received a Certificate of Registration signed by the Director, or until that person has been authorized pursuant to R313-32 to use radioactive material under the general license in R313-21-22(9). The physician, veterinarian, clinical laboratory or hospital shall furnish on form DRC-07 the following information and other information as may be required by that form:

- (i) name and address of the physician, veterinarian, clinical laboratory or hospital;
- (ii) the location of use; and
- (iii) a statement that the physician, veterinarian, clinical laboratory or hospital has appropriate radiation measuring instruments to carry out in vitro clinical or laboratory tests with radioactive material as authorized under the general license in Subsection R313-21-22(9)(a) and that the tests will be performed only by personnel competent in the use of radiation measuring instruments and in the handling of the radioactive material.

(c) A person who receives, acquires, possesses or uses radioactive material pursuant to the general license established by Subsection R313-21-22(9)(a) shall comply with the following:

(i) The general licensee shall not possess at any one time, pursuant to the general license in Subsection R313-21-22(9)(a) at any one location of storage or use, a total amount of iodine-125, iodine-131, selenium-75, iron-59, cobalt-57, or any combination, in excess of 7.4 megabecquerel (200 uCi).

(ii) The general licensee shall store the radioactive material, until used, in the original shipping container or in a container providing equivalent radiation protection.

(iii) The general licensee shall use the radioactive material only for the uses authorized by Subsection R313-21-22(9)(a).

(iv) The general licensee shall not transfer the radioactive material except to a person authorized to receive it pursuant to a license issued by the Director, the Nuclear Regulatory Commission, an Agreement State or Licensing State, nor transfer the radioactive material in a manner other than in the unopened, labeled shipping container as received from the supplier.

(v) The general licensee shall dispose of the Mock Iodine-125 reference or calibration sources described in Subsection R313-21-22(9)(a)(viii) as required by Section R313-15-1001.

(vi) The general licensee shall pay annual fees pursuant to Rule R313-70.

(d) The general licensee shall not receive, acquire, possess, or use radioactive material pursuant to Subsection R313-21-22(9)(a):

(i) Except as prepackaged units which are labeled in accordance with the provision of a specific license issued pursuant to R313-22-75(7) or in accordance with the provisions of a specific license issued by the Nuclear Regulatory Commission, or an Agreement State, or before November 30, 2007, in accordance with the provisions of a specific license issued by a State with comparable provisions to 10 CFR 32.71 (2010) which authorizes the manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3(tritium), iron-59, selenium-75, cobalt-57, or Mock Iodine-125 to persons generally licensed under Subsection R313-21-22(9) or its equivalent, and

(ii) Unless the following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

"This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians in the practice of veterinary medicine, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the United States Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority.

.....  
Name of Manufacturer"

(e) The physician, veterinarian, clinical laboratory or hospital possessing or using radioactive material under the general license in Subsection R313-21-22(9)(a) shall report in writing to the Director, changes in the information previously furnished in the "Registration Form-In Vitro Testing with Radioactive Material Under General License", form DRC -07. The report shall be furnished within 30 days after the effective date of the change.

(f) Any person using radioactive material pursuant to the general license of Subsection R313-21-22(9)(a) is exempt from the requirements of Rules R313-15 and R313-18 with respect to radioactive material covered by that general license, except that persons using the Mock Iodine-125 described in Subsection R313-21-22(9)(a)(viii) shall comply with the provisions of Sections R313-15-1001, R313-15-1201 and R313-15-1202.

## (10) Ice Detection Devices.

(a) A general license is hereby issued to own, receive, acquire, possess, use and transfer strontium-90 contained in ice detection devices, provided each device contains not more than 1.85 megabecquerel (50 uCi) of strontium-90 and each device has been manufactured or initially transferred in accordance with a specific license issued by the Nuclear Regulatory Commission, or each device has been manufactured in accordance with the specifications contained in a specific license issued by the Director, an Agreement State, or a Licensing State to the manufacturer of the device pursuant to licensing requirements equivalent to those in 10 CFR 32.61.

(b) Persons who own, receive, acquire, possess, use or transfer strontium-90 contained in ice detection devices pursuant to the general license in Subsection R313-21-22(10)(a):

(i) shall, upon occurrence of visually observable damage, such as a bend or crack or discoloration from over-heating to the device, discontinue use of the device until it has been inspected, tested for leakage and repaired by a person holding a specific license from the Director, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State to manufacture or service the device; or shall dispose of the device pursuant to the provisions of Section R313-15-1001;

(ii) shall assure that all labels affixed to the device at the time of receipt, and which bear a statement which prohibits removal of the labels, are maintained thereon; and

(iii) are exempt from the requirements of Rules R313-15 and R313-18 except that the persons shall comply with the provisions of Sections R313-15-1001, R313-15-1201 and R313-15-1202.

(c) This general license does not authorize the manufacture, assembly, disassembly, repair, or import of strontium-90 in ice detection devices.

(d) This general license is subject to the provision of Sections R313-12-51 through R313-12-53, R313-12-70, R313-14, R313-19-34, R313-19-41, R313-19-61, and R313-19-100 of these rules.

**KEY: radioactive materials, general licenses, source materials**

**Date of Enactment or Last Substantive Amendment: 2015**

**Notice of Continuation: October 4, 2013**

**Authorizing, and Implemented or Interpreted Law: 19-3-104**

## Environmental Quality, Radiation Control **R313-22** Specific Licenses

### NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 39279

FILED: 06/30/2015

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The State of Utah entered into an agreement with the U.S. Nuclear Regulatory Commission (NRC) to establish and maintain a compatible program for the control of

radioactive material in Utah. To maintain compatibility with NRC requirements, the State of Utah is required to modify the Utah Radiation Control Rules in order to incorporate the appropriate regulations published by the NRC in 77 FR 43666.

**SUMMARY OF THE RULE OR CHANGE:** This rulemaking addresses the adoption of appropriate requirements found in 79 FR 43666. This rule change amends regulations in Rule R313-22 to make requirements for distributors of radioactive material clearer, less prescriptive, and more risk-informed and up-to-date. This amendment also redefines categories of devices to be used under exemptions, adding explicit provisions regarding the sealed source and device registration process, and adding flexibility to the licensing of users of sealed sources and devices. This amendment is primarily intended to make the licensing process more efficient and effective. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the May 1, 2015, issue of the Utah State Bulletin, on page 40. 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:** Section 19-3-108 and Section 19-3-104

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The proposed changes do not add or remove significant requirements that affect radiation. The proposed rule changes are adopting required federal regulations to maintain compatibility as an agreement state. These changes do not add new requirements that would cause the state budget to incur any changes in compliance costs beyond those identified by the Nuclear Regulatory Commission.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to the local government. The proposed changes do not add or remove significant requirements that affect radiation. The proposed rule changes are adopting required federal regulations to maintain compatibility as an agreement state. These changes do not add new requirements that would cause local government to incur any changes in compliance costs beyond those identified by the Nuclear Regulatory Commission.

◆ **SMALL BUSINESSES:** Small businesses may hold a radioactive material license, but there is no anticipated cost or savings for small businesses. The proposed rule changes are adopting required federal regulations to maintain compatibility as an agreement state. These changes do not add new requirements that would cause small businesses to incur any changes in compliance costs beyond those identified by the Nuclear Regulatory Commission.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Small businesses and persons other than businesses may hold a radioactive material license, but there is no anticipated cost or savings for small businesses and persons other than businesses. The proposed rule changes are adopting required federal regulations to maintain compatibility as an agreement state. These changes do not add new requirements that would cause local government to incur any changes in compliance costs beyond those identified by the Nuclear Regulatory Commission.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated costs for affected persons since the proposed rule changes are adopting required federal regulations to maintain compatibility as an agreement state. These changes do not add new requirements that would cause affected persons to incur any changes in compliance costs beyond those identified by the Nuclear Regulatory Commission.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The proposed changes to the rule are necessary for the Utah Radiation Control Rules to be compatible with NRC requirements, and to ensure that the Division's program activities are adequate to protect the public health and safety. The Division is not aware of any business that would be impacted fiscally due to the proposed rule changes.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 ENVIRONMENTAL QUALITY  
 RADIATION CONTROL  
 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:**  
 ◆ Spencer Wickham by phone at 801-536-0082, by FAX at 801-533-4097, or by Internet E-mail at swickham@utah.gov

**THIS RULE MAY BECOME EFFECTIVE ON:** 08/21/2015

**AUTHORIZED BY:** Rusty Lundberg, Director

**R313. Environmental Quality, Radiation Control.  
 R313-22. Specific Licenses.**

**R313-22-32. Filing Application for Specific Licenses.**

(1) Applications for specific licenses shall be filed on a form prescribed by the Director.

(2) The Director may, after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Director to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(3) Applications shall be signed by the applicant or licensee or a person duly authorized to act for and on the applicant's behalf.

(4) An application for a license may include a request for a license authorizing one or more activities.

(5) In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Director, provided the references are clear and specific.

(6)(i) Except as provided in [~~paragraphs (g)(2), (3), and (4)]R313-22 (6)(ii), (iii) or (iv) of this section, an application for a specific license to use byproduct material in the form of a sealed source or in a device that contains the sealed source must either---~~

(A) Identify the source or device by manufacturer and model number as registered with the sealed source and device registry under R313-22-210; or

(B) Contain the information identified in R313-22-210.

(ii) For sources or devices manufactured before October 23, 2012 that are not registered with sealed source and device registry under R313-22-210 and for which the applicant is unable to provide all categories of information specified in R313-22-210, the application must include:

(A) All available information identified in R313-22-210 concerning the source, and, if applicable, the device; and

(B) Sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of a recent leak test.

(iii) For sealed sources and devices allowed to be distributed without registration of safety information in accordance with 10 CFR 32.210(g)(1) (2015), the applicant may supply only the manufacturer, model number, and radionuclide and quantity.

(iv) If it is not feasible to identify each sealed source and device individually, the applicant may propose constraints on the number and type of sealed sources and devices to be used and the conditions under which they will be used, in lieu of identifying each sealed source and device.

(7) As provided by Section R313-22-35, certain applications for specific licenses filed under these rules shall contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning. In the case of renewal applications submitted before January 1, 1995, this submittal may follow the renewal application but shall be submitted on or before January 1, 1995.

(8)(a) Applications to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in Section R313-22-90, "Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release", shall contain either:

(i) An evaluation showing that the maximum dose to a individual off-site due to a release of radioactive materials would not exceed one rem effective dose equivalent or five rems to the thyroid; or

(ii) An emergency plan for responding to a release of radioactive material.

(b) One or more of the following factors may be used to support an evaluation submitted under Subsection R313-22-32(8)(a) (i):

(i) The radioactive material is physically separated so that only a portion could be involved in an accident;

(ii) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(iii) The release fraction in the respirable size range would be lower than the release fraction shown in Section R313-22-90 due to the chemical or physical form of the material;

(iv) The solubility of the radioactive material would reduce the dose received;

(v) Facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in Section R313-22-90;

(vi) Operating restrictions or procedures would prevent a release fraction as large as that shown in Section R313-22-90; or

(vii) Other factors appropriate for the specific facility.

(c) An emergency plan for responding to a release of radioactive material submitted under Subsection R313-22-32(8)(a)(ii) shall include the following information:

(i) Facility description. A brief description of the licensee's facility and area near the site.

(ii) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(iii) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(iv) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(v) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers on-site, and a description of the program for maintaining equipment.

(vi) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying off-site response organizations and the Director; also responsibilities for developing, maintaining, and updating the plan.

(viii) Notification and coordination. A commitment to and a brief description of the means to promptly notify off-site response organizations and request off-site assistance, including medical assistance for the treatment of contaminated injured on-site workers when appropriate. A control point shall be established. The notification and coordination shall be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the Director immediately after notification of the appropriate off-site response organizations and not later than one hour after the licensee declares an emergency.

NOTE: These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499 or other state or federal reporting requirements, including 40 CFR 302, 2010.

(ix) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to off-site response organizations and to the Director.

(x) Training. A brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site including the use of team training for the scenarios.

(xi) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) Exercises. Provisions for conducting quarterly communications checks with off-site response organizations and biennial on-site exercises to test response to simulated emergencies. Quarterly communications checks with off-site response organizations shall include the check and update of all necessary telephone numbers. The licensee shall invite off-site response organizations to participate in the biennial exercises. Participation of off-site response organizations in biennial exercises although recommended is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

(xiii) Hazardous chemicals. A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499, if applicable to the applicant's activities at the proposed place of use of the radioactive material.

(d) The licensee shall allow the off-site response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the Director. The licensee shall provide any comments received within the 60 days to the Director with the emergency plan.

(9) An application from a medical facility, educational institution, or Federal facility to produce Positron Emission Tomography (PET) radioactive drugs for non-commercial transfer to licensees in its consortium authorized for medical use under Rule R313-32 shall include:

(a) A request for authorization for the production of PET radionuclides or evidence of an existing license issued pursuant to 10 CFR Part 30 or equivalent Agreement State requirements for a PET radionuclide production facility within its consortium from which it receives PET radionuclides.

(b) Evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in Subsection R313-22-75(9)(a)(ii).

(c) Identification of the individual(s) authorized to prepare the PET radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in Rule R313-32.

(d) Information identified in Subsection R313-22-75(9)(a)(iii) on the PET drugs to be noncommercially transferred to members of its consortium.

**R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material.**

(1) Licensing the introduction of radioactive material in exempt concentrations into products or materials, and transfer of ownership or possession of the products and materials.

(a) The authority to introduce radioactive material in exempt concentrations into equipment, devices, commodities or other products may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555; and

(b) The manufacturer, processor or producer of equipment, devices, commodities or other products containing exempt concentrations of radioactive materials may obtain the authority to transfer possession or control of the equipment, devices, commodities, or other products containing exempt concentrations to persons who are exempt from regulatory requirements only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) Licensing the distribution of radioactive material in exempt quantities. Authority to transfer possession or control by the manufacturer, processor or producer of equipment, devices, commodities or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons who are exempted from regulatory requirements may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(3) Reserved

(4) Licensing the manufacture and distribution of devices to persons generally licensed under Subsection R313-21-22(4).

(a) An application for a specific license to manufacture or distribute devices containing radioactive material, excluding special nuclear material, to persons generally licensed under Subsection R313-21-22(4) or equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State will be approved if:

(i) the applicant satisfies the general requirements of Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(iii) the device has been registered in the Sealed Source and Device Registry.

(A) the device can be safely operated by persons not having training in radiological protection,

(B) under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that a person will receive in one year, a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1), and

(C) under accident conditions, such as fire and explosion, associated with handling, storage and use of the device, it is unlikely that a person would receive an external radiation dose or dose commitment in excess of the following organ doses:

.....

(iii) each device bears a durable, legible, clearly visible label or labels approved by the Director, which contain in a clearly identified and separate statement:

(A) instructions and precautions necessary to assure safe installation, operation and servicing of the device; documents such as operating and service manuals may be identified in the label and used to provide this information,

(B) the requirement, or lack of requirement, for leak testing, or for testing an "on-off" mechanism and indicator, including the maximum time interval for testing, and the identification of radioactive material by radionuclide, quantity of radioactivity, and date of determination of the quantity; and

(C) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(I) "The receipt, possession, use and transfer of this device, Model No. ...., Serial No. ...., are subject to a general license or the equivalent, and the regulations of the Nuclear Regulatory Commission or a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION -RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(II) "The receipt, possession, use and transfer of this device, Model No. ...., Serial No. ...., are subject to a general license or the equivalent, and the regulations of a Licensing State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION - RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(D) Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words, "Caution-Radioactive Material," the radiation symbol described in Section R313-15-901, and the name of the manufacturer or initial distributor.

(E) Each device meeting the criteria of Subsection R313-21-22(4)(c)(xiii)(A), bears a permanent label, for example, embossed, etched, stamped, or engraved, affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "Caution-Radioactive Material," and, if practicable, the radiation symbol described in Section R313-15-901.

(b) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the Director will consider information which includes, but is not limited to:

- (i) primary containment, or source capsule;
- (ii) protection of primary containment;

(iii) method of sealing containment;  
 (iv) containment construction materials;  
 (v) form of contained radioactive material;  
 (vi) maximum temperature withstood during prototype tests;  
 (vii) maximum pressure withstood during prototype tests;  
 (viii) maximum quantity of contained radioactive material;  
 (ix) radiotoxicity of contained radioactive material; and  
 (x) operating experience with identical devices or similarly designed and constructed devices.

(c) In the event the applicant desires that the general licensee under Subsection R313-21-22(4), or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with this activity or activities, and basis for these estimates. The submitted information shall demonstrate that performance of this activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1).

(d)(i) If a device containing radioactive material is to be transferred for use under the general license contained in Subsection R313-21-22(4), each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(i)(A) through (E) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(A) a copy of the general license contained in Subsection R313-21-22(4); if Subsections R313-21-22(4)(c)(ii) through (iv) or R313-21-22(4)(c)(xiii) do not apply to the particular device, those paragraphs may be omitted;

(B) a copy of Sections R313-12-51, R313-15-1201, and R313-15-1202;

(C) a list of services that can only be performed by a specific licensee;

(D) Information on acceptable disposal options including estimated costs of disposal; and

(E) An indication that the Division's policy is to issue civil penalties for improper disposal.

(ii) If radioactive material is to be transferred in a device for use under an equivalent general license of the Nuclear Regulatory Commission, an Agreement State, or Licensing State, each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(ii)(A) through (D) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(A) A copy of an Agreement State's or Licensing State's regulations equivalent to Sections R313-12-51, R313-15-1201, R313-

15-1202, and Subsection R313-21-22(4) or a copy of 10 CFR 31.5, 10 CFR 31.2, 10 CFR 30.51, 10 CFR 20.2201, and 10 CFR 20.2202. If a copy of the Nuclear Regulatory Commission regulations is provided to a prospective general licensee in lieu of the Agreement State's or Licensing State's regulations, it shall be accompanied by a note explaining that use of the device is regulated by the Agreement State or Licensing State; if certain paragraphs of the regulations do not apply to the particular device, those paragraphs may be omitted;

(B) A list of services that can only be performed by a specific licensee;

(C) Information on acceptable disposal options including estimated costs of disposal; and

(D) The name or title, address, and phone number of the contact at the Nuclear Regulatory Commission, Agreement State, or Licensing State from which additional information may be obtained.

(iii) An alternative approach to informing customers may be proposed by the licensee for approval by the Director.

(iv) Each device that is transferred after February 19, 2002 must meet the labeling requirements in Subsection R313-22-75(4)(a)(iii).

(v) If a notification of bankruptcy has been made under Section R313-19-34 or the license is to be terminated, each person licensed under Subsection R313-22-75(4) shall provide, upon request, to the Director, the Nuclear Regulatory Commission, or an appropriate Agreement State or Licensing State, records of final disposition required under Subsection R313-22-75(4)(d)(vii)(H).

(vi) Each person licensed under Subsection R313-22-75(4) to initially transfer devices to generally licensed persons shall comply with the requirements of Subsections R313-22-75(4)(d)(vi) and (vii).

(A) The person shall report all transfers of devices to persons for use under the general license under Subsection R313-21-22(4) and all receipts of devices from persons licensed under Subsection R313-21-22(4) to the Director. The report must be submitted on a quarterly basis on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(B) The required information for transfers to general licensees includes:

(I) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(C) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(D) For devices received from a Subsection R313-21-22(4) general licensee, the report must include the identity of the general

licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(E) If the licensee makes changes to a device possessed by a Subsection R313-21-22(4) general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(F) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(G) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(H) If no transfers have been made to or from persons generally licensed under Subsection R313-21-22(4) during the reporting period, the report must so indicate.

(vii) The person shall report all transfers of devices to persons for use under a general license in the Nuclear Regulatory Commission's, an Agreement State's, or Licensing State's regulations that are equivalent to Subsection R313-21-22(4) and all receipts of devices from general licensees in the Nuclear Regulatory Commission's, Agreement State's, or Licensing State's jurisdiction to the Nuclear Regulatory Commission, or to the responsible Agreement State or Licensing State agency. The report must be submitted on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(A) The required information for transfers to general licensee includes:

(I) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of the device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(B) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(C) For devices received from a general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(D) If the licensee makes changes to a device possessed by a general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(E) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(F) The report must clearly identify the specific licensee submitting the report and must include the license number of the specific licensee.

(G) If no transfers have been made to or from a Nuclear Regulatory Commission licensee, or to or from a particular Agreement State or Licensing State licensee during the reporting period, this information shall be reported to the Nuclear Regulatory Commission or the responsible Agreement State or Licensing State agency upon request of the agency.

(H) The person shall maintain all information concerning transfers and receipts of devices that supports the reports required by Subsection R313-22-75(4)(d)(vii). Records required by Subsection R313-22-75(4)(d)(vii)(H) must be maintained for a period of three years following the date of the recorded event.

(5) Special requirements for the manufacture, assembly or repair of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble or repair luminous safety devices containing tritium or promethium-147 for use in aircraft for distribution to persons generally licensed under Subsection R313-21-22(5) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.53 through 32.56 (2015) or their equivalent.

(6) Special requirements for license to manufacture or initially transfer calibration sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection R313-21-22(7). An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed under Subsection R313-21-22(7) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.57 through 32.59, and 10 CFR 70.39 (2015), or their equivalent.

(7) Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general license. An application for a specific license to manufacture or distribute radioactive material for use under the general license of Subsection R313-21-22(9) will be approved if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the radioactive material is to be prepared for distribution in prepackaged units of:

(i) iodine-125 in units not exceeding 370 kilobecquerel (ten uCi) each;

(ii) iodine-131 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iii) carbon-14 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iv) hydrogen-3 (tritium) in units not exceeding 1.85 megabecquerel (50 uCi) each;

(v) iron-59 in units not exceeding 740.0 kilobecquerel (20 uCi) each;

(vi) cobalt-57 in units not exceeding 370 kilobecquerel (ten uCi) each;

(vii) selenium-75 in units not exceeding 370 kilobecquerel (ten uCi) each; or

(viii) mock iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each;

(c) prepackaged units bear a durable, clearly visible label:

(i) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 370 kilobecquerel (ten uCi) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 1.85 megabecquerel (50 uCi) of hydrogen-3 (tritium); 740.0 kilobecquerel (20 uCi) of iron-59; or Mock Iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each; and

(ii) displaying the radiation caution symbol described in Section R313-15-901 and the words, "CAUTION, RADIOACTIVE MATERIAL", and "Not for Internal or External Use in Humans or Animals";

(d) one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

(i) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the Nuclear Regulatory Commission or of a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority.

.....  
Name of Manufacturer"

(ii) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

.....  
Name of Manufacturer"

(e) the label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing radioactive material. In the case of the Mock Iodine-125 reference or calibration source, the information accompanying the source shall also contain directions to the licensee regarding the waste disposal requirements set out in Section R313-15-1001.

(8) Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Subsection R313-21-22(10) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the criteria of 10 CFR 32.61, 32.62, 2015 ed. are met.

(9) Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing radioactive material for medical use under R313-32.

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to Rule R313-32 will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits evidence that the applicant is at least one of the following:

(A) registered with the U.S. Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR 207.20(a);

(B) registered or licensed with a state agency as a drug manufacturer;

(C) licensed as a pharmacy by a State Board of Pharmacy;

or  
(D) operating as a nuclear pharmacy within a medical institution; or

(E) registered with a State Agency as a Positron Emission Tomography (PET) drug production facility.

(iii) the applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(iv) the applicant satisfies the following labeling requirements:

(A) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(B) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(b) A licensee described by Subsections R313-22-75(9)(a)(ii)(C) or (D):

(i) May prepare radioactive drugs for medical use, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in Subsections R313-22-75(9)(b)(ii) and (iv), or an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by reference).

(ii) May allow a pharmacist to work as an authorized nuclear pharmacist if:



(A) this individual qualifies as an authorized nuclear pharmacist as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference);

(B) this individual meets the requirements specified in Rule R313-32 (incorporating 10 CFR 35.55(b) and 10 CFR 35.59 by reference) and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(C) this individual is designated as an authorized nuclear pharmacist in accordance with Subsection R313-22-75(9)(b)(iv).

(iii) The actions authorized in Subsections R313-22-75(9)(b)(i) and (ii) are permitted in spite of more restrictive language in license conditions.

(iv) May designate a pharmacist, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), as an authorized nuclear pharmacist if:

(A) The individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator produced radioactive material, and

(B) The individual practiced at a pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC.

(v) Shall provide to the Director:

(A) a copy of each individual's certification by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or Agreement State as specified in Rule R313-32 (incorporating 10 CFR 35.55(a) by reference) with the written attestation signed by a preceptor as required by Rule R313-32 (incorporating 10 CFR 35.55(b)(2) by reference); or

(B) the Nuclear Regulatory Commission or Agreement State license; or

(C) the permit issued by a licensee or Commission master materials permittee of broad scope or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or

(D) the permit issued by a U.S. Nuclear Commission master materials licensee; or

(E) documentation that only accelerator produced radioactive materials were used in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007 or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC; and

(F) a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to Subsections R313-22-75(9)(b)(ii)(A) and R313-22-75(9)(b)(ii)(C), the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(i) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(ii) check each instrument for constancy and proper operation at the beginning of each day of use.

(d) Nothing in Subsection R313-22-75(9) relieves the licensee from complying with applicable FDA, or Federal, and State requirements governing radioactive drugs.

(10) Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed under Rule R313-32 for use as a calibration, transmission, or reference source or for the uses listed in Rule R313-32 (incorporating 10 CFR 35.400, 10 CFR 35.500, 10 CFR 35.600, and 35.1000 by reference) will be approved if:

(a) the applicant satisfies the general requirements in Section R313-22-33;

(b) the applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(i) the radioactive material contained, its chemical and physical form and amount,

(ii) details of design and construction of the source or device,

(iii) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents,

(iv) for devices containing radioactive material, the radiation profile of a prototype device,

(v) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests,

(vi) procedures and standards for calibrating sources and devices,

(vii) legend and methods for labeling sources and devices as to their radioactive content, and

(viii) instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device; provided that instructions which are too lengthy for a label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

(c) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the source or device is licensed by the Director for distribution to persons licensed pursuant to Rule R313-32 (incorporating 10 CFR 35.18, 10 CFR 35.400, 10 CFR 35.500, and 10 CFR 35.600 by reference) or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State; provided that labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source;

(d) the source or device has been registered in the Sealed Source and Device Registry.

(e) in the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the source or device or

similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

(f) in determining the acceptable interval for test of leakage of radioactive material, the Director shall consider information that includes, but is not limited to:

- (i) primary containment or source capsule,
- (ii) protection of primary containment,
- (iii) method of sealing containment,
- (iv) containment construction materials,
- (v) form of contained radioactive material,
- (vi) maximum temperature withstood during prototype tests,

tests,

- (vii) maximum pressure withstood during prototype tests,
- (viii) maximum quantity of contained radioactive material,
- (ix) radiotoxicity of contained radioactive material, and
- (x) operating experience with identical sources or devices or similarly designed and constructed sources or devices.

(11) Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

(a) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection R313-21-21(5) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive a radiation dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1); and

(iii) the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(b) In the case of an industrial product or device whose unique benefits are questionable, the Director will approve an application for a specific license under Subsection R313-22-75(11) only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(c) The Director may deny an application for a specific license under Subsection R313-22-75(11) if the end use of the industrial product or device cannot be reasonably foreseen.

(d) Persons licensed pursuant to Subsection R313-22-75(11) (a) shall:

(i) maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(ii) label or mark each unit to:

(A) identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted

uranium, and the quantity of depleted uranium in each product or device; and

(B) state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the Nuclear Regulatory Commission or an Agreement State;

(iii) assure that the uranium before being installed in each product or device has been impressed with the following legend clearly legible through a plating or other covering: "Depleted Uranium";

(iv) furnish to each person to whom depleted uranium in a product or device is transferred for use pursuant to the general license contained in Subsection R313-21-21(5) or its equivalent:

(A) a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DRC-12; or

(B) a copy of the general license contained in the Nuclear Regulatory Commission's or Agreement State's regulation equivalent to Subsection R313-21-21(5) and a copy of the Nuclear Regulatory Commission's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DRC-12 with a note explaining that use of the product or device is regulated by the Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in Subsection R313-21-21(5);

(v) report to the Director all transfers of industrial products or devices to persons for use under the general license in Subsection R313-21-21(5). The report shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the Director and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of the calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under Subsection R313-21-21(5) during the reporting period, the report shall so indicate;

(vi) provide certain other reports as follows:

(A) report to the Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the Nuclear Regulatory Commission general license in 10 CFR 40.25 (2010);

(B) report to the responsible state agency all transfers of devices manufactured and distributed pursuant to Subsection R313-22-75(11) for use under a general license in that state's regulations equivalent to Subsection R313-21-21(5);

(C) reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person,

(D) if no transfers have been made to Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the Nuclear Regulatory Commission, and

(E) if no transfers have been made to general licensees within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon the request of that agency; and

(vii) records shall be kept showing the name, address and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in Subsection R313-21-21(5) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in the product or device transferred, and compliance with the report requirements of Subsection R313-22-75(11).

**R313-22-210. Registration of Product Information.**

Licensees who manufacture or initially distribute a sealed source or device containing a sealed source whose product is intended for use under a specific license or general license are deemed to have provided reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and the environment if the sealed source or device has been evaluated in accordance with 10 CFR 32.210 (2015) or equivalent regulations of an Agreement State.

**R313-22-211. Inactivation of Certificates of Registration of Sealed Sources and Devices.**

Licensees who no longer manufacture or initially transfer any of the sealed sources or devices covered by a particular certificate issued in accordance with the requirements of R313-22-210 shall request inactivation of the registration certificate in accordance with 10 CFR 32.211 (2015) or equivalent regulations of an Agreement State.

**KEY:** specific licenses, decommissioning, broad scope, radioactive materials

**Date of Enactment or Last Substantive Amendment:** 2015

**Notice of Continuation:** September 23, 2011

**Authorizing, and Implemented or Interpreted Law:** 19-3-104; 19-3-108

**Insurance, Administration  
R590-198-5**

**General Calculation Requirements for  
Basic Reserves and Premium  
Deficiency Reserves**

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR FILE NO.: 39444

FILED: 06/30/2015

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to correct an omission from the original proposed rule. When the proposed rule was filed, it removed two restrictions on special selection factors. One restriction appears in the rule twice, and the second instance was not removed. This change corrects that error.

**SUMMARY OF THE RULE OR CHANGE:** The change removes repeated language that was not removed when the proposed rule was filed. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the July 1, 2015, issue of the Utah State Bulletin, on page 27. 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:** Section 31A-17-402 and Section 31A-17-512

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no cost or savings to the state because the change is clerical.
- ◆ **LOCAL GOVERNMENTS:** There is no cost or savings to local government because the change is clerical.
- ◆ **SMALL BUSINESSES:** There is no cost or savings to small businesses because the change is clerical.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other persons will have a cost or savings because the change is clerical.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The change is merely a clerical change, which will have no affect on any persons and will have no attendant compliance costs.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This change will have no fiscal impact on business. It removes a handful of words that should have been removed previously. It is a clerical change only.

**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](mailto:sgooch@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015**

**THIS RULE MAY BECOME EFFECTIVE ON:** 08/21/2015

**AUTHORIZED BY:** Todd Kiser, Commissioner

**R590. Insurance, Administration.****R590-198. Valuation of Life Insurance Policies Rule.****R590-198-5. General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves.**

A. At the election of the company for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors, or any other valuation mortality table adopted by the NAIC after January 4, 2000 and promulgated by rule by the commissioner for this purpose. If select mortality factors are elected, they may be:

(1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law, see Rule R590-95;

(2) The select mortality factors adopted by the NAIC at the 1999 Spring National Meeting.

(3) Any other table of select mortality factors adopted by the NAIC after January 4, 2000 and promulgated by rule by the commissioner for the purpose of calculating basic reserves.

B. Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors or any other valuation mortality table adopted by the NAIC after January 4, 2000 and promulgated by rule by the commissioner. If select mortality factors are elected, they may be:

(1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;

(2) The select mortality factors adopted by the NAIC at the 1999 Spring National Meeting;

(3) For durations in the first segment, X percent of the select mortality factors adopted by the NAIC at the 1999 Spring National Meeting, subject to the following:

(a) X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience;

(b) X is such that, when using the valuation interest rate used for basic reserves, Item (i) is greater than or equal to Item (ii);

(i) The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X;

(ii) The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;

(c) X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first 5-years after the valuation date;

(d) The appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all the requirements of Subsection B(3);

(e) The appointed actuary may decrease X at any valuation date as long as [~~X does not decrease in any successive policy years and as long as~~]it continues to meet all the requirements of Subsection B(3); and

(f) The appointed actuary shall specifically take into account the adverse effect on expected mortality and the lapsing of any anticipated or actual increase in gross premiums.

(g) If X is less than 100% at any duration for any policy, the following requirements shall be met:

(i) The appointed actuary shall disclose, in the Regulatory Asset Adequacy Issues Summary required by R590-162-7, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods; and

(ii) The appointed actuary shall annually opine for all policies subject to this rule as to whether the mortality rates resulting from the application of X meet the requirements of Subsection B(3). This opinion shall be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience.

(4) Any other table of select mortality factors adopted by the NAIC after January 4, 2000 and promulgated by rule by the commissioner for the purpose of calculating deficiency reserves.

C. This subsection applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. However, if the first segment is less than ten-years, the appropriate ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law may be used thereafter through the tenth policy year from the date of issue.

D. In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if not included in the actual calculation of basic reserves.

Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one-year after the date of the change shall be the greatest of the following:

(1) reserves calculated ignoring the guarantee;

(2) reserves assuming the guarantee was made at issue; and

(3) reserves assuming that the policy was issued on the date of the guarantee.

F. The commissioner may require that the company document the extent of the adequacy of reserves for specified blocks, including but not limited to policies issued prior to January 4, 2000. This documentation may include a demonstration of the extent to which aggregation with other non-specified blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of Rule R590-162-5.

**KEY: insurance companies****Date of Enactment or Last Substantive Amendment: 2015****Notice of Continuation: November 21, 2014****Authorizing, and Implemented or Interpreted Law: 31A-17-402; 31A-17-512**

# Transportation, Preconstruction R930-8 Utility Relocations Required by Highway Projects

## NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 39297

FILED: 06/30/2015

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Department of Transportation (Department) makes these changes to the published proposed new rule after reviewing and considering comments it received from affected persons during the comment period. The Department agrees with many of the comments, and has changed the proposed rule as a result of those comments.

**SUMMARY OF THE RULE OR CHANGE:** Changes to correct typographical errors are made to Section R930-8-8. Subsection R930-8-6(2) is changed to eliminate conflicting phrases. The text of Subsection R930-8-6(4) is replaced with a concise statement that requires utilities to pay for betterments to existing real property interests the utilities receive through the process of relocating utility facilities. Subsection R930-8-10(1), is divided into two subsections and the new Subsection R930-8-10(2) is edited to clarify the Department's intent. Other subsections of Section R930-8-10 are renumbered to coincide with the addition of the new Subsection R930-8-10(2). (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the May 15, 2015, issue of the Utah State Bulletin, on page 93. 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 new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 72-6-116(6) and Subsection 54-3-29(5)(b) and Subsection 54-3-29(6) and Subsection 54-3-29(7) and Subsection 72-6-116(2)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The new rule will help the Department to reduce the amount of time lost on highway construction projects due to inefficient utility facility relocation. It provides a framework for utility companies, the Department and the Department's contractors to follow when it becomes necessary to relocate a utility facility to facilitate a highway construction project, and it defines how the Department and the utility companies must cooperate and coordinate their efforts to minimize wasted time and effort. The Department anticipates that minimizing time lost due to utility relocation

disputes will equate to cost savings for the state budget. These changes to the new rule should enhance cost savings to the state budget generated by the enactment of the new rule.

◆ **LOCAL GOVERNMENTS:** Inefficient highway construction practices adversely affect all of a project's stakeholders. The Department anticipates that reducing time lost due to utility relocation disputes will result in cost savings for local governments for the same reasons it will result in saving to the state's budget. The Department anticipates that these changes to the new rule will lead to even greater savings for local governments.

◆ **SMALL BUSINESSES:** Highway construction that impedes access to small businesses leads to fewer customers for and diminishing revenue for those affected businesses. The Department anticipates that this rule will reduce the time needed to complete highway construction projects and minimize revenue losses experienced by small businesses. The Department anticipates that these changes to the new rule will lead to even greater savings for small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Highway construction projects that impede travel for all members of the traveling public represents additional costs experienced by everyone in the state. Highway construction projects that impede travel can result in greater time needed to get to or from work, school, recreation facilities, and to deliver goods and services. The new rule will reduce the time needed to complete highway construction projects and reduce resulting lost time for everyone. These changes to the new rule are intended to enhance the cost savings experienced by everyone.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The new rule should not result in additional compliance costs for affected persons such as the utility companies. It does not eliminate any substantive or procedural right. This new rule only eliminates gaps in the old rule that are known to have led to lost time on highway construction projects in the past. The Department anticipates that these changes to the new rule will not lead to increased compliance costs for the utilities.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Faster and more efficient highway construction practices benefit everyone who uses the state's transportation system. The Department intends that this new rule and these changes to the new rule will lead to faster and more efficient construction practices, which will have a positive fiscal impact on all the state's businesses, local governments, and on the state as a whole.

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

TRANSPORTATION  
PRECONSTRUCTION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at [jimpalmer@utah.gov](mailto:jimpalmer@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2015

THIS RULE MAY BECOME EFFECTIVE ON: 08/24/2015

AUTHORIZED BY: Carlos Braceras, Executive Director

**R930. Transportation, Preconstruction.**

**R930-8. Utility Relocations Required by Highway Projects.**

**R930-8-1. Purpose.**

This Rule, sets forth the Department's requirements and authority as to a Utility Company's coordination and cooperation when removal, relocation, or alteration of a Utility Facility is made necessary by a highway project and sets forth the options the Department may pursue to proceed with a highway project in the event that a Utility Company fails to cooperate or coordinate with the Department as required by statute or rule.

**R930-8-2. Authority.**

This Rule is enacted pursuant to Utah Code Sections 54-3-29(5)(b), (6), and (7), and 72-6-116(2) and (6).

**R930-8-3. Definitions.**

As used in this Rule R930-8:

(1) "Department" means the Utah Department of Transportation.

(2) "Non-operating Property" and "Non-operating Real Property" refer to property owned by a Utility Company that is not directly part of the Utility Company's physical plant or facilities that provide the utility service.

(3) "Utility Company" and "Utility" shall have the same definition as in Utah Code Section 54-3-29(1)(f), and may be used interchangeably.

(4) "Utility Facility" shall have the same definition as in Utah Code Section 54-3-29(1)(g).

**R930-8-4. Utility Company Coordination and Cooperation.**

When the Department notifies a Utility that relocation of a Utility Facility may be necessary due to a highway project, both the Department and the Utility shall use their best efforts to identify conflicts, minimize utility relocation costs and operational impacts, highway project costs and delays, and to coordinate and cooperate with one another, as directed in Utah Code Sections 54-3-29(6)-(7) and 72-6-116(6). When the Department believes a conflict exists, it will offer an initial scoping meeting and provide authorization for the Utility to do preliminary design work. The Utility shall:

(1) Provide to the Department, the location of each Utility Facility likely to be affected following the process set forth in Rule R930-7-11(6).

(2) Identify to the Department conflicts between the Department's proposed highway work and the Utility's operation of its Utility Facilities.

(3) Submit to the Department all conveyances, vesting documents, or other evidence of title to real property related to the potential relocation of Utility Facilities as early as practicable.

(4) Submit to the Department the Utility's proposed design for relocation; detailed cost estimates; a reasonable relocation schedule to accommodate the highway project; reasonable limits on highway project work, including utility outage windows and construction loadings by the Department; and communication procedures between the parties. A reasonable relocation schedule for the project includes, but is not limited to, work sequencing, task durations, material ordering, notification requirements, mobilization, third-party coordination, communication between the parties, and any other activity necessary for the relocation of the Utility Facility to accommodate the highway project. If the relocation work is to be completed prior to the Department awarding the highway project to its contractor, the Utility shall include specific dates in the schedule.

(5) Execute a written relocation agreement with the Department. The agreement shall include terms and conditions, including but not limited to, the relocation scope of work, reimbursement provisions, federal requirements, description and location of the work to be undertaken, plans and drawings, and detailed cost estimates.

(6) After the Department has awarded the highway project to the contractor, coordinate with the contractor to develop a detailed work plan and schedule, and address all other matters of mutual concern during construction. Submit to the Department written acknowledgement of the approved schedule.

(7) Perform the work necessary for removal, relocation, or alteration of the Utility Facility in accordance with the detailed work plan and schedule developed in (4) and (6) above, and as described in the relocation agreement and supplemental agreements.

**R930-8-5. Timeliness.**

The work listed in Subsections R930-8-4(1) through (7) must be timely completed by the Utility as not to delay the highway project or otherwise increase costs to the project. The Department will provide reasonable deadlines for the Utility so the Utility can meet the deadlines and not unnecessarily delay the highway project. The Department will also provide the Utility with reasonable updates of highway project schedule changes.

**R930-8-6. Relocation.**

The basic concept when relocating Utility Facilities is to functionally restore the Utility's operation facilities that existed prior to the Department constructing a highway project.

(1) The Department incorporates by reference 23 CFR Section 645, subpart A (05/15/1985), for all Utility Facility relocations required by the Department's highway projects. For deviations in determining whether the Utility's real property needed for the highway project should be handled as a utility relocation or right-of-way acquisition, Rule R930-7-13(5) shall apply.

(2) If the Utility's regulatory and construction requirements can be met, the Department may require Utility

Companies to jointly occupy ~~[conduits or]~~ trenches for the highway construction projects. ~~[The Department will not require one Utility to jointly occupy another Utility's conduit.]~~ To the extent Utilities have valid agreements concerning the joint use of above ground facilities, the Utilities shall cooperate with each other for the relocated joint use.

(3) If a Utility determines the existing Utility Facilities do not need to be replaced or are not needed to maintain its operational facilities, payment for the real property, which is needed to accommodate the construction of the highway project where the Utility Facilities are located, shall be handled as a right-of-way acquisition.

#### **R930-8-7. Replacement of Property Rights.**

(1) When the Department replaces a Utility's fee interest or easement, the Utility shall transfer title to the prior fee or easement to the Department without charge.

(2) If the Utility has facilities within a fee or easement and the facilities are relocated within the Department's right-of-way, the Utility shall transfer title to the fee or easement without charge to the Department and the Department shall reimburse the Utility 100% of the future utility relocation costs in compliance with 23 CFR Section 645, subpart A.

(3) When the Utility's Utility Facilities are located in a public utility easement as defined in Utah Code Section 54-3-27, the Department may purchase a replacement public utility easement and may require the Utility to relocate its facilities to the replacement public utility easement.

(4) ~~[The Department may acquire a public utility easement as defined in Utah Code Section 54-3-27, and may require the Utility to relocate its facilities to the public utility easement from the Department's right-of-way. In this situation, the Utility shall sign an agreement that any reimbursement for future utility relocations shall be 50% unless the Utility pays for the public utility easement. Utilities that are political subdivisions of the State shall be exempt from the requirement to sign such agreements.]~~ The Utility shall pay UDOT for any betterment between the existing real property interest and the real property interest acquired for relocation.

(5) If the Department obtains a court ordered occupancy or right-of-entry from a property owner, the Utility shall relocate its facilities onto the replacement property rights while the Department obtains the final order or deeds from the property owner.

(6) Acquisition of Non-operating Real Property from a Utility shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and applicable right-of-way procedures in 23 CFR Section 710.203.

#### **R930-8-8. Reimbursement of Relocation Costs.**

(1) Reimbursement costs shall be determined in accordance with 23 CFR Section 645, subpart A, and the Program Guide, Utility Relocation and Accommodation on Federal-Aid Highway Projects, Sixth Edition, January 2003, as amended, Cost Development and Reimbursement, pages B-21 to B-23.

(2) If a Utility cannot provide a copy of a permit that shows the Department's acceptance of the deviation from the rule in effect at the time of installation of the ~~[u]Utility~~ ~~[f]Facilities~~ and the ~~[u]Utility~~ ~~[f]Facilities~~ do not meet the overhead clearance requirements, the Utility must relocate its facilities without any

reimbursement from the Department. The Utility shall be responsible for 100% of its relocation costs for non-compliant utility facilities.

(3) When reimbursement is made on the basis of actual costs, the Utility's estimate and final billing shall be itemized to show the totals for labor, overhead construction costs, travel expenses, transportation, equipment, materials and supplies, handling costs, and other services.

(4) The Utility's final billing statement shall be provided in a format that facilitates making comparisons with the Department's approved estimates.

(5) A Utility must submit final billings to the Department within six months following the completion of the Utility Facility relocation work. The Department may make a final payment when the final bill is received from a Utility more than six months after the completion of the Utility Facility relocation work if the Department and the Utility have agreed in advance that a longer time period is needed.

(6) The costs incurred by the Department and a Utility for compliance with federal and state statutes, rules, and regulations will be included as part of the utility relocation costs.

(7) Temporary Utility Facility relocations required by the highway project will be included as part of the utility relocation costs.

(8) Telecommunication utility companies granted longitudinal interstate access are required to pay all relocation costs pursuant to Utah Code Section 72-7-108.

#### **R930-8-9. Betterments.**

No betterment credit is required for the replacement of utility devices or materials that are:

- (1) Required by the highway project;
- (2) Of equivalent standards although not identical;
- (3) Of the next highest grade or size when the existing devices or materials are no longer regularly manufactured;
- (4) Required by law pursuant to governmental and appropriate regulatory commission code; or
- (5) Required by current design practices regularly followed by the Utility in its own work, and there is a resulting direct benefit to the highway project.

#### **R930-8-10. Issuance of Administrative Order; Enforcement.**

(1) In the event that a Utility fails to timely coordinate and cooperate with the Department at any point in the utility relocation process, the Department may issue an administrative order pursuant to Utah Code Section 72-6-116(2)(b) to the Utility to accommodate the highway project. The administrative order shall be issued by the Department's Statewide Utilities and Railroads Engineer and will include a reasonable timeframe for Utility Company actions to be complete ~~[Failure]~~ the relocation of the Utility Facilities, including any design.

(2) If the Utility fails to comply with the Department's administrative order, and the failure to comply is not caused by a third party who the Utility has no control over, [may result in-] the Department may issue an administrative order to remedy non-compliance. The Department may order any or all of the following remedies:

- (a) The Department may recover from the Utility increased costs caused by the Utility's unreasonable or unjustified

delays. Such actual and indirect costs may include, but are not limited to, increased costs on the current highway project or related projects, added expenses from loss of a construction season, and loss of project funding.

(b) The Department may deny further permits for utility installation under R930-7 until the Utility's non-compliance is resolved.

(c) The Department may perform design work and construction work on behalf of the Utility for those Utility Facilities located within the highway right-of-way, except for fiber for telecommunications, electricity, and natural gas. The Department will only perform such work if the work can be performed without violating any state or federal statute, regulation, or safety requirement. The Utility shall reimburse the Department for the costs the Department incurs to relocate the Utility's facilities, in [the] amounts allowed by Utah Code Section 72-6-116(3).

(~~2~~3) In addition, the Department may pursue additional remedies or claims against a Utility in a [~~the Utah Third D~~] district [~~C~~] court[.] in Utah.

(~~3~~4) The Department shall not limit or waive any of its remedies or claims allowed in this rule or law.

(~~4~~5) The Department may require a Utility to comply with a practicable shortened process or expedited schedule when an emergency exists that could affect public safety or the structural or functional integrity of the highway.

**R930-8-11. Agency review.**

A Utility aggrieved by an administrative order issued under Rule R930-8-10 and Utah Code Section 72-6-116(2)(b) may file a written request for agency review with the Department pursuant to the Administrative Procedures Act, Utah Code Title 63G, Chapter 4, and Rule R907-1. The presiding officer for the agency review will be the Department's Director of Operations, who will issue the Department's Final Order. The administrative proceedings shall be informal.

**KEY: right-of-way, utility accommodation, utility facilities, utilities**

**Date of Enactment or Last Substantive Amendment: 2015**

**Authorizing, and Implemented or Interpreted Law: 54-3-29(5)(b); 54-3-29(6); 54-3-29(7); 72-6-116(2); 72-6-116(6)**

**End of the Notices of Changes in Proposed Rules Section**



# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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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.

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## Administrative Services, Facilities Construction and Management

### **R23-7**

## State Construction Contracts and Drug and Alcohol Testing

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 39482  
FILED: 06/30/2015

### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Utah State Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management, as well as Subsection 63G-6-604(4).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The legislative direction for the rule still exists. Therefore, the rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ADMINISTRATIVE SERVICES  
FACILITIES CONSTRUCTION AND MANAGEMENT  
ROOM 4110 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:  
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at [abachman@utah.gov](mailto:abachman@utah.gov)  
♦ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at [nicolealder@utah.gov](mailto:nicolealder@utah.gov)

AUTHORIZED BY: Bruce Whittington, Acting Director

EFFECTIVE: 06/30/2015

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## Agriculture and Food, Plant Industry

### **R68-2**

## Utah Commercial Feed Act Governing Feed

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 39471  
FILED: 06/29/2015

### **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 4-12-3 authorizes the department to make and enforce rules in cooperation with other state and federal agencies to protect animal feed from adulteration. The rule enacted under this statute provides for licensing of commercial feed products. The rule also contains the requirement for labeling of commercial feed products.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received during and since the last five year view 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 Feed Act continues to protect consumers and ensures that feed sold and distributed in Utah meet federal and state registration and labeling requirements and that guarantee analysis and ingredient statements on feed products are accurate. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Clark Burgess by phone at 801-538-7188, by FAX at 801-538-7189, or by Internet E-mail at cburgess@utah.gov  
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov  
 ♦ Robert Hougaard by phone at 801-538-7187, by FAX at 801-538-7189, or by Internet E-mail at rhougaard@utah.gov  
 ♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 06/29/2015

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**Education, Administration**  
**R277-107**  
**Educational Services Outside of**  
**Educator's Regular Employment**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT**  
**OF CONTINUATION**  
 DAR FILE NO.: 39462  
 FILED: 06/25/2015

**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 53A-1-402.5 directs the Utah State Board of Education (Board) to make rules establishing basic ethical conduct standards for employees who provide public education-related services or activities outside of their regular employment to their current or prospective public school students; and Subsection 53A-1-401(3) permits the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides direction and parameters for employees who provide or participate in public education-related services or activities outside of their regular public education employment, as required by law. 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: 06/25/2015

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**Education, Administration**  
**R277-410**  
**Accreditation of Schools**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT**  
**OF CONTINUATION**  
 DAR FILE NO.: 39485  
 FILED: 07/01/2015

**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-1-402(1)(c)(i) directs the Utah State Board of Education (Board) to adopt rules for school accreditation and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides accreditation procedures and responsibilities for required public school accreditation and voluntarily nonpublic school accreditation. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
EDUCATION  
ADMINISTRATION  
250 E 500 S  
SALT LAKE CITY, UT 84111-3272  
or at the 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](mailto:angie.stallings@schools.utah.gov)

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

EFFECTIVE: 07/01/2015

Education, Administration  
**R277-500**  
Educator Licensing Renewal,  
Timelines, and Required Fingerprint  
Background Checks

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 39486  
FILED: 07/01/2015

**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 53A-6-104 requires the Utah State Board of Education (Board) to make rules requiring participation in professional learning activities in order for educators to retain Utah educator licensure and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it provides requirements necessary for educator license renewal. 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](mailto:angie.stallings@schools.utah.gov)

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

EFFECTIVE: 07/01/2015

Education, Administration  
**R277-700**  
The Elementary and Secondary School  
Core Curriculum

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 39487  
FILED: 07/01/2015

**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: Subsections 53A-1-402(1)(b) and (c) direct the Utah State Board of Education (Board) to make rules regarding competency levels, graduation requirements, and instruction requirements; Section 53A-1-402.6 directs the Board to establish core standards for Utah public schools; and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary because it specifies the minimum core standard requirements for public schools. 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](mailto:angie.stallings@schools.utah.gov)

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

EFFECTIVE: 07/01/2015

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Governor, Criminal and Juvenile  
Justice (State Commission on)  
**R356-101**  
Judicial Nominating Commissions

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 39466  
FILED: 06/26/2015

**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 Judicial Selection Act (Title 78A, Chapter 10) establishes procedures for selecting state court judges. Among those procedures is the establishment of judicial nominating commissions and the use of those commissions in the judicial selection process. The Judicial Selection Act requires CCJJ to establish rules regarding the governance of judicial nominating commissions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Judicial Selection Act and the Utah Constitution continue to require the use of judicial nominating commissions. The current rule provides clarity on the governance of the commissions, establish expectations for commission members, and provide information to the public regarding the selection of judges. Therefore, this rule should be continued.

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

GOVERNOR  
CRIMINAL AND JUVENILE JUSTICE (STATE COMMISSION ON)  
SUITE 330 SENATE BUILDING  
STATE CAPITOL COMPLEX  
420 N STATE STREET  
SALT LAKE CITY, UT 84114  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Ronald Gordon by phone at 801-538-1432, by FAX at 801-538-1024, or by Internet E-mail at [rbgordon@utah.gov](mailto:rbgordon@utah.gov)

AUTHORIZED BY: Ronald Gordon, Executive Director

EFFECTIVE: 06/26/2015

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Human Services, Administration  
**R495-890**  
Department of Human Services Conflict  
Investigation Procedure

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

DAR FILE NO.: 39469  
FILED: 06/29/2015

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Sections 62A-1-110 and 62A-1-111, and Subsection 62A-4a-202.6(4). The definitions contained in Sections 62A-4a-101, 62A-4a-402, and 62A-4a-102 apply to this rule and to the child abuse, neglect, or dependency conflict investigations. The definitions contained in Section 62A-3-301 apply to this rule and to the vulnerable adult abuse, neglect, or exploitation DHS conflict investigations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There were no written comments within the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes criteria used to determine when conflict investigations are necessary and who will conduct the investigations. Procedures are clarified. This is required by statute. Therefore, this rule should be continued.

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](mailto:janellhall@utah.gov)  
◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at [jhonesrobbins@utah.gov](mailto:jhonesrobbins@utah.gov)

AUTHORIZED BY: Ann Williamson, Executive Director

EFFECTIVE: 06/29/2015

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Human Services, Child Protection  
Ombudsman (Office of)

**R515-1**

Processing Complaints Regarding the  
Utah Division of Child and Family  
Services

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

DAR FILE NO.: 39478  
FILED: 06/30/2015

**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: Sections 62A-1-111 and 62A-4a-208 authorize the Office of the Child Protection Ombudsman to make rules in order to establish standards and procedures for investigations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As Section 62A-4a-208 still requires standards and procedures for investigations, Rule R151-1 continues to be required as it provides those standards and procedures. Therefore, this rule should be continued.

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

HUMAN SERVICES  
CHILD PROTECTION OMBUDSMAN (OFFICE OF)  
195 N 1950 W  
FOURTH FLOOR  
SALT LAKE CITY, UT 84116  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Danelle England by phone at 801-538-4409, by FAX at 801-538-3942, or by Internet E-mail at [dengland@utah.gov](mailto:dengland@utah.gov)

AUTHORIZED BY: Ann Williamson, Executive Director

EFFECTIVE: 06/30/2015

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**Transportation, Operations,  
Construction  
R916-6  
Drug and Alcohol Testing in State  
Construction Contracts**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION  
DAR FILE NO.: 39458  
FILED: 06/22/2015**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Utah Procurement Code at Section 63G-6a-1303 requires the Department of Transportation to make rules that establish penalties that may be imposed on contractors and subcontractors that have entered into public contracts should they fail to establish and maintain a required drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor, posts in one or more conspicuous places a notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy, and subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy. Rule R916-6 establishes these penalties and satisfies other requirements set forth by Section 63G-6a-1303.

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 comments related to Rule R916-6 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: Utah Procurement Code Section 63G-6a-1303 requires the Department of Transportation to make and enforce a rule that does the things set forth in Rule R916-6. This section of the Procurement Code remains in effect as of this date and has not been amended in a way that would allow the Department of Transportation to cause Rule R916-6 to be eliminated from the Administrative Code. Rule R916-6 must continue in effect or the Department of Transportation will be in violation of the Procurement Code.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
TRANSPORTATION  
OPERATIONS, CONSTRUCTION  
CALVIN L RAMPTON COMPLEX

4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

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

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 06/22/2015

**Transportation, Program Development  
R926-13  
Designated Scenic Byways**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION  
DAR FILE NO.: 39448  
FILED: 06/16/2015**

**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 72-4-303(4) requires the Department of Transportation to make rules, in consultation with the Utah State Scenic Byway Committee, which provide for the administration of a scenic byway program that establishes the criteria for nominating a highway to be designated as a scenic byway; establishing the process for nominating a highway to be designated as a state scenic byway; specifying the process for hearings to be conducted in the area of proposed designation prior to the highway being designated as a scenic byway; identifying the highways within the state designated as scenic byways; and establishing the process and criteria for removing the designation of a highway as a scenic byway. This rule satisfies the requirements of Subsection 72-4-303(4), which has been in effect in its present form since 05/12/2009.

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 of Transportation has not received any written comments during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department of Transportation has satisfied the requirements of Subsection 72-4-303(4) and designated at least 30 state highways as State Scenic

Byways, and recognized another seven state highways as National Scenic Byways or All-American Roads with the promulgation of Rule R926-13. This statute has not been repealed and its requirements remain in effect. Rule R926-13 still serves a valid legal purpose and therefore, it should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 06/16/2015

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## Transportation, Program Development **R926-14**

### Utah Scenic Byway Program Administration; Scenic Byways Designation, De-designation, and Segmentation Processes

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

DAR FILE NO.: 39449  
FILED: 06/16/2015

#### **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 72-4-303(4) requires the Department of Transportation to make rules, in consultation with the Utah State Scenic Byway Committee, which provide for the administration of a scenic byway program that establishes the criteria for nominating a highway to be designated as a scenic byway; establishing the process

for nominating a highway to be designated as a state scenic byway; specifying the process for hearings to be conducted in the area of proposed designation prior to the highway being designated as a scenic byway; identifying the highways within the state designated as scenic byways; and establishing the process and criteria for removing the designation of a highway as a scenic byway. This rule, together with Rule R926-13 satisfies the requirements of Subsection 72-4-303(4), which has been in effect in its present form since 05/12/2009.

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 of Transportation has not received any written comments during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department of Transportation has satisfied the requirements of Subsection 72-4-303(4) and established processes for nominating state highways for designation as State Scenic Byways, set forth criteria required of a highway to be considered for designation as a state scenic byway; established the process and criteria for removing the designation of a highway as a Scenic Byway; and established the organization and administration of Utah State Scenic Byway Committee with Rule R926-14. Subsection 72-4-303(4) has not been repealed and its requirements remain in effect. Rule R926-14 still serves a valid legal purpose and therefore, it should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 06/16/2015

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





## NOTICES OF RULE EFFECTIVE DATES

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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.

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### Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

### Administrative Services

#### Finance

No. 39301 (AMD): R25-7. Travel-Related Reimbursements for State Employees

Published: 05/15/2015

Effective: 06/22/2015

#### Purchasing and General Services

No. 39327 (AMD): R33-4. General Procurement Provisions, Prequalifications, Specifications, and Small Purchases

Published: 05/15/2015

Effective: 06/23/2015

No. 39328 (AMD): R33-8. Exceptions to Procurement Requirements

Published: 05/15/2015

Effective: 06/23/2015

### Alcoholic Beverage Control

#### Administration

No. 39329 (AMD): R81-1-26. Criminal History Background Checks

Published: 05/15/2015

Effective: 06/24/2015

No. 39330 (AMD): R81-2-9. Accepting Credit Cards as Payment for Liquor

Published: 05/15/2015

Effective: 06/24/2015

No. 39331 (AMD): R81-3-19. Credit Cards

Published: 05/15/2015

Effective: 06/24/2015

### Commerce

#### Occupational and Professional Licensing

No. 39293 (AMD): R156-63a. Security Personnel Licensing Act Contract Security Rule

Published: 05/15/2015

Effective: 06/22/2015

No. 39294 (AMD): R156-63b. Security Personnel Licensing Act Armored Car Rule

Published: 05/15/2015

Effective: 06/22/2015

#### Real Estate

No. 39305 (AMD): R162-2f-401j. Standards for Property Management

Published: 05/15/2015

Effective: 06/22/2015

#### Securities

No. 39300 (NEW): R164-32. Codification of Precedent

Published: 05/15/2015

Effective: 06/22/2015

### Education

#### Administration

No. 39340 (AMD): R277-404. Requirements for Assessments of Student Achievement

Published: 05/15/2015

Effective: 06/23/2015

#### Health

Health Care Financing, Coverage and Reimbursement Policy

No. 39341 (AMD): R414-1B. Prohibition of Payment for Certain Abortion Services

Published: 05/15/2015

Effective: 07/01/2015

NOTICES OF RULE EFFECTIVE DATES

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No. 39310 (AMD): R414-307. Eligibility for Home and Community-Based Services Waivers

Published: 05/15/2015

Effective: 07/01/2015

No. 39299 (AMD): R414-401-3. Assessment

Published: 05/15/2015

Effective: 07/01/2015

No. 39332 (NEW): R414-507. Ground Ambulance Service Provider Assessments

Published: 05/15/2015

Effective: 07/01/2015

Human Resource Management

Administration

No. 39324 (AMD): R477-1. Definitions

Published: 05/15/2015

Effective: 07/01/2015

No. 39315 (AMD): R477-2. Administration

Published: 05/15/2015

Effective: 07/01/2015

No. 39316 (AMD): R477-3-1. Job Classification Applicability

Published: 05/15/2015

Effective: 07/01/2015

No. 39317 (AMD): R477-4. Filling Positions

Published: 05/15/2015

Effective: 07/01/2015

No. 39318 (AMD): R477-6. Compensation

Published: 05/15/2015

Effective: 07/01/2015

No. 39319 (AMD): R477-7. Leave

Published: 05/15/2015

Effective: 07/01/2015

No. 39320 (AMD): R477-8-3. Lunch, Break and Exercise Release Periods

Published: 05/15/2015

Effective: 07/01/2015

No. 39322 (AMD): R477-15. Workplace Harassment Prevention

Published: 05/15/2015

Effective: 07/01/2015

No. 39323 (NEW): R477-16. Abusive Conduct Prevention

Published: 05/15/2015

Effective: 07/01/2015

Human Services

Administration

No. 39270 (NEW): R495-820. Institutional Review Board

Published: 05/01/2015

Effective: 06/18/2015

No. 39325 (R&R): R495-878. Americans With Disabilities Act Grievance Procedures

Published: 05/15/2015

Effective: 06/22/2015

Administration, Administrative Services, Licensing

No. 39334 (AMD): R501-1. General Provisions

Published: 05/15/2015

Effective: 07/01/2015

No. 39333 (REP): R501-4. Certified Local Inspectors

Published: 05/15/2015

Effective: 06/29/2015

Aging and Adult Services

No. 39272 (AMD): R510-100. Funding Formulas

Published: 05/01/2015

Effective: 06/30/2015

No. 39269 (AMD): R510-400. Home and Community Based Alternatives Program

Published: 05/01/2015

Effective: 06/30/2015

Insurance

Administration

No. 39103 (NEW): R590-271. Data Reporting for Consumer Quality Comparison

Published: 02/15/2015

Effective: 06/22/2015

No. 39103 (CPR): R590-271. Data Reporting for Consumer Quality Comparison

Published: 05/15/2015

Effective: 06/22/2015

Labor Commission

Boiler and Elevator Safety

No. 39296 (AMD): R616-3-3. Safety Codes for Elevators

Published: 05/15/2015

Effective: 06/22/2015

School and Institutional Trust Lands

Administration

No. 39309 (NEW): R850-150. Rare Plant Species

Published: 05/15/2015

Effective: 06/22/2015

**End of the Notices of Rule Effective Dates Section**

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

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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 July 01, 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/>).

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**RULES INDEX - BY AGENCY (CODE NUMBER)**

**ABBREVIATIONS**

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

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>ADMINISTRATIVE SERVICES</b>					
<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
R23-7	State Construction Contracts and Drug and Alcohol Testing	39482	5YR	06/30/2015	Not Printed
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	39301	AMD	06/22/2015	2015-10/6
R25-25-7	Travel-Related Reimbursements for State Employees	39160	AMD	04/21/2015	2015-6/10
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R33-4	General Procurement Provisions, Prequalifications, Specifications, and Small Purchases	39327	AMD	06/23/2015	2015-10/11
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
R33-8	Exceptions to Procurement Requirements	39328	AMD	06/23/2015	2015-10/15
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	State Surplus Property	39271	AMD	06/10/2015	2015-9/4
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<b>AGRICULTURE AND FOOD</b>					
<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
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R68-2	Utah Commercial Feed Act Governing Feed	39471	5YR	06/29/2015	Not Printed
R68-12	Quarantine Pertaining to Mint Wilt	39408	5YR	05/21/2015	2015-12/33

R68-22	Industrial Hemp Research	39148	NEW	04/22/2015	2015-6/14
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R81-1-6	Violation Schedule	39158	AMD	04/28/2015	2015-6/18
R81-1-26	Criminal History Background Checks	39329	AMD	06/24/2015	2015-10/17
R81-2-1	Special Orders of Liquor by Public	39154	AMD	04/28/2015	2015-6/22
R81-2-9	Accepting Credit Cards as Payment for Liquor	39330	AMD	06/24/2015	2015-10/20
R81-3-5	Special Orders of Liquor by Public	39155	AMD	04/28/2015	2015-6/23
R81-3-19	Credit Cards	39331	AMD	06/24/2015	2015-10/21
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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	2015-11/171
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R152-1	Utah Division of Consumer Protection: "Buyer Beware List"	39273	AMD	06/08/2015	2015-9/5
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<u>Occupational and Professional Licensing</u>					
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R156-17b	Pharmacy Practice Act Rule	39018	AMD	02/24/2015	2015-2/51
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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
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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
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R156-47b	Massage Therapy Practice Act Rule	38915	CPR	04/21/2015	2015-6/42
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R156-61	Psychologist Licensing Act Rule	38957	CPR	06/15/2015	2015-9/80
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R277-114	Corrective Action and Withdrawal or Reduction of Program Funds	39285	R&R	06/08/2015	2015-9/10
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R277-410	Accreditation of Schools	39485	5YR	07/01/2015	Not Printed
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

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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
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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

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**ABBREVIATIONS**

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

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	39206	R309-300	5YR	03/13/2015	2015-7/63
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	38998	R307-120	AMD	03/05/2015	2015-1/17
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Hatch Act

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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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	38954	R432-35	AMD	01/27/2015	2014-23/23
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	39157	R765-609	5YR	02/25/2015	2015-6/48
	39023	R765-611	NEW	02/25/2015	2015-2/101
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	39101	R916-4	AMD	03/27/2015	2015-4/26
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	39449	R926-14	5YR	06/16/2015	Not Printed
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