

UTAH STATE BULLETIN

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

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

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

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

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health

Health Care Financing, Coverage and Reimbursement Policy

Notice for Primary Care Network (PCN) Waiver Extension Request

The Utah Department of Health, Division of Medicaid and Health Financing will submit a request to extend the 1115 Primary Care Network Medicaid Waiver for one year. This will allow the Department to continue operating PCN, Non-Traditional Medicaid, and Utah's Premium Partnership Program through December 31, 2016. A copy of the Department's Request for Extension can be viewed at: <http://www.health.utah.gov/pcn/>.

The public may comment on this request until January 1, 2016, by submitting comments to echacon@utah.gov.

End of the Special Notices Section

EXECUTIVE DOCUMENTS

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

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

Calling the Sixty-First Legislature Into the Eighth Extraordinary Session, Utah Proclamation No. 2015-8E

PROCLAMATION

WHEREAS, since the close of the 2015 General Session of the 61st Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Senate into Extraordinary Session; and

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 61st Legislature of the State of Utah into the Eighth Extraordinary Session at the Utah State Capitol in Salt Lake City, Utah, on the 18th day of November 2015, at 4:00 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2015 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 16th day of November 2015.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2015/08/E

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between November 03, 2015, 12:00 a.m., and November 16, 2015, 11:59 p.m. are included in this, the December 01, 2015, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least December 31, 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 March 30, 2016, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

Administrative Services, Finance
R25-15
Change Date and Set Aside Provisions
for Annual Leave II

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39943

FILED: 11/12/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is required by legislation, see S.B. 269 from the 2014 General Session. S.B. 269 requires the Division of Finance to make rules to establish a change date for annual leave II; and for the determination, collection, and deposit of set-aside rates for annual leave II.

SUMMARY OF THE RULE OR CHANGE: This rule is to establish a change date for annual leave II. The change date established by the Division of Finance is 06/20/2015. All annual leave accrued on or after the change date, to an employee who is eligible to receive paid leave, will be considered annual leave II. State agencies are required to offer annual leave II in lieu of annual leave to eligible employees on or after the change date. The rule also requires the Division of Finance to determine a set-aside rate for each subfund of the annual leave trust fund. The set-aside rates will be determined by the expected increase in the annual leave liability subject to a 10% cap. The rule names the subfunds of the trust and requires the Division of Finance to apply the set-aside rates to gross pay of eligible employees and deposit the amounts generated into the applicable subfunds of the trust. There is no impact to state employees. The rule does not affect existing annual leave benefits. (DAR NOTE: A corresponding 120-day (emergency) Rule R25-15 that is effective as of 11/12/2015 is under DAR No. 39942 in this issue, December 1, 2015, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 67-19-14.6(2) and Subsection 67-19-14.6(4) and Subsection 67-19-14.6(5) and Subsection 67-19-14.6(7)(b)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There may be a cost to the state budget, but it will depend on whether there is a projected increase in the annual leave liability each year. The cost to the state will be further limited to a cap of 10% of the total annual leave liability that can be deposited into the trust from funds generated by the set aside rates. There is no impact to state employees, and the rule does not affect existing annual leave benefits.

◆ **LOCAL GOVERNMENTS:** There will not be costs to local governments because the rule only governs state employees

eligible to receive paid leave for leave accrued after 06/20/2015.

◆ **SMALL BUSINESSES:** There will not be costs to small businesses because the rule only governs state employees eligible to receive paid leave.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** State employees' annual leave accrued on or after 06/20/2015 will be considered annual leave II. State agencies are required to offer annual leave II in lieu of annual leave to eligible employees on or after the change date. This rule does not affect existing annual leave benefits of state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule establishes a change date for leave accrued on or after the change date of June 20, 2015. State employees' annual leave accrued after June 20, 2015 will be considered annual leave II. Because the rule does not require any new action on the part of state employees who are eligible for annual leave there are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact to businesses because the rule only applies to state employees eligible to receive paid leave.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ John Reidhead by phone at 801-538-1678, by FAX at 801-538-3244, or by Internet E-mail at jreidhead@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2016

AUTHORIZED BY: John Reidhead, Director

R25. Administrative Services, Finance.

R25-15. Change Date and Set Aside Provisions for Annual Leave II.

R25-15-1. Authority, Purpose, and Definitions.

(1) This rule is authorized under Subsection 67-19-14.6(2) which requires the division to establish a change date, and Subsection 67-19-14.6(7)(b) which requires the division to make rules for the set aside provisions under Subsections 67-19-14.6(4) and 67-19-14.6(5).

(2) Terms used in this rule are defined in Subsection 67-19-14.6(1).

R25-15-2. Change Date.

For the purposes of Subsection 67-19-14.6(2):

(1) The change date established by the division is June 20, 2015.

(2) All annual leave accrued on or after the change date, to an employee who is eligible to receive paid leave, will be considered annual leave II.

(3) State agencies are required to offer annual leave II in lieu of annual leave to eligible employees on or after the change date.

R25-15-3. Determination of Set Aside.

(1) The division may contract with a qualified actuary to help the division determine the expected change in the annual leave liability for a fiscal year.

(2) As required by generally accepted accounting principles and with consideration of Subsection 67-19-14.6(4), the division will calculate the annual leave liability to include applicable employer paid taxes and other employer paid benefits that would be required if the employee were paid for the annual leave.

(3) For each fiscal year, if the division expects the annual leave liability to increase, the division, in consultation with the Governor's Office of Management and Budget, will determine a rate for set aside for each applicable subfund of the annual leave trust.

(4) The division will inform the legislative Fiscal Analyst of the proposed set-aside rates.

(5) The set-aside rates will be determined as a percentage of gross pay of an employee who is eligible to receive paid leave, which if put into effect, would be expected to generate the amount of the projected increase in the annual leave liability applicable to each subfund of the annual leave trust.

(6) In accordance with Subsection 67-19-14.6(4)(c) and Subsection 67-19f-201(3)(b), the proposed set-aside rates will also be adjusted or eliminated as applicable if the accrual of funding in a subfund of the annual leave trust is expected to reach 10% of the annual leave liability attributable to the subfund.

(7) At the beginning of each fiscal year, the division will put into effect the set aside rates authorized by the Legislature for the fiscal year.

R25-15-4. Collection and Deposit of Set Aside in Subfunds of the Annual Leave Trust.

(1) To implement the provision of Title 67 Chapter 19f, State Employees' Annual Leave Trust Fund Act, the division created the following subfunds within the trust:

(a) Public Safety.

(b) Transportation.

(c) Public Education, and

(d) General.

(2) The Public Safety subfund applies to all employees within the Department of Public Safety.

(3) The Transportation Subfund applies to all employees within the Department of Transportation.

(4) The Public Education subfund applies to all employees within the State Office of Education and State Office of Vocational Rehabilitation.

(5) The General subfund applies to all other employees in the Executive, Legislative, and Judicial Branches of the State.

(6) The division shall deposit in each applicable subfund, the amount of funds generated by applying the authorized set-aside rates to each employee eligible to receive paid leave.

(7) In consultation with the Governor's Office of Management and Budget, in accordance with Subsection 67-19-14.6(4)(c) and Subsection 67-19f-201(3)(b), the division will reduce or stop charging a set-aside rate if the funding in a subfund of the annual leave trust reaches or is expected to reach 10% of the annual leave liability attributable to the subfund.

KEY: annual leave, trust fund, liability, state employees

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: 67-19-14.6(2); 67-19-14.6(7)(b); 67-19-14.6(4); 67-19-14.6(5); 67-19-14.6(1)

Commerce, Occupational and
Professional Licensing
R156-37f
Controlled Substance Database Act
Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39923

FILED: 11/09/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to: 1) address changes made by H.B. 395 and S.B. 119 passed during the 2015 General Session; 2) incorporate changes recommended by the Controlled Substance Database (CSD) Administrator and the Pharmacy Licensing Board; and 3) to make technical changes.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-37f-203(1), this change allows for any version of the American Society for Automation in Pharmacy (ASAP) Telecommunications Format for Controlled Substances published by the American Society for Automation in Pharmacy to be used for submission, collection, and maintenance of CSD data. The current rule only allows for and incorporates by reference the ASAP format, revised May 1995. The change also adds customer identification number and five-digit zip code as CSD mandatory data fields. In Subsection R156-37f-203(3), this change modifies and prescribes the method of submission of data to the CSD to be: 1) electronic data sent via a secured internet transfer method, including sFTP site transfer; 2) a web-base service; or 3) any other method approved by the database manager prior to submission. In Subsection R156-37f-203(5)(a), this

change changes the time standard for submission to the CSD to either real time or daily batch file reporting, as required by statute, and specifies that submitted data shall be from the point of sale date. In Subsection R156-37f-203(5)(b), this change deletes language that is unnecessary as it is adequately addressed by the modified language that follows in this subsection by allowing for a waiver. In Subsection R156-37f-203(5)(c), the current Subsection (c) is renumbered as Subsection (5)(b). The change allows a Class A, B, or D pharmacy that has a controlled substance license but does not dispense and does not anticipate dispensing controlled substances, to request a waiver or submit a certification of such for null reporting. The subsection currently only allows only a certification. The change replaces the method by which null reporting will be carried out. Subsection R156-37f-203(6) has become largely obsolete and is deleted from the section. In Subsection 156-37f-301(4), this change implements the new statutory search warrant requirement for law enforcement access to the CSD. The rule change deletes the former case number of the investigation or prosecution standard for law enforcement accessed to the CSD. It also details how a search warrant may be submitted. In Subsection R156-37f-301(5), this change implements the new statutory requirement to provide an accounting of persons or entities that have requested or received CSD information about an individual. Previously, the rule prohibited such an accounting. The change specifies how an individual may submit such a request and the required content of a request. It also addresses how the accounting may be disseminated. Section R156-37f-801a is now obsolete and is deleted from the rule. Section R156-37f-801b is now obsolete and is deleted from the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a) and Subsection 58-37f-301(1)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Removes ASAP Telecommunications Format for Controlled Substances, published by American Society for Automation in Pharmacy (ASAP), May 1995

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The change to real-time reporting or daily-batch reporting was required by statute and the cost was addressed by fiscal note during the 2015 General Session. Such reporting will allow users of the CSD to have more current data, which will assist users of the CSD to better prevent, control, and address controlled substance abuse. These costs and cost savings to all who are impacted cannot be estimated. Implementation of various rule changes will result in a cost savings to the Division of Occupational and Professional Licensing with regard to the cost of paper and toner. These savings will be minimal and cannot be estimated. The rules will have to be reprinted and distributed at an approximate cost of \$50. Any printing and distribution costs incurred will be absorbed in the Division's current budget.

◆ **LOCAL GOVERNMENTS:** The Division anticipates the proposed amendments would not apply to local governments and therefore the Division now anticipates there are no costs or savings to local governments beyond what may have been included in fiscal notes during the 2015 General Session with respect to H.B. 395 and S.B. 119.

◆ **SMALL BUSINESSES:** The change to real-time reporting or daily-batch reporting was required by statute and the cost was addressed by fiscal note. Such reporting will allow users of the CSD to have more current data, which will assist users of the CSD to better prevent, control, and address controlled substance abuse. These costs and cost savings to all who are impacted cannot be estimated. Implementation of various rule changes will save resources at the pharmacies that qualify as small businesses with regard to the cost of paper and toner. The savings will be minimal and cannot be estimated.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The change to real-time reporting or daily-batch reporting was required by statute and the cost was addressed by fiscal note. Such reporting will allow users of the CSD to have more current data, which will assist users of the CSD to better prevent, control, and address controlled substance abuse. These costs and cost savings to all who are impacted cannot be estimated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change to real-time reporting or daily-batch reporting was required by statute and the cost was addressed by fiscal note. Such reporting will allow users of the CSD to have more current data, which will assist users of the CSD to better prevent, control, and address controlled substance abuse. These costs and cost savings to all who are impacted cannot be estimated. Implementation of various rule changes will save resources at the pharmacy and state levels in the cost of paper and toner. The savings will be minimal and cannot be estimated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this filing updates this rule section to address changes made by H.B. 395 and S.B. 119, passed in the 2015 General Session; makes changes recommended by the Controlled Substance Database Administrator and the Pharmacy Licensing Board, and makes technical changes. This rule change will impact some pharmacies or pharmacy groups because of the requirement for real-time reporting or daily batch reporting, replacing the previous weekly-reporting requirement.

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:
 ♦ Marvin Sims by phone at 801-530-6232, by FAX at 801-530-6511, or by Internet E-mail at msims@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 12/15/2015 10:30 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2016

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-37f. Controlled Substance Database Act Rule.
R156-37f-203. Submission, Collection, and Maintenance of Data.

(1) The format used as a guide for submission to the Database shall be in accordance with any version of the ASAP Telecommunications Format for Controlled Substances published by the American Society for Automation in Pharmacy [~~revised May 1995 (ASAP Format), which is hereby incorporated by reference~~]. The Division may approve alternative formats substantially similar to this standard. This standard is further classified by the Database as follows:

(a) Mandatory Data. The following Database data fields are mandatory:

- (i) pharmacy NABP or NCPDP number;
- (ii) customer identification number;
- (iii) patient birth date;
- (iv) patient gender code;
- (v) date filled;
- (vi) Rx number;
- (vii) new-refill code;
- (viii) metric quantity;
- (ix) days supply;
- (x) NDC number;
- (xi) prescriber identification number;
- (xii) date Rx written;
- (xiii) number refills authorized;
- (xiv) patient last name;
- (xv) patient first name; and
- (xvi) patient street address [~~including zip code~~ (extended)];
- (xvii) five digit zip code.

(b) Preferred Data. The following Database data fields are strongly suggested:

- ~~(i) [customer identification number;~~
- ~~(ii)]compound code;~~
- ~~(iii)]DEA suffix;~~
- ~~(iv)]Rx origin code;~~

- (iv) customer location;
- (v) alternate prescriber number; and
- (vi) state in which the prescription is filled.

(c) Optional Data. All other data fields in the ASAP Format not included in Subsections (a) and (b) are optional.

(2) Upon request, the Division will consider approving alternative formats, or adjustments to the ASAP Format, as might be necessary due to the capability or functionality of Database collection instruments. A proposed alternative format shall contain all mandatory data elements.

(3) In accordance with Subsection 58-37f-203(1)(e)a, the data required in Subsection (1) shall be submitted to the Database through one of the following methods:

(a) electronic data sent via a secured internet transfer method, including sFTP site transfer; [telephone modem];

~~(b) secure web base service; or [electronic data submitted on floppy disk or compact disc (CD)];~~

~~(c) any other electronic method approved by the Database manager prior to submission. [if approved by the Database staff prior to submission, electronic data sent via encrypted electronic mail (e-mail);~~

~~(d) electronic data sent via a secured internet transfer method, including but not limited to sFTP site transfer and HyperSend; or~~

~~(e) any other electronic method approved by the Database manager prior to submission.~~

~~(4) The required information may be submitted on paper if:~~

~~(a) the pharmacy or pharmacy group submits a written request to the Division and receives prior approval for a paper submission; and~~

~~(b)(i) the pharmacy or pharmacy group has no computerized record keeping system upon which the data can be electronically recorded; or~~

~~(ii) The pharmacy or pharmacy group is unable to conform its submission(s) to an electronic format without incurring undue financial hardship.]~~

(4) In accordance with Subsection 58-37f-203(1)(a):

~~(5)(a) Effective January 1, 2016, each [each] pharmacy or pharmacy group shall submit [all] data collected on a daily basis either in real time or daily batch file reporting [at least once every seven days on a weekly reporting cycle established by the pharmacy]. The submitted data shall be from the point of sale (POS) date.~~

(i) If the data is submitted by a single pharmacy entity, the data shall be submitted in chronological order according to the date each prescription was filled.

(ii) If the data is submitted by a pharmacy group, the data is required to be sorted by individual pharmacy within the group, and the data of each individual pharmacy within the group is required to be submitted in chronological order according to the date each prescription was filled.

~~(b)(i) A Class A, B, or D pharmacy or pharmacy group that has a controlled substance license but has not dispensed a controlled substance during the preceding seven days shall:~~

~~(A) submit a null report stating that no controlled substance was dispensed during the preceding seven days; or~~

~~(B) comply with this Subsection (5)(c).~~

~~_____ (ii) A null report may be submitted on paper without prior approval of the Division. The Division shall facilitate electronic null reporting as resources permit.]~~

([e]b)(i) A Class A, B, or D pharmacy or pharmacy group that has a controlled substance license but is not dispensing controlled substances and does not anticipate doing so in the immediate future may request a waiver or submit a certification of such, in a form preapproved by the Division, in lieu of ~~[weekly]~~daily null reporting.

(ii) The waiver or certification must be resubmitted at the end of each calendar year.

(iii) If a pharmacy or pharmacy group that has submitted a waiver or certification under this Subsection (5)([e]b) dispenses a controlled substance:

(A) the waiver or certification shall immediately and automatically terminate;

(B) the pharmacy or pharmacy group shall provide written notice of the waiver or certification termination to the Division within seven days of dispensing the controlled substance; and

(C) the Database reporting requirements shall be applicable to the pharmacy or pharmacy group immediately upon the dispensing of the controlled substance. [

~~_____ (6) The pharmacist-in-charge, or his or her designee, for each reporting pharmacy shall submit its report, regardless of the reporting method, on a data transmission form (DTF) substantially equivalent to the DTF approved by the Division. The DTF may be mailed, faxed, emailed, or electronically uploaded to the Database. A copy of the DTF is required to be kept at the pharmacy unless an alternate location has been designated by the reporting pharmacy and approved by the Division. The DTF shall include the following information:~~

- ~~_____ (a) pharmacy name;~~
- ~~_____ (b) pharmacy facsimile (fax) and voice phone numbers;~~
- ~~_____ (c) pharmacy e-mail address;~~
- ~~_____ (d) pharmacy NABP/NCPDP number;~~
- ~~_____ (e) period of time covered by each submission of data;~~
- ~~_____ (f) number of prescriptions in the submission;~~
- ~~_____ (g) submitting pharmacist's signature attesting to the accuracy of the report; and~~
- ~~_____ (h) date of the report submission.]~~

R156-37f-301. Access to Database Information.

In accordance with Subsections 58-37f-301(1)(a) and (b):

(1) The Division Director ~~[shall]~~may designate ~~[in writing]~~ those individuals employed by the Division who ~~[shall]~~may have access to the information in the Database (Database staff).

(2) (a) A request for information from the Database may be made:

(i) directly to the Database by electronic submission, if the requester is registered to use the Database; or

(ii) by oral or written submission to the Database staff, if the requester is not registered to use the Database.

(b) An oral request may be submitted by telephone or in person.

(c) A written request may be submitted by facsimile, email, regular mail, or in person except as otherwise provided herein.

(d) The Division may in its discretion require a requestor to verify the requestor's identity.

(3) The following Database information may be disseminated to a verified requestor who is permitted to obtain the information:

- (a) dispensing/reporting pharmacy ID number/name;
- (b) subject's birth date;
- (c) date prescription was filled;
- (d) prescription (Rx) number;
- (e) metric quantity;
- (f) days supply;
- (g) NDC code/drug name;
- (h) prescriber ID/name;
- (i) date prescription was written;
- (j) subject's last name;
- (k) subject's first name; and
- (l) subject's street address;

(4)(a) Federal, state and local law enforcement authorities and state and local prosecutors requesting information from the Database under Subsection 58-37f-301(2)([d]k) must provide a valid ~~[ease number of the investigation or prosecution.]~~search warrant authorized by the courts and may be provided using one of the following methods:

- (i) in person;
- (ii) be email to csdb@utah.gov;
- (iii) facsimile; or
- (iv) U.S. Mail.

(b) Information in the search warrant should be limited to subject's name and birth date.

(c) Information provided as a result of the search warrant shall be in accordance with Subsection (3).

(5)(a) An individual ~~[whose records are contained within the Database.]~~may [not] receive an accounting of persons or entities that have requested or received Database information about the individual.

(b) An individual may request the information in person or in writing by the following means:

- (i) email;
- (ii) facsimile; or
- (iii) U.S. Mail.

(c) The request for information shall include the following:

- (i) individuals' full name, including all aliases;
- (ii) birth date;
- (iii) home address;
- (iv) government issued identification; and
- (v) date-range.

(d) The results may be disseminated in accordance with Subsection (14).

(6) An individual whose records are contained within the Database may obtain his or her own information and records by:

(a) personally appearing before the Database staff with government-issued picture identification confirming the requester's identity; or

(b) submitting a signed and notarized request that includes the requester's:

- (i) full name;
- (ii) complete home address;

(iii) date of birth; and
 (iv) driver license or state identification card number.
 (7) A requester holding power of attorney for an individual whose records are contained within the Database may obtain the individual's information and records by:

(a) personally appearing before the Database staff with government-issued picture identification confirming the requester's identity; and

(b) providing:

(i) an original, properly executed power of attorney designation; and

(ii) a signed and notarized request, executed by the individual whose information is contained within the Database, and including the individual's:

(A) full name;

(B) complete home address;

(C) date of birth; and

(D) driver license or state identification card number verifying the individual's identity.

(8) A requestor who is the legal guardian of a minor or incapacitated individual whose records are contained within the Database may obtain the individual information and records by:

(a) personally appearing before the Database staff with government-issued picture identification confirming the requester's identity;

(b) submitting the minor or incapacitated individual's:

(i) full name;

(ii) complete home address;

(iii) date of birth; and

(iv) if applicable, state identification card number verifying the individual's identity; and

(c) submitting legal proof that the requestor is the guardian of the individual who is the subject of the request for information from the Database.

(9) A requestor who has a release-of-records from an individual whose records are contained within the Database may obtain the individual's information and records by:

(a) submitting a request in writing;

(b) submitting an original, signed and notarized release-of-records in a format acceptable to the Database staff, identifying the purpose of the release; and

(c) submitting the individual's:

(i) full name;

(ii) complete home address;

(iii) telephone number;

(iv) date of birth; and

(v) driver license or state identification card number verifying the identity of the person who is the subject of the request.

(10) An employee of a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(d) if, prior to making the request:

(a) the licensed practitioner has provided to the Division a written designation that includes the designating practitioner's DEA number and the designated employee's:

(i) full name;

(ii) complete home address;

(iii) e-mail address;

(iv) date of birth; and

(v) driver license number or state identification card number;

(b) the designated employee has registered for an account for access to the Database and provided a unique user identification[~~and password~~];

(c) the designated employee has passed a Database background check of available criminal court and Database records; and

(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.

(11) An employee of a business that employs a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(d) if, prior to making the request:

(a) the licensed practitioner and employing business have provided to the Division a written designation that includes:

(i) the designating practitioner's DEA number;

(ii) the name of the employing business; and

(iii) the designated employee's:

(A) full name;

(B) complete home address;

(C) e-mail address;

(D) date of birth; and

(E) driver license number or state identification card number;

(b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;

(c) the designated employee has passed a Database background check of available criminal court and Database records; and

(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.

(12) An individual who is employed in the emergency room of a hospital that employs a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(d) if, prior to making the request:

(a) the practitioner and the hospital operating the emergency room have provided to the Division a written designation that includes:

(i) the designating practitioner's DEA number;

(ii) the name of the hospital;

(iii) the names of all emergency room practitioners employed at the hospital; and

(iv) the designated employee's:

(A) full name;

(B) complete home address;

(C) e-mail address;

(C) date of birth; and

(D) driver license number or state identification card number;

(b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;

(c) the designated employee has passed a Database background check of available criminal court and Database records; and

(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.

(13) The Utah Department of Health may access Database information for purposes of scientific study regarding public health. To access information, the scientific investigator shall:

(a) demonstrate to the satisfaction of the Division that the research is part of an approved project of the Utah Department of Health;

(b) provide a description of the research to be conducted, including:

(i) a research protocol for the project; and

(ii) a description of the data needed from the Database to conduct that research;

(c) provide assurances and a plan that demonstrates all Database information will be maintained securely, with access being strictly restricted to the requesting scientific investigator;

(d) provide for electronic data to be stored on a secure database computer system with access being strictly restricted to the requesting scientific investigator; and

(e) pay all relevant expenses for data transfer and manipulation.

(14) Database information that may be disseminated under Section 58-37f-301 may be disseminated by the Database staff either:

(a) verbally;

(b) by facsimile;

(c) by email;

(d) by U.S. mail; or

(e) where adequate technology is in place to ensure that a record will not be compromised, intercepted, or misdirected, by electronic access.

~~**R156-37f-801a. Reporting of Information by Pharmacies Participating in the Pilot Program for Real-time Reporting.**~~

~~(1) In accordance with Subsection 58-37f-801(1)(a), the pilot area is designated as the entire state of Utah. Any pharmacy or pharmacy group that submits information to the Database is eligible and may participate in the Real-time Pilot Program.~~

~~(2) In accordance with Subsection 58-37f-801(8), each licensed pharmacy participating in the pilot program for real-time reporting shall, in conjunction with controlled substance point of sale, submit from the pharmacy's database to the Controlled Substance Database, the information required by Section 58-37f-203 as implemented by Section R156-37f-203, through real-time interface and reporting software developed by the Division's contract provider.~~

~~**R156-37f-801b. Access to Information in the Database Submitted by Pharmacies Participating in the Pilot Program for Real-time Reporting.**~~

~~In accordance with Subsection 58-37f-801(8), access to information in the Database submitted by pharmacies participating in the pilot program for real-time reporting shall be the same as set~~

~~forth in Section 58-37f-301 as implemented by Section R156-37f-301.]~~

KEY: controlled substance database, licensing

Date of Enactment or Last Substantive Amendment: [February 24, 2015]2016

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-37f-301(1)

Commerce, Occupational and Professional Licensing **R156-60b-102** Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39924

FILED: 11/09/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Marriage and Family Therapist Licensing Board are proposing an amendment to codify the definition of deficiency in relationship to issuing an externship license. During the 2015 General Session, H.B. 52 passed and amended the Mental Health Professional Practice Act to allow the Division to define deficiency in this context.

SUMMARY OF THE RULE OR CHANGE: In Section R156-60b-102, definition of "deficiency" is being added. The remaining subsections are renumbered.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-60-301 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

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

♦ **LOCAL GOVERNMENTS:** The proposed amendments apply only to marriage and family therapists and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.

♦ **SMALL BUSINESSES:** The proposed amendments apply to licensed marriage and family therapists and applicants for licensure in that classification. In accordance with H.B. 52 (2015), the new statutory language added clarification to the qualifications for externship licenses. The proposed rule amendments may impact individuals that may have qualified for an externship license under the prior undefined deficiency in course work requirement. These individuals may see a

fiscal impact because they will not be able to legally work in the field while correcting the deficiency. Additionally, the individuals that do not meet the proposed deficiency in course work definition may have to obtain an additional degree that meets the standards outlined in Section R156-60b-302a. The number of individuals that this may affect cannot be quantified by the Division. The impacts are not more than those anticipated in the passage of H.B. 52 (2015).

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments apply to licensed marriage and family therapists and applicants for licensure in that classification. In accordance with H.B. 52 (2015), the new statute language added clarification to the qualifications for externship license approval. The proposed rule amendments may impact individuals that may have qualified for an externship license under the prior undefined deficiency in course work requirement. These individuals may see a fiscal impact because they will not be able to legally work in the field while correcting the deficiency. Additionally, the individuals that do not meet the proposed deficiency in course work definition may have to obtain an additional degree that meets the standards outlined in Section R156-60b-302a. The number of individuals that this may affect cannot be quantified by the Division. The impacts are not more than those anticipated in the passage of H.B. 52 (2015).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply to licensed marriage and family therapists and applicants for licensure in that classification. In accordance with H.B. 52 (2015), the new statute language added clarification to the qualifications for externship license approval. The proposed rule amendments may impact individuals that may have qualified for an externship license under the prior undefined deficiency in course work requirement. These individuals may see a fiscal impact because they will not be able to legally work in the field while correcting the deficiency. Additionally, the individuals that do not meet the proposed deficiency in course work definition may have to obtain an additional degree that meets the standards outlined in Section R156-60b-302a. The number of individuals that this may affect cannot be quantified by the Division. The impacts are not more than those anticipated in the passage of H.B. 52 (2015).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this rule adds a definition for "deficiency" as used in the recently amended Subsection 58-60-117(1)(d). This rule change may impact some businesses that employ people that previously qualified for externship licenses under the undefined "deficiency in coursework" requirement, but now do not qualify, now that the "deficiency in coursework requirement" is defined. These impacts were anticipated when the statute was amended in the previous legislative session, and do not outweigh the benefit of defining the "deficiency in coursework" requirement.

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:
 ◆ Dane Ishihara by phone at 801-530-7632, by FAX at 801-530-6511, or by Internet E-mail at dishihara@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ◆ 12/11/2015 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2016

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
 R156-60b. Marriage and Family Therapist Licensing Act Rule.
 R156-60b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or this rule:

(1) "AAMFT" means the American Association for Marriage and Family Therapy.

(2) "Deficiency", as used in Subsection 58-60-117(1)(d), means no more than a combined total of six semester or eight quarter hours in:

(a) theoretical foundations of marital and family therapy;

(b) assessment and treatment in marriage and family therapy, including Diagnostic Statistical Manual (DSM);

(c) human development and family studies which include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(d) research methodology and data analysis; and

(e) electives in marriage and family therapy.

([2]3) "Directly related to marriage and family therapy", as used in R156-60b-304(2)(a), means that the continuing education course meets at least one of the following criteria:

(a) approved by an international, national, or state marriage and family therapy association, national or state marriage and family therapy regulatory board, or a COAMFTE accredited program; or

(b) title, objective, or official description of the course indicates instruction on relationships, couples, or families.

([3]4) "Face to face supervision" as described in Subsection R156-60b-302a(1)(b)(ii)(G) includes both individual and group supervision.

([4]5) "Group supervision" means supervision between the supervisor and no more than three supervisees, unless preapproved by the Board.

([5]6) "Individual supervision" means supervision between the supervisor and one or two supervisees.

([6]7) "Practicum", as used in R156-60b-302a(1)(b)(ii) (G) means a clinical program of training at an accredited school under general supervision in a setting other than a student's private practice.

([7]8) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-60b-502.

KEY: licensing, therapists, marriage and family therapist

Date of Enactment or Last Substantive Amendment:
~~December 23, 2013~~ 2016

Notice of Continuation: August 5, 2014

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-60-301

Commerce, Occupational and
Professional Licensing
R156-60c
Clinical Mental Health Counselor
Licensing Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39911

FILED: 11/03/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Clinical Mental Health Counselor Licensing Board are proposing amendments to codify the definition of deficiency in relationship to issuing an externship license. During the 2015 General Session, H.B. 52 passed and amended the Mental Health Professional Practice Act to allow the Division to define deficiency in this context. Additionally, this filing amends the educational requirements for licensure to provide clarity and uniformity with the terms already used within the industry.

SUMMARY OF THE RULE OR CHANGE: In Section R156-60c-102, definition of "deficiency" is being added. In Section R156-60c-302a, the proposed amendments provide clarity and uniformity with the terms already used within the industry.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-60-401 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the

proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

♦ **LOCAL GOVERNMENTS:** The proposed amendments apply only to licensed clinical mental health counselors and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.

♦ **SMALL BUSINESSES:** The proposed amendments apply to licensed clinical mental health counselors and applicants for licensure in that classification. In accordance with H.B. 52 (2015), the new statute language added clarification to the qualifications for externship licenses. The proposed rule amendments may impact individuals that may have qualified for an externship license under the prior undefined deficiency in course work requirement. These individuals may see a fiscal impact because they will not be able to legally work in the field while correcting the deficiency. Additionally, the individuals that do not meet the proposed deficiency in course work definition may have to obtain an additional degree that meets the standards outlined in Subsection R156-60c-302a. The number of individuals that this may affect cannot be quantified by the Division. The impacts are not more than those anticipated in the passage of H.B. 52 (2015). No fiscal impact to small business is anticipated related to the amended educational requirements for licensure.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments apply to licensed clinical mental health counselors and applicants for licensure in that classification. In accordance with H.B. 52 (2015), the new statute language added clarification to the qualifications for externship license approval. The proposed rule amendments may impact individuals that may have qualified for an externship license under the prior undefined deficiency in course work requirement. These individuals may see a fiscal impact because they will not be able to legally work in the field while correcting the deficiency. Additionally, the individuals that do not meet the proposed deficiency in course work definition may have to obtain an additional degree that meets the standards outlined in Subsection R156-60c-302a. The number of individuals that this may affect cannot be quantified by the Division. The impacts are not more than those anticipated in the passage of H.B. 52 (2015). No fiscal impact to other persons is anticipated related to the amended educational requirements for licensure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply to licensed clinical mental health counselors and applicants for licensure in that classification. In accordance with H.B. 52 (2015), the new statute language added clarification to the qualifications for externship license approval. The proposed rule amendments may impact individuals that may have qualified for an externship license under the prior undefined deficiency in course work requirement. These individuals may see a fiscal impact because they will not be able to legally work in the field while correcting the deficiency. Additionally, the individuals that do not meet the proposed deficiency in course work definition may have to obtain an additional degree that meets the standards outlined in Subsection R156-60c-302a.

The number of individuals that this may affect cannot be quantified by the Division. The impacts are not more than those anticipated in the passage of H.B. 52 No fiscal impact to affected persons is anticipated related to the amended educational requirements for licensure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this rule adds a definition for "deficiency" as used in the recently amended Subsection 58-60-117(1)(d), and amends rule language to provide clarity and uniformity with industry terms. This rule change may impact some businesses that employ people that previously qualified for externship licenses under the undefined "deficiency in coursework" requirement, but now do not qualify, now that the "deficiency in coursework requirement" is defined. These impacts were anticipated when the statute was amended in the previous legislative session, and do not outweigh the benefit of defining the "deficiency in coursework" requirement.

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:

◆ Dane Ishihara by phone at 801-530-7632, by FAX at 801-530-6511, or by Internet E-mail at dishihara@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 12/02/2015 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 475, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2016

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-60c. Clinical Mental Health Counselor Licensing Act Rule.

R156-60c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or this rule:

(1) "Deficiency", as used in Subsection 58-60-117(1)(d), means:

(a) no more than a combined total of six semester or nine quarter hours in:

- (i) group counseling and group work;
- (ii) human growth and development;
- (iii) career development;
- (iv) substance-related and addictive disorders; and
- (v) research and program evaluation.

([1]2) "Internship" means:

(a) one or more courses completed as part of a program at an accredited school:

(i) in a public or private agency engaged in the clinical practice of mental health therapy as defined in Subsection 58-60-102(7); and

(ii) under supervision provided by a qualified mental health training supervisor as defined in Section R156-60c-401.

([2]3) "Practicum" means:

(a) one or more courses completed as part of a program at an accredited school:

(i) in a public or private agency engaged in the clinical practice of mental health therapy as defined in Subsection 58-60-102(7); and

(ii) under supervision provided by a qualified mental health training supervisor as defined in Section R156-60c-401.

([3]4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-60c-502.

R156-60c-302a. Qualifications for Licensure - Education Requirements.

(1) Pursuant to Subsection 58-60-405(1)(d)(i), an applicant for licensure as a clinical mental health counselor shall:

(a) produce certified transcripts evidencing completion of at least 60 semester or 90 quarter credit hours completed as part of a master's or doctorate degree conferred to the applicant in clinical mental health counseling or counselor education and supervision from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP); or

(b)(i) produce certified transcripts evidencing completion of at least 60 semester or 90 quarter credit hours as part of a master's or doctorate degree conferred to the applicant in clinical mental health counseling or an equivalent field from a program affiliated with an institution that has accreditation that is recognized by the Council for Higher Education Accreditation (CHEA).

(ii) A program under Subsection (1)(b)(i) shall include the following graduate level course work:

(A) a minimum of two semester or three quarter hours in professional counseling orientation and ethical practice based on the standards of the American Counseling Association (ACA), American Mental Health Counselors Association (AMHCA), or National Board of Certified Counselors (NBCC);

(B) a minimum of two semester or three quarter hours in social and cultural diversity;

(C) a minimum of two semester or three quarter hours in group counseling and group work;

(D) a minimum of two semester or three quarter hours in human growth and development[~~across the life span~~];

(E) a minimum of two semester or three quarter hours in career development;

(F) a minimum of six semester or eight quarter hours in counseling and helping relationships[~~including theory and skills in~~

~~counseling and psychotherapy with individuals, couples or families];~~

(G) a minimum of two semester or three quarter hours in substance-related and addictive [use-]disorders[~~or addictive or compulsive behaviors~~];

(H) a minimum of two semester or three quarter hours in assessment and testing[~~psychometric test and measurement theory~~];

(I) a minimum of four semester or six quarter hours in [~~assessment of~~]mental status examination and[including] the appraisal of DSM maladaptive and psychopathological behavior;

(J) a minimum of two semester or three quarter hours in research and program evaluation[~~in clinical mental health counseling~~];

(K) a minimum of four semester or six quarter hours of internship or practicum as defined in Subsection R156-60c-102(1) or (2) that includes combined completion of at least 1,000 hours of supervised clinical training of which at least 400 hours shall be in providing clinical mental health [therapy]counseling directly to clients as defined in Subsection 58-60-102(7);and

(L) a minimum of 34 semester or 52 quarter hours of course work related to the practice of counseling of which no more than six semester or eight quarter hours of credit for thesis, dissertation or project hours shall be counted toward the required hours in this subsection.

KEY: licensing, counselors, mental health, clinical mental health counselor

Date of Enactment or Last Substantive Amendment:
[~~September 28, 2015~~]2016

Notice of Continuation: December 9, 2014

Authorizing, and Implemented or Interpreted Law: 58-60-401; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Occupational and Professional Licensing **R156-78-102** Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39912

FILED: 11/03/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Both the Division and the Vocational Rehabilitation Counselors Licensing Board are proposing this amendment to clarify the definition of supervision in the Vocational Rehabilitation Counselors Licensing Act, Title 58, Chapter 78.

SUMMARY OF THE RULE OR CHANGE: Subsection R156-78-101(5)(a) currently includes the wording: "has authorized the work to be performed" which the Board determined may be interpreted as requiring that the supervisor has a formal

work or employment relationship with the supervisee. Board members and the Division reported that applicants for licensure have questioned if the supervisor and the supervisee must work for the same employer. Many applicants for vocational rehabilitation counselor licensure practice in private or independent settings; thus the current language may be a barrier to licensure if the applicant for licensure works independently or for a small employer with few employees. The revised wording clarifies that there must be a professional relationship between the supervisor and the supervisee, but it does not imply the need for an employment relationship. In addition, the revised wording clarifies that the purpose of the supervision is to ensure that the work being performed by the supervisee is consistent with the scope and standards of the profession.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-78-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

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

♦ **LOCAL GOVERNMENTS:** The proposed amendment applies only to licensed vocational rehabilitation counselors and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.

♦ **SMALL BUSINESSES:** The proposed amendment applies only to licensed vocational rehabilitation counselors and applicants for licensure in that classification. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendment applies only to licensed vocational rehabilitation counselors and applicants for licensure in that classification. The Division does not anticipate any costs or savings for other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment applies only to licensed vocational rehabilitation counselors and applicants for licensure in that classification. The previous requirement for the supervising licensed vocational rehabilitation counselor to authorize the work of the supervisee created a barrier to licensure. The revised language minimizes barriers to licensure. Although compliance costs for affects persons cannot be quantified by the Division, minimization of licensure barriers is undoubtedly a benefit to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, this rule rewrites the definition of "supervision" to clarify that a supervisee is not required to

have a formal work or employment relationship with the supervisor. No fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2016

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-78. Vocational Rehabilitation Counselors Licensing Act Rule.**

R156-78-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 78, as used in Title 58, Chapters 1 and 78 or in this rule:

(1) "Disability related work experience", as used in Subsection 58-78-302(1)(e), means the practice of providing vocational rehabilitation services as defined in Subsection 58-78-102(3).

(2) "In-service" means a continuing education course that meets the requirements in Subsection R156-78-304(4) and is hosted or sponsored by an employer and not by a professional association, society or organization related to the profession.

(3) "LVRC" means a licensed vocational rehabilitation counselor.

(4) "Related field", as used in Subsection 58-78-302(1)(d), includes any of the following:

- (a) psychology;
- (b) clinical psychology;
- (c) counseling psychology;
- (d) professional guidance and counseling;
- (e) social work;
- (f) educational counseling;
- (g) educational psychology with rehabilitation counseling emphasis;

(h) special education with rehabilitation counseling emphasis; and

(i) any other field deemed substantially related to the practice of rehabilitation counseling by the Board and Division.

(5) "Supervision", as used in Subsections 58-78-302(1)(e) and 58-78-304(1) means general supervision in that the supervising licensee:

(a) ~~[has authorized the work to be performed by the person being supervised]~~ establishes a professional relationship with the supervisee which ensures that the work being performed is consistent with the scope and standards of the profession;

(b) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by telephone, radio, or some other means, whether or not the supervising licensee is located on the same premises as the person being supervised;

(c) provides necessary consultation within a reasonable period of time; and

(d) maintains routine personal contact with the person being supervised.

(6) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 78, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-78-502.

(7) "Vocational assessment", as used in Subsection 58-78-102(3)(c), includes the performance of forensic evaluations.

KEY: licensing, vocational rehabilitation counselor

Date of Enactment or Last Substantive Amendment: ~~August 8, 2011~~ 2016

Notice of Continuation: August 14, 2014

Authorizing, and Implemented or Interpreted Law: 58-78-101; 58-1-106(1)(a); 58-1-202(1)(a)

Education, Administration
R277-705
Secondary School Completion and
Diplomas

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39936

FILED: 11/10/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-705 is amended to change language regarding accreditation that was being misinterpreted and to provide technical and conforming changes.

SUMMARY OF THE RULE OR CHANGE: Language regarding acceptance of credit awarded to students is changed to clarify that a school or provider needs to be accredited by an accrediting entity adopted by the Utah State Board of Education for a local education agency to accept credit awarded to a student by that school or provider. Technical and conforming changes, including removing repetitive language already in statute and renumbering, are also made throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article X, Section 3 and Subsection 53A-1-401(3) and Subsections 53A-1-402(1)(b) and (c)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The amendments clarify language that was being misinterpreted and provide technical and conforming changes which likely will not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: The amendments clarify language that was being misinterpreted and provide technical and conforming changes which likely will not result in a cost or savings to local government.

◆ SMALL BUSINESSES: The amendments clarify language that was being misinterpreted and provide technical and conforming changes which likely will not result in a cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments clarify language that was being misinterpreted and provide technical and conforming changes which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments clarify language that was being misinterpreted and provide technical and conforming changes which likely will not result in any compliance costs for affected persons.

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

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the 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 12/31/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2016

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

R277. Education, Administration.**R277-705. Secondary School Completion and Diplomas.****R277-705-[2]1. Authority and Purpose.**

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

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

(b) Subsections 53A-1-402(1)(b) and (c), which direct the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements; and

(c) 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:

(a) provide consistent definitions[-];

(b) provide alternative methods for a student[s] to earn credit and alternate methods for schools to award credit[-]; and

(c) ~~[to-]~~provide rules and procedures for the assessment of all students as required by law.

R277-705-[4]2. 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 Northwest).

~~-----~~ B. "Board" means the Utah State Board of Education.]

[C-](1) "Demonstrated competence" means subject mastery as determined by LEA standards and review. LEA review may include such methods and documentation as: tests, interviews, peer evaluations, writing samples, reports or portfolios.

[D-](2) "Diploma" means an official document awarded by an LEA consistent with state and LEA graduation requirements and the provisions of this rule.

[E. "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).

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

[G. "Military child or children" means a K-12 public education student whose parent(s) or legal guardian(s) satisfies the definition of Section 53A-11-1401.

~~-----~~ H-](3)(a) "Secondary school" means grades 7-12 in whatever kind of school the grade levels exist.

(b) Grade 6 may be considered a secondary grade for some purposes.

[I-](4) "Section 504 plan" means a written statement of reasonable accommodations for a student with a qualifying disability that is developed, reviewed, and revised in accordance with Section 504 of the Rehabilitation Act of 1973.

[J-](5)(a) "Special purpose school[s]" means a school[s] designated by a regional accrediting agency[ies], [such as AdvancED Northwest] adopted by the Board.

(b) ~~[These schools typically]~~ "Special purpose school" includes a school:

(i) that serves a specific population such as a student[s] with a disabilit[ies]y, youth in custody, or a school[s] with a specific curricular emphasis[-]; and

(ii) ~~[Their courses and-] with~~ curricula[-are] designed to serve[-their] specific populations [and] that may be modified from a traditional program[s].

~~[K-]~~(6) "Supplemental education provider" means a private school or educational service provider~~[-which]~~;

(a) ~~that~~ may or may not be accredited~~[-]; and~~

(b) ~~that~~ provides courses or services similar to public school courses~~[-] or classes.~~

~~[L-]~~(7)(a) "Transcript" means an official document or record~~[-(s)]~~ generated by one or several schools which includes~~[-, at a minimum]~~;

(i) the courses in which a secondary student was enrolled~~[-];~~

(ii) grades and units of credit earned~~[-]; and~~

(iii) citizenship and attendance records.

(b) ~~[The] A~~ transcript is~~[-usually]~~ one part of ~~[the] a~~ student's permanent record or cumulative file ~~[which also] that~~ may include;

(i) birth certificate~~[-];~~

(ii) immunization records; and

(iii) other information as determined by the school in possession of the record.

~~[M-]~~(8) "Unit of credit" means credit awarded for a course~~[-s]~~ taken;

(a) consistent with this rule~~[-or]~~;

(b) upon LEA authorization; or

(c) for mastery demonstrated by approved methods.

R277-705-3. Required LEA Policy Explaining Student Credit.

~~[A-]~~(1)(a) ~~[All Utah] An LEA[s] governing board~~ shall ~~[have a policy, approved] establish a policy,~~ in an open meeting~~[- by the governing board]~~, explaining the process and standards for acceptance and reciprocity of credits earned by a student~~[-s]~~ in accordance with ~~[Utah] state law.~~

(b) An LEA ~~[P] polic[ies]y~~ described in Subsection (1)(a) shall ~~[provide for] include~~ specific and adequate notice to a student~~[-s]~~ and a parent~~[-s]~~ of all policy requirements and limitations.

~~[B- LEAs shall adhere to the following standards for credits or coursework from schools, supplemental education providers accredited by the Northwest Accreditation Commission, and accredited distance learning schools:]~~

(1)(2)(a) ~~[Public schools] An LEA~~ shall accept credits and grades awarded to a student~~[-s]~~ from a school~~[-s]~~ or a provider~~[-s]~~ accredited by ~~[the Northwest Accreditation Commission or approved] an accrediting entity adopted~~ by the Board ~~[without alteration].~~

(2)(b) An LEA polic~~[-ies]~~y may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted.

~~[C-]~~(3) An LEA polic~~[-ies]~~y shall provide various methods for a student~~[-s]~~ to earn credit from a non-accredited source~~[-s]~~, course work, or education provider~~[-s]~~. ~~Methods, as designated by the LEA may] includ[e]ing:~~

(1)(a) ~~[S] satisfaction of coursework by demonstrated competency, as evaluated at the LEA level;~~

(2)(b) ~~[A] assessment as proctored and determined at the school or school level;~~

(3)(c) ~~[R] review of student work or projects by an LEA administrator[-s]; and~~

(4)(d) ~~[S] satisfaction of electronic or correspondence coursework, as approved at the LEA level.~~

~~[D-]~~(4) An LEA~~[-s]~~ may require documentation of compliance with Section 53A-11-102 prior to reviewing a student's home school or competency work, assessment or materials.

~~[E-]~~(5) An LEA polic~~[-ies]~~y for participation in extracurricular activities, awards, recognitions, and enhanced diplomas may be determined locally consistent with the law and this rule.

~~[F-]~~(6) An LEA has the final decision-making authority for the awarding of credit and grades from a non-accredited source~~[-s]~~ consistent with state law, due process, and this rule.

R277-705-4. Diplomas and Certificates of Completion.

~~[A-]~~(1) An LEA~~[-s]~~ shall award diplomas and certificates of completion.

~~[B-]~~(2) An LEA~~[-s]~~ shall establish criteria for a student~~[-s]~~ to earn a certificate of completion that may be awarded to a student~~[-s]~~ who:

(a) ha~~[-ve]~~s completed the~~[-if]~~ student's senior year~~[-];~~

(b) ~~[are] is~~ exiting the school system~~[-];~~ and

(c) ha~~[-ve]~~s not met all state or LEA requirements for a diploma.

R277-705-5. Students with Disabilities.

~~[A-]~~(1) A student with a disabilit~~[-ies]~~y served by a special education program~~[-s]~~ shall satisfy high school completion or graduation criteria, consistent with state and federal law and the student's IEP.

~~[B-]~~(2) An LEA may award a student~~[-may be awarded]~~ a certificate of completion consistent with state and federal law and the student's IEP or Section 504 Plan.

R277-705-6. Adult Education Students.

~~[A-]~~(1) An ~~[A] adult education student[-s-are]~~ is eligible only for an adult education secondary diploma.

~~[B-]~~(2) An adult education diploma~~[-s-cannot]~~ may not be upgraded or changed to a traditional, high school-specific diploma~~[-s]~~.

~~[C-]~~(3) A ~~[S] school district[-s]~~ shall establish a polic~~[-ies]~~y:

(1)(a) allowing or disallowing adult education student participation in graduation activities or ceremonies~~[-]; and~~

(2)(b) establishing timelines and criteria for satisfying adult education graduation~~[-]~~ and diploma requirements.

R277-705-7. Student Rights and Responsibilities Related to Graduation, Transcripts and Receipt of Diplomas.

~~[A-]~~(1) An LEA~~[-s]~~ shall supervise the granting of credit and awarding of diplomas, but may delegate the responsibility to schools within the LEA.

~~[B-]~~(2) An LEA may determine criteria for a student's participation in graduation activities, honors, and exercises, independent of a student's receipt of a diploma or certificate of completion.

~~[C-]~~(3) A ~~[D] diploma[-s-or]~~, a certificate~~[-s]~~, credits, or an unofficial transcript~~[-s]~~ may not be withheld from a student~~[-s]~~ for nonpayment of school fees.

~~[D-]~~(4)(a) An LEA~~[-s]~~ shall establish a consistent timeline~~[-s]~~ for all students for completion of graduation requirements.

~~(b) A [F]timeline[s] described in Subsection (4)(a) shall be consistent with state law and this rule.~~

~~[E. LEAs shall work with enrolled military children to evaluate the students' coursework or to assist students in completing coursework to allow military children to graduate with the students' age-appropriate graduating class consistent with Section 53A-11-1404.~~

~~F. Consistent with Section 53A-11-1404(3), if a Utah school is unable to facilitate a military child's receipt of diploma by~~

~~evaluating coursework in Utah schools and previous schools attended, the Utah school shall contact the military child's previous local education agency and aid, to the extent possible, the receipt of a diploma.~~

~~G. (5) An LEA's [G]graduation requirements [are not] may not apply retroactively.~~

KEY: ~~[curricula]high school credit, adult education, graduation requirements~~

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

Notice of Continuation: November 10, 2015

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

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-512** Use of Extrapolation in Provider Audits

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39914

FILED: 11/05/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to comply with rulemaking requirements set forth in S.B. 61, passed during the 2015 General Session of the legislature.

SUMMARY OF THE RULE OR CHANGE: This new rule complies with rulemaking requirements set forth in S.B. 61 (2015). It sets forth the conditions under which the Department or one of its contractors may use extrapolation in provider audits.

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 rule only sets forth conditions of

extrapolation in provider audits. It neither affects current payment rates to Medicaid providers nor services to Medicaid recipients.

♦ **LOCAL GOVERNMENTS:** There is no impact to local governments because this rule only sets forth conditions of extrapolation in provider audits. It neither affects current payment rates to Medicaid providers nor services to Medicaid recipients.

♦ **SMALL BUSINESSES:** There is no impact to small businesses because this rule only sets forth conditions of extrapolation in provider audits. It neither affects current payment rates to Medicaid providers nor services to Medicaid recipients.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact because this rule only sets forth conditions of extrapolation in provider audits. It neither affects current payment rates to Medicaid providers nor services to Medicaid recipients.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact because this rule only sets forth conditions of extrapolation in provider audits. It neither affects current payment rates to a single Medicaid provider nor services to a Medicaid recipient.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because it does not change payment rates to Medicaid providers or the kind or amount of services that Medicaid pays for eligible Medicaid participants.

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 12/31/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-512. Use of Extrapolation in Provider Audits.

R414-512-1. Introduction and Authority.

This rule implements rulemaking required by Section 26-18-20. It sets forth the conditions under which the Department or one of its contractors may use extrapolation as defined in Section 63A-13-102.

R414-512-2. Definition.

"Contractor" means a contractor or subcontractor of the Department.

R414-512-3. Use of Extrapolation Limited.

(1) The procedures set forth in Rule R380-400 may be used only if the Department or one of its contractors implements extrapolation pursuant to this rule.

(2) The Department or a contractor that conducts audits of providers on behalf of the Department shall:

(a) have on staff or contract with a medical or dental professional who is experienced in the treatment, billing, and coding procedures used by the type of provider being audited; and

(b) use the services of the appropriate professional described in Subsection R414-512-3(2)(a) if the provider who is the subject of the audit disputes the findings of the audit.

(3) The Department or a contractor may not base a finding of overpayment or underpayment on extrapolation as defined in Section 63A-13-102, unless:

(a) there is a determination that the level of payment error involving the provider exceeds a 10% error rate:

(i) for a sample of claims for a particular service code; and

(ii) over a three-year period of time;

(b) documented education intervention has failed to correct the level of payment error; and

(c) the value of the claims for the provider, in aggregate, exceeds \$200,000 in reimbursement for a particular service code on an annual basis.

(4) If a contractor intends to implement the use of extrapolation as a method of auditing claims, the contractor shall, before adopting the extrapolation method of auditing:

(a) report its intent to use extrapolation to the Department; and

(b) proceed with the use of extrapolation only after the Department has granted permission.

(5) If the Department or a contractor determines Subsection R414-512-3(3)(a) through (c) is applicable to a provider, the Department or the contractor may use extrapolation only for the service code associated with the findings under that subsection.

(6) If extrapolation is used under this rule, a provider may appeal the results of the audit based on:

(a) each individual claim; or

(b) the extrapolation sample.

(7) Nothing in this rule limits a provider's right to appeal the audit under Title 63G, Chapter 4, the Medicaid program and its manual or rules, or other laws or rules that may provide remedies to providers.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

**Human Services, Administration
R495-885
Employee Background Screenings**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39922

FILED: 11/06/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to create a Department of Human Services (DHS) employee background screening process involving the use and retention of fingerprints as allowed by Section 62A-2-120 due to changes from H.B. 145 (2015 General Session).

SUMMARY OF THE RULE OR CHANGE: This rule creates a background screening process for DHS employees in order to enhance the safety of DHS clientele and promote the public trust.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-1-118 and Section 62A-2-120

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This will cost the DHS approximately \$170,000 in the first year with approximately \$60,000 a year ongoing costs. These fees are for the \$52.75 charge that will be paid per person for employees/volunteers subject to the submission of the prints through DHS to Public Safety. This fee is set by FBI and Public Safety and includes the FBI rap back system of criminal feedback reporting.

♦ **LOCAL GOVERNMENTS:** No impact for local government. Only DHS budget is affected.

♦ **SMALL BUSINESSES:** No impact for small businesses. Only DHS budget is affected.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No impact for other entities. Only DHS budget is affected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No person will bear a compliance cost. The compliance costs will be borne by the DHS.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This process will have no direct fiscal impact on businesses in our community.

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:

- ◆ Diane Moore by phone at 801-538-4235, by FAX at 801-538-4553, or by Internet E-mail at dmoore@utah.gov
- ◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at hjonesrobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2016

AUTHORIZED BY: Ann Williamson, Executive Director

R495. Human Services, Administration.

R495-885. Employee Background Screenings.

R495-885-1. Authority and Purpose.

(1) This Rule is authorized by Sections 62A-1-118 and 62A-2-120.

(2) This Rule clarifies the standards for Department of Human Services' employee and volunteer background screening.

(3) This Rule is created to hold DHS employees and volunteers to high standards of conduct, protect children and vulnerable adults, and promote public trust.

R495-885-2. Definitions.

(1) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(2) "Child" is defined in Section 62A-2-101.

(3) "Department" or "DHS" means the Department of Human Services.

(4) "Direct Access" is defined in Section 62A-2-101.

(5) "Director" means the Director of each DHS Office or Division, and includes the Director's designee.

(6) "Employee" means a prospective employee who has received a job offer from DHS or a current employee of DHS, and includes paid interns.

(7) "Executive Director" means the Executive Director of DHS or the Deputy Director designated by the Executive Director.

(8) "FBI rap back" is defined in Section 53-10-108.

(9) "Fingerprints" means an individual's fingerprints as copied electronically through a live-scan fingerprinting device or on two ten-print fingerprint cards.

(10) "Volunteer" means an individual who donates services without pay or other compensation, except expenses actually and reasonably incurred and pre-approved by the supervising agency, and includes unpaid interns.

(11) "Vulnerable adult" is defined in Section 62A-2-101.

R495-885-3. Employees and Volunteers with Direct Access.

(1) The Department finds that a criminal history or identification as a perpetrator of abuse or neglect is directly relevant to an individual's employment or volunteer activities within DHS.

(2) All Department employees and volunteers with potential direct access must have an annual background screening clearance in accordance with Sections 62A-1-118 and 62A-2-120.

(3) Department employees and volunteers who may have direct access shall:

(a) Submit a background screening application to their respective Division or Office on a form created by the Department; and

(b) Submit fingerprints

(i) to the Department via a DHS-operated live-scan machine;

(ii) to the Department via two ten-print fingerprint cards produced by a law enforcement agency, an agency approved by the BCI, or another entity pre-approved by the Department;

(iii) to BCI for an Office or Division clearance, subject to the following conditions:

(A) The fingerprints are retained by BCI for FBI rap back; and

(B) The Office or Division ensures that the minimum standards set forth in Section 62A-2-120 are enforced; or

(iv) to the Department of Health for employees and volunteers of the Utah State Developmental Center per code.

(4) The DHS Office of Licensing shall access information to perform the background checks described in Sections 62A-1-118 and 62A-2-120.

(a) The DHS Office of Licensing will not duplicate fingerprint-based criminal background checks on Department employees or volunteers who have a current fingerprint-based criminal background clearance pursuant to R495-885-3(3).

(b) The fingerprints submitted by DHS employees who are required to obtain a background screening pursuant to Section 62A-2-120 as an individual associated with a licensee shall be utilized to perform the screening required by this R495-885. Screening results shall be reviewed in accordance with both the standards required by Section 62A-2-120 and this R495-885.

(5) Except as described in R495-885-5, Department employees and volunteers who would automatically be denied a background screening approval as described in Section 62A-2-120(5)(a) are not eligible for work with the Department.

(6) Except as described in R495-885-5, Department employees and volunteers who have any offense or finding described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

(7) Each Division and Office shall develop and implement a protocol to ensure renewal background screening applications are submitted to the DHS Office of Licensing annually for all database systems that are not included in the FBI rap back fingerprint process.

R495-885-4. Employees with No Direct Access.

(1) The Department finds that a criminal history is directly relevant to an individual's employment activities within DHS.

(2) The Department is not authorized to perform the checks described in Sections 62A-1-118 and 62A-2-120 for employees with no direct access.

(3) Each Division and Office will identify which of their positions includes no potential for direct access.

(4) Each employee who does not potentially have direct access shall submit an "Authorization and Waiver for Criminal History Check" form to a Department of Human Resources Management, DHS Field Office authorizing DHRM to perform name-based background checks.

(5) Except as described in R495-885-5, Department employees who would automatically be denied a background screening approval based upon the offenses described in Section 62A-2-120(5)(a) are not eligible for work with the Department.

(6) Except as described in R495-885-5, Department employees who have any offense described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

R495-885-5. Background Screening Review.

(1) The Office of Licensing or the Department of Human Resources Management, DHS Field Office shall notify the Director of the background screening results of each prospective employee, employee, and volunteer.

(2) The Director shall review the background screening results of each prospective employee, employee, and volunteer.

(3) Review criteria for prospective or probationary employees and volunteers:

(a) Automatic denial offenses outlined in 62A-2-120(5)(a) are not eligible for review by the DHS Employee and Volunteer Comprehensive Review Committee:

(b) The Director has sole discretion to determine whether to deny employment or refer a prospective or probationary employee or volunteer with the following background screening findings to the DHS Employee and Volunteer Comprehensive Review Committee:

(i) All other circumstances outlined in 62A-2-120(6)(a),

or
(ii) any MIS supported or substantiated findings (for individuals with direct access only)

(c) The determinations of the Director and the DHS Employee and Volunteer Comprehensive Review Committee are final, and a prospective or probationary employee or volunteer has no right to appeal.

(4) Review process for non-probationary employees:

(a) The following background screening findings shall be submitted to the Director:

(i) Automatic denial offenses outlined in 62A-2-120(5)(a),

or
(ii) All other circumstances outlined in 62A-2-120(6)(a),

or
(iii) any MIS supported or substantiated findings.

(b) The Director may consult with the Executive Director and/or the Office of Licensing, and shall evaluate whether the non-probationary employee may present a risk of harm to a child or vulnerable adult or does not meet DHS high standards of conduct or promote public trust.

(c) The Executive Director may, in his/her sole discretion, approve the non-probationary employee for continued employment, including defining permissible and impermissible DHS-wide work-

related activities, or consult the Department of Human Resource Management regarding termination of employment. The determination of the Executive Director is final.

R495-885-6. DHS Employee and Volunteer Comprehensive Review Committee.

(1) The Director of the following Department divisions and offices shall appoint one member and one alternate to serve on the DHS Employee and Volunteer Comprehensive Review Committee:

(a) the Executive Director's Office;

(b) the Division of Aging and Adult Services;

(c) the Division of Child and Family Services;

(d) the Division of Juvenile Justice Services;

(e) the Division of Services for People with Disabilities;

(f) the Division of Substance Abuse and Mental Health;

(g) Public Guardian; and

(i) the Office of Licensing.

(2) DHS Employee and Volunteer Comprehensive Review Committee members and alternates shall be professional staff persons who are familiar with the programs they represent.

(3) The appointed Office of Licensing member shall chair the DHS Employee and Volunteer Comprehensive Review Committee as a non-voting member.

(4) Five voting members shall constitute a quorum.

(5) The DHS Employee and Volunteer Comprehensive Review Committee shall conduct a comprehensive review of a prospective or probationary employee or volunteer's background screening application, criminal history records, abuse, neglect or exploitation records, and related circumstances, in accordance with Section 62A-2-120(6).

R495-885-7. DHS Employee and Volunteer Comprehensive Review Process.

(1) The Office or Division may inform the prospective or probationary employee or volunteer that the results of a background screening indicate they have a criminal history or supported or substantiated findings of abuse or neglect, and the employee or volunteer may:

(a) voluntarily withdraw a pending employment or volunteer application;

(b) voluntarily terminate probationary employment; or

(c) request further review and submit any written statements or records that the employee or volunteer wants the DHS Employee and Volunteer Comprehensive Review Committee to consider, including but not limited to non-redacted documents relating to the results, the nature and seriousness of the offense or incident; the circumstances under which the offense or incident occurred; the age of the employee or volunteer when the offense or incident occurred; whether the offense or incident was an isolated or repeated incident; whether the offense or incident directly relates to abuse of a child or vulnerable adult, evidence of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed.

(i) an employee or volunteer who wants the DHS Employee and Volunteer Comprehensive Review Committee to consider documents relating to the screening results shall submit the documents to the Office or Division within 15 calendar days of notification by the Office of Division.

(2) The Office or Division shall gather information from a prospective or probationary employee or volunteer who requests review and submit it to the DHS Employee and Volunteer Comprehensive Review Committee.

(a) The Division may redact any personally identifying information of the prospective or probationary employee or volunteer that does not compromise the content of the review.

(3) The DHS Employee and Volunteer Comprehensive Review Committee shall evaluate the information provided by the Office or Division and any information provided by the prospective or probationary employee or volunteer. The DHS Employee and Volunteer Comprehensive Review Committee shall consider the date of the offense or incident:

(a) the nature and seriousness of the offense or incident;

(b) the circumstances under which the offense or incident occurred;

(c) the age of prospective or probationary employee or volunteer when the offense or incident occurred;

(d) whether the offense or incident was an isolated or repeated incident;

(e) whether the offense or incident directly relates to abuse of a child or vulnerable adult;

(f) whether approval would likely create a risk of harm to a child or a vulnerable adult;

(g) whether the information may be relevant to the employment or volunteer activities of that person;

(h) whether the relevant information should be relied upon to deny employment or volunteer activities, and

(i) that the background screening approval may be transferred to other DHS Offices or Divisions.

(4) The DHS Employee and Volunteer Comprehensive Review Committee may approve the background screening of a prospective or probationary employee or volunteer only after a simple majority of the voting members of the DHS Employee and Volunteer Comprehensive Review Committee determines that approval will not likely create a risk of harm to a child or vulnerable adult or the prospective employee does not meet DHS high standards of conduct or promote public trust, and identify permissible and impermissible DHS-wide work-related activities.

(5) The DHS Employee and Volunteer Comprehensive Review Committee shall recommend denial of the background screening of a prospective or probationary employee or volunteer when it finds that approval will likely create a risk of harm to a child or vulnerable adult in any DHS Office or Division or the prospective or probationary employee or volunteer does not meet DHS high standards of conduct or promote public trust.

(6) Except as described below, a prospective employee or a volunteer whose background screening has been denied shall not be accepted as a volunteer or hired as an employee. A probationary employee whose background screening has been denied shall have no direct access and employment shall be terminated.

(a) A Director may, in his/her sole discretion, appeal the decision of the DHS Employee and Volunteer Comprehensive Review Committee to the Executive Director.

R495-885-8. Division/Office Responsibilities.

(1) The Department shall notify the DHS Office of Licensing within five months of the termination of each employee for whom fingerprints have been retained under Section 62A-2-120

to enable the Office of Licensing to notify BCI and ensure the destruction of fingerprints.

(2) Each Division and Office shall ensure that an employee or volunteer who previously was screened based upon having no direct access shall, prior to having any direct access, be screened and approved in accordance with R495-885.

R495-885-9. Compliance.

The Department will set an implementation schedule to be in compliance with this rule no later than December 31, 2016.

KEY: background, employees, human services, screening
Date of Enactment or Last Substantive Amendment: 2016
Authorizing, and Implemented or Interpreted Law: 62A-1-118; 62A-2-120

**Human Services, Administration,
Administrative Services, Licensing**

R501-14

Background Screening

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 39913

FILED: 11/04/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed and reenacted to formalize the administrative process changes required by H.B. 145 passed during the 2015 General Session.

SUMMARY OF THE RULE OR CHANGE: H.B. 145 (2015) significantly changed the Department of Human Services (DHS), Office of Licensing background screening process. The changes are outlined well in the bill and subsequent statute changes, but include moving Office of Licensing background screenings from name-based checks to fingerprint-based checks, providing for a conditional approval process, and adding the requirement to include juvenile court checks. Stakeholders participated in the writing of this rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-2-120

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This bill moved individuals who used to have only name-based checks to having fingerprint-based checks at a cost of either \$34.75 or \$52.75 per person. These funds go to the Department of Public Safety for processing of prints and enrollment in either a rap back or a FBI rap back subscription service that provides feedback regarding past criminal behavior and notification upon new criminal activity. State agencies that hold licenses with the Office of Licensing will see increased costs. Costs were

addressed in the fiscal note analysis associated with H.B. 145 (2015). Funds were allocated by the legislature to DHS to defray costs for licensees, and passed on through provider rates for any agencies that held contracts with DHS.

◆ LOCAL GOVERNMENTS: This bill moved individuals who used to have only name-based checks to having fingerprint-based checks at a cost of either \$34.75 or \$52.75 per person. These funds go to the Department of Public Safety for processing of prints and enrollment in either a rap back or a FBI rap back subscription service that provides feedback regarding past criminal behavior and notification upon new criminal activity. Local governments that hold licenses with the Office of Licensing will see increased costs. Costs were addressed in the fiscal note analysis associated with H.B. 145 (2015). Funds were allocated by the legislature to DHS to defray costs for licensees, and passed on through provider rates for any agencies that held contracts with DHS.

◆ SMALL BUSINESSES: This bill moved individuals who used to have only name-based checks to having fingerprint-based checks at a cost of either \$34.75 or \$52.75 per person. These funds go to the Department of Public Safety for processing of prints and enrollment in either a rap back or a FBI rap back subscription service that provides feedback regarding past criminal behavior and notification upon new criminal activity. Small businesses that hold licenses with the Office of Licensing will see increased costs. Costs were addressed in the fiscal note analysis associated with H.B. 145 (2015). Funds were allocated by the legislature to DHS to defray costs for licensees, and passed on through provider rates for any agencies that held contracts with DHS. Private providers with no DHS contracts did not receive state funds via provider rates to assist in defraying this costs, but are absorbing them as the costs of doing business.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This bill moved individuals who used to have only name-based checks to having fingerprint-based checks at a cost of either \$34.75 or \$52.75 per person. These funds go to the Department of Public Safety for processing of prints and enrollment in either a rap back or a FBI rap back subscription service that provides feedback regarding past criminal behavior and notification upon new criminal activity. Larger businesses that hold licenses with the Office of Licensing will see increased costs. Costs were addressed in the fiscal note analysis associated with H.B. 145 (2015). Funds were allocated by the legislature to DHS to defray costs for licensees, and passed on through provider rates for any agencies that held contracts with DHS. Private providers with no DHS contracts did not receive state funds via provider rates to assist in defraying this costs, but are absorbing them as the costs of doing business.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Licensed providers are responsible to comply with H.B. 145 (2015), including the increased compliance costs of fingerprint-based background checks. DHS received \$330,000 General Fund for H.B. 145 (2015) (to fund one Office of Licensing employee, plus provide funds to supplement providers costs due to the increased

requirements). There was also additional \$184,400 in federal funds and Medicaid bringing the total to \$514,400. These funds were distributed to those providers who are specifically serving DHS clients via contract.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact of this rule is significant, yet required by H.B. 145 (2015). The fiscal ramifications were well discussed during the underlying bill's progression through the legislative session and subsequently included a legislative fiscal allotment to DHS. A public hearing on the fees related to this bill was held on 09/18/2015, and no concerns were raised.

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

HUMAN SERVICES
ADMINISTRATION, ADMINISTRATIVE SERVICES,
LICENSING
195 N 1950 W 1ST FLR
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jennifer Stahle by phone at 801-538-9897, by FAX at 801-538-4553, or by Internet E-mail at jenstahle@utah.gov
◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2016

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2016

AUTHORIZED BY: Diane Moore, Director

R501. Human Services, Administration, Administrative Services, Licensing.

[R501-14. Background Screening.

R501-14-1. Authority and Purpose.

_____(1) This Rule is authorized by and implements Sections 62A-2-108.3, 62A-2-120, 62A-2-121, 62A-2-122, 62A-3-104.3, 62A-5-103.5, 78B-6-128, and 78B-6-113.

_____(2) This Rule establishes the circumstances under which an applicant may have direct access or provide services to a child or vulnerable adult when the person has a criminal history record, is listed in the Licensing Information System or the statewide database of the Division of Aging and Adult Services, or when juvenile court records show that a court made a substantiated finding under Section 78A-6-323 that the person committed a severe type of child abuse or neglect.

_____(3) This Rule clarifies the standards for approving, denying, or revoking an applicant's background screening.

R501-14-2. Definitions.

_____(1) "Abuse" may include "severe emotional abuse", "severe physical abuse", and "emotional or psychological abuse", as

these terms are defined in Sections 62A-4a-101 and Section 62A-3-301.

(2) "Applicant" means a person whose identifying information is submitted to the Department of Human Services Office of Licensing under Sections 62A-2-108.3, 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-128, and 78B-6-113.

(3) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(4) "Child" is defined in Section 62A-2-101.

(5) "Comprehensive Review Committee" means the Committee appointed to conduct comprehensive reviews in accordance with Section 62A-2-120.

(6) "Direct Access" is defined in Section 62A-2-101.

(7) "Direct Service Worker" is defined in Section 62A-5-101.

(8) "Directly supervised" is defined in 62A-2-120(5).

(9) "Fingerprints" means an individual's fingerprints as copied electronically through a live-scan fingerprinting device or on two ten-print fingerprint cards by a law enforcement agency, an agency approved by the BCI, or an agency approved by the Office of Licensing.

(10) "Human services program" is defined in Section 62A-2-101.

(11) "Identifying information" means an applicant's:

(a) current and former names, aliases, and addresses;

(b) date of birth;

(c) social security number, and

(d) a current, valid state driver's license or state identification card bearing the applicant's photo, current name, and address; and

(e) Identifying information includes an applicant's fingerprints when required by law or rule, certified copies of applicable court records, and other records specifically requested by the Office of Licensing.

(12) "Licensing Information System" is created by Section 62A-4a-1006, as a sub-part of the Division of Child and Family Services' Management Information System created by Section 62A-4a-1003.

(13) "Neglect" may include "severe neglect", as these terms are defined in Sections 62A-4a-101 and 62A-3-301.

(14) "Personal Care Attendant" is defined in Section 62A-3-101.

(15) "Statewide Database" of the Division of Aging and Adult Services is created by Section 62A-3-311.1 to maintain reports of vulnerable adult abuse, neglect, or exploitation.

(16) "Substantiated" is defined in Sections 62A-3-301 and 62A-4a-101.

(17) "Supported" is defined in Section 62A-4a-101.

(18) "Vulnerable Adult" is defined in Section 62A-2-101.

R501-14-3. Background Screening Procedure.

(1)(a) An applicant for initial background screening or annual background screening renewal shall legibly complete, date and sign a background screening application and consent on a form provided by the Office of Licensing, and attach all required identifying information:

(b) An applicant for annual background screening renewal shall submit a background screening application and identifying information no later than fourteen days preceding the expiration date of the current background screening approval.

(c) An applicant for initial background screening or annual background screening renewal shall disclose all criminal charges, including pending charges, and all supported or substantiated findings of abuse, neglect or exploitation on the background screening application.

(2)(a) An applicant for initial background screening or annual background screening renewal who has not continuously lived in Utah for the five years immediately preceding the day the application is submitted shall submit fingerprints, and a cashier's check or money order for the cost of a FBI national criminal history record check, with the background screening application:

(b) An applicant has not continuously lived in Utah for the five years immediately preceding the date of the application if the applicant has spent six or more consecutive weeks outside Utah, including but not limited to education, volunteer or employment activities, military duty, or vacations.

(c) An applicant has not continuously lived in Utah for the five years immediately preceding the date of the application if the applicant presents an out-of-state driver license or an out-of-state identification card.

(d) Notwithstanding any other provision of Rule R501-14, an applicant shall submit fingerprints if the background screening is being conducted for the purpose of licensing a prospective foster home or approving a prospective adoptive placement of a child in state custody:

(3)(a) Notwithstanding Subsection R501-14-3(2)(a), an applicant for background screening who has continuously lived in Utah for the five years immediately preceding the day the application is submitted, except for time spent outside of the United States and its territories, is not required to submit fingerprints.

(b) An applicant for annual background screening renewal who has continuously lived in Utah at all times since the date of the initial background screening approval is not required to submit fingerprints with the renewal application.

(4) An applicant who has lived outside of the United States during the five years immediately preceding the date of the application shall attach an original or certified copy of:

(a) a criminal history report from each country lived in;

(b) a letter of honorable release from U.S. military or full-time ecclesiastical service, from each country lived in; or

(c) other written verification of criminal history from each country lived in, as approved by the Office of Licensing Background Screening Unit supervisor.

(5)(a) An applicant shall submit the completed application and consent form, and all required identifying information, to the applicable licensing specialist, human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only):

(b) The applicable licensing specialist, human services program, local government employer (for certified local inspector applicants only), Area Agency on Aging (for Personal Care Attendant applicants only), or Division of Services for People With Disabilities (for Direct Service Worker applicants only), shall:

~~(i) inspect the applicant's state driver's license or state identification card and make a good faith effort to determine that it does not appear to have been forged or altered;~~

~~(ii) inspect the copy of applicant's state driver's license or state identification card and make a good faith effort to determine that it appears to be identical to the original; and~~

~~(iii) forward the inspected copy of applicant's state driver's license or state identification card, the completed application and consent form, and all other required identifying information, to the Office of Licensing background screening unit within five calendar days after the applicant completes and signs the application.~~

~~(6) An application that is illegible, incomplete, unsigned, undated, or lacks a signed consent or required identifying information, may be returned to the individual who submitted it without further action.~~

~~(7)(a) Identifying information submitted pursuant to Sections 62A-2-108.3, 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-113, and 78B-6-128 shall be used to search criminal history records, the Licensing Information System, juvenile court records under Section 78A-6-323, and the statewide database.~~

~~(i) Identifying information submitted in accordance with Section 62A-2-120(1)(f) shall also be used to check the child abuse and neglect registry in each state where the applicant resided in accordance with Section 62A-2-120(1)(g).~~

~~(b) In accordance with Section 62A-5-103.5, a direct service worker who is a direct ancestor or descendant, or who is an aunt, uncle or sibling of the person to whom services are rendered, shall be exempt from a criminal history record search, but shall remain subject to a search of the Licensing Information System, juvenile court records under Section 78A-6-323, and the statewide database.~~

~~(8)(a) Except as permitted by Section 62A-2-120(5), an applicant for an initial background screening shall have no direct access to a child or vulnerable adult prior to receiving written confirmation of background screening approval from the Office of Licensing.~~

~~(b) Except as permitted by Section 62A-2-120(5), an applicant seeking annual background screening renewal shall have no direct access to a child or vulnerable adult after the background screening expiration date and prior to receiving written confirmation of background screening approval from the Office of Licensing.~~

~~(9) Upon receipt of a signed, legible, completed application and identifying information, the Office of Licensing shall:~~

~~(a) investigate and make a preliminary determination of whether the applicant has been charged with any crime and the disposition of any charges; and~~

~~(b) search the Licensing Information System, juvenile court records, and the statewide database, and make a preliminary determination of whether the applicant has any supported or substantiated findings of abuse, neglect or exploitation.~~

~~(10)(a) The Office of Licensing may defer action on an application until the applicant submits all additional information required by the Office of Licensing.~~

~~(b) The Office of Licensing may deny an application in the event that an applicant fails to provide all additional information required by the Office of Licensing.~~

~~(11) The Office of Licensing may notify an applicant of its preliminary determination that the applicant may have a criminal history outside of Utah, and require an applicant to:~~

~~(a) submit fingerprints, and a cashier's check or money order for the cost of a nationwide criminal history check, within 15 calendar days of a letter of notification;~~

~~(b) obtain and submit a certified copy of the applicant's criminal history or records from local, state, federal, or foreign officials within 15 calendar days of a letter of notification.~~

~~(12)(a) The Office of Licensing shall send all written communications to the applicant or to the applicable human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only) by first-class mail.~~

~~(b) A human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only) shall provide the applicant with a copy of all written communication from the Office of Licensing within 5 calendar days after the date it is received.~~

~~(13) The applicant shall promptly notify the Office of Licensing of any change of address while the application remains pending.~~

R501-14-4. Results of Screening.

~~(1)(a) The Office of Licensing shall approve an application for background screening in accordance with Section 62A-2-120(2).~~

~~(b) The Office of Licensing shall notify the applicant, the applicable licensing specialist, human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only), that the applicant's background screening application is approved.~~

~~(c) The approval granted by the Office of Licensing shall be valid for a period not to exceed one calendar year from the date of approval.~~

~~(i) Notwithstanding Subsection R501-14-4(1)(c), an applicant's background screening approval that is issued for the purpose of a preplacement adoptive evaluation in accordance with Section 78B-6-128 shall be valid for 18 calendar months from the date of approval.~~

~~(d) An approval granted by the Office of Licensing shall not be transferable, except as provided in Section R501-14-9.~~

~~(e) Except as provided in Section R501-14-9, a new application shall be submitted each time an applicant may have direct access or provide services to a child or vulnerable adult at any human services program other than the program identified on the initial application.~~

~~(2) The Office of Licensing shall deny an application for background screening in accordance with Subsections 62A-2-120(3) and 62A-2-120(8).~~

~~(3) The Office of Licensing shall refer an application to the Comprehensive Review Committee for a comprehensive review in accordance with Section 62A-2-120(4).~~

R501-14-5. Comprehensive Review Committee.

(1) The Director of the following Department of Human Services divisions and offices shall appoint one member and one alternate to serve on the Comprehensive Review Committee:

- (a) the Executive Director's Office;
- (b) the Division of Aging and Adult Services;
- (c) the Division of Child and Family Services;
- (d) the Division of Juvenile Justice Services;
- (e) the Division of Services for People with Disabilities;
- (f) the Division of Substance Abuse and Mental Health;
- (g) Public Guardian; and
- (h) the Office of Licensing.

(2) Comprehensive Review Committee members and alternates shall be professional staff persons who are familiar with the programs they represent.

(3) The appointed Office of Licensing member shall chair the Comprehensive Review Committee as a non-voting member.

(4) Five voting members shall constitute a quorum.

(5) The Comprehensive Review Committee shall conduct a comprehensive review of an applicant's background screening application, criminal history records, abuse, neglect or exploitation records, and related circumstances, in accordance with Section 62A-2-120(4).

R501-14-6. Comprehensive Review Investigation.

(1) The Comprehensive Review Committee shall not deny a background screening application without the Office of Licensing first sending the applicant a written notice that:

(a) the Office is investigating the applicant's criminal history or findings of abuse, neglect or exploitation;

(b) the applicant is encouraged to submit any written statements or records that the applicant wants the Comprehensive Review Committee to consider;

(c) the Comprehensive Review Committee evaluates information using the criteria established by Section 62A-2-120(4) (b), and the applicant may specifically address these issues; and

(d) submissions must be received within 15 calendar days of the written notice.

(2)(a) The Office of Licensing shall gather information described in Section 62A-2-120(4)(b) and provide available information to the Comprehensive Review Committee.

(b) The Office of Licensing may request additional information from any available source, including the applicant, victims, witnesses, investigators, the criminal justice system, law enforcement agencies, the courts and any others it deems necessary for the comprehensive evaluation of an application.

(i) The Office of Licensing may defer action on an application until the applicant submits all additional information required by the Office of Licensing.

(ii) The Office of Licensing may deny an application in the event that an applicant fails to provide all additional information required by the Office of Licensing.

R501-14-7. Comprehensive Review Determination.

(1) The Comprehensive Review Committee shall only consider applications presented by the Office of Licensing. The Comprehensive Review Committee shall evaluate the information provided by the Office of Licensing and any information provided by the applicant.

(2) The Comprehensive Review Committee shall recommend approval of the background screening of an applicant only after a simple majority of the voting members of the Comprehensive Review Committee determines that approval will not likely create a risk of harm to a child or vulnerable adult.

(3) The Comprehensive Review Committee shall recommend denial of the background screening of an applicant when it finds that approval will likely create a risk of harm to a child or vulnerable adult.

(4) The Office of Licensing shall approve or deny the applicant's background screening application in accordance with the recommendation of the Comprehensive Review Committee, and send written notification to the applicant, the applicant's licensing specialist, the licensed human services program the applicant is associated with (if any), a certified local inspector applicant's local government employer (if any), a person described in Subsections 62A-3-101(9)(a)(i) through (iv) (if any), or a direct service worker's employer (if any).

R501-14-8. Post-Approval Responsibilities.

(1) An applicant, a human services program the applicant is associated with (if any), a certified local inspector applicant's local government employer (if any), a person described in Subsections 62A-3-101(9)(a)(i) through (iv) (if any), and a direct service worker's employer (if any), shall immediately notify the Office of Licensing if the applicant is charged with any felony, misdemeanor, or infraction, or listed in the Licensing Information System, juvenile court records under Section 78A-6-323, or the statewide database after a background screening application is approved.

(a) An applicant who is associated with a human services program shall immediately notify the human services program if the applicant is charged with any felony, misdemeanor, or infraction, or listed in the Licensing Information System, juvenile court records under Section 78A-6-323, or the statewide database.

(2) An applicant who has received an approved background screening shall resubmit an application and identifying information to the Office of Licensing within ten calendar days after being charged with any felony, misdemeanor, or infraction, or being listed in the Licensing Information System, the statewide database, or juvenile court records under Section 78A-6-323.

(3) An applicant who has been charged with any felony, misdemeanor, or infraction or listed in the Licensing Information System or the statewide database, or juvenile court records under Section 78A-6-323, after a background screening application is approved shall have no unsupervised direct access to a child or vulnerable adult until after an application and identifying information have been resubmitted to the Office of Licensing and a current background screening approval is received from the Office of Licensing.

(4)(a) An applicant charged with an offense for which there is no final disposition shall inform the Office of Licensing of the current status of each case.

(b) The Office of Licensing shall determine whether the charge could require a denial or committee review, and if so, notify the applicant to submit a certified copy of judicial documentation that indicates the current status of the case at least once every 3 months until final disposition.

~~_____ (c) An applicant shall submit a certified copy of judicial documentation that indicates the current status of the case at least once every 3 months until final disposition.~~

~~_____ (5) The Office of Licensing may revoke the background screening approval of an applicant who:~~

~~_____ (a) has been charged with any felony, misdemeanor, or infraction or is listed in the Licensing Information System, the statewide database, or juvenile court records under Section 78A-6-323; or~~

~~_____ (b) fails to provide required current status information; and~~

~~_____ (c) will likely create a risk of harm to a child or vulnerable adult, as determined by the Office of Licensing.~~

~~_____ (6) The Office of Licensing shall process identifying information received pursuant to Subsection R501-14-8(2) in accordance with Rule R501-14.~~

R501-14-9. Confidentiality.

~~_____ (1) The Office of Licensing may disclose criminal background screening information, including information acknowledging the existence or non-existence of a criminal history, only to the Applicant, the applicable human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only), and in accordance with the Government Records Access and Management Act, Section 63G-2-101, et seq.~~

~~_____ (2) Except as described below, background screening approvals may not be transferred or shared between human service programs:~~

~~_____ (a) A licensed child-placing agency may provide the approval granted by the Office of Licensing to the person who is the subject of the approval, another licensed child-placing agency, or the attorney for the adoptive parents, in accordance with Section 53-10-108(4).~~

~~_____ (b) A licensed human services program may provide a copy of the approval granted by the Office of Licensing to another licensed human services program with the prior written consent of the person who is the subject of the approval.~~

~~_____ (c) A licensed human services program may permit an individual to have direct access to a child or vulnerable adult if:~~

~~_____ (i) the program receives a copy of the approval granted by the Office of Licensing for the person from another licensed human services program;~~

~~_____ (ii) both the sending and receiving human services programs are licensed to provide the same categories of services to the same client populations; and~~

~~_____ (iii) the program receives written confirmation from the Office of Licensing that the background screening approval has not expired or been revoked.~~

R501-14-10. Retention of Background Screening Information.

~~_____ A human services program shall retain the background screening information of all individuals associated with the program for a minimum of eight years after the termination of the individual's association with the program.~~

R501-14-11. Expungement.

~~_____ An applicant whose background screening application has been denied due to the applicant's criminal record may submit a new application with a certified copy of an Order of Expungement.~~

R501-14-12. Administrative Hearing.

~~_____ A notice of agency action that denies or revokes the applicant's background screening application shall inform the applicant of the right to appeal in accordance with Administrative Rule 497-100 and Section 63G-4-101, et seq.~~

R501-14-13. Compliance.

~~_____ Any licensee that is in operation on the effective date of this rule shall be given 30 days after the effective date to achieve compliance with this rule.]~~

R501-14. Human Service Program Background Screening.

R501-14-1. Authority and Purpose.

~~_____ (1) This Rule is authorized by Sections 62A-2-106, 62A-2-120, 62A-2-121, and 62A-2-122.~~

~~_____ (2) This Rule clarifies the standards for approving, denying, or revoking an applicant's background screening.~~

R501-14-2. Definitions

~~_____ (1) "Abuse" is defined in Sections 78A-6-105 and 62A-3-301, and may include "severe abuse", "severe neglect", and "sexual abuse", as these terms are defined in Sections 78A-6-105 and 62A-3-301.~~

~~_____ (2) "Applicant" means a person whose identifying information is submitted to Office under Sections 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-128, and 78B-6-113. Applicant includes the legal guardian of an individual described in Section 62A-2-101(2) (c).~~

~~_____ (3) "Background Screening Agent" means the applicable licensing specialist, human services program, Area Agency on Aging (for Personal Care Attendant applicants only), or DHS Division of Services for People with Disabilities (for Direct Service Worker applicants only).~~

~~_____ (4) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.~~

~~_____ (5) "Child" is defined in Section 62A-2-101.~~

~~_____ (6) "Comprehensive Review Committee" means the Committee appointed to conduct reviews in accordance with Section 62A-2-120.~~

~~_____ (7) "Direct Access" is defined in Section 62A-2-101.~~

~~_____ (8) "Direct Service Worker" is defined in Section 62A-5-101.~~

~~_____ (9) "Directly Supervised" is defined in 62A-2-101.~~

~~_____ (10) "Expiration date" is 395 days from the approval date of the current screening application or one year from the current license start date, whichever is longer. In the event that a human services program has more than one license, the current license start date means the earliest current license start date. A background screening approval that has expired is void.~~

~~_____ (11) "FBI Rap Back System" is defined in Section 53-10-108.~~

(12) "Fingerprints" means an individual's fingerprints as copied electronically through a live-scan fingerprinting device or on two ten-print fingerprint cards by a law enforcement agency, an agency approved by the BCI, or Background Screening Agent.

(13) "Human services program" is defined in Section 62A-2-101.

(14) "Licensee" is defined in Section 62A-2-101.

(15) "Licensing Information System" is created by Section 62A-4a-1006, as a sub-part of the Division of Child and Family Services' Management Information System created by Section 62A-4a-1003.

(16) "Neglect" may include "severe neglect", as these terms are defined in Sections 78A-6-105 and 62A-3-301.

(17) "Office" means the Office of Licensing within the Utah Department of Human Services.

(18) "Personal Care Attendant" is defined in Section 62A-3-101.

(19) "Personal identifying information" is defined in Section 62A-2-120, and shall include:

(a) a current, valid state driver's license or state identification card bearing the applicant's photo, current name, and address;

(b) any current, valid government-issued identification card bearing the applicant's name and photo, including passports, military identification and foreign government identification cards; or

(c) other records specifically requested in writing by the Office.

(20) "Rap Back System" is defined in Section 53-10-108.

(21) "Statewide Database" of the Division of Aging and Adult Services is created by Section 62A-3-311.1 to maintain reports of vulnerable adult abuse, neglect, or exploitation.

(22) "Substantiated" is defined in Section 62A-4a-101.

(23) "Supported" is defined in Sections 62A-3-301 and 62A-4a-101.

(24) "Vulnerable Adult" is defined in Section 62A-2-101.

(25) "WIN Database" is as defined in Section 53-10-108, and includes information from Alaska, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming.

R501-14-3. Initial Background Screening Procedure.

(1) An applicant for initial background screening shall legibly complete, date and sign a background screening application and consent on a form provided by the Office.

(2) An applicant shall disclose all criminal charges, including pending charges, and all supported or substantiated findings of abuse, neglect or exploitation on the background screening application.

(3) An applicant who presents only a foreign country identification card shall:

(a) enroll in the FBI rap back system; and

(b) submit an original or certified copy of a government-issued criminal history report from that country.

(4) An applicant who presents only a US passport or state issued identification card from any state other than Utah, Alaska, Idaho, Montana, Nevada, Oregon, Washington, and Wyoming shall:

(a) enroll in the FBI rap back system.

(5) The background screening application, personal identifying information including fingerprints, and applicable fee

shall be submitted to the Background Screening Agent. The Background Screening Agent shall:

(a) inspect the applicant's government-issued identification card and determine that it does not appear to have been forged or altered;

(b) review and sign the application; and

(c) forward the background screening application, and applicable fee to the Office background screening unit.

R501-14-4. Renewal Background Screening Procedure.

(1) An applicant for background screening renewal shall legibly complete, date and sign a background screening application and consent on a form provided by the Office.

(2) An applicant shall disclose all criminal charges, including pending charges, and all supported or substantiated findings of abuse, neglect or exploitation on the background screening application.

(3) The background screening application, personal identifying information, and applicable fee shall be submitted to the Background Screening Agent.

(a) Notwithstanding R501-14-4(3), an applicant for a background screening renewal who is not currently on rap back is not required to submit fingerprints for a rap back system search and applicable rap back fees unless:

(i) the applicant's most current background screening has expired;

(ii) the human services program with which the applicant is associated requires a rap back system search;

(iii) the applicant wishes to provide services with another licensee and has not submitted fingerprints for a rap back system search and applicable rap back fees;

(iv) the applicant does not present a current, valid identification card issued by the State of Utah; or

(v) the renewal application is submitted on or after July 1, 2017 and the applicant is not already enrolled in rap back.

(4) A licensed human services program wishing to submit background screening renewal applications for multiple applicants associated with the licensee may submit a summary log of the renewing applicants in lieu of individuals' applications.

(a) A summary log may only be used for applicants:

(i) who are enrolled in rap back with the Office;

(ii) with a current, non-expired approval;

(iii) whose name and address have not changed since their last background screening approval;

(iv) who have not had any of the following since their last background screening approval:

I. criminal arrests or charges; II supported or substantiated findings of abuse, neglect or exploitation, or

III. any pending or unresolved criminal issues.

(b) Summary logs shall contain:

(i) applicant name,

(ii) applicant date of birth,

(iii) the last four numbers of each applicant's social security number;

(iv) program name; and

(v) name of program representative completing summary form.

(c) A licensed human services program choosing to submit a summary log of the renewing applicants in lieu of individuals' applications shall maintain documentation signed by each applicant and attesting to the accuracy of the information described in R501-14-4(4)(a) and (b).

(5) An application shall be submitted each time an applicant may have direct access to a child or vulnerable adult at any human services program other than the program identified on the initial application.

(6) The Background Screening Agent shall:

(a) inspect the applicant's government-issued identification card and determine that it does not appear to have been forged or altered;

(b) review and sign the application; and

(c) forward the background screening application, and applicable fee to the Office background screening unit within 30 calendar days after the applicant completes and signs the application and no later than 15 calendar days preceding the background screening expiration date.

R501-14-5. General Background Screening Procedure.

(1)(a) An application that is illegible, incomplete, unsigned, undated, or lacks a signed consent or required identifying information may be returned to the individual who submitted it without further action.

(b) Personal identifying information submitted pursuant to Sections 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-113, and 78B-6-128 shall be used to perform a search in accordance with Sections 62A-2-120(3) and (13).

(2)(a) Except as permitted by Section 62A-2-120(9), an applicant for an initial background screening shall have no direct access to a child or vulnerable adult prior to receiving written confirmation of background screening approval from the Office.

(b) Except as permitted by Section 62A-2-120(9), an applicant seeking background screening renewal shall have no direct access to a child or vulnerable adult after the background screening expiration date and prior to receiving written confirmation of background screening approval from the Office.

(3)(a) The Office may defer action on an application for up to 30 calendar days until the applicant submits all additional information required by the Office.

(b) The Office may deny an application in the event that an applicant fails to provide all additional information required by the Office.

An applicant whose background screening has been denied shall have no further direct access.

(4) The Office may notify a program that the applicant must:

(a) submit fingerprints for a FBI Rap Back System check within 15 calendar days of a letter of notification; and/or

(b) obtain and submit a certified copy of the applicant's criminal history or records from local, state, federal, or foreign officials within 30 calendar days of a letter of notification.

(5)(a) The Office shall send all written communications to the applicant or to the applicable Background Screening Agent by first-class mail.

(b) A Background Screening Agent shall provide the applicant with a copy of all written communication from the Office within 5 calendar days after the date it is received.

(c) Notwithstanding R501-14-5(5)(a), if the Office sends an applicant a sealed letter in care of or via the Background Screening Agent, the letter shall be provided to the applicant unopened.

(6) The applicant shall promptly notify the Office of any change of address while the application remains pending.

(7) A Background Screening Agent may roll fingerprints of applicants for submission to the Office only after it has received and applied training in the proper methods of taking fingerprints.

(a) The program shall verify the identity of the applicant via government-issued identification card at the time that fingerprints are taken.

(b) In the event that 10% or more of the fingerprints submitted by a Background Screening Agent are rejected for quality purposes, the Office may thereafter require that a program utilize law enforcement or BCI to roll prints.

R501-14-6. Background Screening Fees.

(1) The applicant and background screening agent are responsible for ensuring the accuracy of information submitted with fee payments.

(2) Fees shall only be made by cashiers' check, corporate check, money order, or internal DHS transfer. Personal checks and credit or debit card payments shall not be accepted.

(3) A Background Screening Agent may choose to submit one payment for any number of applicants.

(4) Fees are not refundable or transferable for any reason.

R501-14-7. Results of Screening.

(1)(a) The Office shall approve an application for background screening in accordance with Section 62A-2-120(7).

(b) The Office shall notify the applicant or the Background Screening Agent when an applicant's background screening application is approved.

(c) The approval granted by the Office shall be valid for a period not to exceed 395 days from the date of approval.

(d) An approval granted by the Office shall not be transferable, except as provided in Section R501-14-11.

(2)(a) The Office may conditionally approve an application for background screening in accordance with Section 62A-2-120(8).

(b) A program seeking the conditional approval of an applicant shall not request conditional approval unless 10 business days have passed after the applicant's background screening application is received by the Office without receiving notification of the approval or denial of the application.

(c) A written request for conditional approval shall include the applicant's full name, the last four digits of the applicant's social security number, and the date the application was submitted to the Office.

(d) Upon receipt of a written request for conditional approval that complies with R501-14-7(2)(b), the Office shall make a conditional determination within three business days.

(e) If the Office does not provide a standard approval before the expiration date of the conditional approval, the applicant shall no unsupervised direct access.

(f) The Office may revoke the conditional approval prior to the expiration date.

(3) The Office shall deny an application for background screening in accordance with Subsections 62A-2-120(5), (6), (8), and (13).

(4) An applicant whose background screening has been denied shall have no further direct access.

(5) The Office shall refer an application to the Comprehensive Review Committee for a comprehensive review in accordance with Section 62A-2-120(6).

(a) The Office shall refer an applicant to the comprehensive review committee upon learning of a potentially disqualifying offense or finding described in Section 62A-2-120(6)(a) not previously considered by the comprehensive review committee.

R501-14-8. Comprehensive Review Committee.

(1) The Director of the following Department of Human Services divisions and offices shall appoint one member and one alternate to serve on the Comprehensive Review Committee:

- (a) the Executive Director's Office;
- (b) the Division of Aging and Adult Services;
- (c) the Division of Child and Family Services;
- (d) the Division of Juvenile Justice Services;
- (e) the Division of Services for People with Disabilities;
- (f) the Division of Substance Abuse and Mental Health;
- (g) Public Guardian; and
- (h) the Office of Licensing.

(2) Comprehensive Review Committee members and alternates shall be professional staff persons who are familiar with the programs they represent.

(3) The appointed Office member shall chair the Comprehensive Review Committee as a non-voting member.

(4) Five voting members shall constitute a quorum.

(5) The Comprehensive Review Committee shall conduct a comprehensive review of an applicant's background screening application, criminal history records, abuse, neglect or exploitation records, and related circumstances, in accordance with Section 62A-2-120(6).

R501-14-9. Comprehensive Review Investigation.

(1) The Comprehensive Review Committee shall not deny a background screening application without the Office first sending the applicant a written notice that:

- (a) the Office is investigating the applicant's criminal history or findings of abuse, neglect or exploitation;
- (b) the applicant is encouraged to submit any written statements or records that the applicant wants the Comprehensive Review Committee to consider;
- (c) the Comprehensive Review Committee evaluates information using the criteria established by Section 62A-2-120(6)(b), and the applicant may specifically address these issues; and
- (d) submissions must be received within 15 calendar days of the written notice.

(2)(a) The Office shall gather information described in Section 62A-2-120(6)(b) and provide available information to the Comprehensive Review Committee.

(b) The Office may request additional information from any available source, including the applicant, victims, witnesses, investigators, the criminal justice system, law enforcement agencies, the courts and any others it deems necessary for the comprehensive evaluation of an application.

(i) The Office may defer action on an application for up to than 30 calendar days until the applicant submits all additional information required by the Office.

(ii) The Office may deny an application in the event that an applicant fails to provide all additional information required by the Office.

(iii) An applicant whose background screening has been denied shall have no direct access.

R501-14-10. Comprehensive Review Determination.

(1) The Comprehensive Review Committee shall only consider applications and information presented by the Office. The Comprehensive Review Committee shall evaluate the information provided by the Office and any information provided by the applicant.

(a) A background screening approval may be transferred to other human service programs, therefore the Comprehensive Review Committee shall evaluate whether direct access should be authorized for all types of programs.

(2) The Comprehensive Review Committee may, by unanimous vote that includes a representative from each entity identified in R501-14-8(1), identify infraction or misdemeanor offenses that create no risk of harm to a child or vulnerable adult.

(a) The Office may approve the background screening of an applicant whose only offenses are those identified in R501-14-10(2).

(3) The Comprehensive Review Committee shall recommend approval of the background screening of an applicant only after a simple majority of the voting members of the Comprehensive Review Committee determines that approval will not likely create a risk of harm to a child or vulnerable adult.

(4) The Comprehensive Review Committee shall recommend denial of the background screening of an applicant when it finds that approval will likely create a risk of harm to a child or vulnerable adult.

(5) The Office shall approve or deny the applicant's background screening application in accordance with the recommendation of the Comprehensive Review Committee, and send written notification to the applicant or Background Screening Agent.

(6) An applicant whose background screening has been denied shall have no further supervised or unsupervised direct access

R501-14-11 Background Screening Approval Transfer or Concurrent Use.

(1) An applicant is eligible to have his/her current background screening approval shared with or transferred to another program only if the applicant is currently enrolled on the rap back system.

(2) An applicant who wishes to have his/her current background screening shared with or transferred to another program shall complete a background screening application and identify the name of the original program.

(3) An applicant shall not have unsupervised direct access until the program receives written confirmation from the Office that the background screening is current and valid.

(4) A background screening approval that has been transferred or shared shall have the same expiration date as the original approval.

R501-14-12. Post-Approval Responsibilities.

(1) An applicant and Background Screening Agent shall immediately notify the Office if the applicant is charged with any felony, misdemeanor, or infraction, or listed in the Licensing

Information System, juvenile court records, or the statewide database after a background screening application is approved.

(a) An applicant who is associated with a licensee shall immediately notify the licensee if the applicant is charged with any felony, misdemeanor, or infraction, or listed in the Licensing Information System, juvenile court records, or the statewide database.

(2) An applicant who has received an approved background screening shall resubmit an application and personal identifying information to the Office within ten calendar days after being charged with any felony, misdemeanor, or infraction, or being listed in the Licensing Information System, the statewide database, or juvenile court records.

(3) An applicant who has been charged with any felony, misdemeanor, or infraction or listed in the Licensing Information System or the statewide database, or juvenile court records, after a background screening application is approved shall have no unsupervised direct access to a child or vulnerable adult until after an application and personal identifying information have been resubmitted to the Office and a current background screening approval is received from the Office.

(4)(a) An applicant charged with an offense for which there is no final disposition shall inform the Office of the current status of each case.

(b) The Office shall determine whether the charge could require a denial or committee review, and if so, notify the applicant to submit a certified copy of judicial documentation that indicates the current status of the case at least once every 3 months or until final disposition, whichever comes first.

(c) An applicant shall submit a certified copy of judicial documentation that indicates the current status of the case at least once every 3 months or until final disposition, whichever comes first.

(5) The Office may revoke the background screening approval of an applicant who:

(a) has been charged with any felony, misdemeanor, or infraction or is listed in the Licensing Information System, the statewide database, or juvenile court records; and

(b) fails to provide required current status information.

(6) The Office shall process identifying information received pursuant to Subsection R501-14-12(2) in accordance with Rule R501-14.

(7) A Background Screening Agent shall notify the Office when an applicant is no longer associated with the program no later than five months from the date of termination.

(a) The Office shall verify that the applicant is not associated with another program, and notify BCI within six months of the date that the applicant is no longer associated with any licensee.

R501-14-13. Confidentiality.

(1) The Office may disclose criminal background screening information, including information acknowledging the existence or non-existence of a criminal history, only to the Applicant and the Background Screening Agent, and in accordance with the Government Records Access and Management Act, Section 63G-2-101, et seq.

(2) Except as described in R501-14-11 and below, background screening information may not be transferred or shared between human service programs.

(a) A licensed child-placing agency may provide the approval granted by the Office to the person who is the subject of the

approval, another licensed child-placing agency, or the attorney for the adoptive parents, in accordance with Section 53-10-108(4).

R501-14-14. Retention of Background Screening Information.

A human services program shall retain the background screening information of all individuals associated with the program for a minimum of eight years after the termination of the individual's association with the program.

R501-14-15. Expungement.

An applicant whose background screening application has been denied due to the applicant's criminal record may submit a new application with a certified copy of an Order of Expungement.

R501-14-16. Administrative Hearing.

A notice of agency action that denies the applicant's background screening application or revokes the applicant's background screening approval shall inform the applicant of the right to appeal in accordance with Administrative Rule R497-100 and Section 63G-4-101, et seq.

KEY: licensing, background screening, fingerprinting
Date of Enactment or Last Substantive Amendment:
[September 15, 2007]2016
Notice of Continuation: October 6, 2010
Authorizing, and Implemented or Interpreted Law: 62A-2-108 et seq.

Human Services, Child and Family Services **R512-31** Foster Parent Due Process

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 39938
 FILED: 11/12/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule modification is to bring the rule in line with current statute and practice.

SUMMARY OF THE RULE OR CHANGE: This rule change is intended to make the rule technically correct with current practice.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 62A-4a-206 and Section 63G-4-201 and Section 78A-6-318

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There will be no increase in cost or savings to the state budget because these proposed changes

do not increase workload that would require additional staff or other costs.

◆ **LOCAL GOVERNMENTS:** Local governments have no responsibility for services offered by Child and Family Services and are therefore not affected by this rule and will experience no fiscal impact.

◆ **SMALL BUSINESSES:** Small businesses have no responsibility for services offered by Child and Family Services and are therefore not affected by this rule and will experience no fiscal impact.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no expected fiscal impact for "persons other than small businesses, businesses, or local government entities" because funding requests for services offered by Child and Family Services come out of already-existing budgets.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Child and Family Services determined that there will be no compliance costs for affected persons because there are no specific costs involved with the changes being made to this rule.

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

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonessrobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2016

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.

R512-31. Foster Parent Due Process.

R512-31-1. Purpose and Authority.

(1) The purpose of this rule is to define the due process rights of foster parents when a decision is made to remove a foster child from their home.

(2) This rule is authorized by Section 62A-4a-102.

R512-31-2. Definitions.

(1) For the purpose of this rule, the following definitions apply:

(a) "Child and Family Services" means the Division of Child and Family Services.

(b) "Emergency foster care" means temporary placement of a child in a foster home or crisis placement.

(c) "Natural parent" means a child's biological or adoptive parent, and includes a child's noncustodial parent.

(d) "Removal" means taking a child from a foster home for the purpose of placing the child in another foster home or facility, or not returning a child who has run from a foster home back to that foster home.

R512-31-3. Due Process Rights.

(1) As authorized by Section 62A-4a-206, a foster parent has a right to due process when a decision is made to remove a foster child from their home, if the foster parent disagrees with the decision, unless the removal is for the purpose of:

(a) Returning the child to the child's natural parent or legal guardian.

(b) Immediately placing the child in an approved adoptive home.

(c) Placing the child with a relative, as defined in [Subs]Section 78A-6-307[(+)(b)], who obtained custody or asserted an interest in the child within the preference period described in [Subs]Section 78A-6-307[(+)(a)].

(d) Placing an Indian child in accordance with preplacement preferences and other requirements described in the Indian Child Welfare Act, 25 U.S.C., Section 1915.

R512-31-4. Notice to Foster Parents.

(1) A foster parent shall be notified that a foster child in the foster parent's care is to be moved to another placement ten days prior to removal, unless there is a reasonable basis to believe that immediate removal is necessary, as specified in R512-31-4(4). The foster parent shall be notified by personal communication with the foster parent and by written Notice of Agency Action.

(2) The Notice of Agency Action shall be sent by certified mail, return receipt requested, or personally delivered.

(3) In addition to requirements specified in Section 63G-4-201, the Notice of Agency Action shall include the date of removal, the reason for removal, a description of the [f]Foster [p]Parent [e]Conflict [r]Resolution [p]Procedure, and notice regarding the ability of the foster parent to petition the juvenile court judge currently assigned to the case for a review and determination of the appropriateness of the decision by Child and Family Services to remove the child from the foster home, if the child has been in the foster home for 12 months or longer, in accordance with Section 78A-6-318.

(4) If there is a reasonable basis to believe that the child is in danger or that there is a substantial threat of danger to the health or welfare of the child, the notification to the foster parent may occur after removal of the child. Notification shall be provided through personal communication on the day of removal and by written Notice of Agency Action. The Notice of Agency Action shall be sent by certified mail, return receipt requested, within three working days of removal of the child.

R512-31-5. Request for Due Process.

(1) The foster parent shall submit a written request for a hearing prior to removal of the child from the home, unless the child was removed as specified in Rule R512-31-4(4). The request shall be sent to the entity specified in the Notice of Agency Action.

(2) If the child was removed as specified in Rule R512-31-4(4), the foster parent shall submit a written request for a hearing no later than ten days after receiving the Notice of Agency Action.

(3) Prior to a hearing being granted, an attempt to resolve the conflict shall be made as specified in Rule R512-31-(6)(1)(a) and Rule R512-31-(6)(1)(b).

R512-31-6. Foster Parent Conflict Resolution Procedure.

(1) The Foster Parent Conflict Resolution Procedure consists of the following:

(a) A foster parent must first attempt to resolve a conflict with Child and Family Services informally through discussion with the caseworker or supervisor. If a conflict is not resolved through informal discussion, an agency conference may be requested by the foster parent.

(b) The foster parent shall have the opportunity to provide written and oral comments to Child and Family Services in an agency conference chaired by the region[~~a~~] director or designee. The agency conference shall include the foster parent, foster care caseworker, and the caseworker's supervisor, and may include other individuals at the request of the foster parent or caseworker.

(c) If the foster parent is not satisfied with the results of the agency conference with Child and Family Services, the foster parent shall have the opportunity to request a review, to be held before removal of the child, by a third party neutral fact finder. If the child has been placed with the foster parents for a period of at least two years, the foster parent may request a review to be held before removal of the child, by:

(i) The juvenile court judge currently assigned to the child's case, or

(ii) If the juvenile court judge currently assigned to the child's case is not available, another juvenile court judge.

(d) If the foster parent is not satisfied with the results of the agency conference with Child and Family Services and a foster child is to be removed from the foster home, an administrative hearing shall be held through the Department of Human Services, Office of Administrative Hearings. The Office of Administrative Hearings shall serve as the neutral fact finder required by [~~Subs~~]Section 62A-4a-206[~~(2)(b)(ii)~~].

(e) If a child is removed from a foster home based upon the child's statement alone, an agency conference will be held within five business days of a request by the foster parent. If the foster parent is not satisfied with the results of the agency conference, Child and Family Services shall request an expedited administrative hearing or expedited juvenile court hearing. No formal action may be taken with regard to that foster parent's license until after all conflict resolution procedures have been completed.

R512-31-7. Administrative Hearing.

(1) An administrative hearing regarding removal of a child from a foster home for another placement shall be conducted in accordance with Rule R497-100. The [~~A~~]administrative [~~L~~]law [~~J~~]judge shall determine if Child and Family Services has abused its

discretion in removing the child from the foster home, i.e., the decision was arbitrary and capricious.

(2) If there is a criminal investigation of the foster parent in progress relevant to the reason for removal of the child, no administrative hearing shall be granted until the criminal investigation is completed and, if applicable, charges are filed against the foster parent.

(3) If there is an investigation for child abuse, neglect, or dependency involving the foster home, no administrative hearing shall be granted until the investigation is completed.

R512-31-8. Removal of a Foster Child.

(1) The foster child shall remain in the foster home until the conflict resolution procedure specified in Rule R512-31-6 is completed, unless the child was removed as specified in Rule R512-31.4(4). The time frame for the conflict resolution procedure shall not exceed 45 days.

(2) If the child was removed as specified in Rule R512-31.4(4), the child shall be placed in emergency foster care until the conflict is resolved or a final determination is made by the Office of Administrative Hearings as required by [~~Subs~~]Section 62A-4a-206[~~(2)(e)~~].

KEY: child welfare, foster care, due process

Date of Enactment or Last Substantive Amendment: [~~August 11, 2010~~]2016

Notice of Continuation: March 5, 2012

Authorizing, and Implemented or Interpreted Law: 62A-41-102; 62A-4a-105; 62A-4a-206; 63G-4-201; 78A-6-318

Human Services, Child and Family Services

R512-301

Out-of-Home Services, Responsibilities Pertaining to a Parent or Guardian

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39939

FILED: 11/12/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule modification is to bring the rule in line with current statute and practice.

SUMMARY OF THE RULE OR CHANGE: This rule change is intended to make the rule technically correct with current practice.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 62A-4a-106

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There will be no increase in cost or savings to the state budget because these proposed changes do not increase workload that would require additional staff or other costs.

◆ LOCAL GOVERNMENTS: Local governments have no responsibility for services offered by Child and Family Services and are therefore not affected by this rule and will experience no fiscal impact.

◆ SMALL BUSINESSES: Small businesses have no responsibility for services offered by Child and Family Services and are therefore not affected by this rule and will experience no fiscal impact.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no expected fiscal impact for "persons other than small businesses, businesses, or local government entities" because funding requests for services offered by Child and Family Services come out of already-existing budgets.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Child and Family Services determined that there will be no compliance costs for affected persons because there are no specific costs involved with the changes being made to this rule.

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

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov

◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2016

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.**R512-301. Out-of-Home Services, Responsibilities Pertaining to a Parent or Guardian.****R512-301-1. Purpose and Authority.**

(1) The purposes of this rule are to clarify:

(a) Roles and responsibilities of Child and Family Services to a parent or guardian of a child receiving out-of-home services in accordance with Rule R512-300, and

(b) Roles and responsibilities of a parent or guardian while a child is receiving out-of-home services.

(2) Sections 62A-4a-105 and 62A-4a-106 authorize Child and Family Services to provide out-of-home services and 42 USC 672 authorizes federal foster care. 42 USC 672 as amended by Public Law [110-351 (October 7, 2008)]113-183 (September 29, 2014), and 45 CFR Parts 1355 and 1356 [(October 1, 2008)](January 6, 2012) are incorporated by reference.

(3) This rule is authorized by Section 62A-4a-102.

R512-301-2. Definitions.

The following terms are defined for the purposes of this rule:

(1) Child and Family Services means the Division of Child and Family Services.

(2) Out-of-Home Services means those services defined in Rule R512-300.

(3) Child and Family Team means a group that includes the child and family and other concerned individuals involved in providing formal or informal supports or services to the family, that [and] meet[s] together as often as needed to assist[support] the family [and assist them-] in meeting their needs[-to achieve], providing a safe home for their children, and achieving the goals that will lead to conclusion of Child and Family Services involvement. The family is involved in identifying individuals they want included as a part of the Child and Family Team. [~~This may include the referent or other concerned individuals identified by the family as support persons.~~]

(4) Reunification means safely returning the child to the parent or guardian from whom the child was removed by court order or through a voluntary placement.

R512-301-3. Child and Family Services Roles and Responsibilities to a Parent or Guardian of a Child Receiving Out-of-Home Services when Reunification is the Primary Permanency Goal.

(1) Child and Family Services is responsible to make reasonable efforts to reunify a child with a parent or guardian when a court has determined that reunification is appropriate, in accordance with Section 62A-4a-203, or when a child has been placed with Child and Family Services through a voluntary placement.

(2) Child and Family Services shall actively seek to involve[the involvement of the] both the custodial and non-custodial parents or guardians in the Child and Family Team process, unless their whereabouts are unknown, including participation in establishing the Child and Family Team, completing an assessment, developing the Child and Family Plan, and selecting the child's primary and concurrent permanency goals, as described in Rule R512-300. Child and Family Services shall also involve the child's foster parents, stepparent (when appropriate), and the Guardian ad Litem, if one has been appointed by the court.

(3) The Child and Family Plan shall ~~[not only address the child's strengths and needs, but shall also address the family's strengths and underlying needs]~~ address the strengths and needs of both the child and the family. In accordance with Section 62A-4a-205, the plan shall identify ~~[specifically]~~ what the parents must do in order for the child to be returned home, [including how those] specifically how the requirements may be accomplished [behaviorally-]and how the[y]

requirements shall be measured. The plan shall also include the specific services needed to reduce the problems that necessitated placing the child in out-of-home care. Child and Family Services shall utilize and complete an assessment, with the input of the Child and Family Team, to identify the provisions that will be included in the plan. Provisions of the plan shall be crafted by the Child and Family Team and designed to maintain and enhance parental functioning, [care]improve safety, well-being, and permanency for the child, and preserve familial connections.

(4) In accordance with Section 62A-4a-205, additional weight and attention shall be given to the input of the child's parents and the foster parents in the plan development.

(5) Child and Family Services shall make a substantial effort to develop a Child and Family Plan with which the child's parents agree. If a parent does not agree with the services outlined on the Child and Family Plan, Child and Family Services shall make attempts to resolve the disagreement, and, if unsuccessful, shall inform the court of the disagreement.

~~(5)~~(6) The parent or guardian, foster parent, Guardian ad Litem, and the parent or guardian's legal counsel shall be provided a copy of the completed Child and Family Plan upon finalization of the plan, or as soon as reasonably possible following finalization.

~~(6)~~(7) The caseworker shall make diligent attempts to have regular face-to-face contact with the parent or guardian in order to facilitate progress towards [goal achievement as determined by the needs of the parent and the recommendations of the Child and Family Team]completion of the provisions outlined in the Child and Family Plan. At a minimum, the caseworker shall visit the parent or guardian at least once per month.

~~(7)~~(8) Child and Family Services shall make diligent efforts to engage a parent or guardian in continuing contacts with the child, whether through visitation, phone, or written correspondence, when it is not prohibited by court order. Visitation requirements specified in Rule R512-300 apply.

~~(8)~~(9) Child and Family Services shall also make reasonable and diligent efforts to engage and involve a parent or guardian in [appropriate parenting tasks]their child's activities and appointments, such as attending school meetings, recreational activities, and health care visits, when it is determined to be safe for the child and not prohibited by court order.

(10) Child and Family Services must include the parent or guardian as fully as possible when making health care decisions for the child, as long as the child's health and well-being are not compromised by the decision.

~~(9)~~(11) The parent or guardian has a right to reasonable notice and may participate in court and administrative reviews for the child in accordance with 42 USC 675 and Section 78A-6-317.

R512-301-4. Roles and Responsibilities of a Parent or Guardian of a Child Receiving Out-of-Home Services when Reunification is the Primary Permanency Goal.

[In addition to responsibility to comply with orders made by the court, a parent or guardian has responsibility to:]A parent or guardian is responsible for:

(1) Complying with court orders.

~~(1)~~(2) [Participate]Participating in the Child and Family Team process.

~~(2)~~(3) [Provide]Providing input into the assessment and Child and Family Plan development process [to help], in order to identify specific behavioral changes [in behavior]and actions necessary to enable the child to safely return home.

~~(3)~~(4) [Complete]Completing goals and objectives of the plan.

~~(4)~~(5) [Communicate]Frequently communicating with the caseworker about their progress [in completing the plan or regarding problems in meeting specified goals or objectives in advance of]or inability to comply with the objectives of the plan, prior to the proposed completion time frames.

~~(5)~~(6) [Maintain]Maintaining communication and frequent visitation with the child in accordance with Rule R512-300, when not prohibited by the court.

~~(6)~~(7) [Provide]Providing information [necessary]to enable Child and Family Services to determine the child's eligibility for Federal benefits while in care, in accordance with Rule R512-300[; including]. Necessary information includes information on household income, assets, and household composition.

~~(7)~~(8) [Provide]Providing financial support for the child's care, in accordance with 42 USC 671, and Sections 62A-4a-114 and 78A-6-1106, unless deferred or waived as specified in Rule R495-879.

R512-301-5. Guidelines for Making Recommendations for Reunification to the Court.

(1) In accordance with Section 62A-4a-205, when considering reunification, the child's health, safety, and welfare shall be the paramount concern.

(2) The Child and Family Team shall consider the following factors in determining whether to recommend that the court order reunification:

(a) The risk factors that led to the placement were acute rather than chronic.

(b) The child and family assessments (including [factors such as threats of harm, protective capacities of the parent or guardian, the child's vulnerabilities, the level of informal and formal supports available to the family, and the family history, including past patterns of behavior]the safety, risk, and family functioning assessments, as well as any other pertinent assessments) conclude that the parent appears to possess or [have the potential to develop]has developed the ability to ensure the child's safety and provide a nurturing environment.

(c) The parent is committed to the child and indicates a desire to have the child returned home.

(d) The child has a desire for reunification, as determined using age appropriate assessments.

(e) Members of the Child and Family Team support a reunification plan.

(f) If the parent is no longer living with the individual who severely abused the minor, reunification may be considered [if]when the parent is able to implement a plan that ensures the child's ongoing safety.

(g) Existence of factors or exceptions that preclude reunification as specified in Section 78A-6-312.

(3) Child and Family Services shall provide additional relevant facts, when available, to assist the court in making a determination regarding the appropriateness of reunification services, such as:

(a) The parent's failure to respond to previous services or ~~[service plan]~~ Child and Family Plans.

(b) The child being abused while the parent was under the influence of drugs or alcohol, and whether the parent's substance abuse continues to impact their ability to safely parent.

(c) Continuation of a chaotic, dysfunctional lifestyle.

(d) The parent's past history of violent behavior and whether any behavioral changes have been made to address that behavior.

(e) The testimony of a properly qualified professional or expert witness that the parent's behavior is unlikely to be successfully changed.

R512-301-6. Return Home and Trial Home Placement.

(1) When ~~[a child and family's safety needs have been met and the original reasons and risks have been reduced or eliminated, the]~~ the safety issues that resulted in the child being placed in out-of-home care are remedied or eliminated and the parent has demonstrated the behavioral changes needed in order to safely enable the child to return home. Child and Family Services may recommend a trial home placement or a return home to the court. The child may return home[;] when allowable by court order or in conjunction with provisions of a voluntary placement.

(2) Successful reunification shall be systematically considered and planned for from the earliest possible point in the life of the case. Prior to the child being physically returned home, [F]the Child and Family Team shall [plan for the transition and return home prior to the child being returned.] discuss and have a well-defined plan for the child to transition home from out-of-home care. Good transition planning shall include identifying ongoing formal and informal supports, as well as crisis or relapse planning, in order to prevent reentry into out-of-home care.

(3) In order for all pertinent parties to adequately prepare for the child to return home, Child and Family Services shall provide reasonable notice (unless otherwise ordered by the court) of the date the child will be returning home. [to all pertinent parties such as] Parties to be notified include the child, parents, members of the Child and Family Team, Guardian ad Litem, out-of-home care provider, school staff, therapist, and other partner agencies. [; so all parties can be adequately prepared for the return home.]

(4) ~~[Prior to and when the child is returned home,]~~ Child and Family Services shall provide services directed at assisting the child and family make a successful [with the] transition of the child back into the home, and shall [contact relevant parties to ensure] have supports in place to help observe and monitor that no further abuse or neglect is occurring to the child.

(5) If it is determined that the child and family require more intensive services to ensure successful reunification, intensive family reunification or In-Home [s] Services may be utilized in accordance with Rule R512-100.

(6) A child may be returned home for a trial home visit for up to ~~[60]~~ 90 days. The trial home visit shall continue until the court has returned custody to the parent or guardian.

R512-301-7. Voluntary Relinquishment of Parental Rights.

(1) When it is not in a child's best interest to be reunified with the child's parents, Child and Family Services may explore with both parents the option of voluntary relinquishment in accordance with Section 78A-6-514.

(2) If the child is Native American, provisions of the Indian Child Welfare Act (ICWA), 25 USC 1913 shall be met.

R512-301-8. Termination of Parental Rights.

(1) If a court determines that reunification services are not appropriate, Child and Family Services shall petition for termination of parental rights in accordance with 42 USC 675, 42 CFR 1356.21, and Section 62A-4a-203.5 unless exceptions specified in 42 CFR 1356.21 or Section 62A-4a-203.5 apply.

(2) Child and Family Services shall document in the Child and Family Plan ~~[care by kin or]~~ and the court report when a determination is made that there are compelling reasons [for determining-] that filing for termination of parental rights is not in the child's best interest[s] and shall make the plan available to the court for review.

(3) When Child and Family Services files a petition to terminate parental rights, if a permanent family has not already been identified for the child, the caseworker must [also-] concurrently begin to identify, recruit, process, and seek approval of a qualified adoptive family for the child. These efforts must be documented in the case record as specified in Rule R512-300.

(4) If the child is Native American, provisions of the ICWA, 25 USC 1913, shall be met.

(5) Child and Family Services shall not give approval to finalize an adoption until the period to appeal a termination of parental rights has expired. If an appeal has been filed, the adoption may not be finalized until the appeal is resolved.

KEY: social services, child welfare, domestic violence, child abuse
Date of Enactment or Last Substantive Amendment: [December 22, 2010] 2016

Notice of Continuation: May 16, 2013

Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105; 62A-4a-106

Human Services, Child and Family Services **R512-310** Reasonable and Prudent Parent Standard

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39940

FILED: 11/12/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule modification is to bring the rule in line with current statute and practice.

SUMMARY OF THE RULE OR CHANGE: This rule change is intended to make the rule technically correct with current practice.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 62A-4a-210 and Section 62A-4a-211 and Section 62A-4a-212

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There will be no increase in cost or savings to the state budget because these proposed changes do not increase workload that would require additional staff or other costs.

◆ LOCAL GOVERNMENTS: Local governments have no responsibility for services offered by Child and Family Services and are therefore not affected by this rule and will experience no fiscal impact.

◆ SMALL BUSINESSES: Small businesses have no responsibility for services offered by Child and Family Services and are therefore not affected by this rule and will experience no fiscal impact.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no expected fiscal impact for "persons other than small businesses, businesses, or local government entities" because funding requests for services offered by Child and Family Services come out of already-existing budgets.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Child and Family Services determined that there will be no compliance costs for affected persons because there are no specific costs involved with the changes being made to this rule.

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

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonessrobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2016

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.

R512-310. Reasonable and Prudent Parent Standard.

R512-310-1. Purpose and Authority.

(1) The purpose of this rule is to establish standards for normalcy for a child who is in Child and Family Services custody, including a reasonable and prudent parent standard and normalizing activities for children.

(2) This rule is authorized by Sections 62A-4a-102, 62A-4a-105, 62A-4a-210, 62A-4a-211, and 62A-4a-212.

R512-310-2. Definitions.

As used in this part:

(1) "Activity" is defined in Section 62A-4a-210.

(2) "Age-appropriate" is defined in Section 62A-4a-210.

(3) "Caregiver" is defined in Section 62A-4a-210.

(4) "Child and Family Services" means the Division of Child and Family Services.

(5) "Out-of-home placement" is defined in Section 62A-4a-210.

(6) "Reasonable and prudent parent standard" is defined in Section 62A-4a-210.

R512-310-3. Highlights.

(1) A child who comes into care under this chapter is entitled to participate in age-appropriate activities for the child's emotional well-being and development of valuable life-coping skills.

(2) Child and Family Services shall make efforts to normalize the lives of children in the custody of Child and Family Services and to empower a caregiver to approve or disapprove a child's participation in activities based on the caregiver's own assessment using a reasonable and prudent parent standard, without prior approval of Child and Family Services.

(3) Child and Family Services shall allow a caregiver to make important decisions, similar to the decisions that a parent is entitled to make, regarding the child's participation in activities.

(4) Child and Family Services will verify that private agencies providing out-of-home placement under contract with Child and Family Services promote and protect the ability of a child to participate in age-appropriate activities.

(5) A caregiver is not liable for harm caused to a child in an out-of-home placement if the child participates in an activity approved by the caregiver, provided that the caregiver has acted in accordance with a reasonable and prudent parent standard.

(6) Child and Family Services will provide training to caregivers and providers regarding how to use and apply the reasonable and prudent parent standard.

R512-310-4. Requirements for Decision Making.

(1) A caregiver shall use a reasonable and prudent parent standard in determining whether to permit a child to participate in an activity.

(2) A caregiver shall consider:

(a) The child's age, maturity, and developmental level to maintain the overall health and safety of the child;

(b) Potential risk factors and the appropriateness of the activity;

(c) The best interest of the child based on the caregiver's knowledge of the child;

(d) The importance of encouraging the child's emotional and developmental growth;

(e) The importance of providing the child with the most family-like living experience possible; and

(f) The behavioral history of the child and the child's ability to safely participate in the proposed activity.

(3) Child and Family Team Meetings may be convened at any point to discuss whether the caregiver has used the reasonable and prudent parent standard to determine what activities a child may participate in or if the child feels they are being denied the ability to participate in a normalizing activity.

R512-310-5. Participation in Activities.

(1) Caregivers shall ensure that the child has the safety equipment and any necessary permissions and training necessary to safely engage in each activity the child participates in, including but not limited to the following activities:

- (a) Boating;
- (b) Rock climbing;
- (c) Recreational vehicle use;
- (d) Sports;
- (e) Camping.

R512-310-6. Group Home or Residential Setting Activities.

(1) When children are placed in a group home or residential treatment setting, the provider will incorporate normalcy activities into the program. The activities will be in-line with the reasonable and prudent parent standard and will help children with skills essential for positive development.

(2) The provider will also have the presence on-site of at least one official who, with respect to any child placed with the provider, will be the designated caregiver who is authorized to apply the reasonable and prudent parenting standard to decisions involving the participation of the child in age or developmentally-appropriate activities.

KEY: child welfare, foster care

Date of Enactment or Last Substantive Amendment: [~~October 8, 2014~~2016

Authorizing, and Implemented or Interpreted Law: 62A-4a-102; ~~62A-4a-105~~; 62A-4a-210; 62A-4a-211; 62A-4a-212

Insurance, Administration
R590-154
 Unfair Marketing Practices Rule;
 Misleading Names

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39945

FILED: 11/13/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change clarifies some language about what constitutes a legal name.

SUMMARY OF THE RULE OR CHANGE: The rule makes it clear that a licensee shall be licensed using their legal name. It removes confusing language about what constitutes a legal name. It also makes two minor clerical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-23a-402 and Subsection 31A-2-201(3) and Subsection 31A-23a-110(2)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no cost or savings to state budget. The change merely clarifies what is considered a legal name for licensing purposes.

◆ **LOCAL GOVERNMENTS:** There is no cost or savings to local governments. The change merely clarifies what is considered a legal name for licensing purposes.

◆ **SMALL BUSINESSES:** There is no cost or savings to small businesses. The change merely clarifies what is considered a legal name for licensing purposes.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no cost or savings to any other persons. The change merely clarifies what is considered a legal name for licensing purposes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost related to this rule. It only clarifies what is considered a legal name for licensing purposes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses. This rule applies to the licensing process for those who sell insurance in Utah, and clarifies for them what constitutes a legal name.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2016

AUTHORIZED BY: Steve Gooch, Information Specialist

R590. Insurance, Administration.

R590-154. Unfair Marketing Practices Rule; Misleading Names.

R590-154-1. Authority.

This rule is adopted pursuant to Subsection 31A-2-201(3) in which the commissioner is empowered to adopt rules to implement the provisions of the Utah Insurance Code, Section 31A-23a-402, which provides that the commissioner may find certain practices to be misleading, deceptive, unfairly discriminatory, or unreasonably restrain competition, and to prohibit them by rule, and [Section]Subsection 31A-23a-110(2), which provides that a licensee may do business under a name other than the licensee's legal name by notifying the commissioner.

R590-154-2. Purpose and Scope.

(1) The purpose of this rule is to provide guidance to all licensees regarding unfair marketing practices.

(2) This rule applies to all insurance producers, limited lines producers, consultants and insurers licensed under Title 31A, Utah Insurance Code.

R590-154-3. Definitions.

(1) "Licensee" means, as used in this rule, all individual producers, all agency producers, all individual limited line producers, all agency limited line producers, all individual consultants, all agency consultants, and all insurers.

R590-154-4. Findings.

The commissioner finds that each of the practices prohibited in this rule constitute misleading, deceptive or unfairly discriminatory practices or unreasonably restrain competition, except as specifically allowed in this rule.

R590-154-5. Licensee Name.

(1) A licensee licensed under the Utah Insurance Code shall not use any name that is:

- (a) misleading or deceptive;
- (b) likely to be mistaken for another licensee already in business; or
- (c) implies association or connection with any other organization where actual bona fide association or connection does not exist.

(2) "Insurance consulting," "insurance consultants" or similar words shall only be used if the licensee is licensed as a consultant.

(3) ~~[An individual]~~A licensee shall be licensed using the ~~[individual's full]~~licensee's legal name.~~[The full legal name shall include first name or initial, middle name or initial, last name, and suffix.]~~

~~(4) An individual may file with the commissioner a preferred name or nickname to use with the individual's full legal name, consistent with Section 31A-23a-110(2).]~~

(5)4(a) Section 31A-23a-110(2) permits a licensee to use an assumed name by notifying the commissioner.

(b) In order to give notice of an assumed name as required by Section 31A-23a-110(2), the licensee shall comply with R590-244-13.

(6)5 A licensee may use its legal name, or an assumed name provided the commissioner is properly notified of the assumed name.

R590-154-6. Sale, Solicitation, or Negotiation of Insurance; Consultation.

(1) A licensee shall not, orally or in writing, fail to disclose that the licensee is an insurance licensee.

(2) A licensee shall not use or imply license types or lines of authority not held by the licensee.

(3) An individual licensee may only use the name of an agency licensee if the individual licensee is designated to act under the agency's license.

(4) An individual licensee may not sell, solicit, or negotiate insurance; or consult or advise for an agency licensee unless the individual licensee is designated to act under the agency's license.

R590-154-7. Claiming or Representing Department Approval.

(1) A licensee may not represent, either directly or indirectly, that the department, the commissioner, or any employee of the department, has approved, reviewed, or endorsed any marketing program, insurance product, insurance company, practice or act.

(2) A licensee may report the fact of the filing of any form, financial report, or other document with the department, or of licensure, examination or other action involving the department, or the commissioner but may not misrepresent their effect or import.

R590-154-8. Bartering for Insurance.

Any licensee bartering for the sale of insurance or an annuity contract shall fully document the receipt of goods, services or other thing of value, establishing the value of the thing received and how the value was established, from whom received, the date received, and the premium cost of the insurance or annuity contract bartered for, and shall retain said documentation for three years following the expiration of the policy period or bartering transaction, whichever is longer. Any licensee bartering for the sale of an insurance or annuity contract shall disclose at the time of application to the insurer said bartering arrangement.

R590-154-9. Prohibited Insurance Sales Tie-Ins.

Multi-level marketing programs, investment programs, memberships, or other similar programs, designed or represented to produce or provide funds to pay all or any part of the cost of insurance constitutes an illegal inducement. This does not preclude the provision of insurance through a bona fide employee benefits program.

R590-154-10. Commissions or Consulting Fees.

A licensee shall not give or offer to give a premium reduction by means of commission or consulting fee back to the insurer for any purpose, including competition, unless the reduction is for expense savings and is justified by a reasonable standard and with reasonable accuracy. The insurer's underwriting files must document the savings in order to enable the commissioner to verify compliance. This documentation must demonstrate legitimate expense savings realized by the insurer and its producer.

R590-154-11. Prohibited Financing Arrangements.

A licensee may not obtain or arrange for third party financing of premium without the knowledge and consent of the insured.

R590-154-12. Acting as A Licensee in Other Jurisdictions.

A resident licensee may not sell, solicit, or negotiate insurance or advise or consult about insurance in another jurisdiction unless licensed or permitted by law to do so in that jurisdiction.

R590-154-13. Use of Comparative Information.

(1) Every insurer marketing insurance in the State of Utah shall establish written marketing procedures to assure that any comparison of insurance contracts, annuities or insurance companies by its producers will be fair and accurate.

(2) A licensee may not use any published rating information regarding an insurer in connection with the marketing of any insurance contract or annuity unless that person also provides at the same time an explanation of what the rating means as defined by the rating service.

R590-154-14. Disclosure of Insurer in Group Insurance.

Every certificate of insurance or booklet describing coverage of a group insurance policy shall prominently state on the cover of the certificate or booklet the [fuit]-legal name and address of the actual insurer.

R590-154-15. Enforcement Date.

The commissioner shall begin enforcing the revised provisions of this rule on the rule's effective date.

R590-154-16. Severability.

If any provision of this rule or the application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provision of this rule are declared to be severable.

KEY: insurance, unfair marketing practices, misleading names
Date of Enactment or Last Substantive Amendment: [~~October 18, 2015~~2016]

Notice of Continuation: March 20, 2013

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-402; 31A-23a-110

**Public Service Commission,
 Administration
 R746-409
 Pipeline Safety**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39934

FILED: 11/10/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this proposed amendment is to: 1) update the date of the referenced U.S. Department of Transportation pipeline safety regulations to September 1, 2015; 2) identify that penalties for violations of Pipeline Safety regulations fall under the jurisdiction of Title 54, Chapter 13, Part 8; 3) delete unnecessary and duplicative requirements; and 4) consolidate, update, and clarify reporting and operating requirements.

SUMMARY OF THE RULE OR CHANGE: Currently, Rule R746-409 adopts the federal pipeline safety regulations codified in 49 CFR Parts 190, 191, 192, 198, and 199, as amended October 1, 2010. The rule change updates the amendment date to September 1, 2015. Substantive changes between the October 1, 2010, and September 1, 2015, amendment dates include: requirements for operators to implement control room management procedures and distribution integrity management programs; and modifications to requirements pertaining to post-construction inspection, leak surveys, qualifying of plastic pipe joining and transportation of pipe. Currently, Rule R746-409 does not specify that penalties for violations of pipeline safety regulations fall under the jurisdiction of Title 54, Chapter 13, Part 8. The rule change corrects this omission. The rule change adds six definitions for clarity. The rule change formalizes current "State Reportable Incident" criteria and reporting requirements. The rule change clarifies access requirements for inspections occurring "during normal business hours" and "outside of normal business hours." The rule change clarifies and consolidates telephonic notification and written reporting requirements and introduces a toll-free telephone number and an email address for the Division of Public Utilities. The rule change consolidates the requirements for written plans pursuant to federal regulations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-13-2 and Section 54-13-3 and Section 54-13-4 and Section 54-13-8

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 49 CFR Part 198 , published by Government Printing Office, 09/01/2015
- ◆ Updates 49 CFR Part 192, published by Government Printing Office, 09/01/2015
- ◆ Updates 49 CFR Part 191, published by Government Printing Office, 09/01/2015
- ◆ Updates 49 CFR Part 190, published by Government Printing Office, 09/01/2015
- ◆ Updates 49 CFR Part 199 , published by Government Printing Office, 09/01/2015

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The proposed rule change should not result in any costs to the Division of Public Utilities because the Division mainly enforces pipeline safety rules and the rule change reflects current requirements.

♦ **LOCAL GOVERNMENTS:** This rule applies to natural gas public utilities operated by local governments. Since local governments are already expected to operate pursuant to the federal regulations and state requirements incorporated or formalized in this rule change, no anticipated costs are expected. Negligible savings may occur due to streamlining of reporting requirements.

♦ **SMALL BUSINESSES:** This rule applies to operators of natural gas master meter systems and pipeline facilities. Since small businesses are already expected to operate pursuant to the federal regulation and state requirements incorporated or formalized in this rule change, no anticipated costs are expected. Negligible savings may occur due to streamlining of reporting requirements.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Since persons are already expected to operate pursuant to the federal regulation and state requirements incorporated or formalized in this rule change, no anticipated costs are expected. Negligible savings may occur due to streamlining of reporting requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for affected persons will not be expected because this rule change follows practices and requirements already in place at the federal and state level.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule change adopts and formalizes current operating practices and requirements and therefore the proposed rule change will not result in any additional costs. Negligible savings may occur due to streamlining of reporting requirements.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Melanie Reif by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at mreif@utah.gov
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/30/2016

AUTHORIZED BY: Melanie Reif, Administrative Law Judge

R746. Public Service Commission, Administration.

R746-409. Pipeline Safety.

R746-409-1. General Provisions.

A. Scope and Applicability -- ~~[To enable the Commission] Pursuant to [carry out its duties regarding pipeline safety under] Title 54, Chapter 13, [Title 54,] the following rules shall apply to persons [owning or operating an intrastate pipeline facility as defined in that chapter, or a segment of that chapter including, but not limited to, master meter systems, as well as persons] engaged in the transportation of gas as defined in CFR Title 49 Parts 191 and 192.~~

B. Adoption of ~~[Parts 190, 191, 192, 198, and 199] parts of CFR Title 49 --~~ The Commission [hereby] adopts[;] and incorporates by this reference[;] the following parts of CFR Title 49, [Parts] effective September 1, 2015:

1. Part 190 with the exclusion of Part 190.223[;] which is superseded by Title 54, Chapter 13, Part 8, Violation of chapter -- Penalty;

2. Part 191[;];

3. Part 192[;];

4. Part 198[;]; and [199, as amended, October 1, 2010;]

5. Part 199.

C. ~~Persons [owning or operating an intrastate pipeline facility in Utah, or a segment thereof, as well as persons] engaged in the transportation of gas, including distribution of gas through a master-metered system, shall comply with the requirements of CFR Title 49, identified in Section R746-409-1.B, including all minimum safety standards [specified in those Parts of CFR Title 49].~~

R746-409-2. Definitions.

For purposes of these rules, the following terms shall bear the following meanings:

A. "Authorized Inspector" means a person employed or authorized by the Commission or the director of the Division.

~~[A]~~ B. "CFR" means the Code of Federal Regulations;

~~[B]~~ C. "Commission" means the Public Service Commission of Utah;

~~[C]~~ D. "Division" means the Division of Public Utilities, Utah Department of Commerce;

~~[D]~~ E. "Federally Reportable Incident" has the same meaning set forth in Part 191.3, Definitions, Incident.

F. "Operator" has the same meaning set forth in CFR Title 49, Part 191.3, Definitions, Operator.

G. "Part 190" means CFR Title 49, Part 190[~~-entitled~~], Pipeline Safety [Program] Programs and Rulemaking Procedures.

~~[E]~~ H. "Part 191" means CFR Title 49, Part 191[~~-entitled~~], Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports.

~~[F]~~ I. "Part 192" means CFR Title 49, Part 192[~~-entitled~~], Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.

~~[G]~~ J. "Part 198" means CFR Title 49, Part 198[~~-entitled~~], Regulations for Grants to Aid State Pipeline Safety Programs.

~~[H]~~ K. "Part 199" means CFR Title 49, [part] Part 199[~~-entitled~~], Drug and Alcohol Testing.

L. "Pipeline Facility" has the same meaning set forth in Part 191.3 Definitions, Pipeline facility.

M. "State Reportable Incident" means an event that falls within the definition of a federally reportable incident or a safety-

related condition as identified in CRF Title 49, Part 191.23, Reporting safety-related conditions, or meets one or more of the following:

1. Results in damage to any segment of:
 - a. steel main, twelve inches or greater in diameter, or
 - b. transmission pipeline;
2. Requires removal from service or repair of any segment of:
 - a. steel main, twelve inches or greater in diameter, or
 - b. transmission pipeline;
3. Results in property damage of \$15,000 or more, including the cost of gas that is lost;
4. Results in the loss of gas service to ten or more customers;
5. Results in the known evacuation of any highly populated areas including commercial businesses, office buildings, eateries, schools, churches or public meeting places; or
6. Receives news media coverage of which the utility becomes aware.

N. "Transportation of Gas" has the same meaning set forth in CFR Title 49, Part 191.3, Definitions, Transportation of gas.

R746-409-3. Inspections.

A. [Authorized Inspector -- A person employed or]Access for inspection

1. During Normal Business Hours -- During normal business hours, an authorized [by the Commission or the director of the Division]inspector, upon [presenting] presentation of appropriate credentials, [is authorized to]may enter [upon,]an operator's offices and pipeline facilities to inspect and examine[, during normal business hours,] the records and [properties of a person in possession or control of them]pipeline facilities, if the records and [properties]pipeline facilities are relevant to determining [the] compliance with applicable state and federal pipeline safety statutes, rules and regulations.

2. Outside of Normal Business Hours -- For incidents occurring outside of normal business hours, an authorized inspector, upon presentation of appropriate credentials, may enter an operator's pipeline facilities involved in or associated with an incident to inspect and examine the pipeline facilities, if inspection of the pipeline facility is relevant to determining compliance with applicable state and federal pipeline safety statutes, rules and regulations.

B. Reasons for Inspection -- Inspections are ordinarily conducted pursuant to one of the following:

1. [routine scheduling]Routine inspection, including but not limited to a compliance inspection;
2. [a]A complaint received from a member of the public;
3. [information]Information obtained from a previous inspection;
4. A pipeline [accident or]incident; or
5. [when]When deemed appropriate by the Commission.

C. Testing -- To the extent necessary to carry out its responsibilities, the Commission may require testing of portions of intrastate pipeline facilities which have been involved in or affected by an [accident]incident.

D. Further Action -- When information obtained from an authorized inspector or from other appropriate sources indicates that further action is warranted, the Division shall issue a warning letter to an operator and, if necessary, initiate proceedings, including but not limited to seeking the issuance of Commission subpoenas to compel

the production of records and the taking of testimony, hearings and related procedures, before the Commission.

[R746-409-4. Accidents or Incidents Reports and Annual Reports.

A. U.S. Department of Transportation -- An operator shall report to the U.S. Department of Transportation (800-424-8802) accidents or incidents involving its pipeline facilities operated within the state of Utah that cause personal injuries requiring in-patient hospitalization, fatality, or estimated damage to property totaling \$50,000 or more.

B. Commission Notification -- The Commission shall be notified of the accidents or incidents as soon as possible, consistent with public welfare and safety. In those instances where a telephonic report to the United States Department of Transportation is required, a similar report of the accident or incident shall be made by telephone to:

Utah Division of Public Utilities
Lead Pipeline Safety Engineer
P.O. Box 146751
Salt Lake City, Utah 84145-6751
Telephone: 801-530-6673
801-530-6652
800-874-0904

C. Written Report -- An operator, except for master meter systems, shall furnish to the Commission, within 30 days after the occurrence of a reportable accident or incident, a written report of the accident or incident. The report may be made on the standard USDOT form designated Accident or Incident Report, or on a form acceptable to the Commission showing the same information. If certain information is not available, the incomplete report should be submitted indicating this unavailability. When the information becomes available, a supplemental report will be submitted.

D. Annual Report -- An operator, except for master meter systems, shall submit an annual report for that system on DOT form RSPA F 7100.1-1. This report must be submitted annually, not later than March 15, for the preceding calendar year. Operators who file annual reports to federal agencies in accordance with 49 CFR, part 191, are required to file copies of the reports with this Commission. Annual reports may be sent to the same address as noted in Subsection R746-409-4B.

R746-409-5. Operation and Maintenance Plans.

An operator of natural gas transportation facilities, except for master meter operators and liquid propane operators, shall file with the Commission for review by the Division of Public Utilities, a plan for the operation and maintenance of pipeline facilities owned or operated by it, and shall subsequently file changes in the plan. The plan shall cover gas transmission facilities, distribution facilities, and those gathering or production facilities located in non-rural areas. Master meter operators and liquid propane gas operators shall have at their distribution facility a plan for the operation and maintenance of their pipeline facilities. The essential requirements stated in Title 49 CFR Part 192.605, shall be covered by the plan. If the Commission, on recommendation of the Division, finds the plan inadequate for safe operation, the Commission shall, after notice and opportunity for a hearing, require revision of the plan.

R746-409-6. Emergency Plan.

An operator, except for master meter operators and liquid propane operators, shall file with the Commission, for review by the

Division, a plan of written procedures to minimize the hazard resulting from a gas line emergency. The plan shall cover gas transmission facilities, distribution facilities and those gathering or production facilities located in non-rural areas. Master meter operators and liquid propane operators shall have at their distribution facilities a plan to minimize hazards resulting from an incident involving their gas facilities. The essential requirements stated in Title 49 CFR Part 192.615 shall be covered by the plan. If the Commission, on recommendation of the Division, finds the plan inadequate for safe operation, the Commission shall, after notice and opportunity for a hearing, require the plan to be revised.

R746-409-7. Cathodic Protection and Leak Surveys.

A. Cathodic Protection -- Operators of gas transportation facilities who do not have cathodic protection on their metallic underground piping system shall install cathodic protection, in accordance with 49 CFR, Subpart I, unless exempted as per Part 192.455(2)(b) on it within one year after establishment of the Commission rules, unless a time exemption is approved by the Commission.

B. Leak Survey -- A gas detector leak survey shall be conducted on master metered facilities, which were not cathodically protected prior to the Commission rules, at intervals not exceeding 15 months, but at least once each calendar year. The surveys shall be performed annually for at least five years after the date of the installation of cathodic protection.]

R746-409-4. Reporting and Notification Requirements.

A. An operator must comply with the notification and reporting requirements contained in Part 191 and Section R746-409-4.

B. Telephonic notification to the Division.

1. For incidents requiring immediate notice under Part 191.5, an operator must also provide contemporaneous telephonic notification of the same information required under Part 191.5 to the Division at (844)-GAS-2525 or (844)-427-2525.

2. State Reportable Incidents. An operator must provide telephonic notice to the Division at (844)-GAS-2525 or (844)-427-2525 of all state reportable incidents, including the location and known details at the time of reporting, at the earliest practicable moment following discovery.

C. Written Reports required by Part 191. For all reports required under Part 191, including updates and supplemental reports, an operator shall contemporaneously furnish these reports to the Commission and the Division in accordance with Section R746-409-4.F.

D. Excavation Damage Quarterly Report. Each operator with more than 10,000 customers shall file a quarterly excavation damage report within 60 days after the end of the each quarter with the Commission and the Division in accordance with Section R746-409-4.F on a form approved by the Division.

E. Special Reports Relating to Safety Issues. An operator shall prepare and file special reports relating to safety issues as requested by the Commission or the Division in accordance with Section R746-409-4.F.

F. Filing of Written Reports:

1. All required written reports shall be filed with the Commission in accordance with Commission's filing requirements posted on the Commission's website at <http://www.psc.utah.gov> at the

"Filing Req" tab under the Document column labeled "Pipeline Safety."

2. All required written reports shall be filed electronically with the Division at the following e-mail address: pipelinesafety@utah.gov.

R746-409-5. Written Plans.

A. An operator must develop and implement all plans required in Parts 192 and 199, including operations and maintenance plans, emergency response plans, public awareness plans, operator qualifications plans, anti-drug and alcohol misuse plans, and integrity management plans (both transmission and distribution). These plans must be made available to the Commission or the Division upon request.

R746-409-[8]6. Remedies.

A. Rules of Practice and Procedure -- The Commission's Rules of Practice and Procedure, R746-100, shall govern and control proceedings before the Commission regarding pipeline safety, with the exception of the additional remedies and procedures specified herein.

B. Hazardous Facility Order -- If the Commission finds, after notice and a hearing, that a particular intrastate pipeline facility is hazardous to life or property, it may issue a Hazardous Facility Order requiring the owner or operator of the intrastate pipeline facility to take corrective action. Civil penalties set forth in Section 54-13-[6]8 may also be imposed. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action as may be appropriate.

C. Waiver of Notice and Hearing -- The Commission may waive the requirement for notice and hearing in Subsection (B) above before issuing an order pursuant to this section when it or the Division determines that the failure to do so would result in the likelihood of serious harm to life or property. However, the Commission shall include in the order an opportunity for hearing as soon as practicable after issuance of the order.

D. Hazardous Conditions -- The Commission may find an intrastate pipeline facility to be hazardous under paragraph 2 of this section if:

1. [†]Under the facts and circumstances the Commission determines the particular facility is hazardous to life or property; or

2. [†]The intrastate pipeline facility, or a component thereof, has been constructed or operated with equipment, material, or technique which the Commission determines is hazardous to life or property, unless the operator involved demonstrates to the satisfaction of the Commission that, under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous to life or property.

E. Considerations -- In making a determination under paragraph (D)(2) of this section, the Commission may consider, if relevant:

1. [†]The characteristics of the pipe and other equipment used in the intrastate pipeline facility involved, including its age, manufacturer, physical properties, including its resistance to corrosion and deterioration, and the method of its manufacture, construction, or assembly;

2. [†]The nature of the materials transported by the facility, including their corrosive and deteriorative qualities, the sequence in which the materials are transported, and the pressure required for the transportation;

3. [t]The aspects of the areas in which the intrastate pipeline facility is located, in particular the climatic and geologic conditions, including soil characteristics, associated with the areas, and the population density and population and growth patterns of such areas;

4. [a]A recommendation of the National Transportation Safety Board issued in connection with an investigation conducted by the board;

5. [e]Other factors as the Commission may consider appropriate.

F. Contents of Hazardous Facility Order -- A Hazardous Facility Order issued by the Commission shall contain the following information:

1. [a]A finding that the pipeline facility is hazardous to life or property;

2. [t]The relevant facts which form the basis for the finding;

3. [t]The legal basis for the order;

4. [t]The nature and description of particular corrective action required of the respondent;

5. [t]The date by which the required action must be taken or completed and, where appropriate, the duration of the order.

G. No Longer Hazardous -- The Commission shall rescind or suspend a Hazardous Facility Order whenever it determines that the facility is no longer hazardous to life or property.

KEY: rules and procedures, safety, pipelines

Date of Enactment or Last Substantive Amendment: [~~November 7, 2014~~]2016

Notice of Continuation: October 6, 2011

Authorizing, and Implemented or Interpreted Law: 54-13-3; 54-13-5; 54-13-6

Transportation, Operations, Traffic and Safety R920-4

Special Road Use or Event

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 39941

FILED: 11/12/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Portions of Rule R920-4 were ruled unconstitutional by the 10th Circuit Court of Appeals in *iMatter Utah v. Njord*, 774 F.3d 1258 (2014). Additionally, in the 2015 General Session, the Utah Legislature passed H.B. 289, which empowered UDOT to make rules governing the issuance of special use permits to maintain public safety and serve the needs to the traveling public. The statute authorized, but did not require, UDOT to limit the total number of special event permits, to establish penalties if a permittee did not fulfill a permit condition, and to establish a fee schedule reflecting the costs of services provided by the Department in licensing and administering the permits.

UDOT determined it necessary to rewrite the rule to eliminate the portions that offend the state and federal constitutions, and also to take advantage of the guidance the legislature provided in H.B. 289. The changes update the rule so that it better satisfies the needs of UDOT and the people of Utah. These changes are a complete rewrite of the rule.

SUMMARY OF THE RULE OR CHANGE: In Section R920-4-1, adds specific purposes and governmental interests the rule is intended to further. In Section R920-4-1.5, adds a section to define applicable terms. In Section R920-4-2, modifies the special road use permit requirements and included exceptions. In Section R920-4-3, modifies the scope of timelines. In Section R920-4-4, creates new rule defining permit fees. In Section R920-4-5, creates new rule restricting special event permits. In Section R920-4-6, creates new rule delineating requirements for non-free speech road uses section. In Section R920-4-7, elaborates on proper considerations and accommodations for free speech road uses. In Section R920-4-8, redrafts and expands special use double booking conflict resolution section. In Section R920-4-9, redrafts and expands minimum liability forms and coverage requirements section. In Section R920-4-10, expands traffic control requirements and considerations. In Section R920-4-11, expands public notification requirements. In Section R920-4-12, redrafts contingency and participant notification requirements. In Section R920-4-13, moves route identification and private property use requirements. In Section R920-4-14, moves route adherence to other government permitting requirements. In Section R920-4-15, adds a section that details the appeal process.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-6a-1111 and Section 72-1-201 and Section 72-1-212

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Department anticipates that these changes will allow it to generate significant savings to the state budget because they provide for the creation of a revenue neutral fee schedule to be created and used to fund the permitting program. The Department's special event permitting program has been subsidized by the state for a number of years. Fees charged for permits during the past twelve months totaled approximately \$12,900, but the total cost of operating the program is estimated to be \$258,893. Public policy requires that programs such as the special events permitting program be revenue-neutral and funded by the users. The fee schedule is to be determined separate from the changes to the rule and will be based upon the actual costs to the Department of operating the special event permitting program. The Department intends to hold a public hearing at which the public will be apprised of the costs of operating the permitting program and presented a proposed revenue-neutral fee schedule for review and public discussion. Therefore, an exact amount of the resulting aggregate savings to the state budget that will result due to

these changes to Rule R920-4 cannot be determined at present.

♦ LOCAL GOVERNMENTS: The Department does not anticipate that any additional costs or savings to the budgets of local governments will result from the changes to the rule. Many local governments have special event permitting programs that are independent of the Department's. The local governments determine their permit fees. These changes should not have a direct effect on the budgets of local governments.

♦ SMALL BUSINESSES: These changes do not impose any additional tax upon or provide any subsidies for small businesses. The department does not anticipate that the changes will affect the budgets of small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These changes do not impose any additional tax upon or provide any subsidies for persons other than small businesses, businesses, or local government entities. The department does not anticipate that the changes will affect the budgets of persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes will result in additional compliance costs for affected persons. Permit fees must be sufficient to cover the cost of operating the Department's permitting program. However, the exact amount of the additional costs for affected persons that will result due to creation of the revenue-neutral fee schedule authorized by these changes cannot be determined at this time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes to Rule R920-4 are necessary to conform to the requirements of the court's ruling in the iMatter case and H.B. 289 (2015). However, the changes should not result in any negative fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/31/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2016

AUTHORIZED BY: Carlos Braceras, Executive Director

R920. Transportation, Operations, Traffic and Safety.

R920-4. Special Road Use or Event.

R920-4-1. Purpose~~and~~, Authority, Scope, and Definitions of Rule.

(1) The purposes of this rule are to~~ensure~~:

(a) Ensure the right of Utahns and visitors to speak and protest in public forums and other public places owned or maintained by the Utah Department of Transportation;

(b) Encourage and support special events such as parades, runs and walks, bicycle races, and film-related activities, recognizing their importance to Utah's economy and to the well-being of residents of and visitors to Utah;

(c) Manage limited resources and multiple requests for the use of the same roadways in a responsible and content-neutral manner;

(d) Encourage collaboration with local governments in the review and management of Special Road Uses;

(e) Provide guidelines and an appeal process for the review of applications for special road use permits; and

(f) Set reasonable time, place, and manner restrictions for the safe use of roadways for free speech events, and set reasonable requirements on other special events on highways and land under the jurisdiction of the Department to protect public safety~~and minimize disruption to the traveling public when state controlled~~, persons, and property, and to accommodate the interests of persons not participating in the assemblies to use the roadways for travel;

(2) This rule is intended to further the following governmental interests:

(a) The rights of [way are used for parades, marathons, film related activities]Utahns to speak, protest, and [bicycle races]peaceably assemble;

(b) The safety of all participants in, and [to enable]spectators of, special events[through a responsible];

(c) The safety of the travelling public;

(d) The ability of emergency service providers to access and [controlled permitting process]care for participants and spectators in special use events, and for residents near to such event;

(e) The management of limited resources;

(f) Utah's tourism industry and its strong economy;

(g) The ability of residents and others not participating in any special event, to travel on the roadways and to access private property without unreasonable disruption; and

(h) The protection against unreasonable financial burdens on the Department or the State.

(3) This rule is authorized by Sections 72-1-201, 72-1-212 and 41-6a-1111 of the Utah Code Annotated. This rule applies to all highways and adjacent rights-of-way under the Department's jurisdiction~~of the Utah Department of Transportation ("Department")~~.

(4) Definitions.

The following definitions shall apply for purposes of Rule 920-4:

(a) The "Applicant" means an individual, corporation, unincorporated association, Local Government, or other organization, seeking a Special Event Permit. "Applicant" also

includes any predecessors or successors in interest to the Applicant, and, if the Applicant is an entity, any officers and principals of the Applicant.

(b) A "Day" means a calendar day, except as otherwise expressly stated in this Rule.

(c) "Department" means the Utah Department of Transportation.

(d) A "Free Speech Road Use" means a type of Special Road Use conducted for the purpose of persons expressing their political, social, religious, or other views protected by the First Amendment to the United States Constitution and Article I, Section 15 of the Utah Constitution during the event. A "Free Speech Road Use" does not include:

(i) Solicitations or events which primarily propose a commercial transaction;

(ii) Bicycle races or events;

(iii) Foot races, including fun-runs, races, walks, and similar events;

(iv) Motorcycle rallies, parades, and similar events; or

(v) Use of highways and adjacent rights-of-way for filming.

(e) "Local Government" means a municipality as defined in Utah Code Subsection 10-1-104(5), a county, or an institution of higher education defined in Utah Code Section 53B-2-101.

(f) A "Short-Notice Free Speech Road Use" means a type of Free Speech Road Use which arises out of, or is related to, events or other public issues which cannot be reasonably anticipated far enough in advance of the occurrence to allow compliance with the deadlines otherwise required in this Rule. An Applicant bears the burden of demonstrating that a proposed Free Speech Road Use is a Short-Notice Free Speech Road Use.

(g) A "Special Event Permit" means a permit sought or granted by the Department for a Special Road Use.

(h) A "Special Road Use" means a use or event taking place on a highway or adjacent to a highway other than normal traffic or lawful pedestrian movement.

(i) A Special Road Use includes:

(A) A demonstration, rally, vigil, picket line or similar gathering;

(B) A parade or march;

(C) A bicycle race or event;

(D) A foot race, including a fun-run, race, walk, or similar event;

(E) A motorcycle rally, parade, ride or similar event; and

(F) The use of highways and adjacent rights-of-way for filming.

(ii) A "Special Road Use" does not include:

(A) Outdoor advertising, regulated by the Protection of Highways Act, Utah Code Section 72-7-501 et seq. and Utah Admin. Code R933-2;

(B) Encroachment on, or the placement, construction, or maintenance of, roads, driveways, advertising, and utilities, regulated by Utah Code Section 72-7-701 et seq., and Utah Admin. Code R930-7; and

(C) The sole display of unattended signs or banners on or appurtenant to the roadway.

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

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

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

"Application for a Special Event Permit," or "Application for a Permit to Film on State Roads" shall be completed by the applicant seeking a]the particular type of Special Road Use [or Event Permit. All applications for permits shall be made a minimum of 15 days prior to the specified activity]requested, accompanied by the fees as listed within the Department fee schedule and any other documents or attachments as required by this Rule.

R920-4-4. Special Event

(2) An Applicant shall send an application to the regional office in which the Special Road Use originates. If the Special Road Use continues through multiple Department Regions, the Department may designate a regional office to coordinate the application process throughout all other affected regions.

(3) A Special Event Permit shall not be required for activities that occur entirely on a sidewalk, crosswalk, or dedicated pedestrian passageway adjacent to or nearby a roadway so long as:

(a) Pedestrians are lawfully permitted to be present in the area;

(b) Reasonable measures are taken to ensure that the activity does not encroach upon the roadway or otherwise affect normal vehicular traffic flow; and

(c) Non-participating pedestrians have access to the sidewalk or passageway.

R920-4-3. Timeline for Submitting Applications.

(1) Subject to the requirements of this section, Applicants are encouraged to submit applications for a Special Event Permit as far in advance as is practicable to allow sufficient time for the completion of the application, for the negotiation of any conditions to the application, and for appeal, if permitted.

(2) A completed application for a Special Event Permit shall be submitted at least 30 days before the proposed Special Road Use. Any applications not received by the specified deadline may be considered by the Department if:

(a) The Applicant pays the expedited review fee as defined in R920-4-4, and

(b) There is sufficient time to process the application, to coordinate with the Applicant, and to ensure that the Applicant will comply with the terms of the permit.

(3) No application may be filed more than one year before the proposed event date.

(4) Subsection (2) does not apply to:

(a) A Special Event Permit for a Short-Notice Free Speech Road Use; or

(b) A Special Event Permit sought by a Local Government for a Special Road Use if the Local Government is responsible for the supervision and safety of the Special Road Use.

R920-4-4. Fees for Filing Applications; Exceptions.

(1) An application for a Special Event Permit shall be accompanied by the appropriate nonrefundable review fees as listed within the Department fee schedule. The fees are imposed as a regulatory measure and are charged only to defray the expenses of processing the application, reviewing for acceptability, and monitoring the event to ensure conformity with the intent expressed in Section R920-4-1 above.

(2) Any Special Event Permit not received by the deadline in subsection (2) of R920-4-3 shall be accompanied with a nonrefundable expedited review fee as listed within the Department fee schedule. Payment of the expedited fee does not guarantee that the Department will process the application.

(3) Subsection (1) does not apply to:

(a) A Special Event Permit sought by a Local Government if the Local Government is responsible for the supervision and safety of the Special Road Use.

(b) An application for a Special Event Permit for Free Speech Road Use if the Applicant demonstrates, by sufficient evidence, that the payment of the fee would affect the ability of the Applicant to provide for the necessities of life. If an Applicant is an organization, the Department may require proof that the organization's membership is similarly unable to pay.

(4) Subsection (2) does not apply to a Special Event Permit for a Short-Notice Free Speech Road Use. An application for a Special Event Permit for a Short-Notice Free Speech Road Use shall pay the nonrefundable fee specified in subsection (1), unless one of the exceptions in subsection (3) also applies.

R920-4-5. Restrictions on Special Event Permits.

(1) The Region Permit Officer shall not issue a Special Event Permit if, in the two years preceding the date of the Application:

(a) The Applicant had been granted a Special Event Permit, and the Applicant

(i) Violated a condition of the Permit, or

(ii) Failed to take reasonable care in preventing the participants in the Special Road Use from violating a condition of the permit; or

(b) The Applicant engaged in a Special Road Use without first securing a Special Event Permit.

(2) The Region Permit Officer shall not issue a Special Event Permit for Special Road Use on an overpass above a highway, if the Special Road Use is intended to draw the attention of the traffic below, and is not an incidental traversing of the overpass as part of the event path.

(3) The Region Permit Officer shall not issue a Special Event Permit for any portion of the same roadway for a period of more than 24 continuous hours, per Special Road Use.

(a) This subsection does not apply to a Special Event Permit sought by a Local Government for a Special Road Use if the Local Government is responsible for the supervision and safety of the Special Road Use.

(b) Deviations from provisions of this subsection may be allowed if they do not violate state and federal statutes, law, or regulations, and the use will be for the public good without compromising the transportation purposes of the roadway.

(c) Requests for deviations may be considered by the Department on an individual basis, upon justification submitted by the Applicant.

(d) In determining whether to grant the deviation, the Region Permit Officer shall consider the Purposes of the Rule as articulated in Rule R920-4-1(1). The Applicant shall have the burden to prove that the deviation is in the public interest and will not substantially affect the ability of residents and others not participating in any special event to travel on the roadways and to access private property without unreasonable disruption. The Region Permit Officer may require the Applicant to provide additional proof, such as a traffic impact study, to satisfy the Applicant's burden for the deviation.

R920-4-6. Applications for Special Event Permits for Non-Free Speech Road Uses.

This section governs the standards for review of all applications for Special Event Permits other than those covered in R920-4-7.

In addition to an Application for Special Event Permit, the Region Permit Officer shall require the Applicant to provide as necessary:

(a) Insurance coverage, waiver and release of damages and indemnification as described in R920-4-9;

(b) A traffic control plan as described in R920-4-10;

(c) Public notification as described in R920-4-11;

(d) A contingency plan, as described in R920-4-12;

(e) A route map as described in R920-4-13; and

(f) Proof that the applicant has obtained any applicable city, county, or other governmental agency approvals or permits as described in R920-4-14.

(2) In reviewing any Application for Special Event Permit, the Region Permit Officer may place reasonable restrictions on the Special Road Use. Except as provided by R920-4-5(1), no such restriction shall be based on the identity of the applicant or of persons expected to participate in the Special Road Use. The restrictions include, but are not limited to:

(a) A limitation of the total time the permittee may occupy a particular portion of roadway;

(b) A limitation on the particular time of day the permittee may occupy the roadway;

(c) A limitation on the number of lanes the permittee may occupy on the roadway;

(d) A limitation on the number or size of banners or signs any participants may carry on the roadway; and

(e) A prohibition on the use of a particular roadway and the requirement of an alternate route.

(3) The Region Permit Officer may place reasonable terms, conditions, and limitations on a Free Speech Road Use as allowed by this Rule and otherwise required by law. In placing restrictions on the Special Road Use, the Region Permit Officer shall consider:

(a) The annual number of other Special Use events scheduled on the roadway;

_____ (b) Planned construction or repairs of the roadway or utilities underneath or adjacent to the roadway;

_____ (c) The nature of the roadway requested for use, and the volume of traffic normally occupying the roadway at the requested time of use;

_____ (d) The amount of time requested for use;

_____ (e) The safety of all participants in special events;

_____ (f) The safety of the travelling public;

_____ (g) The ability of emergency service providers to access and care for participants and spectators in special use events, and for residents near to such event; and

_____ (h) The ability of residents and others not participating in any special event, to travel on the roadways and to access private property without unreasonable disruption; and

_____ (i) The overall economic impact on nearby businesses and the traveling public resulting from the Special Road Use.

_____ (4) Applications for Special Event Permits governed by this section shall be processed. If the Region Permit Officer determines the application is incomplete, he or she shall notify the Applicant with a notice of incomplete application once the deficiency is discovered.

_____ (5) Once the application is complete, the Region Permit Officer shall apply best efforts to provide approval, approval with conditions, or denial of the Application:

_____ (a) Within 30 days of receipt of a complete application, or seven days before the scheduled event, whichever is earlier.

_____ (b) In the case of an application submitted along with an expedited fee, within three business days of its receipt as complete.

R920-4-7. Review of Applications for Special Event Permits for Free Speech Road Uses.

_____ This section governs the standards for review of applications for Special Event Permits for Free Speech Road Uses.

_____ (1) In addition to any Application for Special Event Permit for Free Speech Road Use, the Region Permit Officer shall require the Applicant to provide, as necessary:

_____ (a) A traffic control plan as described in R920-4-10;

_____ (b) Public notification as described in R920-4-11;

_____ (c) A contingency plan, as described in R920-4-12;

_____ (d) A route map as described in R920-4-13; and

_____ (e) Proof that the applicant has obtained any applicable city, county, or other governmental agency approvals or permits as described in R920-4-14.

_____ (2) In reviewing any Application for Special Event Permit for Free Speech Road Use, the Region Permit Officer may place reasonable time, place, and manner restrictions on the Free Speech Road Use. No such restriction shall be based on the content of the beliefs expressed or anticipated to be expressed during the Free Speech Road Use, or on factors such as the identity or appearance of persons expected to participate in the assembly.

_____ (3) In placing reasonable time, place, and manner restrictions on the Special Road Use, the Region Permit Officer shall consider:

_____ (a) The annual number of other Special Use events scheduled on the roadway;

_____ (b) Planned construction or repairs of the roadway or utilities underneath or adjacent to the roadway;

_____ (c) The nature of the roadway requested for use, and the volume of traffic normally occupying the roadway at the requested time of use;

_____ (d) The amount of time requested for use;

_____ (e) The safety of all participants in special events;

_____ (f) The safety of the travelling public;

_____ (g) The ability of emergency service providers to access and care for participants and spectators in special use events, and for residents near to such event; and

_____ (h) The ability of residents and others not participating in any special event, to travel on the roadways and to access other public and private property without unreasonable disruption.

_____ (4) The Region Permit Officer may place reasonable terms, conditions, and limitations on a Free Speech Road Use as allowed by this Rule and otherwise required by law. In placing time, place, or manner restrictions on a Free Speech Road Use, the Region Permit Officer shall select restrictions that are tailored to address any identified risks of harm or other articulated governmental interests. The restrictions include, but are not limited to:

_____ (a) A limitation of the total time the permittee may occupy a particular portion of roadway;

_____ (b) A limitation on the particular time of day the permittee may occupy the roadway;

_____ (c) A limitation on the number of lanes the permittee may occupy on the roadway;

_____ (d) A limitation on the number or size of banners or signs any participants may carry on the roadway;

_____ (e) A prohibition on the use of a particular roadway and the requirement of an alternate route, where other restrictions will not protect the governmental interests affected by the Free Speech Road Use, and ample alternatives for speech exist.

_____ (5) Once the application is complete, the Region Permit Officer shall apply best efforts to provide approval, approval with conditions, or denial of the Application within 30 days of receipt of a complete application, or seven days before the scheduled event, whichever is earlier.

_____ (6) Applications for Special Event Permit for a Short-Notice Free Speech Road Use shall be processed on an expedited basis, and the Region Permit Officer shall apply best efforts to provide approval, approval with conditions, or denial of the application within three business days of its receipt as complete.

R920-4-8. Special Use Double Booking Conflict Resolution.

_____ [~~Special event permits may not be accepted more than a year in advance of the actual event date. All special event permits are time and date stamped.~~](1) In cases where a double booking [type]-conflict [might surface] arises, the Department will encourage any secondary, or subsequent, [applicant]Applicant to review the feasibility of collocating with the original [applicant]Applicant. If collocating proves impracticable, the Department will encourage any secondary, or subsequent, [applicant]Applicant to offer a viable alternative strategy that meets the needs of all [applicants]Applicants, while also ensuring adequate public safety measures remain intact. [The]

_____ (2) For non-Free Speech Special Road Uses, the Department may also rely on local agency assistance with

establishing special event permitting priorities~~[—In all cases, the Department has]~~ and reserves the authority to exercise the discretion in giving priority consideration to an applicant based on an evaluation of historic use, potential economic benefit, and other relevant factors.

~~(3)~~ In cases where none of the aforementioned conflict resolution strategies prove effective in remedying a continuing dispute between multiple applicants, and the Department ~~[reserves]~~determines that collocating is impracticable, the ~~[right to determine which special event permit]~~Special Event Permit will be issued based on the earliest recorded application time and date where the Department has determined the ~~[applicant]~~Applicant has fully completed all application requirements.

R920-4-[5]9. Minimum Liability Coverage, Waiver and Release of Damages Form, and Indemnification Form Completion Requirements.

~~[The applicant]~~(1) The Applicant for a Special Event Permit governed by R920-4-7 shall obtain and provide proof of liability insurance at time of application naming the "State of Utah, the Department and its ~~[employees]~~Employees" as an additional insured under the certificate, with a minimum \$1,000,000 coverage per occurrence and \$~~[2]~~3,000,000 in aggregate. The ~~[applicant]~~name of the insured on the insurance policy and the name of the Applicant shall be identical.

~~(2)~~ The Applicant may fulfill the requirements of Subsection (1) by providing

(a) Sufficient proof that the Applicant has secured liability insurance for the event required by another governmental entity which meets the minimum coverage requirements contained in Subsection (1), and

(b) The Applicant has included the "State of Utah, the Department of Transportation, and its Employees" as an additional insured on the policy.

(3) The Applicant shall complete the appropriate "Waiver and Release of Damages" and "Indemnification" forms prior to permit issuance. All event participants shall also complete the "Waiver and Release of Damages" form prior to participating in the permitted event.

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

~~Participants in a free speech event on state rights of way are not required to sign or submit the "Waiver and Release of Damages" form described in R920-4-5, however the applicant of a free speech event is still required to complete the "Indemnification" form prior to permit issuance.~~

R920-4-7.] (4) The Applicant [Record—Retention Requirements.

~~Where multiple participants are involved in the special road use or event, the applicant]is responsible for ensuring each [event-]participant completes the [appropriate-]"Waiver and Release of Damages" [and "Indemnification-]"form prior to participating in the event. The originating [applicant]Applicant is the custodian of all signed participant waivers, as specified in [R920-4-4,]subsection (3), and shall produce these upon demand for inspection and review by the Department at any time within 12 months after the completion of the event.[—The Department may also require the~~

~~originating applicant to sign the original forms, as specified in R920-4, prior to permit issuance.]~~

R920-4-[8]10. Traffic Control Requirements and Considerations.

(1) All traffic control is the responsibility of the ~~[applicant]~~Applicant. A traffic control plan, in accordance with R920-1, R930-6 and ~~[Barriading and Construction-]~~Department Standard and Supplemental Drawings, shall be provided to, and approved by, the ~~[District]~~Region Traffic Engineer, or other authorized Department designee. ~~[The applicant shall restore]~~If the ~~[particular road segment]~~Region Traffic Engineer deems it necessary, considering the nature of the Applicant's Special Road Use and the proposed event path, the Applicant may be required to ~~[its original condition, free from litter, etc. An]~~perform and provide a traffic impact study for the Special Road Use.

(2) Road closures will require appropriate traffic control. Appropriate traffic control may include by uniformed state, county, or local peace officers, or a private company, identified event staff, or physical devices, as determined by the Department.

(3) The Region Permit Officer may require an alternate route~~[—may be required], or alternative time, if the proposed Special Road Use occurs~~ when traffic volumes are high, active road construction is present, an alternate event is already occupying the road, a safer route can accommodate the event, or the event poses a significant inconvenience to the traveling public.~~[—Road closures will require traffic control by Uniformed Peace Officers. The Department may require local police, the sheriff's department, the highway patrol, or the Department's Incident Management Team to inspect and monitor traffic control.]~~

(4) All railroad crossings and bridges shall be given special attention. The ~~[applicant]~~Applicant shall coordinate with the appropriate railroad representatives to ensure the event schedule does not conflict with the operation of the railroad.

(5) The Applicant shall restore the particular road segment to its original condition, free from litter and, other material changes.

(6) The Department may monitor and ensure compliance with the terms and conditions of any Special Event Permit, and require the Applicant to pay a monitoring and compliance fee at the rates authorized within the Department's fee schedule.

R920-4-[9]11. Public Notification Requirements.

(1) ~~As determined by the Region Permit Officer, the [applicant shall distribute a-]~~Applicant may be required to provide advance notification to the general public regarding the Special Road Use, depending on the nature of the roadway being used, the time of day of the use, and the impact on the non-participating travelling public and adjacent businesses.

(2) The Region Permit Officer may require the Applicant to inform the general public about the date, time, affected roads, traffic impacts, an estimate of the anticipated length of delay, and other information necessary to provide reasonable notice to the public of the Special Road Use. The methods of notification may include:

(a) A news release distributed to all local radio stations, television stations, and newspapers that announce the event and advise residents of alternate routes and potential delays.~~[—The news~~

~~release shall include the date, times, affected roads, and shall also include an estimate of the anticipated length of delay.]~~

~~(b) The posting of signs, including variable message signs, along the Special Road Use route for a reasonable period of time prior to the event;~~

~~(c) Attempts by the Applicant to personally contact residents and businesses along the Special Road Use route;~~

~~(d) The retention of a dedicated agent or public relations firm to maximize the distribution of the message.~~

~~(3) Any signs required to be posted pursuant to this rule, including any variable message signs, shall not advertise the event itself or any private products or services.~~

R920-4-[10]12. Contingency Plan and Participant Notification Requirements.

~~[The applicant is required to-](1) Considering the nature of the planned Special Road Use, the Applicant shall develop[plans for, and notify, each event participant on the following contingencies;]:~~

~~(a) Contingency or emergency plans[~~in the event of an accident or injury, closest hospitals, how to obtain emergency assistance, etc., locations of~~].~~

~~(b) Planned rest areas, [~~locations of~~]water facilities, and trash cleanup[~~plans~~], and~~

~~(c) Plans to ensure that [~~all~~]participants [~~are required to~~] obey [~~all~~]the conditions of the Special Event Permit and all other generally applicable traffic laws, lights, and signs.~~

~~(d) The Region Permit Officer may require that the Applicant provide notice to participants, bystanders, or the public of all plans enumerated in subsection (1) of this Rule. The amount of and method of notice shall be dependent on the circumstances of the Special Road Use.~~

R920-4-[11]13. Event Route Identification and Private Property Use Requirements.

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

R920-4-[12]14. Adherence to Municipal, County, or other Governmental Agency Permitting Requirements.

The [~~applicant is responsible for obtaining~~]Applicant shall procure any applicable city, county, or other governmental agency [~~permit. Demonstration of compliance with~~]approvals or permits.

R920-4-[12]15. Appeal.

~~(1) An Applicant may [~~be required~~]appeal the following determinations of a Region Permit Officer:~~

~~(a) Any denial of a Special Event Permit;~~

~~(b) A denial of a deviation request as described in Rule R920-4-5(3)(b);~~

~~(c) A determination that a proposed Special Road Use is not a Free Speech Road Use or Short-Notice Free Speech Road Use; and~~

~~(d) Any time, place, or manner restriction placed on a Special Event Permit for a Free Speech Road Use that the Applicant believes is unreasonable or illegal.~~

~~(2) The following process shall be used for an appeal:~~

~~(a) An Applicant may appeal the determinations described in subsection (1) decision to the Department's Program Development Director.~~

~~(b) Any appeal to the Department's Program Development Director shall be in writing and shall include:~~

~~(i) A statement of the basis for the objection.~~

~~(ii) Any supporting documents to be used in the appeal, and~~

~~(iii) A copy of any written decision issued by the Region Permit Officer.~~

~~(c) The Department's Program Development Director shall make a decision on appeal, based on the written submissions of the Applicant, and the Department's file.~~

~~(d) The Department's Program Development Director shall concur with, modify, or overrule the decision of the Region Permit Officer. The decision shall be in writing and shall explain the reasons for the decision.~~

~~(3) Appeals shall be resolved within the following timelines:~~

~~(a) For appeals brought under subsections (1)(c) or (d), the Department's Program Development Director shall issue a decision as soon as reasonably practicable, but no later than three business days after the Department's Program Development Director receives the written appeal.~~

~~(b) For all other appeals, the Department's Program Development Director shall issue a decision no later than 14 days prior to the [~~Department issuing any special road use or event permit~~]planned date of the Special Road Use, or within 30 days after the appeal has been lodged, whichever is later.~~

KEY: ~~parades, [~~bicycle~~]permits, road races, [~~films~~]special events~~

Date of Enactment or Last Substantive Amendment: ~~[~~December 10, 2012~~]2016~~

Notice of Continuation: August 1, 2012

Authorizing, and Implemented or Interpreted Law: 41-6a-1111; 41-22-15; 72-1-201; 72-1-212

Workforce Services, Employment Development **R986-200** Family Employment Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39944

FILED: 11/12/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to comply with recent statutory changes.

SUMMARY OF THE RULE OR CHANGE: The 2015 General Session passed two bills impacting this program. H.B. 65 lifted the 24-month time limit for educational activities and S.B. 17 lifted the 36-month limit for educational activities. The requirement that the education or training must be approved remains in place. Approval will only be granted if the client can prove the education or training meets certain criteria expected to lead to higher earning capacity.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-3-302(5)(b)

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 12/31/2015

THIS RULE MAY BECOME EFFECTIVE ON: 01/07/2016

AUTHORIZED BY: Jon Pierpont, Executive Director

R986. Workforce Services, Employment Development.

R986-200. Family Employment Program.

R986-200-209. Participation in Obtaining an Assessment.

(1) Within [2]30 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

- (a) family circumstances including health, needs of the children, support systems, and relationships;
- (b) personal needs or potential barriers to employment;
- (c) education;
- (d) work history;
- (e) skills;
- (f) financial resources and needs; and
- (g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-200-211. Education and Training As Part of an Employment Plan.

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent [is limited to the lesser of] will only be approved if all of the following are met:

- ~~(a) 24 months which need not be continuous; or~~
- ~~(b) the completion of the education and training requirements of the employment plan.~~

~~(2) Post high school education or training will only be approved if all of the following are met:~~

- (a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.
- (b) The client does not already have a degree or skills training certificate in a currently marketable occupation.
- (c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

~~[(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36-month lifetime limit for FEP and FEPTP, for which the client is eligible.]~~

~~_____ (3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:~~

~~_____ (a) the parent client is employed for 80 or more hours per month during each month of the extension;~~

~~_____ (b) circumstances beyond the control of the client prevented completion within 24 months; and~~

~~_____ (c) the Department director or designee determines that extending the 24-month limit is prudent because other employment, education, or training options do not enable the family to meet the objective of the program.~~

~~_____ (4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate a minimum of 30 hours per week in eligible activities. Twenty of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the minimum number of hours of participation under this subsection is 20 hours per week and all of those 20 hours must be in priority activities.]~~

~~[(5) Graduate work can never be approved or supported as part of an employment plan.]~~

R986-200-218. Exceptions to the Time Limit.

Exceptions to the time limit may be allowed for up to 20% of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) receipt of VA Disability benefits based on the parent being 100% disabled;

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Workers' Compensation benefits;

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical

condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, licensed Mental Health Therapist as defined in UCA Section 58-60-102, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. Substance abuse is considered the same as mental health condition;

(b) is under age 19 through the month of their nineteenth birthday;

(c) is currently engaged in an approved full-time job preparation[~~educational or training~~] activity which the parent was expected to complete within the 36 month time limit but completion within the 36 months was not possible through no fault of the parent[~~Additionally, if the parent has previously received, beginning with the month of January 1997, 24 months of financial assistance while attending educational or training activities, good cause for additional months must be shown and approved;~~];

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay;

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an exception under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An exception under this section can never be for longer than the delay in services;

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment;

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Dependent for the purposes of this paragraph means a person who the parent claims as a dependent on his or her income tax filing. Proof, consisting of a medical statement from a health care professional listed in subparagraph (1)(a)(v) or (vi) of this section is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the parent will be required in the home to care for the dependent, and

(iv) whether the parent is required to be in the home full-time or part-time; or

(h) is currently receiving assistance under one of the exceptions in this section and needs additional time to obtain employment. A client can only receive assistance for one month under this subparagraph. If the Department determines that granting an exception under this subparagraph adversely impacts its federally mandated participation rate requirements or might

otherwise jeopardize its funding, the one month exception will not be granted; ~~or~~

(i) the client is currently participating in the Intergenerational Welfare Dependency Poverty Pilot Program, "Next Generation Kids" and needs additional time to obtain job training and preparation to decrease the risk of his/her children being part of intergenerational welfare dependency. This exception will not be available if the Pilot Program is to end; ~~or~~

~~(j) parents who volunteer to fully participate in a Department-approved employment and training activity. Department approval will only be granted if all the requirements of Department rule 986-200-211(1)(a) through (f) are met.~~

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) threats of, or attempts at, physical or sexual abuse;

(e) mental abuse which includes stalking and harassment;

or

(f) neglect or deprivation of medical care.

(3) Employment extension. An extension to the time limit can be granted for a maximum of an additional 24 months if during the previous two months, the parent client was employed for no less than 20 hours per week. The employment can consist of self-employment if the parent's net income from that self-employment is at or above minimum wage.

(a) If, at the end of the 24-month extension, the parent client qualifies for an exception under subsections (1) or (2) of this section, an exception can be granted under the provisions of those sections.

(b) A family cannot receive financial assistance for more than a total of 60 months unless an exception can be granted under subsections (1) and (2) of this section.

(4) All clients receiving an extension or an exception must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection, establishment, and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions or extension listed above. Both parents need not meet the same exception or extension.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons for an exception in Subsections (1) (c), (d), (e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including food stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

(8) Exceptions and extensions are subject to a review at least once every six months.

KEY: family employment program

Date of Enactment or Last Substantive Amendment:
~~September 1, 2015~~2016

Notice of Continuation: September 2, 2015

Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.

End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Division of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

Administrative Services, Finance **R25-15**

Change Date and Set Aside Provisions for Annual Leave II

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 39942

FILED: 11/12/2015

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is required by legislation, see S.B. 269 from the 2014 General Session. S.B. 269 requires the Division of Finance to make rules to establish a change date for annual leave II; and for the determination, collection, and deposit of set-aside rates for annual leave II.

SUMMARY OF THE RULE OR CHANGE: This rule is to establish a change date for annual leave II. The change date established by the Division of Finance is 06/20/2015. All annual leave accrued on or after the change date, to an employee who is eligible to receive paid leave, will be considered annual leave II. State agencies are required to offer annual leave II in lieu of annual leave to eligible employees on or after the change date. The rule also

requires the Division of Finance to determine a set-aside rate for each subfund of the annual leave trust fund. The set-aside rates will be determined by the expected increase in the annual leave liability subject to a 10% cap. The rule names the subfunds of the trust and requires the Division of Finance to apply the set-aside rates to gross pay of eligible employees and deposit the amounts generated into the applicable subfunds of the trust. There is no impact to state employees. The rule does not affect existing annual leave benefits. (DAR NOTE: A corresponding proposed new Rule R25-15 is under DAR No. 39943 in this issue, December 1, 2015, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 67-19-14.6(2) and Subsection 67-19-14.6(4) and Subsection 67-19-14.6(5) and Subsection 67-19-14.6(7)(b)

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

JUSTIFICATION: This rule is required by S.B. 269 from the 2014 General Session. S.B. 269 requires the Division of Finance to establish a change date of no later than 01/02/2016 for Annual Leave II. This rule will be submitted through the regular rulemaking process but will not become effective prior to the required change date in S.B. 269. Therefore, Finance is submitting this rule as a 120-day

emergency rule in order to have the rule in place prior to 01/02/2016.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There may be a cost to the state budget, but it will depend on whether there is a projected increase in the annual leave liability each year. The cost to the state will be further limited to a cap of 10% of the total annual leave liability that can be deposited into the trust from funds generated by the set aside rates. There is no impact to state employees, and the rule does not affect existing annual leave benefits.

◆ **LOCAL GOVERNMENTS:** There will not be costs to local governments because the rule only governs state employees eligible to receive paid leave for leave accrued after 06/20/2015.

◆ **SMALL BUSINESSES:** There will not be costs to small businesses because the rule only governs state employees eligible to receive paid leave.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** State employees' annual leave accrued on or after 06/20/2015 will be considered annual leave II. State agencies are required to offer annual leave II in lieu of annual leave to eligible employees on or after the change date. This rule does not affect existing annual leave benefits of state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule establishes a change date for leave accrued on or after the change date of 06/20/2015. State employee's annual leave accrued after 06/20/2015 will be considered annual leave II. Because the rule does not require any new action on the part of state employees who are eligible for annual leave there are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact to businesses because the rule only applies to state employees eligible to receive paid leave.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ John Reidhead by phone at 801-538-1678, by FAX at 801-538-3244, or by Internet E-mail at jreidhead@utah.gov

EFFECTIVE: 11/12/2015

AUTHORIZED BY: John Reidhead, Director

R25. Administrative Services, Finance.

R25-15. Change Date and Set Aside Provisions for Annual Leave II.

R25-15-1. Authority, Purpose, and Definitions.

(1) This rule is authorized under Subsection 67-19-14.6(2) which requires the division to establish a change date, and Subsection 67-19-14.6(7)(b) which requires the division to make rules for the set aside provisions under Subsections 67-19-14.6(4) and 67-19-14.6(5).

(2) Terms used in this rule are defined in Subsection 67-19-14.6(1).

R25-15-2. Change Date.

For the purposes of Subsection 67-19-14.6(2):

(1) The change date established by the division is June 20, 2015.

(2) All annual leave accrued on or after the change date, to an employee who is eligible to receive paid leave, will be considered annual leave II.

(3) State agencies are required to offer annual leave II in lieu of annual leave to eligible employees on or after the change date.

R25-15-3. Determination of Set Aside.

(1) The division may contract with a qualified actuary to help the division determine the expected change in the annual leave liability for a fiscal year.

(2) As required by generally accepted accounting principles and with consideration of Subsection 67-19-14.6(4), the division will calculate the annual leave liability to include applicable employer paid taxes and other employer paid benefits that would be required if the employee were paid for the annual leave.

(3) For each fiscal year, if the division expects the annual leave liability to increase, the division, in consultation with the Governor's Office of Management and Budget, will determine a rate for set aside for each applicable subfund of the annual leave trust.

(4) The division will inform the legislative Fiscal Analyst of the proposed set-aside rates.

(5) The set-aside rates will be determined as a percentage of gross pay of an employee who is eligible to receive paid leave, which if put into effect, would be expected to generate the amount of the projected increase in the annual leave liability applicable to each subfund of the annual leave trust.

(6) In accordance with Subsection 67-19-14.6(4)(c) and Subsection 67-19f-201(3)(b), the proposed set-aside rates will also be adjusted or eliminated as applicable if the accrual of funding in a subfund of the annual leave trust is expected to reach 10% of the annual leave liability attributable to the subfund.

(7) At the beginning of each fiscal year, the division will put into effect the set aside rates authorized by the Legislature for the fiscal year.

R25-15-4. Collection and Deposit of Set Aside in Subfunds of the Annual Leave Trust.

(1) To implement the provision of Title 67 Chapter 19f, State Employees' Annual Leave Trust Fund Act, the division created the following subfunds within the trust:

(a) Public Safety.

(b) Transportation.

(c) Public Education, and

(d) General.

(2) The Public Safety subfund applies to all employees within the Department of Public Safety.

(3) The Transportation Subfund applies to all employees within the Department of Transportaion.

(4) The Public Education subfund applies to all employees within the State Office of Education and State Office of Vocational Rehabilitation.

(5) The General subfund applies to all other employees in the Executive, Legislative, and Judicial Branches of the State.

(6) The division shall deposit in each applicable subfund, the amount of funds generated by applying the authorized set-aside rates to each employee eligible to receive paid leave.

(7) In consultation with the Governor's Office of Management and Budget, in accordance with Subsection 67-19-14.6(4)(c) and Subsection 67-19f-201(3)(b), the division will reduce or stop charging a set-aside rate if the funding in a subfund of the annual leave trust reaches or is expected to reach 10% of the annual leave liability attributable to the subfund.

KEY: annual leave, trust fund, liability, state employees

Date of Enactment or Last Substantive Amendment: November 12, 2015

Authorizing, and Implemented or Interpreted Law: 67-19-14.6(2); 67-19-14.6(7)(b); 67-19-14.6(4); 67-19-14.6(5); 67-19-14.6(1)

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

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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

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

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

Administrative Services, Fleet Operations **R27-1** Definitions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39918
FILED: 11/06/2015

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is established pursuant to Section 63A-9-401 which requires the Department of Administrative Services, Division of Fleet Operations to establish rules regarding the state fleet.

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 over the past five years from interested persons supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes definitions that provide clarity and continuity for all Division of Fleet Operations rules. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES
FLEET OPERATIONS
ROOM 4120 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:

♦ Jeff Mottishaw by phone at 801-538-3601, or by Internet E-mail at jmottishaw@utah.gov

AUTHORIZED BY: Jeff Mottishaw, Director

EFFECTIVE: 11/06/2015

Administrative Services, Fleet Operations **R27-2**

Fleet Operations Adjudicative Proceedings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39919
FILED: 11/06/2015

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is established pursuant to Section 63G-4-202 which allows an agency to designate, by rule, categories of adjudicative proceedings to be conducted informally.

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 over the past five years from interested persons supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed to establish procedures governing informal adjudicatory proceedings for the Division of Fleet Operations. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 FLEET OPERATIONS
 ROOM 4120 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:
 ♦ Jeff Mottishaw by phone at 801-538-3601, or by Internet E-mail at jmottishaw@utah.gov

AUTHORIZED BY: Jeff Mottishaw, Director

EFFECTIVE: 11/06/2015

**Administrative Services, Fleet
 Operations
 R27-3
 Vehicle Use Standards**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 39920
 FILED: 11/06/2015

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is established pursuant to Subsection 63A-9-401(1)(d) which authorizes the Division of Fleet Operations to establish the requirement for the use of

state vehicles, including business and personal use practices, and commute standards.

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 over the past five years from interested persons supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required to define the vehicle use standards for state employees while operating a state vehicle. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 FLEET OPERATIONS
 ROOM 4120 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:
 ♦ Jeff Mottishaw by phone at 801-538-3601, or by Internet E-mail at jmottishaw@utah.gov

AUTHORIZED BY: Jeff Mottishaw, Director

EFFECTIVE: 11/06/2015

**Administrative Services, Fleet
 Operations
 R27-7
 Safety and Loss Prevention of State
 Vehicles**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 39921
 FILED: 11/06/2015

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is established pursuant to Subsection 63A-9-401(1)(d)(iii) which requires the Division of Fleet Operations to make rules establishing requirements for fleet safety and loss prevention programs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received over the past five years from interested persons supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed to establish the requirements for fleet safety and loss prevention programs for the Division of Fleet Operations. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 FLEET OPERATIONS
 ROOM 4120 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:
 ♦ Jeff Mottishaw by phone at 801-538-3601, or by Internet E-mail at jmottishaw@utah.gov

AUTHORIZED BY: Jeff Mottishaw, Director

EFFECTIVE: 11/06/2015

Education, Administration
R277-705
 Secondary School Completion and
 Diplomas

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 39935
 FILED: 11/10/2015

**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: Utah Constitution Article X, Section 3, vests general control and supervision of public education in the Board; Subsections 53A-1-402(1)(b) and (c) direct the Board to make rules regarding competency levels, graduation requirements, and instruction requirements; and Subsection 53A-1-401(3) authorizes the Board to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-705 continues to be necessary because it provides alternative methods for a student to earn credit and alternate methods for schools to award credits and provides procedures for the assessment of all students as required by law.

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: 11/10/2015

Environmental Quality, Water Quality
R317-102
 Utah Wastewater State Revolving Fund
 (SRF) Program

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 39946
 FILED: 11/16/2015

**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 19-5-104(1)(a) authorizes the Utah Water Quality Board to adopt rules to implement awarding construction loans to political subdivisions and municipal authorities under Section 11-8-2. The authority for the Department of Environmental Quality acting through the Utah Water Quality Board to issue loans to

finance all or part of wastewater project costs from the State Revolving Fund (SRF) is provided in Title VI of the Federal Clean Water Act and Section 73-10c-1.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received during the last five-year review period for the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes policies and procedures for implementing the Utah Wastewater SRF Program. The rule contains definitions, eligibility requirements, types of financial assistance provided, and funding priorities that are central to the Water Quality Board's implementation of their statutory charge. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

AUTHORIZED BY: Walter Baker, Director

EFFECTIVE: 11/16/2015

Health, Family Health and
 Preparedness, Emergency Medical
 Services
R426-7
 Emergency Medical Services
 Prehospital Data System Rules

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 39932
 FILED: 11/10/2015

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE

OR REQUIRE THE RULE: Under Title 26, Chapter 8a, Emergency Medical Services (EMS) is required to collect and maintain related health data.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Code Annotated still requires that EMS collect and use related EMS data. Therefore, this rule should be continued.

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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/10/2015

Health, Family Health and
 Preparedness, Emergency Medical
 Services
R426-8
 Emergency Medical Services
 Ambulance Rates and Charges

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 39933
 FILED: 11/10/2015

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Title 26, Chapter 8a, it is required that the department set rates and charges for licensed ambulance providers.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Code Annotated still requires Emergency Medical Services (EMS) to manage and distribute fines and forfeiture funds as allocated. Therefore, this rule should be continued.

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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/10/2015

Health, Family Health and Preparedness, Licensing
R432-100
General Hospital Standards

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 39916
 FILED: 11/05/2015

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/05/2015

Health, Family Health and Preparedness, Licensing
R432-101
Specialty Hospital - Psychiatric

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 39915
 FILED: 11/05/2015

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/05/2015

Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/05/2015

Health, Family Health and
 Preparedness, Licensing
R432-102
 Specialty Hospital - Chemical
 Dependency/Substance Abuse

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

DAR FILE NO.: 39917
 FILED: 11/05/2015

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26,

Health, Family Health and
 Preparedness, Licensing
R432-103
 Specialty Hospital - Rehabilitation

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

DAR FILE NO.: 39926
 FILED: 11/09/2015

**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: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/09/2015

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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/09/2015

Health, Family Health and Preparedness, Licensing
R432-104

Specialty Hospital - Long-Term Acute Care

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 39925
FILED: 11/09/2015

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: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

Health, Family Health and Preparedness, Licensing
R432-105

Specialty Hospital - Orthopedic

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 39927
FILED: 11/09/2015

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: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/09/2015

Health, Family Health and Preparedness, Licensing
R432-106
 Specialty Hospital - Critical Access

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 39928
 FILED: 11/09/2015

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: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/09/2015

Health, Family Health and Preparedness, Licensing
R432-500
 Freestanding Ambulatory Surgical Center Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 39929
 FILED: 11/09/2015

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: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/09/2015

Health, Family Health and
Preparedness, Licensing
R432-550
Birthing Centers

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

DAR FILE NO.: 39930
FILED: 11/09/2015

**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: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been written comments in regards to amending the statute and this rule so the current unlicensed birthing centers would be able to comply and become licensed. Birthing centers have a difficult time complying with the rule requirement of having either a transfer agreement with a hospital or having a physician with admitting privileges at a hospital. These providers agree the rule should be continued.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Bureau has and will continue to work closely with the Health Facility Committee and the birthing centers in regards to amendments to the birthing center rule. This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/09/2015

Health, Family Health and
Preparedness, Licensing
R432-600
Abortion Clinic Rule

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

DAR FILE NO.: 39931
FILED: 11/09/2015

**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: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/09/2015

Human Services, Recovery Services **R527-34** Non-IV-A Services

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39947

FILED: 11/16/2015

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: Section 62A-11-107 gives the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law. Provisions found in Section 62A-11-104 require the office to provide child support services to those that are legally entitled to receive those services and requires that ORS collect money due the agency which could help offset state expenditures. The rule also summarizes the services available to recipients of Non-IV-A child support services, individuals not receiving case assistance who are otherwise eligible for child support services. 45 CFR 302.33 states that ORS must provide that an application fee will be charged for each individual who applies for services, that ORS shall collect the application fee from the individual or pay the application fee out of state funds, and that ORS may elect to recover any costs incurred in excess of any fees collected to cover administrative costs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because the Non-IV-A services outlined in this rule are still provided by ORS. In addition, this rule incorporates 45 CFR 302.33 by reference, which is still in effect. This federal regulation addresses costs that a state may elect to recover for providing Non-IV-A services, and it is still necessary to specify the fees that ORS has elected to charge, or not charge, for child support services.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Casey Cole by phone at 801-536-0360, by FAX at 801-536-8509, or by Internet E-mail at cacole@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 11/16/2015

Human Services, Recovery Services **R527-35** Non-IV-A Fee Schedule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39948

FILED: 11/16/2015

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: Section 62A-11-107 gives the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law pursuant to Title 62A, Chapter 11. Provisions found in Section 62A-11-104 require the office to collect money due the agency which may help offset state expenditure. 45 CFR 302.33 states that ORS must provide that an application fee will be charged for each individual who applies for services, that ORS shall collect the application fee from the individual or pay the application fee out of state funds, and that ORS may elect to recover any costs incurred in excess of any fees collected to cover administrative costs. This rule provides the schedule of fees that ORS may charge recipients of child support services who are not receiving financial assistance or Medicaid.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because the

fees outlined in this rule that are charged for the Non-IV-A services provided by ORS are still in effect. In addition, this rule incorporates 45 CFR 302.33 by reference, which is still in effect, and addresses the costs that a state may elect to recover for providing Non-IV-A services. The fees listed in this rule are not specified in the federal regulations or in the authorizing state statute.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Casey Cole by phone at 801-536-0360, by FAX at 801-536-8509, or by Internet E-mail at cacole@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 11/16/2015

Human Services, Recovery Services **R527-231**

Review and Adjustment of Child Support Order

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39908
FILED: 11/03/2015

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 62A-11-107 gives the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law. Section 78B-12-210 provides the guidelines for establishing or modifying a judicial or administrative child support order. Section 62A-11-320.5 requires ORS to review and adjust child support orders every three years, taking into account the best interest of the child involved. Section 62A-11-320.6 allows ORS to review a child support order at any time if there has been a substantial change in circumstances.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: There have been no comments received since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued because the state and federal laws are still in effect which require review and adjustment processes for child support orders. In addition, this rule provides essential clarification by listing specific situations where a review and adjustment will or will not be pursued by ORS.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Scott Weight by phone at 801-741-7435, by FAX at 801-536-8509, or by Internet E-mail at sweigh2@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 11/03/2015

Human Services, Recovery Services **R527-800**

Acquisition of Real Property, and Medical Support Cooperation Requirements

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39949
FILED: 11/16/2015

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: Section 62A-11-104 gives the Office of Recovery Services (ORS) the authority to determine whether an applicant or recipient of cash assistance or Medicaid is cooperating in good faith. Section 62A-11-111 provides ORS with reasonable costs of sale and settlement of property or an estate when it becomes necessary to sell property or settle an estate. Section 59-2-1101 states that property owned by the state is tax exempt. 42 CFR 433.147-148 authorizes ORS to gather information from a recipient of

medical assistance regarding Third Party Liability, establishment of paternity for children to establish medical support liability, and in utilizing all available third party resources to offset Medicaid expenditures, and by failing to provide this information, the recipient may be removed from the medical assistance case.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because the laws that require ORS to initiate enforcement actions against real property in order to satisfy financial obligations when other methods have failed or are unavailable are still in effect.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN SERVICES
 RECOVERY SERVICES
 515 E 100 S
 SALT LAKE CITY, UT 84102-4211
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Casey Cole by phone at 801-536-0360, by FAX at 801-536-8509, or by Internet E-mail at cacole@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 11/16/2015

**Human Services, Recovery Services
 R527-936**

Third Party Liability, Medicaid

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 39909
 FILED: 11/03/2015

**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: Title 26, Chapter 19; Section 26-18-8; and Subsection 26-18-10(4) require the Office of Recovery Services (ORS) to promulgate rules to administer the Third Party Liability Program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed to continue the Third Party Liability program required by the Medical Benefits Recovery Act found in Title 26, Chapter 19.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN SERVICES
 RECOVERY SERVICES
 515 E 100 S
 SALT LAKE CITY, UT 84102-4211
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Scott Weight by phone at 801-741-7435, by FAX at 801-536-8509, or by Internet E-mail at sweigh2@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 11/03/2015

**Transportation Commission,
 Administration
 R940-6**

**Prioritization of New Transportation
 Capacity Projects**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 39910
 FILED: 11/03/2015

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Rule R940-6 is mandated by Section 72-1-304, which requires the Transportation Commission to develop a written prioritization process for the prioritization of new transportation capacity projects and promulgate the process into an administrative rule.

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 about this rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 72-1-304 is still a valid statute and it has not been amended to eliminate the requirement for the rule. Therefore, this rule should be continued.

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

CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119
or at the 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: 11/03/2015

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

NOTICES OF RULE EFFECTIVE DATES

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

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

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

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Administrative Services

Facilities Construction and Management

No. 39752 (AMD): R23-3. Planning and Programming for Capital Projects

Published: 10/01/2015

Effective: 11/09/2015

Commerce

Occupational and Professional Licensing

No. 39639 (AMD): R156-41-602. Form of Written Informed Consent

Published: 10/01/2015

Effective: 11/10/2015

Environmental Quality

Air Quality

No. 39355 (NEW): R307-230. NOx Emission Limits for Natural Gas-Fired Water Heaters

Published: 06/01/2015

Effective: 11/03/2015

No. 39355 (CPR): R307-230. NOx Emission Limits for Natural Gas-Fired Water Heaters

Published: 10/01/2015

Effective: 11/03/2015

Drinking Water

No. 39640 (AMD): R309-500-6. Plan Approval Procedure

Published: 10/01/2015

Effective: 11/16/2015

No. 39641 (AMD): R309-520. Facility Design and Operation: Disinfection

Published: 10/01/2015

Effective: 11/16/2015

Solid and Hazardous Waste

No. 39459 (AMD): R315-15-18. Polychlorinated Biphenyls (PCBs)

Published: 07/15/2015

Effective: 11/12/2015

Governor

Criminal and Juvenile Justice (State Commission on)

No. 39450 (NEW): R356-1. Procedures for the Calculation and Distribution of Funds to Reimburse County Correctional Facilities Housing State Probationary Inmates or State Parole Inmates

Published: 07/15/2015

Effective: 11/04/2015

Health

Children's Health Insurance Program

No. 39734 (AMD): R382-10. Eligibility

Published: 10/01/2015

Effective: 11/16/2015

Insurance

Administration

No. 39754 (AMD): R590-260. Utah Defined Contribution Risk Adjuster Plan of Operation

Published: 10/01/2015

Effective: 11/09/2015

NOTICES OF RULE EFFECTIVE DATES

Natural Resources

Wildlife Resources

No. 39719 (AMD): R657-3. Collection, Importation, Transportation, and Possession of Animals
Published: 10/01/2015
Effective: 11/10/2015

No. 39717 (AMD): R657-6. Taking Upland Game
Published: 10/01/2015
Effective: 11/10/2015

No. 39718 (AMD): R657-9. Taking Waterfowl, Common Snipe and Coot
Published: 10/01/2015
Effective: 11/10/2015

No. 39712 (AMD): R657-10. Taking Cougar
Published: 10/01/2015
Effective: 11/10/2015

No. 39713 (AMD): R657-11. Taking Furbearers
Published: 10/01/2015
Effective: 11/10/2015

No. 39715 (AMD): R657-45. Wildlife License, Permit, and Certificate of Registration Forms and Terms
Published: 10/01/2015
Effective: 11/10/2015

No. 39739 (AMD): R657-55. Wildlife Expo Permits
Published: 10/01/2015
Effective: 11/10/2015

No. 39714 (AMD): R657-60. Aquatic Invasive Species Interdiction
Published: 10/01/2015
Effective: 11/10/2015

No. 39716 (AMD): R657-63. Self Defense Against Wild Animals
Published: 10/01/2015
Effective: 11/10/2015

Public Safety

Peace Officer Standards and Training

No. 39738 (AMD): R728-409. Suspension, Revocation, or Relinquishment of Certification
Published: 10/01/2015
Effective: 11/12/2015

End of the Notices of Rule Effective Dates Section

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

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2015 through November 16, 2015. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

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

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

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

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

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Administrative Rules</u>					
R15-1	Administrative Rule Hearings	39726	5YR	09/11/2015	2015-19/113
R15-2	Public Petitioning for Rulemaking	39727	5YR	09/11/2015	2015-19/113
R15-3	Definitional Clarification of Administrative Rule	39728	5YR	09/11/2015	2015-19/114
R15-4	Administrative Rulemaking Procedures	39729	5YR	09/11/2015	2015-19/115
R15-5	Administrative Rules Adjudicative Proceedings	39730	5YR	09/11/2015	2015-19/115
<u>Facilities Construction and Management</u>					
R23-1	Procurement of Construction	39033	R&R	03/03/2015	2015-2/4
R23-1-1504	Performance Evaluation	39642	NSC	09/30/2015	Not Printed
R23-2	Procurement of Architect-Engineer Services	39061	REP	03/16/2015	2015-3/4
R23-3	Planning and Programming for Capital Projects	39752	AMD	11/09/2015	2015-19/4
R23-7	State Construction Contracts and Drug and Alcohol Testing	39482	5YR	06/30/2015	2015-14/139
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	39301	AMD	06/22/2015	2015-10/6
R25-10	State Entities Posting of Financial Information to the Utah Public Finance Website	39360	AMD	07/08/2015	2015-11/4
R25-15	Change Date and Set Aside Provisions for Annual Leave II	39942	EMR	11/12/2015	Not Printed
R25-25-7	Travel-Related Reimbursements for State Employees	39160	AMD	04/21/2015	2015-6/10
<u>Fleet Operations</u>					
R27-1	Definitions	39918	5YR	11/06/2015	Not Printed
R27-2	Fleet Operations Adjudicative Proceedings	39919	5YR	11/06/2015	Not Printed
R27-3	Vehicle Use Standards	39920	5YR	11/06/2015	Not Printed
R27-7	Safety and Loss Prevention of State Vehicles	39921	5YR	11/06/2015	Not Printed
<u>Purchasing and General Services</u>					
R33-1-1	Definitions	38974	AMD	01/28/2015	2014-24/4
R33-4	General Procurement Provisions, Prequalifications, Specifications, and Small Purchases	39327	AMD	06/23/2015	2015-10/11
R33-4	General Procurement Provisions, Prequalifications, Specifications, and Small Purchases	39472	AMD	08/21/2015	2015-14/6
R33-4	General Procurement Provisions, Prequalifications, Specifications, and Small Purchases	39523	NSC	08/24/2015	Not Printed
R33-6-101	Competitive Sealed Bidding; Multiple Stage Bidding; Reverse Auction	38975	AMD	01/28/2015	2014-24/5

R33-6-109	Only One Bid Received	39366	AMD	07/09/2015	2015-11/5
R33-7	Request for Proposals	38976	AMD	01/28/2015	2014-24/6
R33-7	Request for Proposals	39513	NSC	07/30/2015	Not Printed
R33-7-702	Only One Proposal Received	39365	AMD	07/09/2015	2015-11/6
R33-7-702	Only One Proposal Received	39432	AMD	08/07/2015	2015-13/6
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	Controversies and Protests	39470	AMD	08/21/2015	2015-14/9
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
R33-26-202	Information Technology Equipment	39042	AMD	03/31/2015	2015-2/33
R33-26-202	Disposal of State-Owned Surplus Electronic Data Devices	39454	AMD	08/21/2015	2015-14/11
<u>Records Committee</u>					
R35-1	State Records Committee Appeal Hearing Procedures	39400	AMD	07/31/2015	2015-11/7
R35-2	Declining Appeal Hearings	39401	AMD	07/31/2015	2015-11/9
R35-4	Compliance with State Records Committee Decisions and Orders	39402	AMD	07/31/2015	2015-11/10
R35-5	Subpoenas Issued by the Records Committee	39403	AMD	07/31/2015	2015-11/11
R35-6	Expedited Hearing	39404	AMD	07/31/2015	2015-11/12
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-1	Public Petitions for Declaratory Rulings	39633	EXD	09/01/2015	2015-18/137
R51-1	Public Petitions for Declaratory Rulings	39636	EMR	09/02/2015	2015-19/109
<u>Animal Industry</u>					
R58-1	Admission, Identification, and Inspection of Livestock, Poultry and other Animals	39423	AMD	08/12/2015	2015-13/7
R58-2	Disease, Inspections, and Quarantines	39422	AMD	08/12/2015	2015-13/14
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
R58-12	Record Keeping and Carcass Identification at Meat Exempt (Custom Cut) Establishments	39573	5YR	08/12/2015	2015-17/97
R58-13	Custom Exempt Slaughter	39614	EXD	08/25/2015	2015-18/137
R58-13	Custom Exempt Slaughter	39616	EMR	08/25/2015	2015-18/131
R58-15	Collection of Annual Fees for the Wildlife Damage Prevention Act	39602	5YR	08/13/2015	2015-17/97
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
R58-22	Equine Infectious Anemia (EIA)	39424	AMD	08/12/2015	2015-13/15
<u>Chemistry Laboratory</u>					
R63-1	Fee Schedule	39611	5YR	08/24/2015	2015-18/133
<u>Plant Industry</u>					
R68-1	Utah Bee Inspection Act Governing Inspection of Bees	39237	5YR	03/24/2015	2015-8/33
R68-1	Utah Bee Inspection Act Governing Inspection of Bees	39612	5YR	08/24/2015	2015-18/133
R68-2	Utah Commercial Feed Act Governing Feed	39471	5YR	06/29/2015	2015-14/139
R68-6	Utah Nursery Act	39548	5YR	07/29/2015	2015-16/79
R68-10	Quarantine Pertaining to the European Corn Borer	39507	5YR	07/10/2015	2015-15/31
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

RULES INDEX

Regulatory Services

R70-101	Bedding, Upholstered Furniture and Quilted Clothing	39223	5YR	03/16/2015	2015-7/57
R70-101	Bedding, Upholstered Furniture and Quilted Clothing	39407	R&R	07/22/2015	2015-12/6
R70-610	Uniform Retail Wheat Standards of Identify	39561	5YR	08/05/2015	2015-17/98
R70-620	Enrichment of Flour and Cereal Products	39560	5YR	08/05/2015	2015-17/98
R70-910	Registration of Servicepersons for Commercial Weighing and Measuring Devices	39562	5YR	08/05/2015	2015-17/99
R70-950	Uniform National Type Evaluation	39563	5YR	08/05/2015	2015-17/99

ALCOHOLIC BEVERAGE CONTROL

Administration

R81-1-3	General Policies	39156	AMD	04/28/2015	2015-6/16
R81-1-6	Violation Schedule	39158	AMD	04/28/2015	2015-6/18
R81-1-26	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
R81-2-8	Accepting Checks as Payment for Liquor	39476	AMD	08/25/2015	2015-14/13
R81-2-9	Accepting Credit Cards as Payment for Liquor	39330	AMD	06/24/2015	2015-10/20
R81-3-1	Definition	39417	AMD	07/28/2015	2015-12/12
R81-3-5	Special Orders of Liquor by Public	39155	AMD	04/28/2015	2015-6/23
R81-3-14	Type 5 Package Agencies	39418	AMD	07/28/2015	2015-12/14
R81-3-19	Credit Cards	39331	AMD	06/24/2015	2015-10/21
R81-4B	Airport Lounge Licenses	39803	5YR	10/02/2015	2015-21/107
R81-4E	Resort Licenses	39059	5YR	01/08/2015	2015-3/69
R81-7	Single Event Permits	39474	R&R	11/02/2015	2015-14/14
R81-7	Single Event Permits	39474	CPR	11/02/2015	2015-18/128
R81-10A	Recreational Amenity On-Premise Beer Retailer Licenses	39804	5YR	10/02/2015	2015-21/107
R81-10B	Temporary Beer Event Permits	39475	REP	11/02/2015	2015-14/18

ATTORNEY GENERAL

Administration

R105-1	Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services	39032	AMD	03/26/2015	2015-2/34
R105-1	Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services	39099	AMD	03/26/2015	2015-4/4
R105-1	Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services	39363	EMR	05/12/2015	2015-11/171
R105-1	Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services	39364	AMD	07/13/2015	2015-11/13
R105-3	White Collar Crime Registry	39445	NEW	08/10/2015	2015-13/17

AUDITOR

Administration

R123-6	Allocation of Money in the Property Tax Valuation Agency Fund	39136	AMD	04/08/2015	2015-5/8
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CAPITOL PRESERVATION BOARD (STATE)

Administration

R131-2	Capitol Hill Complex Facility Use	39025	AMD	02/24/2015	2015-2/41
R131-6	Board Designation of Space	39501	5YR	07/06/2015	2015-15/31
R131-9	Art and Exhibits	39266	EXD	04/08/2015	2015-9/87
R131-15	State Construction Contracts and Drug and Alcohol Testing	39502	5YR	07/06/2015	2015-15/32

COMMERCE

Administration

R151-4-109	Extension of Time and Continuance of Hearing	39144	AMD	04/10/2015	2015-5/9
R151-14-3	Adjudicative Proceedings	39034	AMD	02/24/2015	2015-2/49

Consumer Protection

R152-1	Utah Division of Consumer Protection: "Buyer Beware List"	39281	5YR	04/15/2015	2015-9/83
R152-1	Utah Division of Consumer Protection: "Buyer Beware List"	39273	AMD	06/08/2015	2015-9/5
R152-22-3	Application for Charitable Organization Permit	39525	AMD	09/21/2015	2015-16/7
R152-39	Child Protection Registry Rules	39282	5YR	04/15/2015	2015-9/83
R152-49	Immigration Consultants Registration Act Rules	39524	NEW	09/21/2015	2015-16/8

Occupational and Professional Licensing

R156-1	General Rule of the Division of Occupational and Professional Licensing	39630	AMD	10/22/2015	2015-18/56
R156-1-308a	Renewal Dates	39857	NSC	11/09/2015	Not Printed
R156-17b	Pharmacy Practice Act Rule	39056	5YR	01/05/2015	2015-3/69
R156-17b	Pharmacy Practice Act Rule	39018	AMD	02/24/2015	2015-2/51
R156-20a	Environmental Health Scientist Act Rule	39306	5YR	04/27/2015	2015-10/101
R156-20a	Environmental Health Scientist Act Rule	39351	AMD	07/09/2015	2015-11/20
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	39609	AMD	10/22/2015	2015-18/63
R156-22-302c	Qualifications for Licensure - Experience Requirements	39856	NSC	11/09/2015	Not Printed
R156-24b-302b	Qualifications for Licensure - Examination Requirements	39092	AMD	03/24/2015	2015-4/9
R156-26a-501	Unprofessional Conduct	39055	AMD	04/02/2015	2015-3/7
R156-28-304	Continuing Professional Education	39233	AMD	05/27/2015	2015-8/6
R156-31b	Nurse Practice Act Rule	39132	AMD	04/07/2015	2015-5/10
R156-31b-103	Authority - Purpose	39615	NSC	09/11/2015	Not Printed
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R657-6	Taking Upland Game	39717	AMD	11/10/2015	2015-19/78
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R722-380	Firearm Background Check Information	39411	AMD	07/22/2015	2015-12/31

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R865-9I-37	Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 63M-1-401 through 63M-1-414	39426	NSC	06/24/2015	Not Printed
R865-13G-18	Definition of Statewide Average Rack Price of a Gallon of Motor Fuel Pursuant to Utah Code Ann. Sections 59-13-201 and 59-13-210	39618	AMD	10/22/2015	2015-18/108
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 R895-2 Americans With Disabilities Act (ADA) Complaint Procedure 39753 5YR 09/15/2015 2015-19/120
 R895-6 IT Plan Submission Rule for Agencies 39026 AMD 05/05/2015 2015-2/104
 R895-14 Access to Information Technology for Users with Disabilities 39427 NEW 08/07/2015 2015-13/52

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 R920-2 Rural Conventional Road Definition 39495 NEW 08/24/2015 2015-14/109
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R926-8	Guidelines for Partnering with Local Governments	39505	NSC	07/30/2015	Not Printed
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R986-700	Child Care Assistance	39395	AMD	09/01/2015	2015-11/159
R986-700	Child Care Assistance	39496	AMD	09/01/2015	2015-14/110
R986-700	Child Care Assistance	39647	5YR	09/03/2015	2015-19/123
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R994-207	Unemployment	39577	5YR	08/13/2015	2015-17/107
R994-304	Special Provisions Regarding Transfers of Unemployment Experience and Assigning Rates	39242	5YR	03/25/2015	2015-8/42
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R994-403-118e	Disqualification Periods if a Claimant Fails to Provide Information	39792	NSC	10/20/2015	Not Printed

RULES INDEX - BY KEYWORD (SUBJECT)

ABBREVIATIONS

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

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>abortion</u> Health, Health Care Financing, Coverage and Reimbursement Policy	39341	R414-1B	AMD	07/01/2015	2015-10/32
<u>abrasive blasting</u> Environmental Quality, Air Quality	39116 39119	R307-206 R307-306	5YR 5YR	02/05/2015 02/05/2015	2015-5/105 2015-5/107
<u>abusive conduct</u> Human Resource Management, Administration	39323	R477-16	NEW	07/01/2015	2015-10/67
<u>acceptable documents</u> Public Safety, Driver License	39182	R708-41	5YR	03/10/2015	2015-7/79
<u>access</u> Environmental Quality, Drinking Water	39194	R309-545	5YR	03/13/2015	2015-7/70
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<u>accounts</u> Money Management Council, Administration	39810	R628-4	5YR	10/05/2015	2015-21/110
<u>accreditation</u> Education, Administration	39485 39490	R277-410 R277-410	5YR AMD	07/01/2015 08/26/2015	2015-14/140 2015-14/43
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	38770	R313-17-4	CPR	02/17/2015	2014-24/40
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School and Institutional Trust Fund Board of Trustees, Administration	39143	R849-1	NEW	04/15/2015	2015-5/92
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	39727	R15-2	5YR	09/11/2015	2015-19/113
	39728	R15-3	5YR	09/11/2015	2015-19/114
	39729	R15-4	5YR	09/11/2015	2015-19/115
	39730	R15-5	5YR	09/11/2015	2015-19/115
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	39636	R51-1	EMR	09/02/2015	2015-19/109
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	38770	R313-17-4	CPR	02/17/2015	2014-24/40
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	39322	R477-15	AMD	07/01/2015	2015-10/65
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	39251	R850-22	5YR	04/01/2015	2015-8/37
	39254	R850-25	5YR	04/01/2015	2015-8/39
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	38998	R307-120	AMD	03/05/2015	2015-1/17
	39353	R307-121	AMD	09/03/2015	2015-11/86
	39354	R307-122	NEW	09/03/2015	2015-11/89
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	39303	R315-15-3	NSC	05/06/2015	Not Printed
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	39459	R315-15-18	AMD	11/12/2015	2015-14/65

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	38982	R432-2-6	AMD	02/06/2015	2014-24/33

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	38954	R432-35	AMD	01/27/2015	2014-23/23
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	39926	R432-103	5YR	11/09/2015	Not Printed
	39925	R432-104	5YR	11/09/2015	Not Printed
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	39928	R432-106	5YR	11/09/2015	Not Printed
	39929	R432-500	5YR	11/09/2015	Not Printed
	39930	R432-550	5YR	11/09/2015	Not Printed
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	39588	R277-203	AMD	10/08/2015	2015-17/31	
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	39604	R156-46a-502d	NSC	09/11/2015	Not Printed
	38915	R156-47b	AMD	04/21/2015	2014-22/16
	38915	R156-47b	CPR	04/21/2015	2015-6/42
	39238	R156-47b-302a	AMD	05/28/2015	2015-8/7
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Commerce, Real Estate	39572	R162-2f	5YR	08/12/2015	2015-17/101
	38972	R162-2f-206	AMD	01/21/2015	2014-24/28
	39305	R162-2f-401j	AMD	06/22/2015	2015-10/25
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	39280	R313-19-13	AMD	08/26/2015	2015-9/27
	39280	R313-19-13	CPR	08/26/2015	2015-14/114
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	39524	R152-49	NEW	09/21/2015	2015-16/8
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	38971	R162-2e-401	AMD	01/28/2015	2014-24/26
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