

UTAH STATE BULLETIN

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

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

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Public Hearing to Discuss the 1115 Waiver and H.B. 437 "Health Care Revisions" From the 2016 General Session

The Division of Medicaid and Health Financing (DMHF) will hold public hearings to discuss the renewal of and proposed amendments to the Primary Care Network 1115 Demonstration waiver. Proposed changes to the waiver are required to implement the provisions of H.B. 437 "Health Care Revisions" passed during the 2016 General Session. These amendments include requesting authority to add Medicaid eligibility for additional adults between the ages of 19 and 64 who meet certain criteria. In addition, the State will request a waiver of the Medicaid IMD (institution for mental disease) exclusion. Finally, amendments will be proposed to remove the high risk pregnant woman group, as it is no longer needed due to the Affordable Care Act; making changes to Non-Traditional Medicaid benefits to comply with mental health parity; and removing the EPSDT waiver for 19 and 20 year olds.

These topics will be discussed at public hearings to be held on Thursday, May 19, 2016, from 1:30 p.m. to 3:30 p.m. as part of the monthly Medical Care Advisory Committee (MCAC) meeting, and Wednesday, May 25, 2016, from 1:00 p.m. to 3:00 p.m. Both meetings will be in Room 125 of the Cannon Health Building, 288 North 1460 West, Salt Lake City, Utah.

A conference line is available for those who would like to attend by phone: 1-877-820-7831, passcode 196690#. Individuals requiring an accommodation to fully participate in this meeting should contact Jennifer Meyer-Smart at 801-538-6338 by 5:00 p.m. on May 11, 2016.

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between April 02, 2016, 12:00 a.m., and April 15, 2016, 11:59 p.m. are included in this, the May 01, 2016, 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 May 31, 2016. 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 August 29, 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 OR A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

Commerce, Occupational and
Professional Licensing
R156-15A
State Construction Code Administration
and Adoption of Approved State
Construction Code Rule

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 40298
FILED: 04/05/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule filing is to delete the International Existing Building Code (IEBC) from being named as an approved code and all amendments to the IEBC as an approved code. The IEBC was changed from an approved code to an adopted code as a result of H.B. 316 which was passed during the 2016 General Session.

SUMMARY OF THE RULE OR CHANGE: Proposed amendments affect Sections R156-15A-401, R156-15A-402, and R156-15A-403. The proposed amendments delete the IEBC from being named as an approved code and all amendments to the IEBC as an approved code. The IEBC was changed from an approved code to an adopted code as a result of H.B. 316 (2016).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 15A-1-205 and Subsection 15A-1-204(6) 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 do not affect local governments; therefore, there should be no cost impact to local governments.
- ◆ **SMALL BUSINESSES:** The proposed amendments do not affect small businesses; therefore, there is no cost impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments do not have costs beyond costs considered by the legislature and resulting from the passage of H.B. 316 (2016).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments do not have compliance costs beyond

costs considered by the legislature and resulting from the passage of H.B. 316 (2016).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change deletes the IEBC as an approved code. The Code was changed from an approved code to an adopted code under H.B. 316 in the 2016 General Session. 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:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 05/11/2016 10:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 464, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-15A. State Construction Code Administration and
Adoption of Approved State Construction Code Rule.
R156-15A-401. Adoption - Approved Codes.**

Approved Codes. In accordance with Subsection 15A-1-204(6)(a), and subject to the limitations contained in Subsection 15A-1-204(6)(b), the following codes or standards are hereby incorporated by reference and approved for use and adoption by a compliance agency as the construction standards which may be applied to existing buildings in the regulation of building alteration, remodeling, repair, removal, seismic evaluation, and rehabilitation in the state:

(1) the 1997 edition of the Uniform Code for the Abatement of Dangerous Buildings (UCADB) promulgated by the International Code Council;

(2) ~~the 2012 edition of the International Existing Building Code (IEBC), including its appendix chapters, promulgated by the International Code Council;~~

~~_____ (3)]ASCE 31-03, Seismic Evaluation of Existing Buildings, promulgated by the American Society of Civil Engineers;~~

~~_____ ([4]3) ASCE/SEI 41-06, the Seismic Rehabilitation of Existing Buildings, promulgated by the American Society of Civil Engineers, 2007 edition.[~~

~~R156-15A-402. Statewide Amendments to the IEBC.~~

~~_____ The following are adopted as amendments to the IEBC to be applicable statewide:~~

~~_____ (1) In Section 202 the definition for existing buildings is deleted and replaced with the following:~~

~~_____ EXISTING BUILDING. A building lawfully erected under a prior adopted code, or one which is deemed a legal non-conforming building by the code official, and one which is not a dangerous building.~~

~~_____ (2) In Section 301.1 the exception is deleted.~~

~~_____ (3) In Section 705.1, Exception number 3, the following is added at the end:~~

~~_____ "This exception does not apply if the existing facility is undergoing a change of occupancy classification."~~

~~_____ (4) Section 706.2.1 is deleted and replaced with the following:~~

~~_____ 706.2.1 Parapet bracing, wall anchors, and other appendages. Buildings constructed prior to 1975 shall have parapet bracing, wall anchors, and appendages such as cornices, spires, towers, tanks, signs, statuary, etc. evaluated by a licensed engineer when said building is undergoing reroofing, or alteration of or repair to said feature. Such parapet bracing, wall anchors, and appendages shall be evaluated in accordance with the reduced International Building Code level seismic forces as specified in IEBC Section 301.1.4.2 and design procedures of Section 301.1.4. When found to be deficient because of design or deteriorated condition, the engineer's recommendations to anchor, brace, reinforce, or remove the deficient feature shall be implemented.~~

~~_____ EXCEPTIONS:~~

~~_____ 1. Group R-3 and U occupancies.~~

~~_____ 2. Unreinforced masonry parapets need not be braced according to the above stated provisions provided that the maximum height of an unreinforced masonry parapet above the level of the diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Design Categories D, E, or F.~~

~~_____ (5) Section 1007.3.1 is deleted and replaced with the following:~~

~~_____ 1007.3.1 Compliance with the International Building Code Level Seismic Forces. When a building or portion thereof is subject to a change of occupancy such that a change in the nature of the occupancy results in a higher risk category based on Table 1604.5 of the International Building Code; or where such change of occupancy results in a reclassification of a building to a higher hazard category as shown in Table 1012.4; or where a change of a Group M occupancy to a Group A, E, F, I-1, R-1, R-2, or R-4 occupancy with two-thirds or more of the floors involved in Level 3 alteration work; or when such change of occupancy results in a design occupant load increase of 100% or more, the building shall~~

~~conform to the seismic requirements of the International Building Code for the new risk category.~~

~~_____ Exceptions 1-4 remain unchanged.~~

~~_____ 5. Where the design occupant load increase is less than 25 occupants and the occupancy category does not change.~~

~~_____ (6) In Section 1012.7.3 exception 2 is deleted.~~

~~_____ (7) In Section 1012.8.2 number 7 is added as follows:~~

~~_____ 7. When a change of occupancy in a building or portion of a building results in a Group R-2 occupancy, not less than 20 percent of the dwelling or sleeping units shall be Type B dwelling or sleeping units. These dwelling or sleeping units may be located on any floor of the building provided with an accessible route. Two percent, but not less than one unit, of the dwelling or sleeping units shall be Type A dwelling units.~~

~~R156-15A-403. Local Amendment to the IEBC.~~

~~_____ The following are adopted as amendments to the IEBC to be applicable to the following jurisdictions:~~

~~_____ None.]~~

KEY: contractors, building codes, building inspections, licensing

Date of Enactment or Last Substantive Amendment: ~~[October 23, 2014]~~2016

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 15A-1-204(6); 15A-1-205

Education, Administration
R277-100
Rulemaking Policy

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40332

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-100 is repealed based on the Utah State Board of Education's (Board) determination that requirements established in Rule R277-100 for the Board are unnecessary to comply with the Utah Administration Rulemaking Act (UARA). The repeal of Rule R277-100 will bring the Board's rulemaking process closer into conformity with other agencies. The Board has adopted an internal Board policy for rulemaking that is better suited as it is limited to the Board and staff.

SUMMARY OF THE RULE OR CHANGE: Rule R277-100 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Title 63G, Chapter 3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The repeal of Rule R277-100 likely will not result in a cost or savings to the state budget. The requirements established in this rule for the Board are unnecessary to comply with the UARA and a new better suited internal policy has been adopted by the Board.

◆ **LOCAL GOVERNMENTS:** The repeal of Rule R277-100 likely will not result in a cost or savings to local government. The requirements established in this rule for the Board are unnecessary to comply with the UARA and a new better suited internal policy has been adopted by the Board.

◆ **SMALL BUSINESSES:** The repeal of Rule R277-100 likely will not result in a cost or savings to small businesses. The requirements established in this rule for the Board are unnecessary to comply with the UARA and a new better suited internal policy has been adopted by the Board.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The repeal of Rule R277-100 likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities. The requirements established in this rule for the Board are unnecessary to comply with the UARA and a new better suited internal policy has been adopted by the Board.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The repeal of Rule R277-100 likely will not result in any compliance costs for affected persons. The requirements established in this rule for the Board are unnecessary to comply with the UARA and a new better suited internal policy has been adopted by the Board.

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 repeal of 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 05/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/12/2016 02:00 PM, Utah State Office of Education, 250 E 500 S, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

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

R277. Education, Administration.**[R277-100. Rulemaking Policy.****R277-100-1. Authority and Purpose.**

- _____ (1) This rule is authorized by:
- _____ (a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;
- _____ (b) Title 63G, Chapter 3, the Utah Administrative Rulemaking Act, which specifies procedures for a state agency to follow in making rules; and
- _____ (c) Subsection 53A-1-401(3), which authorizes the Board to adopt rules in accordance with its responsibilities.
- _____ (2) The purpose of this rule is to conform the rulemaking procedures of the Board and divisions supervised by the Board to those required under the Utah Administrative Rulemaking Act.

R277-100-2. Definitions.

- _____ (1) Terms used in this rule are defined in Section 63G-3-102 and Rule R15.
- _____ (2) As used in this rule:
- _____ (a) "Hearing" means an administrative rulemaking hearing.
- _____ (b) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

R277-100-3. Petition for Rulemaking -- Appeal.

- _____ (1) A person may petition the Board to make, amend, or repeal a rule as provided by Subsection 63G-3-601(3) and Rule R15-2.
- _____ (2)(a) The Superintendent shall review a petition prior to consideration by the Board.
- _____ (b) The Superintendent shall notify a petitioner of any changes suggested by the Superintendent to the petition.
- _____ (3)(a) A petitioner may appeal a decision made by the Superintendent under Subsections 63G-3-601(5) through (7) by sending a signed request for consideration of the appeal, including a copy of the original petition and copies of correspondence with the Superintendent, if any, to the Board Chair.
- _____ (b) The Chair shall present the appeal to the Board.
- _____ (c) If the Board votes to review the petition, the Board shall schedule the petition for a future meeting of the Board.
- _____ (d) The decision of the Board is final.

R277-100-4. Procedures for Making, Amending, or Repealing a Rule.

- _____ (1) Prior to submitting a proposed rule to the Board, the Superintendent shall make a reasonable effort to solicit information from LEA officials, professional associations, and other affected parties concerning the need for, and content of, the proposed rule.
- _____ (2) In addition to the persons described in Subsection 63G-3-301(10), the Superintendent shall also send a copy of the proposed rule or make the rule available electronically to:

- ~~_____ (a) school district superintendents and charter school directors; and~~
- ~~_____ (b) another person who, in the judgment of the Superintendent, should receive notice:~~
- ~~_____ (3)(a) The Superintendent shall:~~
- ~~_____ (i) maintain a file containing a copy of the proposed rule and the rule analysis form; and~~
- ~~_____ (ii) make the file available to the public during the regular business hours of the USOE upon request.~~
- ~~_____ (b) The Superintendent shall keep the following in the file:~~
- ~~_____ (i) a written comment;~~
- ~~_____ (ii) a note on a verbal comment;~~
- ~~_____ (iii) information received electronically; and~~
- ~~_____ (iv) a hearing record, if any.~~

~~R277-100-5. Formal Adoption by the Board of Procedures, Handbooks, and Manuals.~~

- ~~_____ (1) Under Board direction, a division under the supervision of the Board may periodically develop or amend a policy manual or policy handbook that does not meet the definition of a rule.~~
- ~~_____ (2) The Superintendent shall provide an LEA electronic access to the policy manual or handbook considered for adoption by the Board.~~

~~R277-100-6. Hearings.~~

- ~~_____ (1)(a) For a hearing that is mandatory under Subsection 63G-3-302(2), the Board shall follow the procedures and requirements of:~~
- ~~_____ (i) Section 63G-3-302;~~
- ~~_____ (ii) Rule R15-1; and~~
- ~~_____ (iii) Subsections (6) and (7).~~
- ~~_____ (b) For a hearing that is voluntary, the Board shall follow the procedures and requirements of:~~
- ~~_____ (i) Section 63G-3-302;~~
- ~~_____ (ii) Rule 15-1, except as provided by this section; and~~
- ~~_____ (iii) this section.~~
- ~~_____ (2) Notwithstanding Subsection R15-1-5(2):~~
- ~~_____ (a) the Board may hold the hearing itself or appoint any person who can fairly conduct the hearing, other than the Superintendent, as a hearing officer; and~~
- ~~_____ (b) the hearing officer shall know rulemaking procedures, but may not be directly responsible for administering the rule.~~
- ~~_____ (3) The hearing officer shall rule on a question of relevance and redundancy.~~
- ~~_____ (4) Notwithstanding Subsection R15-1-5(4)(b), a person familiar with the rule at issue may be asked to be present at the hearing to respond to inquiries and to provide information.~~
- ~~_____ (5) A written comment shall include the name, address, and, if applicable, the organization represented by the person making the comment.~~
- ~~_____ (6)(a) The hearing officer shall make written findings and recommendations, including any facts pertinent to the hearing, recommendations for Board action, and reasons for the recommendations.~~

- ~~_____ (b) The hearing officer shall transmit the findings, recommendations, and the complete record of the hearing to the Board as soon as possible following the close of the hearing.~~
- ~~_____ (c) If the Board conducts the hearing, the Chair shall prepare written findings, the decision, and reasons for the decision.~~
- ~~_____ (7)(a)(i) The Board shall issue a written decision as soon as possible after the close of the hearing and before the rule becomes effective.~~
- ~~_____ (ii) The decision shall state:~~
- ~~_____ (A) whether the proposed rule will be adopted, changed, or withdrawn;~~
- ~~_____ (B) any alternative action, such as whether a rule will be proposed on the subject matter of the hearing; and~~
- ~~_____ (C) reasons for the decision.~~
- ~~_____ (iii) The written decision is included in the hearing record.~~
- ~~_____ (b) If the hearing is held under Subsection (1)(a), the Board shall mail a copy of or send electronically the decision to the person who requested the hearing.~~

~~KEY: administrative procedures, rules and procedures~~
~~Date of Enactment or Last Substantive Amendment: November 23, 2015~~
~~Notice of Continuation: September 28, 2015~~
~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 63G-3-101 et seq.; 53A-1-401(3)~~

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

NOTICE OF PROPOSED RULE
 (Repeal)
 DAR FILE NO.: 40325
 FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-200 is repealed based upon a court ruling which concluded that the Utah State Board of Education had not followed proper rulemaking procedures in its adoption. New Rule R277-210, following appropriate rulemaking procedure, is being filed simultaneously with the repeal of this rule. (DAR NOTE: The proposed new Rule R277-210 is under DAR No. 40334 in this issue, May 1, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-200 is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Rule R277-200 is repealed in its entirety, and the new Rule R277-210 is filed to take its place, which likely will not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: Rule R277-200 is repealed in its entirety, and the new Rule R277-210 is filed to take its place, which likely will not result in a cost or savings to local government.

◆ SMALL BUSINESSES: Rule R277-200 is repealed in its entirety, and the new Rule R277-210 is filed to take its place, which likely will not result in a cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Rule R277-200 is repealed in its entirety, and the new Rule R277-210 is filed to take its place, 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: Rule R277-200 is repealed in its entirety, and the new Rule R277-210 is filed to take its place, 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 repeal of 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 05/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/12/2016 02:00 PM, Utah State Office of Education, 250 E 500 S, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

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

R277. Education, Administration.

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

~~**R277-200-1. Authority and Purpose.**~~

- ~~(1) This rule is authorized by:~~
- ~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~
 - ~~(b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and~~
 - ~~(c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~
- ~~(2) The purpose of this rule is to establish definitions for terms in UPPAC activities.~~
- ~~(3) The definitions contained in this rule apply to Rules R277-200 through R277-207. Any calculation of time called for by these rules shall be governed by Utah R. Civ. P. 6.~~

~~**R277-200-2. Definitions.**~~

- ~~(1)(a) "Action" means a disciplinary action taken by the Board adversely affecting an educator's license.~~
- ~~(b) "Action" does not include a disciplinary letter.~~
- ~~(c) "Action" includes:~~
- ~~(i) a letter of reprimand;~~
 - ~~(ii) probation;~~
 - ~~(iii) suspension; and~~
 - ~~(iv) revocation.~~
- ~~(2) "Administrative hearing" or "hearing" has the same meaning as that term is defined in Section 53A-6-601.~~
- ~~(3) "Alcohol related offense" means:~~
- ~~(a) driving under the influence;~~
 - ~~(b) alcohol-related reckless driving or impaired driving;~~
 - ~~(c) intoxication;~~
 - ~~(d) driving with an open container;~~
 - ~~(e) unlawful sale or supply of alcohol;~~
 - ~~(f) unlawful permitting of consumption of alcohol by minors;~~
 - ~~(g) driving in violation of an alcohol or interlock restriction; and~~
 - ~~(8) any offense under the laws of another state that is substantially equivalent to the offenses described in Subsections(3) (a) through (g).~~
- ~~(4) "Allegation of misconduct" means a written report alleging that an educator:~~
- ~~(a) has engaged in unprofessional or criminal conduct;~~
 - ~~(b) is unfit for duty;~~
 - ~~(c) has lost the educator's license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or~~
 - ~~(d) has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.~~
- ~~(5) "Answer" means a written response to a complaint filed by USOE alleging educator misconduct.~~
- ~~(6) "Applicant" means a person seeking:~~
- ~~(a) a new license;~~
 - ~~(b) reinstatement of an expired, surrendered, suspended, or revoked license; or~~

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

_____ (7) "Chair" means the Chair of UPPAC.

_____ (8) "Complaint" means a written allegation or charge against an educator filed by USOE against the educator.

_____ (9) "Complainant" means the Utah State Office of Education.

_____ (10) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file developed by the USOE and maintained on all licensed Utah educators.

_____ (11)(a) "Conviction" means the final disposition of a judicial action for a criminal offense, except in cases of a dismissal on the merits.

_____ (b) "Conviction" includes:

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

_____ (ii) a guilty or no-contest plea;

_____ (iii) a plea in abeyance; and

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

_____ (12) "Criminal Background Review" means the process by which the Executive Secretary, UPPAC, and the Board review information pertinent to:

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

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

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

_____ (13)(a) "Disciplinary letter" means a letter issued to a respondent by the Board as a result of an investigation into an allegation of educator misconduct.

_____ (b) "Disciplinary letter" includes:

_____ (i) a letter of admonishment;

_____ (ii) a letter of warning; and

_____ (iii) any other action that the Board takes to discipline an educator for educator misconduct that does not rise to the level of an action as defined in this section.

_____ (14) "Drug" means controlled substance as defined in Section 58-37-2.

_____ (15) "Drug-related offense" means any criminal offense under:

_____ (a) Title 58, Chapter 37;

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

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

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

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

_____ (f) Title 58, Chapter 37e, Drug Dealer's Liability Act. Sections 58-37 through 37e.

_____ (16) "Educator Misconduct" means:

_____ (a) unprofessional or criminal conduct;

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

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

_____ (17) "Executive Committee" means a subcommittee of UPPAC consisting of the following members:

_____ (a) Executive Secretary;

_____ (b) Chair;

_____ (c) Vice-Chair; and

_____ (d) one member of UPPAC at large.

_____ (18) "Executive Secretary" means an employee of USOE who:

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

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

_____ (19) "Expedited Hearing" means an informal hearing aimed at determining an Educator's fitness to remain in the classroom held as soon as possible following an arrest, citation, or charge for a criminal offense requiring mandatory self-reporting under Section R277-516-3.

_____ (20) "Expedited Hearing Panel" means a panel of the following three members:

_____ (a) the Executive Secretary;

_____ (b) a voting member of UPPAC; and

_____ (c) a UPPAC prosecutor.

_____ (21) "Final action" means an action by the Board that concludes an investigation of an allegation of misconduct against a licensed educator.

_____ (22) "GRAMA" refers to the Government Records Access and Management Act, Title 63G, Chapter 2, Government Records Access and Management Act.

_____ (23) "Hearing officer" means a licensed attorney who:

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

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

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

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

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

_____ (24) "Hearing panel" means a panel of three or more individuals designated to:

_____ (a) hear evidence presented at a hearing;

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

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

_____ (25) "Hearing report" means a report that:

_____ (a) is prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing; and

_____ (b) includes:

_____ (i) a recommended disposition;

_____ (ii) detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent; and

_____ (iii) applicable law and rule.

_____ (26) "Informant" means a person who submits information to UPPAC concerning the alleged misconduct of an educator.

~~_____ (27) "Investigator" means an employee of the USOE, or independent investigator selected by the Board, who:~~

~~_____ (a) is assigned to investigate allegations of educator misconduct under UPPAC supervision;~~

~~_____ (b) offers recommendations of educator discipline to UPPAC and the Board at the conclusion of the investigation;~~

~~_____ (c) provides an independent investigative report for UPPAC and the Board; and~~

~~_____ (d) may also be the prosecutor but does not have to be.~~

~~_____ (28) "Investigative report" means a written report of an investigation into allegations of educator misconduct, prepared by an Investigator that:~~

~~_____ (a) includes a brief summary of the allegations, the investigator's narrative, and a recommendation for UPPAC and the Board;~~

~~_____ (b) may include a rationale for the recommendation, and mitigating and aggravating circumstances;~~

~~_____ (c) is maintained in the UPPAC Case File; and~~

~~_____ (d) is classified as protected under Subsection 63G-2-305(34).~~

~~_____ (29) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.~~

~~_____ (30) "Letter of admonishment" is a letter sent by the Board to an educator cautioning the educator to avoid or take specific actions in the future.~~

~~_____ (31) "Letter of reprimand" is a letter sent by the Board to an educator:~~

~~_____ (a) for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting more serious discipline;~~

~~_____ (b) that provides specific directives to the educator as a condition for removal of the letter;~~

~~_____ (c) appears as a notation on the educator's CACTUS file; and~~

~~_____ (d) that an educator can request to be removed from the educator's CACTUS file after two years, or after such other time period as the Board may prescribe in the letter of reprimand.~~

~~_____ (32) "Letter of warning" is a letter sent by the Board to an educator:~~

~~_____ (a) for misconduct that was inappropriate or unethical; and~~

~~_____ (b) that does not warrant longer term or more serious discipline.~~

~~_____ (33) "License" means a teaching or administrative credential, including an endorsement, which is issued by the Board to signify authorization for the person holding the license to provide professional services in Utah's public schools.~~

~~_____ (34) "Licensed educator" means an individual issued a teaching or administrative credential, including an endorsement, issued by the Board to signify authorization for the individual holding the license to provide professional services in Utah's public schools.~~

~~_____ (35) "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for the members of NASDTEC regarding persons whose licenses have been suspended or revoked.~~

~~_____ (36) "Notification of Alleged Educator Misconduct" means the official UPPAC form that may be accessed on UPPAC's internet website, and may be submitted by any person, school, or LEA that alleges educator misconduct.~~

~~_____ (37) "Party" means a complainant or a respondent.~~

~~_____ (38) "Petitioner" means an individual seeking:~~

~~_____ (a) an educator license following a denial of a license;~~

~~_____ (b) reinstatement following a license suspension; or in the event of compelling circumstances, reinstatement following a license revocation.~~

~~_____ (39) "Probation" is an action directed by the Board that:~~

~~_____ (a) involves monitoring or supervision for a designated time period, usually accompanied by a disciplinary letter;~~

~~_____ (b) may require the educator to be subject to additional monitoring by an identified person or entity;~~

~~_____ (c) may require the educator to be asked to satisfy certain conditions in order to have the probation lifted;~~

~~_____ (d) may be accompanied by a letter of reprimand, which shall appear as a notation on the educator's CACTUS file; and~~

~~_____ (e) unless otherwise specified, lasts at least two years and may be terminated through a formal petition to the Board by the respondent.~~

~~_____ (40) "Prosecutor" means an attorney who:~~

~~_____ (a) is designated by the Superintendent to represent the complainant and present evidence in support of the complaint; and~~

~~_____ (b) may also be the investigator, but does not have to be.~~

~~_____ (41) "Revocation" means a permanent invalidation of a Utah educator license consistent with Rule R277-517.~~

~~_____ (42) "Respondent" means an educator against whom:~~

~~_____ (a) a complaint is filed; or~~

~~_____ (b) an investigation is undertaken.~~

~~_____ (43) "Serve" or "service," as used to refer to the provision of notice to a person, means:~~

~~_____ (a) delivery of a written document or its contents to the person or persons in question; and~~

~~_____ (b) delivery that may be made in person, by mail, by electronic correspondence, or by any other means reasonably calculated, under all of the circumstances, to notify an interested person or persons to the extent reasonably practical or practicable of the information contained in the document.~~

~~_____ (44) "Sexually explicit conduct" means the same as that term is defined in Section 76-5b-103.~~

~~_____ (45) "Stipulated agreement" means an agreement between a respondent and the Board:~~

~~_____ (a) under which disciplinary action is taken against the educator in lieu of a hearing;~~

~~_____ (b) that may be negotiated between the parties and becomes binding:~~

~~_____ (i) when approved by the Board; and~~

~~_____ (ii) at any time after an investigative letter has been sent;~~

~~_____ (c) is a public document under GRAMA unless it contains specific information that requires redaction or separate classification of the agreement.~~

~~_____ (46)(a) "Suspension" means an invalidation of a Utah educator license.~~

~~_____ (b) "Suspension" may:~~

~~_____ (i) include specific conditions that an educator must satisfy; and~~

~~(ii) may identify a minimum time period that must elapse before the educator may request a reinstatement hearing before UPPAC;~~

~~(47) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, established in Section 53A-6-301.~~

~~(48) "UPPAC Background Check File" means a file maintained securely by UPPAC on a criminal background review that:~~

- ~~(a) contains information obtained from:~~
 - ~~(i) BCI; and~~
 - ~~(ii) letters, police reports, court documents, and other materials as provided by an educator; and~~
- ~~(b) is classified as private under Subsection 63G-2-302(2).~~

~~(49) "UPPAC Case File" means a file:~~

- ~~(a) maintained securely by UPPAC on an investigation into educator misconduct;~~

- ~~(b) opened following UPPAC's direction to investigate alleged misconduct;~~
- ~~(c) that contains the original notification of misconduct with supporting documentation, correspondence with the Executive Secretary, the investigative report, the stipulated agreement, the hearing report, and the final disposition of the case;~~

~~(d) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and~~

~~(e) that after a case proceeding is closed, is considered public under GRAMA, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA, in which case the file may be redacted or partially or fully restricted.~~

~~(50) "UPPAC Evidence File" means a file:~~

- ~~(a) maintained by the attorney assigned by UPPAC to investigate a case containing materials, written or otherwise, obtained by the UPPAC investigator during the course of the attorney's investigation;~~

- ~~(b) that contains correspondence between the Investigator and the educator or the educator's counsel;~~
- ~~(c) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and~~

~~(d) that is considered public under GRAMA after case proceedings are closed, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA.~~

~~(51) "UPPAC investigative letter" means a letter sent by UPPAC to an educator notifying the educator that an allegation of misconduct has been received against him and that UPPAC or the Board has directed that an investigation of the educator's alleged actions take place.~~

~~(52) "UPPAC Prosecutor File" means a file:~~

- ~~(a) that is kept by the attorney assigned by UPPAC to investigate and/or prosecute a case that contains:~~

- ~~(i) the attorney's notes prepared in the course of investigation; and~~

~~(ii) other documents prepared by the attorney in anticipation of an eventual hearing; and~~

~~(b) that is classified as protected pursuant to Subsection 63G-2-305(18).~~

~~KEY: professional practices, definitions, educators~~

~~Date of Enactment or Last Substantive Amendment: October 8, 2015~~

~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)]~~

Education, Administration
R277-201
 Utah Professional Practices Advisory
 Commission (UPPAC), Rules of
 Procedure: Notification to Educators,
 Complaints and Final Disciplinary
 Actions

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40326

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-201 is repealed based upon a court ruling which concluded that the Utah State Board of Education had not followed proper rulemaking procedures in its adoption. New Rule R277-211, following appropriate rulemaking procedure, is being filed simultaneously with the repeal of this rule. (DAR NOTE: The proposed new Rule R277-211 is under DAR No. 40335 in this issue, May 1, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-201 is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Rule R277-201 is repealed in its entirety, and the new Rule R277-211 is filed to take its place, which likely will not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: Rule R277-201 is repealed in its entirety, and the new Rule R277-211 is filed to take its place, which likely will not result in a cost or savings to local government.

♦ SMALL BUSINESSES: Rule R277-201 is repealed in its entirety, and the new Rule R277-211 is filed to take its place, which likely will not result in a cost or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Rule R277-201 is repealed in its entirety, and the new Rule R277-211 is filed to take its place, 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: Rule R277-201 is repealed in its entirety, and the new Rule R277-211 is filed to take its place, 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 repeal of 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 05/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 05/12/2016 02:00 PM, Utah State Office of Education, 250 E 500 S, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

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

R277. Education, Administration.

~~**[R277-201. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.**~~

~~**R277-201-1. Authority and Purpose.**~~

- ~~(1) This rule is authorized by:~~
 - ~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~
 - ~~(b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and~~

~~(c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities;~~

~~(2) The purpose of this rule is to provide procedures regarding:~~

- ~~(a) notifications of alleged educator misconduct;~~
- ~~(b) review of notifications by UPPAC; and~~
- ~~(c) complaints, stipulated agreement, and defaults.~~
- ~~(3) Except as provided in Subsection(4), Title 63G, Chapter 4, Administrative Procedures Act does not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).~~
- ~~(4) UPPAC may invoke and use sections or provisions of Title 63G, Chapter 4, Administrative Procedures Act as necessary to adjudicate an issue.~~

~~**R277-201-2. Initiating Proceedings Against Educators.**~~

~~(1) The Executive Secretary may refer a case to UPPAC to make a determination if an investigation should be opened regarding an educator:~~

- ~~(a) upon receiving a notification of alleged educator misconduct; or~~
- ~~(b) upon the Executive Secretary's own initiative.~~
- ~~(2) An informant shall submit an allegation to the Executive Secretary in writing, including the following:~~
 - ~~(a) the informant's:~~
 - ~~(i) name;~~
 - ~~(ii) position, such as administrator, teacher, parent, or student;~~
 - ~~(iii) telephone number;~~
 - ~~(iv) address; and~~
 - ~~(v) contact information;~~
 - ~~(b) information of the educator against whom the allegation is made:~~
 - ~~(i) name;~~
 - ~~(ii) position, such as administrator, teacher, candidate; and~~
 - ~~(iii) if known, the address and telephone number;~~
 - ~~(c) the facts on which the allegation is based and supporting information; and~~
 - ~~(d) signature of the informant and date.~~

~~(3) If an informant submits a written allegation of misconduct as provided in this rule, the informant may be notified of a final action taken by the Board regarding the allegation.~~

~~(4)(a) Proceedings initiated upon the Executive Secretary's own initiative may be based on information received through a telephone call, letter, newspaper article, media information, notice from another state, or by other means.~~

~~(b) The Executive Secretary may also recommend an investigation based on an anonymous allegation, notwithstanding the provisions of this rule, if the allegation bears sufficient indicia of reliability.~~

~~(5) All written allegations, subsequent dismissals, actions, or disciplinary letters related to a case against an educator shall be maintained permanently in the UPPACease file.~~

~~(b) The Executive Secretary may also recommend an investigation based on an anonymous allegation, notwithstanding the provisions of this rule, if the allegation bears sufficient indicia of reliability.~~

~~(5) All written allegations, subsequent dismissals, actions, or disciplinary letters related to a case against an educator shall be maintained permanently in the UPPACease file.~~

~~**R277-201-3. Review of Notification of Alleged Educator Misconduct.**~~

~~(1)(a) On reviewing the notification of alleged educator misconduct, the Executive Secretary, the Executive Committee, or both, shall recommend one of the following to UPPAC:~~

~~(i) dismiss the matter if UPPAC determines that alleged misconduct does not involve an issue that UPPAC should address; or~~

~~(ii) initiate an investigation if UPPAC determines that the alleged misconduct involves an issue that may be appropriately addressed by UPPAC and the Board.~~

~~(b) If the Executive Secretary or Executive Committee recommends UPPAC initiate an investigation:~~

~~(i) UPPAC shall initiate an investigation; and~~

~~(ii) the Executive Secretary shall direct a UPPAC investigator to gather evidence relating to the allegations.~~

~~(2)(a) Prior to a UPPAC investigator's initiation of an investigation, the Executive Secretary shall send a letter to the following with information that UPPAC has initiated an investigation:~~

~~(i) the educator to be investigated;~~

~~(ii) the LEA that employs the educator; and~~

~~(iii) the LEA where the alleged activity occurred.~~

~~(b) A letter described in Subsection(2)(a) shall inform the educator and the LEA that an investigation shall take place and is not evidence of unprofessional conduct.~~

~~(c) UPPAC shall place a flag on the educator's CACTUS file after sending the notices as provided in this rule.~~

~~(3)(a) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.~~

~~(b) The investigator shall prepare an investigative report of the findings of the investigation and a recommendation for appropriate action or disciplinary letter.~~

~~(c) If the investigator discovers additional evidence of unprofessional conduct that could have been included in the original notification of alleged educator misconduct, the investigator may include the additional evidence of misconduct in the investigative report.~~

~~(d) The investigator shall submit the investigative report to the Executive Secretary.~~

~~(e) The Executive Secretary shall review the investigative report described in Subsection(3)(d) with UPPAC.~~

~~(f) The investigative report described in Subsection(3)(d) shall become part of the UPPAC case file.~~

~~(4) UPPAC shall review the investigative report and take one of the following actions:~~

~~(a) UPPAC determines no further action should be taken; UPPAC may recommend that the Board dismiss the case; or~~

~~(b) UPPAC may make an initial recommendation of appropriate action or disciplinary letter.~~

~~(5) After receiving an initial recommendation from UPPAC for action, the Executive Secretary shall direct a UPPAC prosecutor to:~~

~~(a) prepare and serve a complaint; or~~

~~(b) negotiate and prepare a stipulated agreement.~~

~~(6)(a) A stipulated agreement shall conform to the requirements set forth in Section R277-201-6.~~

~~(b) An educator may stipulate to any recommended disposition for an action.~~

~~(7) The Executive Secretary shall forward any stipulated agreement to the Board for approval.~~

R277-201-4. Expedited Hearings.

~~(1) In a case involving the report of an arrest, citation, or charge of a licensed educator, which requires self-reporting by the educator under Section R277-516-3, the Executive Secretary, with the consent of the educator, may schedule the matter for an expedited hearing in lieu of initially referring the matter to UPPAC.~~

~~(2)(a) The Executive Secretary shall hold an expedited hearing within 30 days of a report of an arrest, citation, or charge, unless otherwise agreed upon by both parties.~~

~~(b) The Executive Secretary or the Executive Secretary's designee shall conduct an expedited hearing with the following additional invited participants:~~

~~(i) the educator;~~

~~(ii) the educator's attorney or representative;~~

~~(iii) a UPPAC prosecutor;~~

~~(iv) a voting member of UPPAC; and~~

~~(v) a representative of the educator's LEA.~~

~~(3) The panel may consider the following matters at an expedited hearing:~~

~~(a) an educator's oral or written explanation of the events;~~

~~(b) a police report;~~

~~(c) a court docket or transcript;~~

~~(d) an LEA's investigative report or employment file; and~~

~~(e) additional information offered by the educator if the panel deems it probative of the issues at the expedited hearing.~~

~~(4) After reviewing the evidence, the expedited hearing panel shall make written findings and a recommendation to UPPAC to do one of the following:~~

~~(a) close the case;~~

~~(b) close the case upon completion of court requirements;~~

~~(c) recommend issuance of a disciplinary letter to the Board;~~

~~(d) open a full investigation; or~~

~~(e) recommend action by the Board, subject to an educator's due process rights under these rules.~~

~~(5) An expedited hearing may be recorded, but the testimony from the expedited hearing is inadmissible during a future UPPAC action related to the allegation.~~

~~(6) If the Board fails to adopt the recommendation of an expedited hearing panel, UPPAC shall open a full investigation.~~

R277-201-5. Complaints.

~~(1) If UPPAC determines that an allegation is sufficiently supported by evidence discovered in the investigation, UPPAC, through the Executive Secretary, may direct the prosecutor to serve a complaint upon the educator being investigated.~~

~~(2) At a minimum, a complaint shall include:~~

~~(a) a statement of legal authority and jurisdiction under which the action is being taken;~~

~~(b) a statement of the facts and allegations upon which the complaint is based;~~

~~(c) other information that the investigator believes is necessary to enable the respondent to understand and address the allegations;~~

~~(d) a statement of the potential consequences if an allegation is found to be true or substantially true;~~

~~(c) a statement that the respondent shall answer the complaint and request a hearing, if desired, within 30 days of the date the complaint is mailed to the respondent;~~

~~(f) a statement that the respondent is required to file a written answer described in Subsection(2)(e) with the Executive Secretary;~~

~~(g) a statement advising the respondent that if the respondent fails to respond within 30 days, a default judgment for revocation or a suspension of the educator's license may occur for a term of five years or more;~~

~~(h) a statement that, if a hearing is requested, the hearing will be scheduled no less than 25 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing; and~~

~~(i) a statement that the hearing is governed by these rules, with an internet address where the rules may be accessed.~~

~~(3) On the Executive Secretary's own motion, the Executive Secretary, or the Executive Secretary's designee, with notice to the parties, may reschedule a hearing date.~~

~~(4)(a) A respondent may file an answer to a complaint by filing a written response signed by the respondent or the respondent's representative with the Executive Secretary within 30 days after the complaint is mailed.~~

~~(b) The answer may include a request for a hearing, and shall include:~~

~~(i) the file number of the complaint;~~

~~(ii) the names of the parties;~~

~~(iii) a statement of the relief that the respondent seeks; and~~

~~(iv) if not requesting a hearing, a statement of the reasons that the relief requested should be granted.~~

~~(5)(a) As soon as reasonably practicable after receiving an answer, or no more than 30 days after receipt of an answer at the USOE, the Executive Secretary shall schedule a hearing, if requested, as provided in Rule R277-202.~~

~~(b) If the parties can reach an agreement prior to the hearing consistent with the terms of UPPAC's initial recommendation, the prosecutor may negotiate a stipulated agreement with the respondent.~~

~~(c) A stipulated agreement described in Subsection(5)(b) shall be submitted to the Board for the Board's final approval.~~

~~(6)(a) If a respondent does not respond to the complaint within 30 days, the Executive Secretary may initiate default proceedings in accordance with the procedures set forth in Section R277-201-7.~~

~~(b) Except as provided in Subsection R277-201-7(3), if the Executive Secretary enters an order of default, the Executive Secretary shall make a recommendation to the Board for a revocation or a suspension of the educator's license for five years before the educator may request a reinstatement hearing.~~

~~(c) If a default results in a suspension, a default may include conditions that an educator shall satisfy before the educator may qualify for a reinstatement hearing.~~

~~(d) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).~~

R277-201-6. Stipulated Agreements.

~~(1) At any time after UPPAC has made an initial recommendation, a respondent may accept UPPAC's initial recommendation, rather than request a hearing, by entering into a stipulated agreement.~~

~~(2) By entering into a stipulated agreement, a respondent waives the respondent's right to a hearing to contest the recommended disposition, contingent on final approval by the Board.~~

~~(3) At a minimum, a stipulated agreement shall include:~~

~~(a) a summary of the facts, the allegations, and the evidence relied upon by UPPAC in its recommendation;~~

~~(b) a statement that the respondent admits the facts recited in the stipulated agreement as true for purposes of the Board administrative action;~~

~~(c) a statement that the respondent:~~

~~(i) waives the respondent's right to a hearing to contest the allegations that gave rise to the investigation; and~~

~~(ii) agrees to limitations on the respondent's license or surrenders the respondent's license rather than contest the allegations;~~

~~(d) a statement that the respondent agrees to the terms of the stipulated agreement and other provisions applicable to the case, such as remediation, counseling, restitution, rehabilitation, and other conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the letter of reprimand or termination of probation;~~

~~(e) if for suspension or revocation of a license, a statement that the respondent:~~

~~(i) may not seek or provide professional services in a public school in the state;~~

~~(ii) may not seek to obtain or use an educator license in the state; or~~

~~(iii) may not work or volunteer in a public K-12 setting in any capacity without express authorization from the UPPAC Executive Secretary, unless or until the respondent:~~

~~(A) first obtains a valid educator license or authorization from the Board to obtain such a license; or~~

~~(B) satisfies other provisions provided in the stipulated agreement;~~

~~(f) a statement that the action and the stipulated agreement shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;~~

~~(g) a statement that respondent waives the respondent's right to contest the facts stated in the stipulated agreement at a subsequent reinstatement hearing, if any;~~

~~(h) a statement that all records related to the stipulated agreement shall remain permanently in the UPPAC case file; and~~

~~(i) a statement reflecting the stipulated agreement's classification under Title 63G, Chapter 2, Government Records Access and Management Act.~~

~~(4) A violation of the terms of a stipulated agreement may result in additional disciplinary action and may affect the reinstatement process.~~

~~(5)(a) A stipulated agreement shall be forwarded to the Board for approval prior to execution by the respondent.~~

~~(b) Prior to consideration of a stipulated agreement, UPPAC shall:~~

~~(i) make the UPPAC case file available to the Board for confidential review; and~~

~~(ii) make other evidence available for review as directed by the Board.~~

~~(c) There is a presumption that the Board shall approve a stipulated agreement if the Board finds that:~~

~~(i) a stipulated agreement is based on adequate evidence; and~~

~~(ii) the terms of a stipulated agreement present a reasonable resolution of the case.~~

~~(d) The Board may take other action as provided in this rule if it finds that:~~

~~(i) a stipulated agreement is based on insufficient evidence;~~

~~(ii) the terms of a stipulated agreement present an unreasonable resolution of the case consistent with:~~

~~(A) R277-207; and~~

~~(B) due process; or~~

~~(iii) exceptional circumstances exist which warrant an alternative resolution.~~

~~(e)(i) If the Board finds that a stipulated agreement is based on insufficient evidence, the Board may reject a stipulated agreement and direct UPPAC to hold a hearing if the Board provides direction, in the form of a motion, as to what issues need to be addressed by UPPAC.~~

~~(ii) The Executive Secretary shall notify the parties of the decision and the proceedings shall continue from the point under these procedures at which the stipulated agreement was negotiated, as if the stipulated agreement had not been submitted.~~

~~(f) If the Board finds that the terms of a stipulated agreement present an unreasonable resolution of a case, it may, by motion, provide alternative terms to the Executive Secretary, that would be satisfactory to the Board.~~

~~(g) If accepted by the respondent, the stipulated agreement, as modified, is a final Board administrative action without further Board consideration.~~

~~(h) If the terms approved by the Board are rejected by the respondent, the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the stipulated agreement had not been submitted.~~

~~(i) If the Board approves a stipulated agreement, the approval is a final Board administrative action, effective upon signature by all parties, and the Executive Secretary shall:~~

~~(i) notify the parties of the decision;~~

~~(ii) update CACTUS to reflect the action;~~

~~(iii) report the action to the NASDTEC Educator Information Clearinghouse if the agreement results in:~~

~~(A) a revocation; or~~

~~(b) a suspension; and~~

~~(iv) direct the appropriate penalties to begin.~~

~~(6) If, after negotiating a stipulated agreement, a respondent fails to sign or respond to a proffered stipulated agreement within 30 days after the stipulated agreement is mailed,~~

~~the Executive Secretary shall direct the prosecutor to prepare findings in default consistent with Section R277-201-7.~~

~~R277-201-7. Default Procedures.~~

~~(1) If a respondent does not respond to a complaint or execute a negotiated stipulated agreement within 30 days from the date the complaint or stipulated agreement is served, the Executive Secretary may issue an order of default against the respondent consistent with the following:~~

~~(a) the prosecutor shall prepare and serve on the respondent an order of default including:~~

~~(i) a statement of the grounds for default; and~~

~~(ii) a recommended disposition if the respondent fails to file a response to a complaint or respond to a proffered stipulated agreement;~~

~~(b) ten days following service of the order of default, the prosecutor shall attempt to contact respondent by telephone or electronically;~~

~~(c) UPPAC shall maintain documentation of attempts toward written, telephonic, or electronic contact;~~

~~(d) the respondent has 20 days following service of the order of default to respond to UPPAC; and~~

~~(e) if UPPAC receives a response from respondent to a default order before the end of the 20-day default period, UPPAC shall allow respondent a final ten-day period to respond to a complaint or stipulated agreement.~~

~~(2) Except as provided in Subsection(3), if an order of default is issued, the Executive Secretary may make a recommendation to the Board for revocation or for a suspension of the educator's license for no less than five years.~~

~~(3) If an order of default is issued, the Executive Secretary shall make a recommendation to the Board for a revocation of the educator's license if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).~~

~~R277-201-8. Disciplinary Letters and Dismissal.~~

~~(1) If UPPAC recommends issuance of a disciplinary letter or dismissal, the Executive Secretary shall forward the case to the Board for review.~~

~~(2) Prior to Board consideration of a disciplinary letter or dismissal, UPPAC shall:~~

~~(a) make the UPPAC case file available to the Board for confidential review; and~~

~~(b) make other evidence available for review as directed by the Board.~~

~~(3) There is a presumption that the Board shall approve a UPPAC disciplinary letter or dismissal recommendation if the Board finds that:~~

~~(a) the UPPAC recommendation is based on adequate evidence; and~~

~~(b) the UPPAC recommendation constitutes a reasonable resolution of the case.~~

~~(4) If the Board finds that the UPPAC recommendation is based on insufficient evidence or presents an unreasonable resolution of the case or exceptional circumstances exist that warrant an alternative resolution, then the Board may:~~

~~(a) remand the case to UPPAC for a hearing;~~

~~(b) remand the case to UPPAC with recommendations for negotiation of a stipulated agreement;~~
~~(c) direct the Executive Secretary to issue a different level of disciplinary letter; or~~
~~(d) dismiss the matter.~~
~~(5) If the Board approves a disciplinary letter, the Executive Secretary shall:~~
~~(a) prepare the disciplinary letter and mail it to the educator;~~
~~(b) place a copy of the disciplinary letter in the UPPAC case file; and~~
~~(c) update CACTUS to reflect that the investigation is closed.~~

~~KEY: teacher licensing, conduct, hearings~~

~~Date of Enactment or Last Substantive Amendment: October 8, 2015~~

~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)]~~

Education, Administration
R277-202
 UPPAC Hearing Procedures and
 Reports

NOTICE OF PROPOSED RULE

(Repeal)
 DAR FILE NO.: 40327
 FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-202 is repealed based upon a court ruling which concluded that the Utah State Board of Education had not followed proper rulemaking procedures in its adoption. New Rule R277-212, following appropriate rulemaking procedure, is being filed simultaneously with the repeal of this rule. (DAR NOTE: The proposed new Rule R277-212 is under DAR No. 40336 in this issue, May 1, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-202 is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: Rule R277-202 is repealed in its entirety, and the new Rule R277-212 is filed to take its place, which likely will not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: Rule R277-202 is repealed in its entirety, and the new Rule R277-212 is filed to take its place, which likely will not result in a cost or savings to local government.

♦ SMALL BUSINESSES: Rule R277-202 is repealed in its entirety, and the new Rule R277-212 is filed to take its place, which likely will not result in a cost or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Rule R277-202 is repealed in its entirety, and the new Rule R277-212 is filed to take its place, 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: Rule R277-202 is repealed in its entirety, and the new Rule R277-212 is filed to take its place, 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 repeal of 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 05/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 05/12/2016 02:00 PM, Utah State Office of Education, 250 E 500 S, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

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

R277. Education, Administration.

[R277-202. UPPAC Hearing Procedures and Reports.

R277-202-1. Authority and Purpose.

~~(1) This rule is authorized by:~~

~~_____ (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~

~~_____ (b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and~~

~~_____ (c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~

~~_____ (2) The purpose of this rule is to establish procedures regarding UPPAC hearings and hearing reports.~~

~~_____ (3) The standards and procedures of Title 63G, Chapter 4, Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).~~

R277-202-2. Scheduling a Hearing.

~~_____ (1)(a) Following receipt of an answer by respondent requesting a hearing:~~

~~_____ (i) UPPAC shall select panel members;~~

~~_____ (ii) the Executive Secretary shall appoint a hearing officer from among a list of hearing officers identified by the state procurement process and approved by UPPAC; and~~

~~_____ (iii) UPPAC shall schedule the date, time, and place for the hearing.~~

~~_____ (b) The Executive Secretary shall schedule a hearing for a date that is not less than 25 days nor more than 180 days from the date the Executive Secretary receives the answer.~~

~~_____ (c) The required scheduling periods may be waived by mutual written consent of the parties or by the Executive Secretary for good cause shown.~~

~~_____ (2)(a) Any party may request a change of hearing date by submitting a request in writing that shall:~~

~~_____ (i) include a statement of the reasons for the request; and~~

~~_____ (ii) be submitted to the Executive Secretary at least five days prior to the scheduled date of the hearing.~~

~~_____ (b) The Executive Secretary shall determine whether the reason stated in the request is sufficient to warrant a change.~~

~~_____ (c) If the Executive Secretary finds that the reason for the request for a change of hearing date is sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.~~

~~_____ (d) If the Executive Secretary does not find the reason for the request for a change of hearing date to be sufficient, the Executive Secretary shall immediately notify the parties that the request has been denied.~~

~~_____ (e) The Executive Secretary and the parties may waive the time period required for requesting a change of hearing date for good cause shown.~~

~~_____ (3) An educator is entitled to a hearing on any matter in which an action is recommended, as defined in Subsection R277-200-2(1).~~

~~_____ (4) An educator is not entitled to a hearing on a matter in which a disciplinary letter is recommended, as defined in Subsection R277-200-2(14).~~

R277-202-3. Appointment and Duties of the Hearing Officer and Hearing Panel.

~~_____ (1)(a) The Executive Secretary shall appoint a hearing officer to chair the hearing panel and conduct the hearing.~~

~~_____ (b) The Executive Secretary shall select a hearing officer on a random basis from a list of available contracted hearing officers, subject to availability and conflict of interest.~~

~~_____ (c) The Executive Secretary shall provide such information about the case as necessary to determine whether the hearing officer has a conflict of interest and shall disqualify any hearing officer that cannot serve under the Utah Rules of Professional Conduct.~~

~~_____ (d) A hearing officer:~~

~~_____ (i) may require the parties to submit a brief and a list of witnesses prior to the hearing;~~

~~_____ (ii) presides at the hearing and regulates the course of the proceeding;~~

~~_____ (iii) administers an oath to a witness as follows: "Do you swear or affirm that the testimony you will give is the truth?";~~

~~_____ (iv) may take testimony, rule on a question of evidence, and ask a question of a witness to clarify a specific issue; and~~

~~_____ (v) prepares and submits a hearing report to the Executive Secretary at the conclusion of the proceedings in consultation with panel members and the timelines of this rule.~~

~~_____ (2)(a) UPPAC shall select three or more individuals to serve as members of the hearing panel.~~

~~_____ (b) As directed by UPPAC, any licensed educator may serve as a panel member, if needed.~~

~~_____ (c) The majority of panel members shall be current UPPAC members.~~

~~_____ (d) UPPAC shall select panel members on a rotating basis to the extent practicable.~~

~~_____ (e) UPPAC shall accommodate each prospective panel member based on the availability of the panel member.~~

~~_____ (f) If the respondent is a teacher, at least one panel member shall be a teacher.~~

~~_____ (g) If the respondent is a non-teacher licensed educator, at least one panel member shall be a non-teacher licensed educator.~~

~~_____ (h) The requirements of Subsection(2) may be waived only upon the stipulation of both UPPAC and the respondent.~~

~~_____ (3)(a) A UPPAC panel member shall:~~

~~_____ (i) assist a hearing officer by providing information concerning professional standards and practices of educators in the respondent's particular field of practice and in the situations alleged;~~

~~_____ (ii) ask a question of a witness to clarify a specific issue;~~

~~_____ (iii) review all evidence and briefs, if any, presented at the hearing;~~

~~_____ (iv) make a recommendation to UPPAC as to the suggested disposition of a complaint; and~~

~~_____ (v) assist the hearing officer in preparing the hearing report.~~

~~_____ (b) A panel member may only consider the evidence approved for admission by the hearing officer.~~

~~_____ (c) The Executive Secretary may make an emergency substitution of a panel member for cause with the consent of the parties.~~

~~_____ (d) The agreement to substitute a panel member shall be in writing.~~

~~_____ (e) Parties may agree to a two-member UPPAC panel in an emergency situation.~~

~~_____ (f) If the parties do not agree to a substitution or to having a two-member panel, the Executive Secretary shall reschedule the hearing.~~

~~_____ (4)(a) A party may request that the Executive Secretary disqualify a hearing officer by submitting a written request for disqualification to the Executive Secretary.~~

~~(b) A party shall submit a request to disqualify a hearing officer to the Executive Secretary at least 15 days before a scheduled hearing.~~

~~(c) The Executive Secretary shall review a request described in Subsection(4) and supporting evidence to determine whether the reasons for the request are substantial and sufficient.~~

~~(d) If the Executive Secretary determines that the hearing officer should be disqualified, the Executive Secretary shall appoint a new hearing officer and, if necessary, reschedule the hearing.~~

~~(e) A hearing officer may recuse himself or herself from a hearing if, in the hearing officer's opinion, the hearing officer's participation would violate any of the Utah Rules of Professional Conduct consistent with the Supreme Court Rules of Professional Practice.~~

~~(f) If the Executive Secretary denies a request to disqualify a hearing officer, the Executive Secretary shall notify the party within ten days prior to the date of the hearing.~~

~~(g) The requesting party may submit a written appeal of the Executive Secretary's denial to the Superintendent no later than five days prior to the hearing date.~~

~~(h) If the Superintendent finds that the appeal is justified, the Superintendent shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.~~

~~(i) The decision of the Superintendent described in Subsection(4)(h) is final.~~

~~(j) If a party fails to file an appeal within the time requirements of Subsection (4)(g), the appeal shall be deemed denied.~~

~~(k) If the Executive Secretary fails to meet the time requirements described in Subsection(4), the request or appeal is approved.~~

~~(5)(a) A UPPAC member shall recuse himself or herself as a panel member due to any known financial or personal interest, prior relationship, personal and independent knowledge of the persons or issues in the case, or other association that the panel member believes would compromise the panel member's ability to make an impartial decision.~~

~~(b) A party may request that a UPPAC panel member be disqualified by submitting a written request to the following:~~

- ~~(i) the hearing officer; or~~
- ~~(ii) to the Executive Secretary if there is no hearing officer.~~

~~(c) A party shall submit a request described in Subsection(5)(b) no less than 15 days before a scheduled hearing.~~

~~(d) The hearing officer, or the Executive Secretary, if there is no hearing officer, shall:~~

~~(i) review a request described in Subsection(5)(b) and supporting evidence to determine whether the reasons for the request are substantial and compelling enough to disqualify the panel member; and~~

~~(ii) if the reasons for the request described in Subsection(5)(b) are substantial and compelling, disqualify the panel member.~~

~~(e) If the panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members:~~

- ~~(i) UPPAC shall appoint a replacement; and~~
- ~~(ii) the Executive Secretary shall, if necessary, reschedule the hearing.~~

~~(f) If a request described in Subsection(5)(b) is denied, the hearing officer or the Executive Secretary if there is no hearing officer, shall notify the party requesting the panel member's disqualification no less than ten days prior to the date of the hearing.~~

~~(g) The requesting party may file a written appeal of a denial described in Subsection(5)(f) with the Superintendent no later than five days prior to the hearing date.~~

~~(h) If the Superintendent finds that an appeal described in Subsection(5)(g) is justified, the Superintendent shall direct the hearing officer or the Executive Secretary if there is no hearing officer, to replace the panel member.~~

~~(i) If a panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members, UPPAC shall agree upon a replacement and the Executive Secretary shall, if necessary, reschedule the hearing.~~

~~(j) The decision of the Superintendent described in Subsection(5)(h) is final.~~

~~(k) If a party fails to file an appeal within the time requirements of Subsection (5)(g), the appeal shall be deemed denied.~~

~~(l) If the hearing officer, or the Executive Secretary if there is no hearing officer, fails to meet the time requirements described in this Subsection(5), the request or appeal is approved.~~

~~(6) The Executive Secretary may, at the time the Executive Secretary selects a hearing officer or panel member, select an alternative hearing officer or panel member following the process for selecting those individuals.~~

~~(7) The Executive Secretary may substitute a panel member with an alternative panel member if the Executive Secretary notifies the parties of the substitution.~~

R277-202-4. Preliminary Instructions to Parties to a Hearing.

~~(1) No later than 25 days before the date of a hearing, the Executive Secretary shall provide the parties with the following information:~~

- ~~(a) date, time, and location of the hearing;~~
- ~~(b) names and LEA affiliations of each panel member, and the name of the hearing officer; and~~
- ~~(c) instructions for accessing these rules.~~

~~(2) No later than 20 days before the date of the hearing, the respondent and the complainant shall provide the following to the other party and to the hearing officer:~~

- ~~(a) a brief, if requested by the hearing officer containing:~~
 - ~~(i) any procedural and evidentiary motions along with the party's position regarding the allegations; and~~
 - ~~(ii) relevant laws, rules, and precedent;~~
- ~~(b) the name of the person who will represent the party at the hearing;~~

~~(c) a list of witnesses expected to be called, including a summary of the testimony that each witness is expected to present;~~

~~(d) a summary of documentary evidence that the party intends to submit; and~~

~~(e) following receipt of the other party's witness list, a list of anticipated rebuttal witnesses and evidence no later than ten days prior to the hearing.~~

~~(3)(a) Except as provided in Subsection(3)(b), a party may not present a witness or evidence at the hearing if the witness~~

or evidence has not been disclosed to the other party as required in Subsection(2):

(b) A party may present a witness or evidence at the hearing even if the witness or hearing has not been disclosed to the other party if:

(i) the parties stipulate to the presentation of the witness or evidence at the hearing; or

(ii) the hearing officer makes a determination of good cause to allow the witness or evidence.

(4) If a party fails to comply in good faith with a directive of the hearing officer, including time requirements, the hearing officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances.

(5) A party shall provide materials to the hearing officer, panel members, and UPPAC as directed by the hearing officer.

R277-202-5. Hearing Parties' Representation.

(1) A USOE prosecutor shall represent the complainant.

(2) A respondent may represent himself or herself or be represented, at the respondent's own cost, by another person.

(3) The informant has no right to:

(a) individual representation at the hearing; or

(b) to be present or heard at the hearing unless called as a witness.

(4) A respondent shall notify the Executive Secretary in a timely manner and in writing if the respondent chooses to be represented by anyone other than the respondent.

R277-202-6. Discovery Prior to a Hearing.

(1) Discovery is permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the hearing officer.

(2) Unduly burdensome legalistic discovery may not be used to delay a hearing.

(3) A hearing officer may limit discovery:

(a) at the discretion of the hearing officer; or

(b) upon a motion by either party.

(4) A hearing officer rules on all discovery requests and motions.

(5) The Executive Secretary shall issue a subpoena or other order to secure the attendance of a witness pursuant to Subsection 53A-6-306(3)(c)(i) if:

(a) requested by either party; and

(b) notice of intent to call the witness has been timely provided as required by Section R277-202-4.

(6) The Executive Secretary shall issue a subpoena to produce evidence if timely requested by either party.

(7)(a) A party may not present an expert witness report or expert witness testimony at a hearing unless the requirements of Section R277-202-10 have been met.

(b) A respondent may not subpoena the UPPAC prosecutor or investigator as an expert witness.

R277-202-7. Burden and Standard of Proof for UPPAC Proceedings.

(1) In matters other than those involving applicants for licensing, and excepting the presumptions under Subsection R277-202-11(10), the Board shall have the burden of proving that an action against the license is appropriate.

(2) An applicant for licensing has the burden of proving that licensing is appropriate.

(3) The standard of proof in all UPPAC hearings is a preponderance of the evidence.

(4) The Utah Rules of Evidence are not applicable to UPPAC proceedings.

(5) The criteria to decide an evidentiary question are:

(a) reasonable reliability of the offered evidence;

(b) fairness to both parties; and

(c) usefulness to UPPAC in reaching a decision.

(6) The hearing officer has the sole responsibility to determine the application of the hearing rules and the admissibility of evidence.

R277-202-8. Department.

(1) Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during a hearing, giving due respect to members of the hearing panel and complying with the instructions of the hearing officer.

(2) A hearing officer may exclude a person from the hearing room who fails to conduct himself or herself in an appropriate manner and may, in response to extreme instances of noncompliance, disallow the person's testimony.

(3) Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process may not harass, intimidate, or pressure witnesses or other hearing participants, nor may they direct others to harass, intimidate, or pressure witnesses or participants.

R277-202-9. Hearing Record.

(1) A hearing shall be recorded at UPPAC's expense, and the recording shall become part of the UPPAC case file, unless otherwise agreed upon by all parties.

(2) An individual party may, at the party's own expense, make a recording or transcript of the proceedings if the party provides notice to the Executive Secretary.

(3) If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.

(4) All evidence and statements presented at a hearing shall become part of the UPPAC case file and may not be removed except by direction of the hearing officer or by order of the Board.

(5) A party may review a UPPAC case file upon request of the party if the review of the UPPAC case file is performed:

(a) under supervision of the Executive Secretary; and

(b) at the USOE.

R277-202-10. Expert Witnesses in UPPAC Proceedings.

(1) A hearing officer may allow testimony by an expert witness.

(2) A party may call an expert witness at the party's own expense.

(3) A party shall provide a hearing officer and the opposing party with the following information at least 15 days prior to the hearing date:

(a) notice of intent of a party to call an expert witness;

(b) the identity and qualifications of an expert witness;

(c) the purpose for which the expert witness is to be called; and

~~(d) any prepared expert witness report.~~
~~(4) Defects in the qualifications of an expert witness, once a minimum threshold of expertise is established, go to the weight to be given the testimony and not to its admissibility.~~
~~(5) An expert witness who is a member of the complainant's staff or staff of an LEA may testify and have the testimony considered as part of the record in the same manner as the testimony of any other expert.~~

~~R277-202-11. Evidence and Participation in UPPAC Proceedings.~~

~~(1) A hearing officer may not exclude evidence solely because the evidence is hearsay.~~
~~(2) Each party has a right to call witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.~~
~~(3) Testimony presented at the hearing shall be given under oath if the testimony is offered as evidence to be considered in reaching a decision on the merits.~~
~~(4) If a case involves allegations of child abuse or of a sexual offense against a minor, either party, a member of the hearing panel, or the hearing officer, may request that a minor be allowed to testify outside of the respondent's presence.~~
~~(5) If the hearing officer determines that a minor would suffer undue emotional or mental harm, or that the minor's testimony in the presence of the respondent would be unreliable, the minor's testimony may be admitted as described in this section.~~
~~(6) An oral statement of a victim or witness younger than 18 years of age that is recorded prior to the filing of a complaint is admissible as evidence in a hearing regarding the offense if:~~
~~(a) no attorney for either party is in the minor's presence when the statement is recorded;~~
~~(b) the recording is visual and aural and is recorded;~~
~~(c) the recording equipment is capable of making an accurate recording;~~
~~(d) the operator of the equipment is competent;~~
~~(e) the recording is accurate and has not been altered; and~~
~~(f) each voice in the recording is identified.~~
~~(7) The testimony of a witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and may be transmitted by closed circuit equipment to another room where it can be viewed by the respondent if:~~
~~(a) only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the minor may be with the minor during the testimony;~~
~~(b) the respondent is not present during the minor's testimony;~~
~~(c) the hearing officer ensures that the minor cannot hear or see the respondent;~~
~~(d) the respondent is permitted to observe and hear, but not communicate with the minor; and~~
~~(e) only hearing panel members, the hearing officer, and the attorneys question the minor.~~
~~(8) If the hearing officer determines that the testimony of a minor may be taken consistent with Subsections(4) through~~
~~(7) the minor may not be required to testify in any proceeding where the recorded testimony is used.~~

~~(9) On the hearing officer's own motion or upon objection by a party, the hearing officer:~~
~~(a) may exclude evidence that the hearing officer determines to be irrelevant, immaterial, or unduly repetitious;~~
~~(b) shall exclude evidence that is privileged under law applicable to administrative proceedings in the state unless waived;~~
~~(c) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;~~
~~(d) may take official notice of any facts that could be judicially noticed under judicial or administrative laws of the state, or from the record of other proceedings before the agency.~~
~~(10)(a) A rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor if the person has:~~
~~(i) been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor;~~
~~(ii) failed to defend himself or herself against the charge when given a reasonable opportunity to do so; or~~
~~(iii) voluntarily surrendered a license or allowed a license to lapse in the face of a charge of having committed a sexual offense against a minor.~~
~~(b) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has been found pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing unfitness for duty, including immoral, unprofessional, or incompetent conduct, or other violation of standards of ethical conduct, performance, or professional competence.~~
~~(c) Evidence of behavior described in Subsection(10)(b) may include:~~
~~(i) conviction of a felony;~~
~~(ii) a felony charge and subsequent conviction for a lesser related charge pursuant to a plea bargain or plea in abeyance;~~
~~(iii) an investigation of an educator's license, certificate, or authorization in another state; or~~
~~(iv) the expiration, surrender, suspension, revocation, or invalidation of an educator's license for any reason.~~

~~R277-202-12. Hearing Report.~~

~~(1) Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials as permitted by the hearing officer, the hearing officer shall sign and issue a hearing report consistent with the recommendations of the panel that includes:~~
~~(a) detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted;~~
~~(b) a statement of relevant precedent, if available;~~
~~(c) a statement of applicable law and rule;~~
~~(d) a recommended disposition of UPPAC panel members that shall be one or an appropriate combination of the following:~~
~~(i) dismissal of the complaint;~~
~~(ii) letter of admonishment;~~
~~(iii) letter of warning;~~
~~(iv) letter of reprimand;~~
~~(v) probation, to include the following terms and conditions:~~

~~_____ (A) it is the respondent's responsibility to petition UPPAC for removal of probation and letter of reprimand from the respondent's CACTUS file;~~

~~_____ (B) a probationary time period or specifically designated indefinite time period;~~

~~_____ (C) conditions that can be monitored;~~

~~_____ (D) if recommended by the panel, a person or entity to monitor a respondent's probation;~~

~~_____ (E) a statement providing for costs of probation, if appropriate; and~~

~~_____ (F) whether or not the respondent may work in any capacity in public education during the probationary period;~~

~~_____ (vi) disciplinary action held in abeyance;~~

~~_____ (vii) suspension, to include the following terms and conditions:~~

~~_____ (A) a recommended minimum time period after which an educator may request a reinstatement hearing under Rule R277-203; and~~

~~_____ (B) any recommended conditions precedent to requesting a reinstatement hearing under Section R277-203-2; or~~

~~_____ (viii) revocation; and~~

~~_____ (e) notice that UPPAC's recommendation is subject to approval by the Board and judicial review as may be allowed by law.~~

~~_____ (2) Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence.~~

~~_____ (3) Any of the consequences described in Subsection(1)(d) may be imposed in the form of a disciplinary action held in abeyance.~~

~~_____ (4)(a) If the respondent's penalty is held in abeyance, the respondent's penalty is stayed subject to the satisfactory completion of probationary conditions.~~

~~_____ (b) The decision to impose a consequence in the form of a disciplinary action held in abeyance shall provide for appropriate or presumed discipline if the respondent does not fully satisfy the probationary conditions.~~

~~_____ (5)(a) A hearing officer shall circulate a draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.~~

~~_____ (b) Hearing panel members shall notify the hearing officer of any changes to the report:~~

~~_____ (i) as soon as possible after receiving the report; and~~

~~_____ (ii) prior to the 20 day completion deadline of the hearing report.~~

~~_____ (c) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with UPPAC.~~

~~_____ (d) The Executive Secretary may participate in UPPAC's deliberation as a resource to UPPAC in explaining the hearing report and answering any procedural questions raised by UPPAC members.~~

~~_____ (e) The hearing officer may confer with the Executive Secretary or the panel members or both while preparing the hearing report.~~

~~_____ (f) The hearing officer may request the Executive Secretary to confer with the hearing officer and panel following the hearing.~~

~~_____ (g) The Executive Secretary may return a hearing report to a hearing officer if the report is incomplete, unclear, or unreadable, or missing essential components or information.~~

~~_____ (h) UPPAC shall vote to uphold the hearing officer's and panel's report if UPPAC finds that:~~

~~_____ (i) there are no significant procedural errors;~~

~~_____ (ii) the hearing officer's recommendations are based upon a reasonable interpretation of the evidence presented at the hearing; and~~

~~_____ (iii) that all issues explained in the hearing report are adequately addressed in the conclusions of the report.~~

~~_____ (i) After the UPPAC review, the Executive Secretary shall send a copy of the hearing report to:~~

~~_____ (i) the Board for further action;~~

~~_____ (ii) the respondent; and~~

~~_____ (iii) the UPPAC case file.~~

~~_____ (6)(a) If UPPAC adopts a hearing report that recommends an action, as defined in Subsection R277-200-2(1), either party may request review by the Superintendent within 15 days from the date the Executive Secretary sends a copy of the hearing report to the respondent.~~

~~_____ (b) The request for review shall consist of:~~

~~_____ (i) the name, position, and address of the appellant;~~

~~_____ (ii) the issue being appealed; and~~

~~_____ (iii) the signature of the appellant or the appellant's representative.~~

~~_____ (c) An appeal to the Superintendent is limited to a question of fairness or a violation of due process.~~

~~_____ (d) If the Superintendent finds that a procedural error has occurred that violates fairness or due process, the Superintendent shall:~~

~~_____ (i) refer the report back to UPPAC for reconsideration as to whether the findings, conclusions, or decisions are supported by a preponderance of the evidence; or~~

~~_____ (ii) direct the UPPAC Executive Secretary to take specific administrative action.~~

~~_____ (e) After UPPAC completes reconsideration, the Superintendent shall:~~

~~_____ (i) notify all parties; and~~

~~_____ (ii) refer the report to the Board, if necessary, for final disposition consistent with this rule.~~

~~_____ (7)(a) Prior to Board consideration of a hearing report, UPPAC shall:~~

~~_____ (i) make the UPPAC case file available to the Board for confidential review; and~~

~~_____ (ii) make other evidence available for review as directed by the Board.~~

~~_____ (b) It is presumed that the Board will approve a UPPAC hearing report if:~~

~~_____ (i) the UPPAC hearing process comports with due process and is free from a procedural error;~~

~~_____ (ii) the hearing report is based upon a reasonable interpretation of the evidence;~~

~~_____ (iii) the hearing report's recommendations constitute a reasonable resolution to the UPPAC investigation; and~~

~~_____ (iv) the hearing report provides adequate guidance to the educator concerning any conditions prior to:~~

- ~~(A) reinstatement;~~
~~(B) termination of probation; or~~
~~(C) removal of a letter of reprimand from CACTUS.~~
~~(c) If the Board determines that any of the criteria in Subsection (1) are absent from a hearing report, or that exceptional circumstances exist, the Board shall:~~
~~(i) remand the case to UPPAC to cure any issues with due process; or~~
~~(ii)(A) issue findings specifying the defects in the hearing report and adopting the Board's agreed upon disposition of the matter; and~~
~~(B) direct the Executive Secretary to include the findings as an addendum to the hearing report, which findings constitute final Board action.~~
~~(d) Following Board adoption of a hearing report or alternative findings, the Executive Secretary shall:~~
~~(i) notify the educator;~~
~~(ii) notify the educator's employer;~~
~~(iii) update CACTUS to reflect the Board's action; and~~
~~(iv) report the action to the NASDTEC Educator-Information Clearing house if the action results in:~~
~~(A) a revocation; or~~
~~(B) a suspension.~~
~~(8) The hearing report is a public document under Title 63G, Chapter 2, Government Records Access and Management Act after final action is taken in the case, but may be redacted if it is determined that the hearing report contains particular information, the dissemination of which is otherwise restricted under the law.~~
~~(9) A respondent's failure to comply with the terms of a final disposition may result in additional discipline against the educator license.~~
~~(10) If a hearing officer fails to satisfy the hearing officer's responsibilities under this rule, the Executive Secretary may:~~
~~(a) notify the Utah State Bar of the failure;~~
~~(b) reduce the hearing officer's compensation consistent with the failure;~~
~~(c) take timely action to avoid disadvantaging either party; or~~
~~(d) preclude the hearing officer from further employment by the Board for UPPAC purposes.~~
~~(11) The Executive Secretary may waive the deadlines within this section if the Executive Secretary finds good cause.~~
~~(12) All criteria of letters of warning and reprimand, probation, suspension, and revocation apply to the comparable sections of the final hearing report.~~

R277-202-13. Default.

- ~~(1)(a) The Executive Secretary may prepare an order of default if:~~
~~(i) the respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice; or~~
~~(ii) the hearing officer recommends default as a sanction as a result of misconduct by the respondent or the respondent's representative during the course of the hearing process.~~
~~(b) The hearing officer may determine that the respondent has failed to attend a properly scheduled hearing if the respondent~~

~~has not appeared within 30 minutes of the appointed time for the hearing to begin, unless the respondent shows good cause for failing to appear in a timely manner.~~

~~(2) The recommendation of default may be executed by the Executive Secretary following all applicable time periods, without further action by UPPAC.~~

~~(3) An order of default may result in a recommendation to the Board for revocation or for a suspension of no less than five years.~~

~~(4) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).~~

R277-202-14. Rights of Victims at Hearings.

~~(1) If the allegations that gave rise to the underlying allegations involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to:~~

~~(a) advise the alleged victim that a hearing has been scheduled; and~~

~~(b) notify the alleged victim of the date, time, and location of the hearing.~~

~~(2) An alleged victim entitled to notification of a hearing is permitted, but is not required, to attend the hearing.~~

KEY: hearings, reports, educators

Date of Enactment or Last Substantive Amendment: October 8, 2015

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)]

Education, Administration
R277-203
 Request for Licensure Reinstatement
 and Reinstatement Procedures

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40328

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-203 is repealed based upon a court ruling which concluded that the Utah State Board of Education had not followed proper rulemaking procedures in its adoption. New Rule R277-213, following appropriate rulemaking procedure, is being filed simultaneously with the repeal of this rule. (DAR NOTE: The proposed new Rule R277-213 is under DAR No. 40337 in this issue, May 1, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-203 is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Rule R277-203 is repealed in its entirety, and the new Rule R277-213 is filed to take its place, which likely will not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: Rule R277-203 is repealed in its entirety, and the new Rule R277-213 is filed to take its place, which likely will not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: Rule R277-203 is repealed in its entirety, and the new Rule R277-213 is filed to take its place, which likely will not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Rule R277-203 is repealed in its entirety, and the new Rule R277-213 is filed to take its place, 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: Rule R277-203 is repealed in its entirety, and the new Rule R277-213 is filed to take its place, 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 repeal of 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 05/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/12/2016 02:00 PM, Utah State Office of Education, 250 E 500 S, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

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

R277. Education, Administration.

~~[R277-203. Request for Licensure Reinstatement and Reinstatement Procedures.~~

~~**R277-203-1. Authority and Purpose.**~~

- ~~_____ (1) This rule is authorized by:~~
 - ~~_____ (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~
 - ~~_____ (b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and~~
 - ~~_____ (c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~
- ~~_____ (2) The purpose of this rule is to establish procedures regarding educator license reinstatement.~~
- ~~_____ (3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).~~

~~**R277-203-2. Application for Licensing Following Denial or Loss of License.**~~

- ~~_____ (1)(a) An individual who has been denied a license or lost the individual's license through suspension, or through surrender of a license or allowing a license to lapse in the face of an allegation of misconduct, may request a review to consider reinstatement of a license.~~
- ~~_____ (b) A request for review described in Subsection (1)(a) shall:~~
 - ~~_____ (i) be in writing;~~
 - ~~_____ (ii) be transmitted to the UPPAC Executive Secretary; and~~
 - ~~_____ (iii) have the following information:~~
 - ~~_____ (A) name and address of the individual requesting review;~~
 - ~~_____ (B) the action being requested;~~
 - ~~_____ (C) specific evidence and documentation of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations from UPPAC or the Board;~~
 - ~~_____ (D) reason(s) that the individual seeks reinstatement; and~~
 - ~~_____ (E) signature of the individual requesting review.~~
- ~~_____ (2)(a) The Executive Secretary shall review the request with UPPAC.~~
- ~~_____ (b) If UPPAC determines that the request is incomplete or invalid:~~
 - ~~_____ (i) the Executive Secretary shall deny the request; and~~
 - ~~_____ (ii) notify the individual requesting reinstatement of the denial.~~
- ~~_____ (c) If UPPAC determines that the request of an individual described in Subsection (1) is complete, timely, and appropriate, UPPAC shall schedule and hold a hearing as provided under Section R277-203-3.~~
- ~~_____ (3)(a) Burden of Persuasion: The burden of persuasion at a reinstatement hearing shall fall on the individual seeking the reinstatement.~~
- ~~_____ (b) An individual requesting reinstatement of a suspended license shall:~~

~~(i) show sufficient evidence of compliance with any conditions imposed in the past disciplinary action;~~
~~(ii) provide sufficient evidence to the reinstatement hearing panel that the educator will not engage in recurrences of the actions that gave rise to the suspension and that reinstatement is appropriate;~~
~~(iii) undergo a criminal background check not more than six months prior to the requested hearing; and~~
~~(iv) provide materials for review by the hearing panel that demonstrate the individual's compliance with directives from UPPAC or the Board found in petitioner's original stipulated agreement or hearing report.~~
~~(c) An individual requesting licensing following a denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable, when requesting reinstatement.~~
~~(4) An individual whose license has been suspended or revoked in another state shall seek reinstatement of the individual's license in the other state before a request for a reinstatement hearing may be approved.~~

R277-203-3. Reinstatement Hearing Procedures:

~~(1) A hearing officer shall:~~
~~(a) preside over a reinstatement hearing; and~~
~~(b) rule on all procedural issues during the reinstatement hearing as they arise.~~
~~(2) A hearing panel, comprising individuals as set forth in Subsection (2), shall:~~
~~(a) hear the evidence; and~~
~~(b) along with the prosecutor and hearing officer, question the individual seeking reinstatement regarding the appropriateness of reinstatement.~~
~~(3) An individual seeking reinstatement may:~~
~~(a) be represented by counsel; and~~
~~(b) may present evidence and witnesses.~~
~~(4) A party may present evidence and witnesses consistent with Rule R277-202.~~
~~(5) A hearing officer of a reinstatement hearing shall direct one or both parties to explain the background of a case to panel members at the beginning of the hearing to provide necessary information about the initial misconduct and subsequent UPPAC and Board action.~~
~~(6) An individual seeking reinstatement shall present documentation or evidence that supports reinstatement.~~
~~(7) The USOE, represented by the UPPAC prosecutor, shall present any evidence or documentation that explains and supports USOE's recommendation in the matter.~~
~~(8) Other evidence or witnesses may be presented by either party and shall be presented consistent with Rule R277-202.~~
~~(9) The individual seeking reinstatement shall:~~
~~(a) focus on the individual's actions, rehabilitative efforts, and performance following license denial or suspension;~~
~~(b) explain item by item how each condition of the hearing report or stipulated agreement was satisfied;~~
~~(c) provide documentation in the form of evaluations, reports, or plans, as directed by the hearing report or stipulated agreement, of satisfaction of all required and outlined conditions;~~

~~(d) be prepared to completely and candidly respond to the questions of the UPPAC prosecutor and hearing panel regarding:~~
~~(i) the misconduct that caused the license suspension;~~
~~(ii) subsequent rehabilitation activities;~~
~~(iii) counseling or therapy received by the individual related to the original misconduct; and~~
~~(iv) work, professional actions, and behavior between the suspension and reinstatement request;~~
~~(c) present witnesses and be prepared to question witnesses (including counselors, current employers, support group members) at the hearing who can provide substantive corroboration of rehabilitation or current professional fitness to be an educator;~~
~~(f) provide copies of all reports and documents to the UPPAC prosecutor and hearing officer at least five days before a reinstatement hearing; and~~
~~(g) bring eight copies of all documents or materials that an individual seeking reinstatement plans to introduce at the hearing.~~
~~(10) The UPPAC prosecutor, the hearing panel, and hearing officer shall thoroughly question the individual seeking reinstatement as to the individual's:~~
~~(a) underlying misconduct which is the basis of the sanction on the educator's license;~~
~~(b) specific and exact compliance with reinstatement requirements;~~
~~(c) counseling, if required for reinstatement;~~
~~(d) specific plans for avoiding previous misconduct; and~~
~~(e) demeanor and changed understanding of petitioner's professional integrity and actions consistent with Rule R277-515.~~
~~(11) If the individual seeking reinstatement sought counseling as described in Subsection(10)(c), the individual shall state, under oath, that he provided all relevant information and background to his counselor or therapist.~~
~~(12) A hearing officer shall rule on procedural issues in a reinstatement hearing in a timely manner as they arise.~~
~~(13) No more than 20 days following a reinstatement hearing, a hearing officer, with the assistance of the hearing panel, shall:~~
~~(a) prepare a hearing report in accordance with the requirements set forth in Section R277-203-5; and~~
~~(b) provide the hearing report to the UPPAC Executive Secretary.~~
~~(14) The Executive Secretary shall submit the hearing report to UPPAC at the next meeting following receipt of the hearing report by the Executive Secretary.~~
~~(15) UPPAC may do the following upon receipt of the hearing report:~~
~~(a) accept the hearing panel's recommendation as prepared in the hearing report;~~
~~(b) amend the hearing panel's recommendation with conditions or modifications to the hearing panel's recommendation which shall be:~~
~~(i) directed by UPPAC;~~
~~(ii) prepared by the UPPAC Executive Secretary; and~~
~~(iii) attached to the hearing report; or~~
~~(c) reject the hearing panel's recommendation.~~

~~(16) After UPPAC makes a recommendation on the hearing panel report, the UPPAC recommendation will be forwarded to the Board for final action on the individual's reinstatement request.~~

R277-203-4. Rights of a Victim at a Reinstatement Hearing.

~~(1) If the allegations that gave rise to the underlying suspension involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to notify the victim or the victim's family of the reinstatement request.~~

~~(2) UPPAC's notification shall:~~

~~(a) advise the victim or the victim's family that a reinstatement hearing has been scheduled;~~

~~(b) notify the victim or the victim's family of the date, time, and location of the hearing;~~

~~(c) advise the victim or the victim's family of the victim's right to be heard at the reinstatement hearing; and~~

~~(d) provide the victim or the victim's family with a form upon which the victim can submit a statement for consideration by the hearing panel.~~

~~(3) A victim entitled to notification of the reinstatement proceedings shall be permitted:~~

~~(a) to attend the hearing; and~~

~~(b) to offer the victim's position on the educator's reinstatement request, either by testifying in person or by submitting a written statement.~~

~~(4) A victim choosing to testify at a reinstatement hearing shall be subject to reasonable cross-examination in the hearing officer's discretion.~~

~~(5) A victim choosing not to respond in writing or appear at the reinstatement hearing waives the victim's right to participate in the reinstatement process.~~

R277-203-5. Reinstatement Hearing Report.

~~(1) A hearing officer shall provide the following in a reinstatement hearing report:~~

~~(a) a summary of the background of the original disciplinary action;~~

~~(b) adequate information, including summary statements of evidence presented, documents provided, and petitioner's testimony and demeanor for both UPPAC and the Board to evaluate petitioner's progress and rehabilitation since petitioner's original disciplinary action;~~

~~(c) the hearing panel's conclusions regarding petitioner's appropriateness and fitness to be a public school educator again;~~

~~(d) the hearing panel's recommendation; and~~

~~(e) a statement indicating whether the hearing panel's recommendation to UPPAC was unanimous or identifying how the panel member's voted concerning reinstatement.~~

~~(2)(a) The hearing panel report is a public document under GRAMA following the conclusion of the reinstatement process unless specific information or evidence contained therein is protected by a specific provision of GRAMA, or another provision of state or federal law.~~

~~(b) The Executive Secretary shall add the hearing panel report to the UPPAC case file.~~

~~(3) If a license is reinstated, an educator's CACTUS file shall be updated to:~~

~~(a) remove the flag;~~

~~(b) show that the educator's license was reinstated; and~~

~~(c) show the date of formal Board action reinstating the license.~~

~~(4)(a) UPPAC and the Board shall follow the procedures described in Subsection R277-202-12(7) when considering a reinstatement hearing report.~~

~~(b) The Board decision as to whether to accept the recommendation of the reinstatement hearing report is within the Board's sole discretion.~~

~~(5) If the Board denies an individual's request for reinstatement, the individual shall wait at least twenty four (24) months prior to filing a request for reinstatement again, unless a different time is specified by UPPAC or the Board.~~

~~(6) If the Board reinstates an educator, the Executive Secretary shall:~~

~~(a) update CACTUS to reflect the Board's action; and~~

~~(b) report the Board's action to the NASDTEC Educator Information Clearinghouse.~~

~~(7) The Executive Secretary shall send notice of the Board's decision no more than 30 days following Board action to:~~

~~(a) the educator;~~

~~(b) the educator's LEA.~~

R277-203-6. Reinstatement from Revocation of License.

~~(1) The Executive Secretary shall deny any request for a reinstatement hearing for a revoked license unless the educator's stipulated agreement or revocation order from the Board allows the educator to request a reinstatement hearing.~~

~~(2) An educator may request that the Superintendent order a new hearing if:~~

~~(a) an educator provides:~~

~~(i) evidence of mistake or false information that was critical to the revocation action; or~~

~~(ii) newly discovered evidence;~~

~~(A) that undermines the revocation determination; and~~

~~(B) that the educator could not have reasonably obtained during the original disciplinary proceedings; or~~

~~(b) an educator identifies material procedural Board error in the revocation process.~~

~~(3) A request for review by the Superintendent must be filed within 30 days of Board action for circumstances identified in Subsection (2)(a)(i) or (b).~~

~~(4) A request for review by the Superintendent must be filed within 90 days of discovery of the new evidence for circumstances identified in Subsection (2)(a)(ii).~~

~~(5) The Superintendent:~~

~~(a) shall make a determination on a request made under Subsection (2) within 60 days; and~~

~~(b) may request briefing from an educator and USOE staff in making a determination.~~

~~(6) If the Superintendent finds that the criteria in Subsection (2)(a) have been established, the Superintendent shall direct UPPAC to conduct a new hearing consistent with Rule R277-202.~~

~~(7) If the Superintendents finds that the criteria in Subsection (2)(b) have been established, the Superintendent shall recommend to the Board that they reconsider their previous action.~~

~~KEY: licensure, reinstatement, hearings; license reinstatements
Date of Enactment or Last Substantive Amendment: October 8, 2015
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)]~~

Education, Administration
R277-204
Utah Professional Practices Advisory
Commission Criminal Background
Review

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40329
FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-204 is repealed based upon a court ruling which concluded that the Utah State Board of Education had not followed proper rulemaking procedures in its adoption. New Rule R277-214, following appropriate rulemaking procedure, is being filed simultaneously with the repeal of this rule. (DAR NOTE: The proposed new Rule R277-214 is under DAR No. 40338 in this issue, May 1, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-204 is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Rule R277-204 is repealed in its entirety, and the new Rule R277-214 is filed to take its place, which likely will not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: Rule R277-204 is repealed in its entirety, and the new Rule R277-214 is filed to take its place, which likely will not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: Rule R277-204 is repealed in its entirety, and the new Rule R277-214 is filed to take its place, which likely will not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Rule R277-204 is repealed in its entirety, and the new Rule R277-214 is filed to take its place, 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: Rule R277-204 is repealed in its entirety, and the new Rule R277-214 is filed to take its place, 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 repeal of 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 05/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/12/2016 02:00 PM, Utah State Office of Education, 250 E 500 S, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

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

R277. Education, Administration.

~~[R277-204. Utah Professional Practices Advisory Commission Criminal Background Review.~~

~~R277-204-1. Authority and Purpose.~~

- ~~(1) This rule is authorized by:~~
 - ~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~
 - ~~(b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and~~
 - ~~(c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~
- ~~(2) The purpose of this rule is:~~
 - ~~(a) to establish procedures for an applicant to proceed toward licensing; or~~
 - ~~(b) be denied to continue when an application or recommendation for licensing or renewal identifies offenses in the applicant's criminal background check.~~
- ~~(3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).~~

R277-204-2. Initial Submission and Evaluation of Information.

~~(1) The Executive Secretary shall review all information received as part of a criminal background review.~~

~~(2) The Executive Secretary may request any of the following information from an educator in determining how to process a criminal background review:~~

~~(a) a letter of explanation for each reported offense that details the circumstances, the final disposition, and any explanation for the offense the applicant may want to provide UPPAC, including any advocacy for approving licensing;~~

~~(b) official documentation regarding each offense, including court records and police reports for each offense, or if both court records and police reports are not available, a letter on official police or court stationery from the appropriate court or police department involved, explaining why the records are not available; and~~

~~(c) any other information that the Executive Secretary considers relevant under the circumstances in a criminal background review.~~

~~(3)(a) The Executive Secretary may only process a criminal background review after receipt of all letters of explanation and documentation requested in good faith by the Executive Secretary.~~

~~(b) The Executive Secretary shall provide timely notice if the information provided by an applicant is incomplete.~~

~~(4) If an applicant is under court supervision of any kind, including parole, informal or formal probation, or plea in abeyance, the Executive Secretary may not process the background check review until the Executive Secretary receives proof that court supervision has terminated.~~

~~(5) It is the applicant's sole responsibility to provide any requested material to the Executive Secretary.~~

~~(6) The Executive Secretary shall process criminal background reviews subject to the following criteria:~~

~~(a) the Executive Secretary may clear a criminal background review without further action if the arrest, citation, or charge resulted in a dismissal, unless the dismissal resulted from a plea in abeyance agreement;~~

~~(b) the Executive Secretary shall forward a recommendation to clear the following criminal background reviews directly to the Board:~~

~~(i) singular offenses committed by an applicant, excluding offenses identified in Subsection(6)(c), if the arrest occurred more than two years prior to the date of submission to UPPAC for review;~~

~~(ii) more than two offenses committed by the applicant, excluding offenses identified in Subsection(6)(c), if at least one arrest occurred more than five years prior to the date of submission to UPPAC for review; or~~

~~(iii) more than two offenses committed by the applicant, excluding offenses identified in Subsection(6)(c), if all arrests for the offenses occurred more than 10 years prior to the date of submission to UPPAC for review;~~

~~(c) the Executive Secretary shall forward the following criminal background reviews to UPPAC, which shall make a recommendation to the Board for final action:~~

~~(i) convictions or pleas in abeyance for any offense where the offense date occurred less than two years prior to the date of submission to UPPAC;~~

~~(ii) convictions or pleas in abeyance for multiple offenses where all offenses occurred less than five years prior to the date of submission to UPPAC;~~

~~(iii) convictions or pleas in abeyance for felonies;~~

~~(vi) arrests, convictions, or pleas in abeyance for sex-related or lewdness offenses;~~

~~(v) convictions or pleas in abeyance for alcohol-related offenses or drug-related offenses where the offense date was less than five years prior to the date of submission to UPPAC;~~

~~(vi) convictions or pleas in abeyance involving children in any way; and~~

~~(vii) convictions or pleas in abeyance involving any other matter which the Executive Secretary determines, in his discretion, warrants review by UPPAC and the Board; and~~

~~(d) If the criminal background review involves a conviction for an offense requiring mandatory revocation under Subsection 53A-6-501(5)(b) or meeting the definition of sex offender under Subsection 77-41-102(17), the Executive Secretary shall forward a recommendation directly to the Board that clearance be denied.~~

~~(7) The Executive Secretary shall use reasonable discretion to interpret the information received from the Bureau of Criminal Identification to comply with the provisions of this rule.~~

~~(8) In Board review of recommendations of the Executive Secretary and UPPAC for criminal background checks, the following shall apply:~~

~~(a) the Board shall consider a criminal background review in accordance with the standards described in Section 53A-6-405;~~

~~(b) the Board may uphold any recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE;~~

~~(c) the Board may substitute its own judgment in lieu of the recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE; and~~

~~(d) if the Board chooses to substitute its own judgment in a criminal background review, the Board shall adopt findings articulating its reasoning.~~

~~(9) If a criminal background review arises as a result of conduct that was cleared in a prior criminal background review by the Executive Secretary, UPPAC, or the Board, the prior action shall be deemed final, and the Executive Secretary shall clear the criminal background review.~~

~~(10) If a criminal background review results in an applicant's denial, the applicant may request to be heard, and to have the matter reconsidered by the Board, consistent with the requirements of Subsection 53A-15-1506(1)(e).~~

~~**KEY: educator licenses, background reviews, background checks**~~

~~**Date of Enactment or Last Substantive Amendment: October 8, 2015**~~

~~**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)]**~~

Education, Administration
R277-205
Alcohol Related Offenses

NOTICE OF PROPOSED RULE

(Repeal)
 DAR FILE NO.: 40330
 FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-205 is repealed based upon a court ruling which concluded that the Utah State Board of Education had not followed proper rulemaking procedures in its adoption. Necessary language in this rule is incorporated into the new Rule R277-214 which, following appropriate rulemaking procedure, is being filed simultaneously with the repeal of this rule. (DAR NOTE: The proposed new Rule R277-214 is under DAR No. 40338 in this issue, May 1, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-205 is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Rule R277-205 is repealed in its entirety, and necessary language in this rule is incorporated into the new Rule R277-214, which likely will not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: Rule R277-205 is repealed in its entirety, and necessary language in this rule is incorporated into the new Rule R277-214, which likely will not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: Rule R277-205 is repealed in its entirety, and necessary language in this rule is incorporated into the new Rule R277-214, which likely will not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Rule R277-205 is repealed in its entirety, and necessary language in this rule is incorporated into the new Rule R277-214, 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: Rule R277-205 is repealed in its entirety, and necessary language in this rule is incorporated into the new Rule R277-214, 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 repeal of 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 05/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/12/2016 02:00 PM, Utah State Office of Education, 250 E 500 S, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

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

R277. Education, Administration.

~~[R277-205. Alcohol Related Offenses.~~

~~**R277-205-1. Authority and Purpose.**~~

- ~~(1) This rule is authorized by:~~
- ~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~
 - ~~(b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and~~
 - ~~(c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~
- ~~(2) The purpose of this rule is to establish procedures for disciplining educators regarding alcohol related offenses.~~
- ~~(3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).~~

~~**R277-205-2. Action by the Board if a Licensed Educator Has Been Convicted of an Alcohol Related Offense.**~~

- ~~(1)(a) If as a result of a background check, it is discovered that a licensed educator has been convicted of an alcohol related offense in the previous five years, UPPAC shall adhere to the minimum conditions described in this Subsection (1):~~
- ~~(b) One conviction—a letter shall be sent to the educator informing the educator of the provisions of this rule.~~

~~(c) Two convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical assessment and recommended treatment following the second conviction.~~

~~(d) If the most recent conviction was more than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of warning to the educator.~~

~~(e) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of reprimand to the educator and a letter to the district, if employed.~~

~~(f) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical assessment and recommended treatment, UPPAC or the Board may initiate an investigation of the educator based upon the alcohol offenses.~~

~~(g) Three convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical assessment and recommended treatment following the third conviction.~~

~~(h) If the most recent conviction was more than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of warning to the educator.~~

~~(i) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, UPPAC shall recommend that the Board send a letter of reprimand to the educator and send a copy of the letter of reprimand to the educator's employer.~~

~~(j) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical assessment and recommended treatment, UPPAC shall recommend suspension of the educator's license to the Board, subject to the educator's right to a hearing under Rule R277-202.~~

~~(2) This rule does not preclude more serious or additional action by the Board against an educator for other related or unrelated offenses.~~

~~**R277-205-3. Board Action Toward Individuals Who Do Not Hold Licensing:**~~

~~(1) If as a result of a background check, it is discovered that an individual inquiring about educator licensing, seeking information about educator licensing, or placed in a public school for any purpose requiring a background check, has been convicted of an alcohol related offense within five years of the date of the background check, the minimum conditions described in this section shall apply.~~

~~(2) One conviction--the individual shall be denied Board clearance for a period of one year from the date of the arrest.~~

~~(3) Two convictions--the individual shall be denied Board clearance for a period of two years from the date of the most recent~~

~~arrest and the applicant shall present documentation of clinical assessment and recommended treatment before Board clearance shall be considered.~~

~~(4) Three convictions--the Board may require the applicant to present documentation of clinical assessment and recommended treatment and may deny clearance.~~

~~**KEY: educators, disciplinary actions, alcohol, background checks**~~

~~**Date of Enactment or Last Substantive Amendment: October 8, 2015**~~

~~**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)]**~~

Education, Administration
R277-206
Drug Related Offenses

NOTICE OF PROPOSED RULE
(Repeal)

DAR FILE NO.: 40331

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-206 is repealed based upon a court ruling which concluded that the Utah State Board of Education had not followed proper rulemaking procedures in its adoption. Necessary language in this rule is incorporated into the new Rule R277-214 which, following appropriate rulemaking procedure, is being filed simultaneously with the repeal of this rule. (DAR NOTE: The proposed new Rule R277-214 is under DAR No. 40338 in this issue, May 1, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-206 is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: Rule R277-206 is repealed in its entirety, and necessary language in this rule is incorporated into the new Rule R277-214, which likely will not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: Rule R277-206 is repealed in its entirety, and necessary language in this rule is incorporated into the new Rule R277-214, which likely will not result in a cost or savings to local government.

♦ SMALL BUSINESSES: Rule R277-206 is repealed in its entirety, and necessary language in this rule is incorporated into the new Rule R277-214, which likely will not result in a cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Rule R277-206 is repealed in its entirety, and necessary language in this rule is incorporated into the new Rule R277-214, 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: Rule R277-206 is repealed in its entirety, and necessary language in this rule is incorporated into the new Rule R277-214, 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 repeal of 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 05/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/12/2016 02:00 PM, Utah State Office of Education, 250 E 500 S, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

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

R277. Education, Administration.

~~R277-206. Drug Related Offenses.~~

~~R277-206-1. Authority and Purpose.~~

- ~~(1) This rule is authorized by:

 - ~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~
 - ~~(b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and~~
 - ~~(c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~~~
- ~~(2) The purpose of this rule is to establish procedures for disciplining educators regarding drug related offenses.~~

~~(3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).~~

~~R277-206-2. Action by the Board if a Licensed Educator Has Been Convicted of a Drug Related Offense.~~

- ~~(1)(a) If as a result of a background check, it is discovered that a licensed educator has been convicted of a drug-related offense in the previous ten years, the minimum conditions described in this Subsection (1) shall apply.~~
- ~~(b) One conviction—a letter shall be sent to the educator informing the educator of the provisions of this rule.~~
- ~~(c) Two convictions—a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical assessment and recommended treatment following the second conviction.~~
- ~~(d) If the most recent conviction was more than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Board shall send a letter of warning to the educator.~~
- ~~(e) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Board shall send a letter of reprimand to the educator and a letter to the district with notice of treatment.~~
- ~~(f) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical treatment, UPPAC or the Board may initiate an investigation of the educator based upon the drug offenses.~~
- ~~(g) Three convictions—a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the third conviction.~~
- ~~(h) If the most recent conviction was more than five years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, the Board shall send a letter of warning to the educator.~~
- ~~(i) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical assessment and recommended treatment, the Board shall send a letter of reprimand to the educator and send a copy of the letter of reprimand to the educator's employer.~~
- ~~(j) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical assessment and recommended treatment, UPPAC shall recommend suspension of the educator's license to the Board, subject to the educator's right to a hearing under Rule R277-202.~~
- ~~(2) This rule does not preclude more serious or additional action by the Board against an educator if circumstances warrant it.~~

~~R277-206-3. Board Action Towards an Individual Who Does Not Hold Licensing.~~

~~(1)(a) If as a result of a background check, it is discovered that an applicant has been convicted of a drug related offense within ten years of the date of the background check, the minimum conditions described in this Subsection (1) shall apply.~~

~~(b) One conviction—the individual shall be denied clearance for a period of one year from the date of the conduct giving rise to the charge.~~

~~(c) Two convictions—the individual shall be denied clearance for a period of three years from the date of the conduct giving rise to the most recent charge and the applicant shall present documentation of clinical assessment and recommended treatment before clearance shall be considered.~~

~~(d) Three convictions—the individual shall be denied clearance for a period of five years from the date of the conduct giving rise to the most recent charge.~~

~~(2) UPPAC or the Board may require the applicant to present documentation of clinical assessment and recommended treatment and may recommend denial of clearance.~~

~~KEY: educators, disciplinary actions, drug offenses, background checks~~

~~Date of Enactment or Last Substantive Amendment: October 8, 2015~~

~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)]~~

**Education, Administration
R277-207**

**Utah Professional Practices Advisory
Commission (UPPAC), Disciplinary
Rebuttable Presumptions**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40333

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-207 is repealed based upon a court ruling which concluded that the Utah State Board of Education had not followed proper rulemaking procedures in its adoption. New Rule R277-215, following appropriate rulemaking procedure, is being filed simultaneously with the repeal of this rule. (DAR NOTE: The proposed new Rule R277-215 is under DAR No. 40339 in this issue, May 1, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-207 is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Rule R277-207 is repealed in its entirety, and the new Rule R277-215 is filed to take its place, which likely will not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: Rule R277-207 is repealed in its entirety, and the new Rule R277-215 is filed to take its place, which likely will not result in a cost or savings to local government.

◆ SMALL BUSINESSES: Rule R277-207 is repealed in its entirety, and the new Rule R277-215 is filed to take its place, which likely will not result in a cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Rule R277-207 is repealed in its entirety, and the new Rule R277-215 is filed to take its place, 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: Rule R277-207 is repealed in its entirety, and the new Rule R277-215 is filed to take its place, 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 repeal of 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 05/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/12/2016 02:00 PM, Utah State Office of Education, 250 E 500 S, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

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

R277. Education, Administration.**~~[R277-207. Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions.~~****~~R277-207-1. Authority and Purpose.~~**

~~(1) This rule is authorized by:~~

- ~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~
- ~~(b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and~~
- ~~(c) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.~~

~~(2) The purpose of this rule is to establish rebuttable presumptions for UPPAC and Board review of UPPAC cases.~~

~~R277-207-2. Rebuttable Presumptions.~~

~~(1) UPPAC and the Board shall consider the rebuttable presumptions in this section when evaluating a case of educator misconduct.~~

~~(2)(a) Revocation is presumed appropriate if an educator:~~

~~(i) is subject to mandatory revocation under Subsection 53A-6-501(5)(b);~~

~~(ii) is convicted of, admits to, or is found pursuant to an evidentiary hearing to have engaged in viewing child pornography, whether real or simulated, on or off school property;~~

~~(iii) is convicted three or more times of any combination of drug, alcohol, violence, or sexual offenses in the three years previous to the most recent conviction;~~

~~(iv) is convicted of an offense that requires the educator to register as a sex offender under Subsection 77-41-105(3);~~

~~(v) except as provided in Subsection (2)(e), is convicted of any felony; or~~

~~(vi) intentionally provides alcohol or illegal drugs to a minor.~~

~~(b) Early release or work release permitted by the jail may not be considered by UPPAC or the Board for purposes of calculating the jail time in Subsection (2)(a)(iii).~~

~~(c) An educator who is convicted of a felony may apply for a reinstatement hearing if the educator's felony is:~~

~~(i) expunged; or~~

~~(ii) reduced to a misdemeanor pursuant to Section 76-3-402.~~

~~(3) Suspension of three years or more is presumed appropriate if an educator:~~

~~(a) engages in a boundary violation of a sexually suggestive nature that is not sexually explicit conduct;~~

~~(b) is convicted of child abuse if the conduct results in a conviction of a class A misdemeanor or higher;~~

~~(c) is convicted of an offense that results in the educator being placed on court supervision for three or more years; or~~

~~(d) is convicted of intentional theft or misappropriation of public funds.~~

~~(4) Suspension of one to three years is presumed appropriate, if an educator:~~

~~(a) willfully or knowingly creates, views, or gains access to sexually inappropriate material on school property or using school equipment;~~

~~(b) is convicted of one or more misdemeanor violence offenses in the last 3 years;~~

~~(c) is convicted of using physical force with a minor if the conviction is a class B misdemeanor or lower;~~

~~(d) engages in repeated incidents of or a single egregious incident of excessive physical force or discipline to a child or student that:~~

~~(i) does not result in a criminal conviction; and~~

~~(ii) does not meet the circumstances described in Subsection 53A-11-802(2);~~

~~(c) threatens a student physically, verbally, or electronically;~~

~~(f) engages in a pattern of inappropriately fraternizing with a student under a circumstance not described in Subsection (3) (a);~~

~~(g) engages in multiple incidents or a pattern of theft or misappropriation of public funds that does not result in a criminal conviction;~~

~~(h) attends a school or school-related activity in an assigned employment-related capacity while possessing, using, or under the influence of alcohol or illegal drugs;~~

~~(i) is convicted of two drug-related offenses or alcohol-related offenses in the three years previous to the most recent conviction;~~

~~(j) engages in a pattern of or a single egregious incident of:~~

~~(i) harassing;~~

~~(ii) bullying; or~~

~~(iii) threatening a co-worker or community member;~~

~~(k) knowingly and deliberately falsifies or misrepresents information on an education-related document; or~~

~~(l) knowingly and deliberately teaches, counsels, or assists a student in a manner that undermines or disregards the lawful, express directives of a parent.~~

~~(5) A short-term suspension is presumed appropriate if an educator:~~

~~(a) has three or more incidents of inappropriate conduct that would otherwise warrant lesser discipline; or~~

~~(b) fails to report to appropriate authorities suspected child or sexual abuse.~~

~~(6) A letter of admonition, letter of warning, or letter of reprimand, with or without probation, is presumed appropriate if an educator:~~

~~(a) engages in a miscellaneous minimal boundary violation with a student or minor, whether physical, electronic, or verbal;~~

~~(b) engages in minimal inappropriate physical contact with a student;~~

~~(c) engages in unprofessional communications or conduct with a student, co-worker, community member, or parent;~~

~~(d) engages in an inappropriate discussion with a student that violates state or federal law;~~

~~(e) knowingly violates a requirement or procedure for special education needs;~~

~~(f) knowingly violates a standardized testing protocol;~~

~~(g) is convicted of one of the following with or without court probation:~~

~~(i) a single driving under the influence of alcohol or drugs offense under Section 41-6a-502;~~

~~(ii) impaired driving under Section 41-6a-502.5; or~~

~~(iii) a charge that contains identical or substantially similar elements to the state's driving under the influence of alcohol or drugs law or under the law of another state or territory;~~

~~(h) carelessly mismanages public funds or fails to accurately account for receipt and expenditure of public funds entrusted to the educator's care;~~

~~(i) fails to make a report required by Rule R277-516;~~

~~(j) is convicted of one or two misdemeanor offenses not otherwise listed;~~

~~(k) engages in an activity that constitute or create the appearance of a conflict of interest with the educator's professional responsibility; or~~

~~(l) engages in other minor violations of the Utah Educator Standards in Rule R277-515.~~

~~(7) In considering a presumption described in this section, UPPAC or the Board shall consider deviating from the presumptions if:~~

~~(a) the presumption does not involve a revocation mandated by statute; and~~

~~(b) aggravating or mitigating factors exist that warrant deviation from the presumption.~~

~~(8) An aggravating factor may include the following:~~

~~(a) the educator has engaged in prior misconduct;~~

~~(b) the educator presents a serious threat to a student;~~

~~(c) the educator's misconduct directly involved a student;~~

~~(d) the educator's misconduct involved a particularly vulnerable student;~~

~~(e) the educator's misconduct resulted in physical or psychological harm to a student;~~

~~(f) the educator violated multiple standards of professional conduct;~~

~~(g) the educator's attitude does not reflect responsibility for the misconduct or the consequences of the misconduct;~~

~~(h) the educator's misconduct continued after investigation by the LEA or UPPAC;~~

~~(i) the educator holds a position of heightened authority as an administrator;~~

~~(j) the educator's misconduct had a significant impact on the LEA or the community;~~

~~(k) the educator's misconduct was witnessed by a student;~~

~~(l) the educator was not honest or cooperative in the course of UPPAC's investigation;~~

~~(m) the educator was convicted of crime as a result of the misconduct; and~~

~~(n) any other factor that, in the view of UPPAC or the Board, warrants a more serious consequence for the educator's misconduct.~~

~~(9) A mitigating factor may include the following:~~

~~(a) the educator's misconduct was the result of strong provocation;~~

~~(b) the educator was young and new to the profession;~~

~~(c) the educator's attitude reflects recognition of the nature and consequences of the misconduct and demonstrates a reasonable expectation that the educator will not repeat the misconduct;~~

~~(d) the educator's attitude suggests amenability to supervision and training;~~

~~(e) the educator has little or no prior disciplinary history;~~

~~(f) since the misconduct, the educator has an extended period of misconduct-free classroom time;~~

~~(g) the educator was a less active participant in a larger offense;~~

~~(h) the educator's misconduct was directed or approved, whether implicitly or explicitly, by a supervisor or person in authority over the educator;~~

~~(i) the educator has voluntarily sought treatment or made restitution for the misconduct;~~

~~(j) there was insufficient training or other policies that might have prevented the misconduct;~~

~~(k) any other factor that, in the view of UPPAC or the Board, warrants a less serious consequence for the educator's misconduct.~~

~~(10)(a) UPPAC and the Board have sole discretion to determine the weight they give to an aggravating or mitigating factor.~~

~~(b) The weight UPPAC or the Board give an aggravating or mitigating factor may vary in each case and any one aggravating or mitigating factor may outweigh some or all other aggravating or mitigating factors.~~

~~**KEY: educator, disciplinary presumptions**~~

~~**Date of Enactment or Last Substantive Amendment: January 11, 2016**~~

~~**Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-6-306; 53A-1-401(3)]**~~

Education, Administration
R277-210
Utah Professional Practices Advisory
Commission (UPPAC), Definitions

NOTICE OF PROPOSED RULE
(New Rule)

DAR FILE NO.: 40334

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Board of Education (Board) recently received a court ruling, which concluded that the Board had not followed proper rulemaking procedures in the adoption of Rules R277-200 through R277-207. As a result, Rule R277-210 has been drafted to be adopted via appropriate rulemaking procedures. Rule R277-200 is being repealed simultaneously with the adoption of Rule R277-210. (DAR NOTE: The proposed repeal of Rule R277-200 is under DAR No. 40325 in this issue, May 1, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-210 provides definitions used in UPPAC activities and applies to Rules R277-210 through R277-216.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This new Rule R277-210 is filed to replace Rule R277-200, which likely will not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: This new Rule R277-210 is filed to replace Rule R277-200, which likely will not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: This new Rule R277-210 is filed to replace Rule R277-200, which likely will not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This new Rule R277-210 is filed to replace Rule R277-200, 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: This new Rule R277-210 is filed to replace Rule R277-200, 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 enactment of this new 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 05/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 05/12/2016 02:00 PM, Utah State Office of Education, 250 E 500 S, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

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

R277. Education, Administration.

R277-210. Utah Professional Practices Advisory Commission (UPPAC), Definitions.

R277-210-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and
 - (c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to establish definitions for terms in UPPAC activities.
- (3) The definitions contained in this rule apply to Rules R277-210 through R277-216.
 - (b) Any calculation of time called for by these rules shall be governed by Utah R. Civ. P. 6.

R277-210-2. Definitions.

- (1)(a) "Action" means a disciplinary action taken by the Board adversely affecting an educator's license.
 - (b) "Action" does not include a disciplinary letter.
 - (c) "Action" includes:
 - (i) a letter of reprimand;
 - (ii) probation;
 - (iii) suspension; and
 - (iv) revocation.
- (2) "Administrative hearing" or "hearing" has the same meaning as that term is defined in Section 53A-6-601.
- (3) "Alcohol related offense" means:
 - (a) driving under the influence;
 - (b) alcohol-related reckless driving or impaired driving;
 - (c) intoxication;
 - (d) driving with an open container;
 - (e) unlawful sale or supply of alcohol;
 - (f) unlawful permitting of consumption of alcohol by minors;
 - (g) driving in violation of an alcohol or interlock restriction; and
 - (8) any offense under the laws of another state that is substantially equivalent to the offenses described in Subsections(3) (a) through (g).
- (4) "Allegation of misconduct" means a written report alleging that an educator:
 - (a) has engaged in unprofessional or criminal conduct;
 - (b) is unfit for duty;
 - (c) has lost the educator's license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or
 - (d) has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.
- (5) "Answer" means a written response to a complaint filed by USOE alleging educator misconduct.
- (6) "Applicant" means a person seeking:
 - (a) a new license;
 - (b) reinstatement of an expired, surrendered, suspended, or revoked license; or

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

_____ (7) "Chair" means the Chair of UPPAC.

_____ (8) "Complaint" means a written allegation or charge against an educator filed by USOE against the educator.

_____ (9) "Complainant" means the Utah State Office of Education.

_____ (10) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file developed by the USOE and maintained on all licensed Utah educators.

_____ (11)(a) "Conviction" means the final disposition of a judicial action for a criminal offense, except in cases of a dismissal on the merits.

_____ (b) "Conviction" includes:

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

_____ (ii) a guilty or no contest plea;

_____ (iii) a plea in abeyance; and

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

_____ (12) "Criminal Background Review" means the process by which the Executive Secretary, UPPAC, and the Board review information pertinent to:

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

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

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

_____ (13)(a) "Disciplinary letter" means a letter issued to a respondent by the Board as a result of an investigation into an allegation of educator misconduct.

_____ (b) "Disciplinary letter" includes:

_____ (i) a letter of admonishment;

_____ (ii) a letter of warning; and

_____ (iii) any other action that the Board takes to discipline an educator for educator misconduct that does not rise to the level of an action as defined in this section.

_____ (14) "Drug" means controlled substance as defined in Section 58-37-2.

_____ (15) "Drug related offense" means any criminal offense under:

_____ (a) Title 58, Chapter 37;

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

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

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

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

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

_____ Sections 58-37 through 37e.

_____ (16) "Educator Misconduct" means:

_____ (a) unprofessional or criminal conduct;

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

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

_____ (17) "Executive Committee" means a subcommittee of UPPAC consisting of the following members:

_____ (a) Executive Secretary;

_____ (b) Chair;

_____ (c) Vice-Chair; and

_____ (d) one member of UPPAC at large.

_____ (18) "Executive Secretary" means:

_____ (a) an employee of USOE who:

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

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

_____ (b) the Executive Secretary's designee.

_____ (19) "Expedited Hearing" means an informal hearing aimed at determining an Educator's fitness to remain in the classroom held as soon as possible following an arrest, citation, or charge for a criminal offense requiring mandatory self-reporting under Section R277-516-3.

_____ (20) "Expedited Hearing Panel" means a panel of the following three members:

_____ (a) the Executive Secretary;

_____ (b) a voting member of UPPAC; and

_____ (c) a UPPAC attorney.

_____ (21) "Final action" means an action by the Board that concludes an investigation of an allegation of misconduct against a licensed educator.

_____ (22) "GRAMA" refers to the Government Records Access and Management Act, Title 63G, Chapter 2, Government Records Access and Management Act.

_____ (23) "Hearing officer" means a licensed attorney who:

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

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

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

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

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

_____ (24) "Hearing panel" means a panel of three or more individuals designated to:

_____ (a) hear evidence presented at a hearing;

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

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

_____ (25) "Hearing report" means a report that:

_____ (a) is prepared by the hearing officer consistent with the recommendations of the hearing panel at the conclusion of a hearing; and

_____ (b) includes:

_____ (i) a recommended disposition;

_____ (ii) detailed findings of fact and conclusions of law, based upon the evidence presented in the hearing, relevant precedent; and

_____ (iii) applicable law and rule.

_____ (26) "Informant" means a person who submits information to UPPAC concerning the alleged misconduct of an educator.

_____ (27) "Investigator" means an employee of the USOE, or independent investigator selected by the Board, who:

_____ (a) is assigned to investigate allegations of educator misconduct under UPPAC supervision;

_____ (b) offers recommendations of educator discipline to UPPAC and the Board at the conclusion of the investigation;

_____ (c) provides an independent investigative report for UPPAC and the Board; and

_____ (d) may also be a UPPAC attorney but does not have to be.

_____ (28) "Investigative report" means a written report of an investigation into allegations of educator misconduct, prepared by an Investigator that:

_____ (a) includes a brief summary of the allegations, the investigator's narrative, and a recommendation for UPPAC and the Board;

_____ (b) may include a rationale for the recommendation, and mitigating and aggravating circumstances;

_____ (c) is maintained in the UPPAC Case File; and

_____ (d) is classified as protected under Subsection 63G-2-305(34).

_____ (29) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

_____ (30) "Letter of admonishment" is a letter sent by the Board to an educator cautioning the educator to avoid or take specific actions in the future.

_____ (31) "Letter of reprimand" is a letter sent by the Board to an educator:

_____ (a) for misconduct that was longer term or more seriously unethical or inappropriate than conduct warranting a letter of warning, but not warranting more serious discipline;

_____ (b) that provides specific directives to the educator as a condition for removal of the letter;

_____ (c) appears as a notation on the educator's CACTUS file; and

_____ (d) that an educator can request to be removed from the educator's CACTUS file after two years, or after such other time period as the Board may prescribe in the letter of reprimand.

_____ (32) "Letter of warning" is a letter sent by the Board to an educator:

_____ (a) for misconduct that was inappropriate or unethical; and

_____ (b) that does not warrant longer term or more serious discipline.

_____ (33) "License" means a teaching or administrative credential, including an endorsement, which is issued by the Board to signify authorization for the person holding the license to provide professional services in Utah's public schools.

_____ (34) "Licensed educator" means an individual issued a teaching or administrative credential, including an endorsement, issued by the Board to signify authorization for the individual holding the license to provide professional services in Utah's public schools.

_____ (35) "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator Information Clearinghouse" means a database maintained by NASDTEC for the members of NASDTEC regarding persons whose licenses have been suspended or revoked.

_____ (36) "Notification of Alleged Educator Misconduct" means the official UPPAC form that may be accessed on UPPAC's internet website, and may be submitted by any person, school, or LEA that alleges educator misconduct.

_____ (37) "Party" means a complainant or a respondent.

_____ (38) "Petitioner" means an individual seeking:

_____ (a) an educator license following a denial of a license;

_____ (b) reinstatement following a license suspension; or in the event of compelling circumstances, reinstatement following a license revocation.

_____ (39) "Probation" is an action directed by the Board that:

_____ (a) involves monitoring or supervision for a designated time period, usually accompanied by a disciplinary letter;

_____ (b) may require the educator to be subject to additional monitoring by an identified person or entity;

_____ (c) may require the educator to be asked to satisfy certain conditions in order to have the probation lifted;

_____ (d) may be accompanied by a letter of reprimand, which shall appear as a notation on the educator's CACTUS file; and

_____ (e) unless otherwise specified, lasts at least two years and may be terminated through a formal petition to the Board by the respondent.

_____ (40) "Revocation" means a permanent invalidation of a Utah educator license consistent with Rule R277-517.

_____ (41) "Respondent" means an educator against whom:

_____ (a) a complaint is filed; or

_____ (b) an investigation is undertaken.

_____ (42) "Serve" or "service," as used to refer to the provision of notice to a person, means:

_____ (a) delivery of a written document or its contents to the person or persons in question; and

_____ (b) delivery that may be made in person, by mail, by electronic correspondence, or by any other means reasonably calculated, under all of the circumstances, to notify an interested person or persons to the extent reasonably practical or practicable of the information contained in the document.

_____ (43) "Sexually explicit conduct" means the same as that term is defined in Section 76-5b-103.

_____ (44) "Stipulated agreement" means an agreement between a respondent and the Board:

_____ (a) under which disciplinary action is taken against the educator in lieu of a hearing;

_____ (b) that may be negotiated between the parties and becomes binding:

_____ (i) when approved by the Board; and

_____ (ii) at any time after an investigative letter has been sent;

_____ (c) is a public document under GRAMA unless it contains specific information that requires redaction or separate classification of the agreement.

_____ (45)(a) "Suspension" means an invalidation of a Utah educator license.

_____ (b) "Suspension" may:

_____ (i) include specific conditions that an educator must satisfy; and

_____ (ii) may identify a minimum time period that must elapse before the educator may request a reinstatement hearing before UPPAC.

_____ (46) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, established in Section 53A-6-301.

_____ (47) "UPPAC Attorney File" means a file:

_____ (a) that is kept by the attorney assigned by UPPAC to investigate and/or prosecute a case that contains:

(i) the attorney's notes prepared in the course of investigation; and

(ii) other documents prepared by the attorney in anticipation of an eventual hearing; and

(b) that is classified as protected pursuant to Subsection 63G-2-305(18).

(48) "UPPAC Background Check File" means a file maintained securely by UPPAC on a criminal background review that:

(a) contains information obtained from:

(i) BCI; and

(ii) letters, police reports, court documents, and other materials as provided by an educator; and

(b) is classified as private under Subsection 63G-2-302(2).

(49) "UPPAC Case File" means a file:

(a) maintained securely by UPPAC on an investigation into educator misconduct;

(b) opened following UPPAC's direction to investigate alleged misconduct;

(c) that contains the original notification of misconduct with supporting documentation, correspondence with the Executive Secretary, the investigative report, the stipulated agreement, the hearing report, and the final disposition of the case;

(d) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

(e) that after a case proceeding is closed, is considered public under GRAMA, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA, in which case the file may be redacted or partially or fully restricted.

(50) "UPPAC Evidence File" means a file:

(a) maintained by the attorney assigned by UPPAC to investigate a case containing materials, written or otherwise, obtained by the UPPAC investigator during the course of the attorney's investigation;

(b) that contains correspondence between the Investigator and the educator or the educator's counsel;

(c) that is classified as protected under Subsection 63G-2-305(10) until the investigation and any subsequent proceedings before UPPAC and the Board are completed; and

(d) that is considered public under GRAMA after case proceedings are closed, unless specific documents contained therein contain non-public information or have been otherwise classified as non-public under GRAMA.

(51) "UPPAC investigative letter" means a letter sent by UPPAC to an educator notifying the educator that an allegation of misconduct has been received against him and that UPPAC or the Board has directed that an investigation of the educator's alleged actions take place.

KEY: professional practices, definitions, educators

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401

Education, Administration
R277-211
 Utah Professional Practices Advisory
 Commission (UPPAC), Rules of
 Procedure: Notification to Educators,
 Complaints and Final Disciplinary
 Actions

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40335

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Board of Education (Board) recently received a court ruling, which concluded that the Board had not followed proper rulemaking procedures in the adoption of Rules R277-200 through R277-207. As a result, Rule R277-211 has been drafted to be adopted via appropriate rulemaking procedures. Rule R277-201 is being repealed simultaneously with the adoption of Rule R277-211. (DAR NOTE: The proposed repeal of Rule R277-201 is under DAR No. 40326 in this issue, May 1, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-211 provides procedures regarding notifications of alleged educator misconduct; review of notifications by UPPAC; and complaints, proposed stipulated agreements, approved stipulated agreements, and defaults.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This new Rule R277-211 is filed to replace Rule R277-201, which likely will not result in a cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** This new Rule R277-211 is filed to replace Rule R277-201, which likely will not result in a cost or savings to local government.

♦ **SMALL BUSINESSES:** This new Rule R277-211 is filed to replace Rule R277-201, which likely will not result in a cost or savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new Rule R277-211 is filed to replace Rule R277-201, 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: This new Rule R277-211 is filed to replace Rule R277-201, 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 enactment of this new 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 05/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 05/12/2016 02:00 PM, Utah State Office of Education, 250 E 500 S, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

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

R277. Education, Administration.

R277-211. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.

R277-211-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide procedures regarding:

(a) notifications of alleged educator misconduct;

(b) review of notifications by UPPAC; and

(c) complaints, proposed stipulated agreements, approved stipulated agreements, and defaults.

(3) Except as provided in Subsection(4), Title 63G, Chapter 4, Administrative Procedures Act does not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

(4) UPPAC may invoke and use sections or provisions of Title 63G, Chapter 4, Administrative Procedures Act as necessary to adjudicate an issue.

R277-211-2. Initiating Proceedings Against Educators.

(1) The Executive Secretary may refer a case to UPPAC to make a determination if an investigation should be opened regarding an educator:

(a) upon receiving a notification of alleged educator misconduct; or

(b) upon the Executive Secretary's own initiative.

(2) An informant shall submit an allegation to the Executive Secretary in writing, including the following:

(a) the informant's:

(i) name;

(ii) position, such as administrator, teacher, parent, or student;

(iii) telephone number;

(iv) address; and

(v) contact information;

(b) information of the educator against whom the allegation is made:

(i) name;

(ii) position, such as administrator, teacher, candidate; and

(iii) if known, the address and telephone number;

(c) the facts on which the allegation is based and supporting information; and

(d) signature of the informant and date.

(3) If an informant submits a written allegation of misconduct as provided in this rule, the informant may be notified of a final action taken by the Board regarding the allegation.

(4)(a) Proceedings initiated upon the Executive Secretary's own initiative may be based on information received through a telephone call, letter, newspaper article, media information, notice from another state, or by other means.

(b) The Executive Secretary may also recommend an investigation based on an anonymous allegation, notwithstanding the provisions of this rule, if the allegation bears sufficient indicia of reliability.

(5) The Executive Secretary shall maintain all written allegations, subsequent dismissals, actions, or disciplinary letters related to a case against an educator shall be maintained permanently in the UPPAC case file.

R277-211-3. Review of Notification of Alleged Educator Misconduct.

(1)(a) Upon receipt of a notification of alleged educator misconduct, the Executive Secretary shall recommend one of the following to UPPAC:

(i) dismiss the matter if UPPAC determines that alleged misconduct does not involve an issue that UPPAC should address; or

(ii) initiate an investigation if UPPAC determines that the alleged misconduct involves an issue that may be appropriately addressed by UPPAC and the Board.

(b) If the Executive Secretary recommends UPPAC initiate an investigation:

(i) UPPAC shall initiate an investigation; and

(ii) the Executive Secretary shall direct a UPPAC investigator to gather evidence relating to the allegations.

(2)(a) Prior to a UPPAC investigator's initiation of an investigation, the Executive Secretary shall send a letter to the following with information that UPPAC has initiated an investigation:

(i) the educator to be investigated;

(ii) the LEA that employs the educator; and

(iii) the LEA where the alleged activity occurred.

(b) A letter described in Subsection(2)(a) shall inform the educator and the LEA that an investigation shall take place and is not evidence of unprofessional conduct.

(c) UPPAC shall place a flag on the educator's CACTUS file after sending the notices as provided in this rule.

(3)(a) The investigator shall review relevant documentation and interview individuals who may have knowledge of the allegations.

(b) The investigator shall prepare an investigative report of the findings of the investigation and a recommendation for appropriate action or disciplinary letter.

(c) If the investigator discovers additional evidence of unprofessional conduct that could have been included in the original notification of alleged educator misconduct, the investigator may include the additional evidence of misconduct in the investigative report.

(d) The investigator shall submit the investigative report to the Executive Secretary.

(e) The Executive Secretary shall review the investigative report described in Subsection(3)(d) with UPPAC.

(f) The investigative report described in Subsection(3)(d) shall become part of the UPPAC case file.

(4) UPPAC shall review the investigative report and take one of the following actions:

(a) UPPAC determines no further action should be taken, UPPAC may recommend that the Board dismiss the case; or

(b) UPPAC may make an initial recommendation of appropriate action or disciplinary letter.

(5) After receiving an initial recommendation from UPPAC for action, the Executive Secretary shall direct a UPPAC attorney to:

(a) prepare and serve a complaint; or

(b) negotiate and prepare a proposed stipulated agreement.

(6)(a) A proposed stipulated agreement shall conform to the requirements set forth in Section R277-211-6.

(b) An educator may stipulate to any recommended disposition for an action.

(7) The Executive Secretary shall forward any proposed stipulated agreement to the Board for approval.

R277-211-4. Expedited Hearings.

(1) In a case involving the report of an arrest, citation, or charge of a licensed educator, which requires self-reporting by the educator under Section R277-516-3, the Executive Secretary, with

the consent of the educator, may schedule the matter for an expedited hearing in lieu of initially referring the matter to UPPAC.

(2)(a) The Executive Secretary shall hold an expedited hearing within 30 days of a report of an arrest, citation, or charge, unless otherwise agreed upon by both parties.

(b) The Executive Secretary or the Executive Secretary's designee shall conduct an expedited hearing with the following additional invited participants:

(i) the educator;

(ii) the educator's attorney or representative;

(iii) a UPPAC attorney;

(iv) a voting member of UPPAC; and

(v) a representative of the educator's LEA.

(3) The panel may consider the following matters at an expedited hearing:

(a) an educator's oral or written explanation of the events;

(b) a police report;

(c) a court docket or transcript;

(d) an LEA's investigative report or employment file; and

(e) additional information offered by the educator if the panel deems it probative of the issues at the expedited hearing.

(4) After reviewing the evidence described in Subsection (3), the expedited hearing panel shall make written findings and a recommendation to UPPAC to do one of the following:

(a) close the case;

(b) close the case upon completion of court requirements;

(c) recommend issuance of a disciplinary letter to the Board;

(d) open a full investigation; or

(e) recommend action by the Board, subject to an educator's due process rights under these rules.

(5) An expedited hearing may be recorded, but the testimony from the expedited hearing is inadmissible during a future UPPAC action related to the allegation.

(6) If the Board fails to adopt the recommendation of an expedited hearing panel, UPPAC shall open a full investigation.

R277-211-5. Complaints.

(1) If UPPAC determines that an allegation is sufficiently supported by evidence discovered in the investigation, the Executive Secretary shall direct the UPPAC attorney to serve a complaint upon the educator being investigated.

(2) At a minimum, a complaint shall include:

(a) a statement of legal authority and jurisdiction under which the action is being taken;

(b) a statement of the facts and allegations upon which the complaint is based;

(c) other information that the investigator believes is necessary to enable the respondent to understand and address the allegations;

(d) a statement of the potential consequences if an allegation is found to be true or substantially true;

(e) a statement that the respondent shall answer the complaint and request a hearing, if desired, within 30 days of the date the complaint is mailed to the respondent;

(f) a statement that the respondent is required to file a written answer described in Subsection(2)(e) with the Executive Secretary;

(g) a statement advising the respondent that if the respondent fails to respond within 30 days, a default judgment for revocation or a suspension of the educator's license may occur for a term of five years or more;

(h) a statement that, if a hearing is requested, the hearing will be scheduled no less than 25 days, nor more than 180 days, after receipt of the respondent's answer, unless a different date is agreed to by both parties in writing; and

(i) a copy of the applicable hearing rules as required by Subsection 53A-6-604(2).

(3) On the Executive Secretary's own motion, the Executive Secretary, or the Executive Secretary's designee, with notice to the parties, may reschedule a hearing date.

(4)(a) A respondent may file an answer to a complaint by filing a written response signed by the respondent or the respondent's representative with the Executive Secretary within 30 days after the complaint is mailed.

(b) The answer may include a request for a hearing, and shall include:

(i) the file number of the complaint;

(ii) the names of the parties;

(iii) a statement of the relief that the respondent seeks; and

(iv) if not requesting a hearing, a statement of the reasons that the relief requested should be granted.

(5)(a) As soon as reasonably practicable after receiving an answer, or no more than 30 days after receipt of an answer at the USOE, the Executive Secretary shall schedule a hearing, if requested by either party, as provided in Rule R277-202.

(b) If the parties can reach an agreement prior to the hearing consistent with the terms of UPPAC's initial recommendation, the UPPAC attorney may negotiate a proposed stipulated agreement with the respondent.

(c) A proposed stipulated agreement described in Subsection(5)(b) shall be submitted to the Board for the Board's final approval.

(6)(a) If a respondent does not respond to the complaint within 30 days, the Executive Secretary may initiate default proceedings in accordance with the procedures set forth in Section R277-211-7.

(b) Except as provided in Subsection R277-211-7(3), if the Executive Secretary enters an order of default, the Executive Secretary shall make a recommendation to the Board for a revocation or a suspension of the educator's license for five years before the educator may request a reinstatement hearing.

(c) If a default results in a suspension, a default may include conditions that an educator shall satisfy before the educator may qualify for a reinstatement hearing.

(d) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).

R277-211-6. Proposed Stipulated Agreements.

(1) At any time after UPPAC has made an initial recommendation, a respondent may accept UPPAC's initial recommendation, rather than request a hearing, by entering into a proposed stipulated agreement.

(2) By entering into a proposed stipulated agreement, a respondent waives the respondent's right to a hearing to contest the

recommended disposition, contingent on final approval by the Board.

(3) At a minimum, the Executive Secretary shall include the following in a stipulated agreement:

(a) a summary of the facts, the allegations, and the evidence relied upon by UPPAC in its recommendation;

(b) a statement that the respondent admits the facts recited in the stipulated agreement as true for purposes of the Board administrative action;

(c) a statement that the respondent:

(i) waives the respondent's right to a hearing to contest the allegations that gave rise to the investigation; and

(ii) agrees to limitations on the respondent's license or surrenders the respondent's license rather than contest the allegations;

(d) a statement that the respondent agrees to the terms of the proposed stipulated agreement and other provisions applicable to the case, such as remediation, counseling, restitution, rehabilitation, and other conditions, if any, under which the respondent may request a reinstatement hearing or a removal of the letter of reprimand or termination of probation;

(e) if for suspension or revocation of a license, a statement that the respondent:

(i) may not seek or provide professional services in a public school in the state;

(ii) may not seek to obtain or use an educator license in the state; or

(iii) may not work or volunteer in a public K-12 setting in any capacity without express authorization from the UPPAC Executive Secretary, unless or until the respondent:

(A) first obtains a valid educator license or authorization from the Board to obtain such a license; or

(B) satisfies other provisions provided in the proposed stipulated agreement;

(f) a statement that the action and the proposed stipulated agreement shall be reported to other states through the NASDTEC Educator Information Clearinghouse and any attempt to present to any other state a valid Utah license shall result in further licensing action in Utah;

(g) a statement that respondent waives the respondent's right to contest the facts stated in the proposed stipulated agreement at a subsequent reinstatement hearing, if any;

(h) a statement that all records related to the proposed stipulated agreement shall remain permanently in the UPPAC case file;

(i) a statement reflecting the proposed stipulated agreement's classification under Title 63G, Chapter 2, Government Records Access and Management Act;

(j) a statement that a violation of the terms of an approved stipulated agreement may result in additional disciplinary action and may affect the reinstatement process; and

(k) a statement that the educator understands that the Board is not bound by UPPAC's recommendation or the negotiated proposed stipulated agreement unless the Board approves the proposed stipulated agreement.

(4)(a) The Executive Secretary shall forward a proposed stipulated agreement to the Board for approval.

(b) If the Board does not approve a proposed stipulated agreement, the Board may:

(i) direct UPPAC to hold a hearing if the Board provides direction, in the form of a motion, as to what issues need to be addressed by UPPAC;

(ii) provide alternative terms, by motion, to the Executive Secretary, that would be satisfactory to the Board;

(iii) direct the Executive Secretary to issue a disciplinary letter or dismiss the matter; or

(iv) take other appropriate action consistent with due process and R277-215.

(5) If the respondent accepts a stipulated agreement with a modified disposition proposed by the Board, the stipulated agreement, as modified, is a final Board administrative action without further Board consideration.

(6) If the terms approved by the Board are rejected by the respondent, the proceedings shall continue from the point under these procedures at which the agreement was negotiated, as if the stipulated agreement had not been submitted.

(7) If the Board directs UPPAC to hold a hearing under Subsection (4)(b)(i), the Executive Secretary shall:

(a) notify the parties of the decision;

(b) direct a UPPAC attorney to issue a complaint; and

(c) direct the proceedings as if the proposed stipulated agreement had not been submitted.

(8) If the Board approves a proposed stipulated agreement, the approval is a final Board administrative action, effective upon signature by all parties, and the Executive Secretary shall:

(a) notify the parties of the decision;

(b) update CACTUS to reflect the action;

(c) report the action to the NASDTEC Educator Information Clearinghouse if the agreement results in:

(i) a revocation; or

(ii) a suspension; and

(d) direct the appropriate penalties to begin.

R277-211-7. Default Procedures.

(1) If a respondent does not respond to a complaint within 30 days from the date the complaint or approved stipulated agreement is served, the Executive Secretary may issue an order of default against the respondent consistent with the following:

(a) the Executive Secretary shall prepare and serve on the respondent an order of default including:

(i) a statement of the grounds for default; and

(ii) a recommended disposition if the respondent fails to file a response to a complaint;

(b) ten days following service of the order of default, a UPPAC attorney shall attempt to contact respondent by telephone or electronically;

(c) UPPAC shall maintain documentation of attempts toward written, telephonic, or electronic contact;

(d) the respondent has 20 days following service of the order of default to respond to UPPAC; and

(e) if UPPAC receives a response from respondent to a default order before the end of the 20 day default period, UPPAC shall allow respondent a final ten day period to respond to a complaint.

(2) Except as provided in Subsection (3), if an order of default is issued, the Executive Secretary may make a

recommendation to the Board for revocation or for a suspension of the educator's license for no less than five years.

(3) If an order of default is issued, the Executive Secretary shall make a recommendation to the Board for a revocation of the educator's license if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).

R277-211-8. Disciplinary Letters and Dismissal.

(1) If UPPAC recommends issuance of a disciplinary letter or dismissal, the Executive Secretary shall forward the case to the Board for review.

(2) If the Board does not approve a recommendation for a disciplinary letter or dismissal described in Subsection (1), the Board may:

(a) remand the case to UPPAC for a hearing with direction from the Board, in the form of a motion, as to what issues need to be addressed by UPPAC;

(b) remand the case to UPPAC with recommendations for negotiation of a stipulated agreement;

(c) direct the Executive Secretary to issue a different level of disciplinary letter; or

(d) dismiss the matter.

(3) If the Board approves a disciplinary letter, the Executive Secretary shall:

(a) prepare the disciplinary letter and mail it to the educator;

(b) place a copy of the disciplinary letter in the UPPAC case file; and

(c) update CACTUS to reflect that the investigation is closed.

KEY: teacher licensing, conduct, hearings

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401

Education, Administration R277-212 UPPAC Hearing Procedures and Reports

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40336

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Board of Education (Board) recently received a court ruling, which concluded that the Board had not followed proper rulemaking procedures in the adoption of Rules R277-200 through R277-207. As a result, Rule R277-212 has been drafted to be adopted via appropriate rulemaking procedures. Rule R277-202 is being

repealed simultaneously with the adoption of Rule R277-212. (DAR NOTE: The proposed repeal of Rule R277-202 is under DAR No. 40327 in this issue, May 1, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-212 provides procedures regarding UPPAC hearings and hearing reports.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This new Rule R277-212 is filed to replace Rule R277-202, which likely will not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: This new Rule R277-212 is filed to replace Rule R277-202, which likely will not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: This new rule R277-212 is filed to replace Rule R277-202, which likely will not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This new Rule R277-212 is filed to replace Rule R277-202, 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: This new Rule R277-212 is filed to replace Rule R277-202, 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 enactment of this new 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 05/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 05/12/2016 02:00 PM, Utah State Office of Education, 250 E 500 S, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

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

R277. Education, Administration.

R277-212. UPPAC Hearing Procedures and Reports.

R277-212-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and
 - (c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to establish procedures regarding UPPAC hearings and hearing reports.
- (3) The standards and procedures of Title 63G, Chapter 4, Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-212-2. Scheduling a Hearing.

- (1)(a) Following receipt of an answer by respondent requesting a hearing, or at the direction of the Board:
 - (i) UPPAC shall select panel members;
 - (ii) the Executive Secretary shall appoint a hearing officer from among a list of hearing officers identified by the state procurement process and approved by UPPAC; and
 - (iii) UPPAC shall schedule the date, time, and place for the hearing.
- (b) The Executive Secretary shall schedule a hearing for a date that is not less than 45 days nor more than 180 days from the date the Executive Secretary receives the answer unless otherwise stipulated by the parties.
- (c) The required scheduling periods may be waived by mutual written consent of the parties or by the hearing officer for good cause shown.
- (2)(a) Any party may request a change of hearing date by submitting a request in writing that shall:
 - (i) include a statement of the reasons for the request; and
 - (ii) be submitted to the hearing officer at least five days prior to the scheduled date of the hearing.
- (b) The hearing officer shall determine whether the reason stated in the request is sufficient to warrant a change.
- (c) If the hearing officer finds that the reason for the request for a change of hearing date is sufficient, the hearing officer shall promptly notify all parties of the new time, date, and place for the hearing.
- (d) If the hearing officer does not find the reason for the request for a change of hearing date to be sufficient, the hearing officer shall immediately notify the parties that the request has been denied.

(e) The hearing officer and the parties may waive the time period required for requesting a change of hearing date for good cause shown.

(3) An educator is entitled to a hearing on any matter in which an action is recommended.

(4) An educator is not entitled to a hearing on a matter in which a disciplinary letter is recommended.

R277-212-3. Appointment and Duties of the Hearing Officer and Hearing Panel.

(1)(a) The Executive Secretary shall appoint a hearing officer to chair the hearing panel and conduct the hearing.

(b) The Executive Secretary shall select a hearing officer on a random basis from a list of available contracted hearing officers, subject to availability and conflict of interest.

(c) The Executive Secretary shall provide such information about the case as necessary to determine whether the hearing officer has a conflict of interest and shall disqualify any hearing officer that cannot serve under the Utah Rules of Professional Conduct.

(d) A hearing officer:

(i) may require the parties to submit a brief and a list of witnesses prior to the hearing;

(ii) presides at the hearing and regulates the course of the proceeding;

(iii) administers an oath to a witness as follows: "Do you swear or affirm that the testimony you will give is the truth?";

(iv) may take testimony, rule on a question of evidence, and ask a question of a witness to clarify a specific issue; and

(v) prepares and submits a hearing report to the Executive Secretary at the conclusion of the proceedings in consultation with panel members and the timelines of this rule.

(2)(a) UPPAC shall select three or more individuals to serve as members of the hearing panel.

(b) As directed by UPPAC, any licensed educator may serve as a panel member, if needed.

(c) The majority of panel members shall be current UPPAC members.

(d) UPPAC shall select panel members on a rotating basis to the extent practicable.

(e) UPPAC shall accommodate each prospective panel member based on the availability of the panel member.

(f) If the respondent is a teacher, at least one panel member shall be a teacher.

(g) If the respondent is a non-teacher licensed educator, at least one panel member shall be a non-teacher licensed educator.

(3) The requirements of Subsection (2) may be waived only upon the stipulation of both UPPAC and the respondent.

(4)(a) A UPPAC panel member shall:

(i) assist a hearing officer by providing information concerning professional standards and practices of educators in the respondent's particular field of practice and in the situations alleged;

(ii) ask a question of a witness to clarify a specific issue;

(iii) review all evidence and briefs, if any, presented at the hearing;

(iv) make a recommendation to UPPAC as to the suggested disposition of a complaint; and

(v) assist the hearing officer in preparing the hearing report.

(b) A panel member may only consider the evidence approved for admission by the hearing officer.

(c) The Executive Secretary may make an emergency substitution of a panel member for cause with the consent of the parties.

(d) The agreement to substitute a panel member shall be in writing.

(e) Parties may agree to a two-member UPPAC panel in an emergency situation.

(f) If the parties do not agree to a substitution or to having a two-member panel, the Executive Secretary shall reschedule the hearing.

(5)(a) A party may request that the Executive Secretary disqualify a hearing officer by submitting a written request for disqualification to the Executive Secretary.

(b) A party shall submit a request to disqualify a hearing officer to the Executive Secretary at least 15 days before a scheduled hearing.

(6)(a) The Executive Secretary shall review a request described in Subsection (5) and supporting evidence to determine whether the reasons for the request are substantial and compelling.

(b) If the Executive Secretary determines that the hearing officer should be disqualified, the Executive Secretary shall appoint a new hearing officer and, if necessary, reschedule the hearing.

(7) A hearing officer may recuse himself or herself from a hearing if, in the hearing officer's opinion, the hearing officer's participation would violate any of the Utah Rules of Professional Conduct consistent with the Supreme Court Rules of Professional Practice.

(8)(a) If the Executive Secretary denies a request to disqualify a hearing officer described in Subsection (5), the Executive Secretary shall notify the party within ten days prior to the date of the hearing.

(b) The requesting party may submit a written appeal of the Executive Secretary's denial to the Superintendent no later than five days prior to the hearing date.

(c) If the Superintendent finds that the appeal is justified, the Superintendent shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.

(d) The decision of the Superintendent described in Subsection (8)(c) is final.

(e) If a party fails to file an appeal within the time requirements of Subsection (8)(b), the appeal shall be deemed denied.

(f) If the Executive Secretary fails to meet the time requirements described in Subsection (6) or (8), the request or appeal is approved.

(9)(a) A UPPAC member shall recuse himself or herself as a panel member due to any known financial or personal interest, prior relationship, personal and independent knowledge of the persons or issues in the case, or other association that the panel member believes would compromise the panel member's ability to make an impartial decision.

(b) A party may request that a UPPAC panel member be disqualified by submitting a written request to the following:

(i) the hearing officer; or

(ii) to the Executive Secretary if there is no hearing officer.

(c) A party shall submit a request described in Subsection (9)(b) no less than 15 days before a scheduled hearing.

(d) The hearing officer, or the Executive Secretary, if there is no hearing officer, shall:

(i) review a request described in Subsection (9)(b) and supporting evidence to determine whether the reasons for the request are substantial and compelling enough to disqualify the panel member; and

(ii) if the reasons for the request described in Subsection (9)(b) are substantial and compelling, disqualify the panel member.

(e) If the panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members:

(i) UPPAC shall appoint a replacement; and

(ii) the Executive Secretary shall, if necessary, reschedule the hearing.

(f) If a request described in Subsection (9)(b) is denied, the hearing officer or the Executive Secretary if there is no hearing officer, shall notify the party requesting the panel member's disqualification no less than ten days prior to the date of the hearing.

(g) The requesting party may file a written appeal of a denial described in Subsection (9)(f) with the Superintendent no later than five days prior to the hearing date.

(h) If the Superintendent finds that an appeal described in Subsection (9)(g) is justified, the Superintendent shall direct the hearing officer or the Executive Secretary if there is no hearing officer, to replace the panel member.

(i) If a panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members, UPPAC shall agree upon a replacement and the Executive Secretary shall, if necessary, reschedule the hearing.

(j) The decision of the Superintendent described in Subsection (9)(h) is final.

(k) If a party fails to file an appeal within the time requirements of Subsection (9)(g), the appeal shall be deemed denied.

(l) If the hearing officer, or the Executive Secretary if there is no hearing officer, fails to meet the time requirements described in this Subsection (9), the request or appeal is approved.

(10) The Executive Secretary may, at the time the Executive Secretary selects a hearing officer or panel member, select an alternative hearing officer or panel member following the process for selecting those individuals.

(11) The Executive Secretary may substitute a panel member with an alternative panel member if the Executive Secretary notifies the parties of the substitution.

R277-212-4. Preliminary Instructions to Parties to a Hearing.

(1) A hearing shall be scheduled no less than 45 days after receipt of an answer, unless otherwise stipulated by the parties.

(2) No later than 25 days before the date of a hearing, the Executive Secretary shall provide the parties with the following information:

(a) date, time, and location of the hearing;

(b) names and LEA affiliations of each panel member, and the name of the hearing officer; and

(c) instructions for accessing these rules.

(3) No later than 20 days before the date of the hearing, the respondent and the complainant shall provide the following to the other party and to the hearing officer:

(a) a brief, if requested by the hearing officer containing:

(i) any procedural and evidentiary motions along with the party's position regarding the allegations; and

(ii) relevant laws, rules, and precedent;

(b) the name of the person who will represent the party at the hearing;

(c) a list of witnesses expected to be called, including a summary of the testimony that each witness is expected to present;

(d) a summary of documentary evidence that the party intends to submit; and

(e) following receipt of the other party's witness list, a list of anticipated rebuttal witnesses and evidence no later than ten days prior to the hearing.

(4)(a) Except as provided in Subsection (4)(b), a party may not present a witness or evidence at the hearing if the witness or evidence has not been disclosed to the other party as required in Subsection (3).

(b) A party may present a witness or evidence at the hearing even if the witness or hearing has not been disclosed to the other party if:

(i) the parties stipulate to the presentation of the witness or evidence at the hearing; or

(ii) the hearing officer makes a determination of good cause to allow the witness or evidence.

(5) If a party fails to comply in good faith with a directive of the hearing officer, including time requirements, the hearing officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances.

(6) A party shall provide materials to the hearing officer, panel members, and UPPAC as directed by the hearing officer.

R277-212-5. Hearing Parties' Representation.

(1) A UPPAC attorney shall represent the complainant.

(2) A respondent may represent himself or herself or be represented, at the respondent's own cost, by another person.

(3) The informant has no right to:

(a) individual representation at the hearing; or

(b) to be present or heard at the hearing unless called as a witness.

(4) A respondent shall notify the Executive Secretary in a timely manner and in writing if the respondent chooses to be represented by anyone other than the respondent.

R277-212-6. Discovery Prior to a Hearing.

(1) Discovery is permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the hearing officer.

(2) Unduly burdensome legalistic discovery may not be used to delay a hearing.

(3) A hearing officer may limit discovery:

(a) at the discretion of the hearing officer; or

(b) upon a motion by either party.

(4) A hearing officer rules on all discovery requests and motions.

(5) The Executive Secretary shall issue a subpoena or other order to secure the attendance of a witness pursuant to Subsection 53A-6-306(3)(c)(i) if:

- (a) requested by either party; and
- (b) notice of intent to call the witness has been timely provided as required by Section R277-212-4.

(6) The Executive Secretary shall issue a subpoena to produce evidence if timely requested by either party.

(7)(a) A party may not present an expert witness report or expert witness testimony at a hearing unless the requirements of Section R277-212-10 have been met.

(b) A respondent may not subpoena the UPPAC attorney or investigator as an expert witness.

R277-212-7. Burden and Standard of Proof for UPPAC Proceedings.

(1) In matters other than those involving applicants for licensing, and excepting the presumptions under Subsection R277-212-11(11), the Board shall have the burden of proving that an action against the license is appropriate.

(2) An applicant for licensing has the burden of proving that licensing is appropriate.

(3) The standard of proof in all UPPAC hearings is a preponderance of the evidence.

(4) The Utah Rules of Evidence are not applicable to UPPAC proceedings.

(5) The criteria to decide an evidentiary question are:

- (a) reasonable reliability of the offered evidence;
- (b) fairness to both parties; and
- (c) usefulness to UPPAC in reaching a decision.

(6) The hearing officer has the sole responsibility to determine the application of the hearing rules and the admissibility of evidence.

R277-212-8. Department.

(1) Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during a hearing, giving due respect to members of the hearing panel and complying with the instructions of the hearing officer.

(2) A hearing officer may exclude a person from the hearing room who fails to conduct himself or herself in an appropriate manner and may, in response to extreme instances of noncompliance, disallow the person's testimony.

(3) Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process may not harass, intimidate, or pressure witnesses or other hearing participants, nor may they direct others to harass, intimidate, or pressure witnesses or participants.

R277-212-9. Hearing Record.

(1) A hearing shall be recorded at UPPAC's expense, and the recording shall become part of the UPPAC case file, unless otherwise agreed upon by all parties.

(2) An individual party may, at the party's own expense, make a recording or transcript of the proceedings if the party provides notice to the Executive Secretary.

(3) If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.

(4) All evidence and statements presented at a hearing shall become part of the UPPAC case file and may not be removed except by direction of the Executive Secretary or by order of the Board.

(5)(a) Upon request of an educator, UPPAC will provide an electronic or paper copy of the UPPAC case file to the educator.

(b) UPPAC may charge fees in accordance with Rule R277-103-5 if the educator requests a paper copy.

R277-212-10. Expert Witnesses in UPPAC Proceedings.

(1) A hearing officer may allow testimony by an expert witness.

(2) A party may call an expert witness at the party's own expense.

(3) A party shall provide a hearing officer and the opposing party with the following information at least 15 days prior to the hearing date:

- (a) notice of intent of a party to call an expert witness;
- (b) the identity and qualifications of an expert witness;
- (c) the purpose for which the expert witness is to be called; and
- (d) any prepared expert witness report.

(4) Defects in the qualifications of an expert witness, once a minimum threshold of expertise is established, go to the weight to be given the testimony and not to its admissibility.

(5) An expert witness who is a member of the complainant's staff or staff of an LEA may testify and have the testimony considered as part of the record in the same manner as the testimony of any other expert.

R277-212-11. Evidence and Participation in UPPAC Proceedings.

(1) A hearing officer may not exclude evidence solely because the evidence is hearsay.

(2) Each party has a right to call witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.

(3) Testimony presented at the hearing shall be given under oath if the testimony is offered as evidence to be considered in reaching a decision on the merits.

(4) If a case involves allegations of child abuse or of a sexual offense against a minor under applicable federal or state law, either party, a member of the hearing panel, or the hearing officer, may request that a child victim or witness younger than 14 years of age be allowed to testify outside of the respondent's presence.

(5) If the hearing officer determines that a minor would suffer undue emotional or mental harm, or that the minor's testimony in the presence of the respondent would be unreliable, the minor's testimony may be admitted as described in this section.

(6) An oral statement of a victim or witness younger than 14 years of age that is recorded prior to the filing of a complaint is admissible as evidence in a hearing regarding the offense if:

- (a) no attorney for either party is in the minor's presence when the statement is recorded;
- (b) the recording is visual and aural and is recorded;
- (c) the recording equipment is capable of making an accurate recording;

(d) the operator of the equipment is competent;
(e) the recording is accurate and has not been altered; and
(f) each voice in the recording is identified.
(7) The testimony of a witness or victim younger than 14 years of age may be taken in a room other than the hearing room, and may be transmitted by closed circuit equipment to another room where it can be viewed by the respondent if:
(a) only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the minor may be with the minor during the testimony;
(b) the respondent is not present during the minor's testimony;
(c) the hearing officer ensures that the minor cannot hear or see the respondent;
(d) the respondent is permitted to observe and hear, but not communicate with the minor; and
(e) only hearing panel members, the hearing officer, and the attorneys question the minor.
(8)(a) If a witness testifies under circumstances described in Subsection (7), a pro se educator, may submit written questions to the hearing officer to ask on the educator's behalf.
(b) A hearing officer shall take appropriate recesses to ensure a pro se educator is allowed to ask all needed follow up questions.
(9) If the hearing officer determines that the testimony of a minor may be taken consistent with Subsections (4) through (7), the minor may not be required to testify in any proceeding where the recorded testimony is used.
(10) On the hearing officer's own motion or upon objection by a party, the hearing officer:
(a) may exclude evidence that the hearing officer determines to be irrelevant, immaterial, or unduly repetitious;
(b) shall exclude evidence that is privileged under law applicable to administrative proceedings in the state unless waived;
(c) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;
(d) may take official notice of any facts that could be judicially noticed under judicial or administrative laws of the state, or from the record of other proceedings before the agency.
(11)(a) In addition to a rebuttable presumption described in Subsection 53A-6-306(3)(e), a rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor if the person has:
(i) been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor; or
(ii) failed to defend himself or herself against the charge when given a reasonable opportunity to do so.
(b) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has been found pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing unfitness for duty, including immoral, unprofessional, or incompetent conduct, or other violation of standards of ethical conduct, performance, or professional competence.

(c) Evidence of behavior described in Subsection (11)(b) may include:
(i) conviction of a felony;
(ii) a felony charge and subsequent conviction for a lesser related charge pursuant to a plea bargain or plea in abeyance;
(iii) an investigation of an educator's license, certificate, or authorization in another state; or
(iv) the expiration, surrender, suspension, revocation, or invalidation of an educator's license for any reason.

R277-212-12. Hearing Report.

(1) Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials as permitted by the hearing officer, the hearing officer shall sign and issue a hearing report consistent with the recommendations of the panel that includes:
(a) detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted;
(b) a statement of relevant precedent, if available;
(c) a statement of applicable law and rule;
(d) a recommended disposition of UPPAC panel members that shall be one or an appropriate combination of the following:
(i) dismissal of the complaint;
(ii) letter of admonishment;
(iii) letter of warning;
(iv) letter of reprimand;
(v) probation, to include the following terms and conditions:
(A) it is the respondent's responsibility to petition UPPAC for removal of probation and letter of reprimand from the respondent's CACTUS file;
(B) a probationary time period or specifically designated indefinite time period;
(C) conditions that can be monitored;
(D) if recommended by the panel, a person or entity to monitor a respondent's probation;
(E) a statement providing for costs of probation, if appropriate; and
(F) whether or not the respondent may work in any capacity in public education during the probationary period;
(vi) disciplinary action held in abeyance;
(vii) suspension, to include the following terms and conditions:
(A) a recommended minimum time period after which an educator may request a reinstatement hearing under Rule R277-203; and
(B) any recommended conditions precedent to requesting a reinstatement hearing under Section R277-203-2; or
(viii) revocation; and
(e) notice that UPPAC's recommendation is subject to approval by the Board and judicial review as may be allowed by law.
(2) Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence.
(3) Any of the consequences described in Subsection (1) (d) may be imposed in the form of a disciplinary action held in abeyance.

(4)(a) If the respondent's penalty is held in abeyance, the respondent's penalty is stayed subject to the satisfactory completion of probationary conditions.

(b) The decision to impose a consequence in the form of a disciplinary action held in abeyance shall provide for appropriate or presumed discipline if the respondent does not fully satisfy the probationary conditions.

(5)(a) A hearing officer shall circulate a draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.

(b) Hearing panel members shall notify the hearing officer of any changes to the report:

(i) as soon as possible after receiving the report; and

(ii) prior to the 20 day completion deadline of the hearing report.

(c) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with UPPAC.

(d) The Executive Secretary may participate in UPPAC's deliberation as a resource to UPPAC in explaining the hearing report and answering any procedural questions raised by UPPAC members.

(e) The hearing officer may confer with the Executive Secretary or the panel members or both while preparing the hearing report.

(f) The hearing officer may request the Executive Secretary to confer with the hearing officer and panel following the hearing.

(g) The Executive Secretary may return a hearing report to a hearing officer if the report is incomplete, unclear, or unreadable, or missing essential components or information.

(h) UPPAC shall vote to uphold the hearing officer's and panel's report if UPPAC finds that:

(i) there are no significant procedural errors;

(ii) the hearing officer's recommendations are based upon a preponderance of the evidence presented at the hearing; and

(iii) that all issues explained in the hearing report are adequately addressed in the conclusions of the report.

(i) After the UPPAC review, the Executive Secretary shall send a copy of the hearing report to:

(i) the Board for further action;

(ii) the respondent; and

(iii) the UPPAC case file.

(6)(a) If UPPAC adopts a hearing report that recommends an action, as defined in Subsection R277-200-2(1), either party may request review by the Superintendent within 15 days from the date the Executive Secretary sends a copy of the hearing report to the respondent.

(b) The request for review shall consist of:

(i) the name, position, and address of the appellant;

(ii) the issue being appealed; and

(iii) the signature of the appellant or the appellant's representative.

(c) An appeal to the Superintendent is limited to a question of fairness or a violation of due process.

(d) If the Superintendent finds that a procedural error has occurred that violates fairness or due process, the Superintendent shall:

(i) refer the report back to UPPAC for reconsideration as to whether the findings, conclusions, or decisions are supported by a preponderance of the evidence; or

(ii) direct the UPPAC Executive Secretary to take specific administrative action.

(e) After UPPAC completes reconsideration, the Superintendent shall:

(i) notify all parties; and

(ii) refer the report to the Board, if necessary, for final disposition consistent with this rule.

(7) If the Board does not approve a UPPAC hearing report, the Board may:

(a) remand the case to UPPAC with direction to cure due process issues; or

(b) issue findings;

(i) specifying the reasons why the Board disapproves of the hearing report;

(ii) adopting the Board's decision on the matter; and

(iii) directing the Executive Secretary to include the findings as an addendum to the hearing report, which findings constitute final Board action; or

(c) take other appropriate action consistent with due process and R277-215.

(8) Following Board adoption of a hearing report or the Board's decision under Subsection (7)(b), the Executive Secretary shall:

(a) notify the educator;

(b) notify the educator's employer;

(c) update CACTUS to reflect the Board's action; and

(d) report the action to the NASDTEC Educator Information Clearing house if the action results in:

(i) a revocation; or

(ii) a suspension.

(9) The hearing report is a public document under Title 63G, Chapter 2, Government Records Access and Management Act after final action is taken in the case, but may be redacted if it is determined that the hearing report contains particular information, the dissemination of which is otherwise restricted under the law.

(10) A respondent's failure to comply with the terms of a final disposition may result in additional discipline against the educator license.

(11) If a hearing officer fails to satisfy the hearing officer's responsibilities under this rule, the Executive Secretary may:

(a) notify the Utah State Bar of the failure;

(b) reduce the hearing officer's compensation consistent with the failure;

(c) take timely action to avoid disadvantaging either party; or

(d) preclude the hearing officer from further employment by the Board for UPPAC purposes.

(12) The Executive Secretary may waive the deadlines within this section if the Executive Secretary finds good cause.

(13) All criteria of letters of warning and reprimand, probation, suspension, and revocation apply to the comparable sections of the final hearing report.

R277-212-13. Default.

(1)(a) The Executive Secretary may prepare an order of default if:

(i) the respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice; or

(ii) the hearing officer recommends default as a sanction as a result of misconduct by the respondent or the respondent's representative during the course of the hearing process.

(b) The hearing officer may determine that the respondent has failed to attend a properly scheduled hearing if the respondent has not appeared within 30 minutes of the appointed time for the hearing to begin, unless the respondent shows good cause for failing to appear in a timely manner.

(2) The recommendation of default may be executed by the Executive Secretary following all applicable time periods, without further action by UPPAC.

(3) An order of default may result in an Executive Secretary recommendation to the Board for revocation or for a suspension of no less than five years.

(4) An order of default shall result in an Executive Secretary recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).

R277-212-14. Rights of Victims at Hearings.

(1) If the allegations that gave rise to the underlying allegations involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to:

(a) advise the alleged victim that a hearing has been scheduled;

(b) notify the alleged victim of the date, time, and location of the hearing; and

(c) notify the alleged victim of the right to attend the hearing alone or with a victim advocate present.

(2) An alleged victim entitled to notification of a hearing is permitted, but is not required, to attend the hearing.

(3) An alleged victim or witness may have a victim advocate attend the hearing with them.

KEY: hearings, reports, educators

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401

Education, Administration
R277-213

Request for Licensure Reinstatement
and Reinstatement Procedures

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40337

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Board of Education (Board) recently received a court ruling, which concluded that the Board had not followed proper rulemaking procedures in the adoption of Rules R277-200 through R277-207. As a result, Rule R277-213 has been drafted to be adopted via appropriate rulemaking procedures. Rule R277-203 is being repealed simultaneously with the adoption of Rule R277-213. (DAR NOTE: The proposed repeal of Rule R277-203 is under DAR No. 40328 in this issue, May 1, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-213 provides procedures regarding educator license reinstatement.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This new Rule R277-213 is filed to replace Rule R277-203, which likely will not result in a cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** This new Rule R277-213 is filed to replace Rule R277-203, which likely will not result in a cost or savings to local government.

♦ **SMALL BUSINESSES:** This new rule R277-213 is filed to replace Rule R277-203, which likely will not result in a cost or savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new Rule R277-213 is filed to replace Rule R277-203, 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: This new Rule R277-213 is filed to replace Rule R277-203, 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 enactment of this new 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 05/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 05/12/2016 02:00 PM, Utah State Office of Education, 250 E 500 S, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

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

R277. Education, Administration.**R277-213. Request for Licensure Reinstatement and Reinstatement Procedures.****R277-213-1. Authority and Purpose.**

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
- (b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and
- (c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to establish procedures regarding educator license reinstatement.
- (3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-213-2. Application for Licensing Following Denial or Loss of License.

- (1)(a) An individual who has been denied a license or lost the individual's license through suspension, or through surrender of a license or allowing a license to lapse in the face of an allegation of misconduct, may request a review to consider reinstatement of a license.
- (b) A request for review described in Subsection (1)(a) shall:
- (i) be in writing;
- (ii) be transmitted to the UPPAC Executive Secretary; and
- (iii) have the following information:
- (A) name and address of the individual requesting review;
- (B) the action being requested;
- (C) specific evidence and documentation of compliance with terms and conditions of any remedial or disciplinary requirements or recommendations from UPPAC or the Board;
- (D) reason(s) that the individual seeks reinstatement; and
- (E) signature of the individual requesting review.

(2)(a) The Executive Secretary shall review the request with UPPAC.

(b) If UPPAC determines that the request is incomplete or invalid:

- (i) the Executive Secretary shall deny the request; and
- (ii) notify the individual requesting reinstatement of the denial.

(c) If UPPAC determines that the request of an individual described in Subsection (1) is complete, timely, and appropriate, UPPAC shall schedule and hold a hearing as provided under Section R277-213-3.

(3)(a) Burden of Persuasion: The burden of persuasion at a reinstatement hearing shall fall on the individual seeking the reinstatement.

(b) An individual requesting reinstatement of a suspended license shall:

- (i) show sufficient evidence of compliance with any conditions imposed in the past disciplinary action;
- (ii) provide sufficient evidence to the reinstatement hearing panel that the educator will not engage in recurrences of the actions that gave rise to the suspension and that reinstatement is appropriate;
- (iii) undergo a criminal background check not more than six months prior to the requested hearing; and
- (iv) provide materials for review by the hearing panel that demonstrate the individual's compliance with directives from UPPAC or the Board found in petitioner's original stipulated agreement or hearing report.

(c) An individual requesting licensing following a denial shall show sufficient evidence of completion of a rehabilitation or remediation program, if applicable, when requesting reinstatement.

(4) An individual whose license has been suspended or revoked in another state shall seek reinstatement of the individual's license in the other state before a request for a reinstatement hearing may be approved.

R277-213-3. Reinstatement Hearing Procedures.

- (1) A hearing officer shall:
- (a) preside over a reinstatement hearing; and
- (b) rule on all procedural issues during the reinstatement hearing as they arise.
- (2) A hearing panel, comprising individuals as set forth in Subsection (2), shall:
- (a) hear the evidence; and
- (b) along with the UPPAC attorney and hearing officer, question the individual seeking reinstatement regarding the appropriateness of reinstatement.
- (3) An individual seeking reinstatement may:
- (a) be represented by counsel; and
- (b) may present evidence and witnesses.
- (4) A party may present evidence and witnesses consistent with Rule R277-212.
- (5) A hearing officer of a reinstatement hearing shall direct one or both parties to explain the background of a case to panel members at the beginning of the hearing to provide necessary information about the initial misconduct and subsequent UPPAC and Board action.
- (6) An individual seeking reinstatement shall present documentation or evidence that supports reinstatement.

(7) The USOE, represented by a UPPAC attorney, shall present any evidence or documentation that explains and supports USOE's recommendation in the matter.

(8) Other evidence or witnesses may be presented by either party and shall be presented consistent with Rule R277-212.

(9) The individual seeking reinstatement shall:

(a) focus on the individual's actions, rehabilitative efforts, and performance following license denial or suspension;

(b) explain item by item how each condition of the hearing report or stipulated agreement was satisfied;

(c) provide documentation in the form of evaluations, reports, or plans, as directed by the hearing report or stipulated agreement, of satisfaction of all required and outlined conditions;

(d) be prepared to completely and candidly respond to the questions of the UPPAC attorney and hearing panel regarding:

(i) the misconduct that caused the license suspension;

(ii) subsequent rehabilitation activities;

(iii) counseling or therapy received by the individual related to the original misconduct; and

(iv) work, professional actions, and behavior between the suspension and reinstatement request;

(e) present witnesses and be prepared to question witnesses (including counselors, current employers, support group members) at the hearing who can provide substantive corroboration of rehabilitation or current professional fitness to be an educator;

(f) provide copies of all reports and documents to the UPPAC attorney and hearing officer at least five days before a reinstatement hearing; and

(g) bring eight copies of all documents or materials that an individual seeking reinstatement plans to introduce at the hearing.

(10) The UPPAC attorney, the hearing panel, and hearing officer shall thoroughly question the individual seeking reinstatement as to the individual's:

(a) underlying misconduct which is the basis of the sanction on the educator's license;

(b) specific and exact compliance with reinstatement requirements;

(c) counseling, if required for reinstatement;

(d) specific plans for avoiding previous misconduct; and

(e) demeanor and changed understanding of petitioner's professional integrity and actions consistent with Rule R277-515.

(11) If the individual seeking reinstatement sought counseling as described in Subsection(10)(c), the individual shall state, under oath, that he provided all relevant information and background to his counselor or therapist.

(12) A hearing officer shall rule on procedural issues in a reinstatement hearing in a timely manner as they arise.

(13) No more than 20 days following a reinstatement hearing, a hearing officer, with the assistance of the hearing panel, shall:

(a) prepare a hearing report in accordance with the requirements set forth in Section R277-213-5; and

(b) provide the hearing report to the UPPAC Executive Secretary.

(14) The Executive Secretary shall submit the hearing report to UPPAC at the next meeting following receipt of the hearing report by the Executive Secretary.

(15) UPPAC may do the following upon receipt of the hearing report:

(a) accept the hearing panel's recommendation as prepared in the hearing report;

(b) amend the hearing panel's recommendation with conditions or modifications to the hearing panel's recommendation which shall be:

(i) directed by UPPAC;

(ii) prepared by the UPPAC Executive Secretary; and

(iii) attached to the hearing report; or

(c) reject the hearing panel's recommendation.

(16) After UPPAC makes a recommendation on the hearing panel report, the UPPAC recommendation will be forwarded to the Board for final action on the individual's reinstatement request.

(17) If the Board denies an individual's request for reinstatement, the individual shall wait at least twenty four (24) months prior to filing a request for reinstatement again, unless a different time is specified by UPPAC or the Board.

(18) If the Board reinstates an educator's license, the Executive Secretary shall:

(a) update CACTUS to reflect the Board's action; and

(b) report the Board's action to the NASDTEC Educator Information Clearing house.

(19) The Executive Secretary shall send notice of the Board's decision no more than 30 days following Board action to:

(a) the educator;

(b) the educator's LEA.

R277-213-4. Rights of a Victim at a Reinstatement Hearing.

(1) If the allegations that gave rise to the underlying suspension involve abuse of a sexual or physical nature, UPPAC shall make reasonable efforts to notify the victim or the victim's family of the reinstatement request.

(2) A UPPAC's notification described in Subsection (1) shall:

(a) advise the victim or the victim's family that a reinstatement hearing has been scheduled;

(b) notify the victim or the victim's family of the date, time, and location of the hearing;

(c) advise the victim or the victim's family of the victim's right to be heard at the reinstatement hearing; and

(d) provide the victim or the victim's family with a form upon which the victim can submit a statement for consideration by the hearing panel.

(3) A victim entitled to notification of the reinstatement proceedings shall be permitted:

(a) to attend the hearing; and

(b) to offer the victim's position on the educator's reinstatement request, either by testifying in person or by submitting a written statement.

(4) A victim choosing to testify at a reinstatement hearing shall be subject to reasonable cross examination in the hearing officer's discretion.

(5) A victim choosing not to respond in writing or appear at the reinstatement hearing waives the victim's right to participate in the reinstatement process.

R277-213-5. Reinstatement Hearing Report.

(1) A hearing officer shall provide the following in a reinstatement hearing report:

(a) a summary of the background of the original disciplinary action;

(b) adequate information, including summary statements of evidence presented, documents provided, and petitioner's testimony and demeanor for both UPPAC and the Board to evaluate petitioner's progress and rehabilitation since petitioner's original disciplinary action;

(c) the hearing panel's conclusions regarding petitioner's appropriateness and fitness to be a public school educator again;

(d) the hearing panel's recommendation; and

(e) a statement indicating whether the hearing panel's recommendation to UPPAC was unanimous or identifying how the panel member's voted concerning reinstatement.

(2)(a) The hearing panel report is a public document under GRAMA following the conclusion of the reinstatement process unless specific information or evidence contained therein is protected by a specific provision of GRAMA, or another provision of state or federal law.

(b) The Executive Secretary shall add the hearing panel report to the UPPAC case file.

(3) If a license is reinstated, an educator's CACTUS file shall be updated to:

(a) remove the flag;

(b) show that the educator's license was reinstated; and

(c) show the date of formal Board action reinstating the license.

R277-213-6. Reinstatement from Revocation of License.

(1) The Executive Secretary shall deny any request for a reinstatement hearing for a revoked license unless the educator's stipulated agreement or revocation order from the Board allows the educator to request a reinstatement hearing.

(2) An educator may request that the Superintendent order a new hearing if:

(a) an educator provides:

(i) evidence of mistake or false information that was critical to the revocation action; or

(ii) newly discovered evidence;

(A) that undermines the revocation determination; and

(B) that the educator could not have reasonably obtained during the original disciplinary proceedings; or

(b) an educator identifies material procedural Board error in the revocation process.

(3) A request for review by the Superintendent must be filed within 30 days of Board action for circumstances identified in Subsection (2)(a)(i) or (b).

(4) A request for review by the Superintendent must be filed within 90 days of discovery of the new evidence for circumstances identified in Subsection(2)(a)(ii).

(5) The Superintendent:

(a) shall make a determination on a request made under Subsection(2) within 60 days; and

(b) may request briefing from an educator and USOE staff in making a determination.

(6) If the Superintendent finds that the criteria in Subsection (2)(a) have been established, the Superintendent shall direct UPPAC to conduct a new hearing consistent with Rule R277-212.

(7) If the Superintendent finds that the criteria in Subsection (2)(b) have been established, the Superintendent shall recommend to the Board that they reconsider their previous action.

KEY: licensure, reinstatements, hearings, license reinstatements

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401

Education, Administration
R277-214
 Utah Professional Practices Advisory
 Commission Criminal Background
 Review

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40338

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Board of Education (Board) recently received a court ruling, which concluded that the Board had not followed proper rulemaking procedures in the adoption of Rules R277-200 through R277-207. As a result, Rule R277-214 has been drafted to be adopted via appropriate rulemaking procedures. Rules R277-204, R277-205, and R277-206 are being repealed simultaneously with the adoption of Rule R277-214. (DAR NOTE: The proposed repeal of Rule R277-204 is under DAR No. 40329, the proposed repeal of Rule R277-205 is under DAR No. 40330, and the proposed repeal of Rule R277-206 is under DAR No. 40331 in this issue, May 1, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-214 provides procedures for an applicant to proceed toward licensing or be denied to continue when an application or recommendation for licensing or renewal identifies offenses in the applicant's criminal background check.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This new Rule R277-214 is filed to replace Rules R277-204, R277-205, and R277-206, which likely will not result in a cost or savings to the state budget.

- ◆ LOCAL GOVERNMENTS: This new Rule R277-214 is filed to replace Rules R277-204, R277-205, and R277-206, which likely will not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: This new rule R277-214 is filed to replace Rules R277-204, R277-205, and R277-206, which likely will not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This new Rule R277-214 is filed to replace Rules R277-204, R277-205, and R277-206, 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: This new Rule R277-214 is filed to replace Rules R277-204, R277-205, and R277-206, 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 enactment of this new 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 05/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 05/12/2016 02:00 PM, Utah State Office of Education, 250 E 500 S, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

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

R277. Education, Administration.
R277-214. Utah Professional Practices Advisory Commission Criminal Background Review.

R277-214-1. Authority and Purpose.

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is:

(a) to establish procedures for an applicant to proceed toward licensing; or

(b) be denied to continue when an application or recommendation for licensing or renewal identifies offenses in the applicant's criminal background check.

(3) The standards and procedures of the Utah Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

R277-214-2. Initial Submission and Evaluation of Information.

(1) The Executive Secretary shall review all information received as part of a criminal background review.

(2) The Executive Secretary may request any of the following information from an educator in determining how to process a criminal background review:

(a) a letter of explanation for each reported offense that details the circumstances, the final disposition, and any explanation for the offense the applicant may want to provide UPPAC, including any advocacy for approving licensing;

(b) official documentation regarding each offense, including court records and police reports for each offense, or if both court records and police reports are not available, a letter on official police or court stationery from the appropriate court or police department involved, explaining why the records are not available; and

(c) any other information that the Executive Secretary considers relevant under the circumstances in a criminal background review.

(3)(a) The Executive Secretary may only process a criminal background review after receipt of all letters of explanation and documentation requested in good faith by the Executive Secretary.

(b) The Executive Secretary shall provide timely notice if the information provided by an applicant is incomplete.

(4) If an applicant is under court supervision of any kind, including parole, informal or formal probation, or plea in abeyance, the Executive Secretary may not process the background check review until the Executive Secretary receives proof that court supervision has terminated.

(5) It is the applicant's sole responsibility to provide any requested material to the Executive Secretary.

(6) The Executive Secretary shall process criminal background reviews subject to the following criteria:

(a) the Executive Secretary may clear a criminal background review without further action if the arrest, citation, or charge resulted in a dismissal, unless the dismissal resulted from a plea in abeyance agreement;

(b) the Executive Secretary shall forward a recommendation to clear the following criminal background reviews directly to the Board:

(i) singular offenses committed by an applicant, excluding offenses identified in Subsection(6)(c), if the arrest

occurred more than two years prior to the date of submission to UPPAC for review:

(ii) more than two offenses committed by the applicant, excluding offenses identified in Subsection(6)(c), if at least one arrest occurred more than five years prior to the date of submission to UPPAC for review; or

(iii) more than two offenses committed by the applicant, excluding offenses identified in Subsection(6)(c), if all arrests for the offenses occurred more than 10 years prior to the date of submission to UPPAC for review;

(c) the Executive Secretary shall forward the following criminal background reviews to UPPAC, which shall make a recommendation to the Board for final action:

(i) convictions or pleas in abeyance for any offense where the offense date occurred less than two years prior to the date of submission to UPPAC;

(ii) convictions or pleas in abeyance for multiple offenses where all offenses occurred less than five years prior to the date of submission to UPPAC;

(iii) convictions or pleas in abeyance for felonies;

(vi) arrests, convictions, or pleas in abeyance for sex-related or lewdness offenses;

(v) convictions or pleas in abeyance for alcohol-related offenses or drug-related offenses where the offense date was less than five years prior to the date of submission to UPPAC;

(vi) convictions or pleas in abeyance involving children in any way; and

(vii) convictions or pleas in abeyance involving any other matter which the Executive Secretary determines, in his discretion, warrants review by UPPAC and the Board; and

(d) If the criminal background review involves a conviction for an offense requiring mandatory revocation under Subsection 53A-6-501(5)(b) or meeting the definition of sex offender under Subsection 77-41-102(17), the Executive Secretary shall forward a recommendation directly to the Board that clearance be denied.

(7) The Executive Secretary shall use reasonable discretion to interpret the information received from the Bureau of Criminal Identification to comply with the provisions of this rule.

(8) In Board review of recommendations of the Executive Secretary and UPPAC for criminal background checks, the following shall apply:

(a) the Board shall consider a criminal background review in accordance with the standards described in Section 53A-6-405;

(b) the Board may uphold any recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE;

(c) the Board may substitute its own judgment in lieu of the recommendation of the Executive Secretary or UPPAC, which action shall be the final agency action of USOE; and

(d) if the Board chooses to substitute its own judgment in a criminal background review, the Board shall adopt findings articulating its reasoning.

(9) If a criminal background review arises as a result of conduct that was cleared in a prior criminal background review by the Executive Secretary, UPPAC, or the Board, the prior action shall be deemed final, and the Executive Secretary shall clear the criminal background review.

(10) If a criminal background review results in an applicant's denial, the applicant may request to be heard, and to have the matter reconsidered by the Board, consistent with the requirements of Subsection 53A-15-1506(1)(c).

R277-214-3. Alcohol and Drug Related Offenses of an Individual Who Does Not Hold Licensing.

(1)(a) If as a result of a background check, it is discovered that an applicant has been convicted of an alcohol related offense or a drug related offense within five years of the date of the background check, the minimum conditions described in this Subsection (1) shall apply.

(b) One conviction--the individual shall be denied clearance for a period of one year from the date of the conduct giving rise to the charge.

(c) Two convictions--the individual shall be denied clearance for a period of two years from the date of the conduct giving rise to the most recent charge and the applicant shall present documentation of clinical assessment and recommended treatment before clearance shall be considered.

(d) Three convictions--the individual shall be denied clearance for a period of five years from the date of the conduct giving rise to the most recent charge, and the applicant shall present documentation of clinical assessment and recommended treatment before clearance shall be considered.

(2) UPPAC or the Board may take action in excess of the minimum conditions specified in Subsection (1) if aggravating circumstances exist as set forth in Subsection R277-215-2(9).

KEY: educator licenses, background reviews, background checks

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401

Education, Administration
R277-215
 Utah Professional Practices Advisory
 Commission (UPPAC), Disciplinary
 Rebuttable Presumptions

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40339

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Board of Education (Board) recently received a court ruling, which concluded that the Board had not followed proper rulemaking procedures in the adoption of Rules R277-200 through R277-207. As a result, Rule R277-215 has been drafted to be adopted via appropriate rulemaking procedures. Rule R277-207 is being

repealed simultaneously with the adoption of Rule R277-215. (DAR NOTE: The proposed repeal of Rule R277-207 is under DAR No. 40333 in this issue, May 1, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-215 provides rebuttable presumptions for UPPAC and Board review of UPPAC cases.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This new Rule R277-215 is filed to replace Rule R277-207, which likely will not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: This new Rule R277-215 is filed to replace Rule R277-207, which likely will not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: This new rule R277-215 is filed to replace Rule R277-207, which likely will not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This new Rule R277-215 is filed to replace Rule R277-207, 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: This new Rule R277-215 is filed to replace Rule R277-207, 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 enactment of this new 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 05/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 05/12/2016 02:00 PM, Utah State Office of Education, 250 E 500 S, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

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

R277. Education, Administration.

R277-215. Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions.

R277-215-1. Authority and Purpose.

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and
 - (c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to establish rebuttable presumptions for UPPAC and Board review of UPPAC cases.

R277-215-2. Rebuttable Presumptions.

- (1) UPPAC and the Board shall consider the rebuttable presumptions in this section when evaluating a case of educator misconduct.
- (2)(a) Revocation is presumed appropriate if an educator:
- (i) is subject to mandatory revocation under Subsection 53A-6-501(5)(b);
 - (ii) is convicted of, admits to, or is found pursuant to an evidentiary hearing to have engaged in viewing child pornography, whether real or simulated, on or off school property;
 - (iii) is convicted of an offense that requires the educator to register as a sex offender under Subsection 77-41-105(3);
 - (iv) intentionally provides alcohol or illegal drugs to a minor.
- (b) Early release or work release permitted by the jail may not be considered by UPPAC or the Board for purposes of calculating the jail time in Subsection (2)(a)(iii).
- (3)(a) Suspension of ten years or more is presumed if an educator is convicted of any felony not specified in Subsection (2).
- (b) An educator who is suspended based on a felony conviction under Subsection (3)(a) may apply for a reinstatement hearing early if the educator's felony:
- (i) is expunged; or
 - (ii) is reduced pursuant to Section 76-3-402.
- (4) Suspension of three years or more is presumed appropriate if an educator:
- (a) engages in a boundary violation of a sexually suggestive nature that is not sexually explicit conduct;
 - (b) is convicted of child abuse if the conduct results in a conviction of a class A misdemeanor or higher;

_____ (c) is convicted of an offense that results in the educator being placed on court supervision for three or more years; or

_____ (d) is convicted of intentional theft or misappropriation of public funds.

_____ (5) Suspension of one to three years is presumed appropriate, if an educator:

_____ (a) willfully or knowingly creates, views, or gains access to sexually inappropriate material on school property or using school equipment;

_____ (b) is convicted of one or more misdemeanor violence offenses in the last 3 years;

_____ (c) is convicted of using physical force with a minor if the conviction is a class B misdemeanor or lower;

_____ (d) engages in repeated incidents of or a single egregious incident of excessive physical force or discipline to a child or student that:

_____ (i) does not result in a criminal conviction; and

_____ (ii) does not meet the circumstances described in Subsection 53A-11-802(2);

_____ (e) threatens a student physically, verbally, or electronically;

_____ (f) engages in a pattern of inappropriately fraternizing with a student under a circumstance not described in Subsection (3) (a);

_____ (g) engages in multiple incidents or a pattern of theft or misappropriation of public funds that does not result in a criminal conviction;

_____ (h) attends a school or school-related activity in an assigned employment-related capacity while possessing, using, or under the influence of alcohol or illegal drugs;

_____ (i) is convicted of two drug-related offenses or alcohol-related offenses in the three years previous to the most recent conviction;

_____ (j) engages in a pattern of or a single egregious incident of:

_____ (i) harassing;

_____ (ii) bullying; or

_____ (iii) threatening a co-worker or community member;

_____ (k) knowingly and deliberately falsifies or misrepresents information on an education-related document; or

_____ (l) knowingly and deliberately teaches, counsels, or assists a student in a manner that undermines or disregards the lawful, express directives of a parent.

_____ (6) A short-term suspension is presumed appropriate if an educator:

_____ (a) has three or more incidents of inappropriate conduct that would otherwise warrant lesser discipline; or

_____ (b) fails to report to appropriate authorities suspected child or sexual abuse.

_____ (7) A letter of admonition, letter of warning, or letter of reprimand, with or without probation, is presumed appropriate if an educator:

_____ (a) engages in a miscellaneous minimal boundary violation with a student or minor, whether physical, electronic, or verbal;

_____ (b) engages in minimal inappropriate physical contact with a student;

_____ (c) engages in unprofessional communications or conduct with a student, co-worker, community member, or parent;

_____ (d) engages in an inappropriate discussion with a student that violates state or federal law;

_____ (e) knowingly violates a requirement or procedure for special education needs;

_____ (f) knowingly violates a standardized testing protocol;

_____ (g) is convicted of one of the following with or without court probation:

_____ (i) a single driving under the influence of alcohol or drugs offense under Section 41-6a-502;

_____ (ii) impaired driving under Section 41-6a-502.5; or

_____ (iii) a charge that contains identical or substantially similar elements to the state's driving under the influence of alcohol or drugs law or under the law of another state or territory;

_____ (h) carelessly mismanages public funds or fails to accurately account for receipt and expenditure of public funds entrusted to the educator's care;

_____ (i) fails to make a report required by Rule R277-516;

_____ (j) is convicted of one or two misdemeanor offenses not otherwise listed;

_____ (k) engages in an activity that constitute or create the appearance of a conflict of interest with the educator's professional responsibility; or

_____ (l) engages in other minor violations of the Utah Educator Standards in Rule R277-515.

_____ (8) In considering a presumption described in this section, UPPAC or the Board shall consider deviating from the presumptions if:

_____ (a) the presumption does not involve a revocation mandated by statute; and

_____ (b) aggravating or mitigating factors exist that warrant deviation from the presumption.

_____ (9) An aggravating factor may include the following:

_____ (a) the educator has engaged in prior misconduct;

_____ (b) the educator presents a serious threat to a student;

_____ (c) the educator's misconduct directly involved a student;

_____ (d) the educator's misconduct involved a particularly vulnerable student;

_____ (e) the educator's misconduct resulted in physical or psychological harm to a student;

_____ (f) the educator violated multiple standards of professional conduct;

_____ (g) the educator's attitude does not reflect responsibility for the misconduct or the consequences of the misconduct;

_____ (h) the educator's misconduct continued after investigation by the LEA or UPPAC;

_____ (i) the educator holds a position of heightened authority as an administrator;

_____ (j) the educator's misconduct had a significant impact on the LEA or the community;

_____ (k) the educator's misconduct was witnessed by a student;

_____ (l) the educator was not honest or cooperative in the course of UPPAC's investigation;

_____ (m) the educator was convicted of crime as a result of the misconduct; and

(n) any other factor that, in the view of UPPAC or the Board, warrants a more serious consequence for the educator's misconduct.

(10) A mitigating factor may include the following:

(a) the educator's misconduct was the result of strong provocation;

(b) the educator was young and new to the profession;

(c) the educator's attitude reflects recognition of the nature and consequences of the misconduct and demonstrates a reasonable expectation that the educator will not repeat the misconduct;

(d) the educator's attitude suggests amenability to supervision and training;

(e) the educator has little or no prior disciplinary history;

(f) since the misconduct, the educator has an extended period of misconduct-free classroom time;

(g) the educator was a less active participant in a larger offense;

(h) the educator's misconduct was directed or approved, whether implicitly or explicitly, by a supervisor or person in authority over the educator;

(i) the educator has voluntarily sought treatment or made restitution for the misconduct;

(j) there was insufficient training or other policies that might have prevented the misconduct;

(k) any other factor that, in the view of UPPAC or the Board, warrants a less serious consequence for the educator's misconduct.

(11)(a) UPPAC and the Board have sole discretion to determine the weight they give to an aggravating or mitigating factor.

(b) The weight UPPAC or the Board give an aggravating or mitigating factor may vary in each case and any one aggravating or mitigating factor may outweigh some or all other aggravating or mitigating factors.

KEY: educators, disciplinary presumptions

Date of Enactment of Last Substantive Amendment: 2016

Authorizing, Implemented, or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401

Education, Administration
R277-922
 Digital Teaching and Learning Grant
 Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40340

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for Rule R277-922 is to establish an application, a grant review advisory committee, and a process

for the Digital Teaching and Learning Program and to give direction to local education agencies (LEAs) participating in the program.

SUMMARY OF THE RULE OR CHANGE: This new rule provides standards and procedures for the Digital Teaching and Learning Grant Program; Advisory Committee; Utah State Board of Education approval or denial of LEA plans; pre-LEA plan submission and LEA plan requirements; distribution of grant money to participating LEAs; and prohibited uses of grant money.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Title 53A, Chapter 1, Part 14

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: Funding is provided to distribute to school districts and charter schools for administration and participation in the Digital Teaching and Learning Grant Program, so it is likely that enactment of this rule will not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: Funding is provided to distribute to school districts and charter schools for administration and participation in the Digital Teaching and Learning Grant Program, so it is likely that enactment of this rule will not result in a cost or savings to local government.

♦ SMALL BUSINESSES: Funding is provided to distribute to school districts and charter schools for administration and participation in the Digital Teaching and Learning Grant Program, so it is likely that enactment of this rule will not result in a cost or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Funding is provided to distribute to school districts and charter schools for administration and participation in the Digital Teaching and Learning Grant Program, so it is likely that enactment of this rule will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Funding is provided to distribute to school districts and charter schools for administration and participation in the Digital Teaching and Learning Grant Program, so it is likely that enactment of this rule 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 enactment of this new 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 05/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

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

R277. Education, Administration.

R277-922. Digital Teaching and Learning Grant Program.

R277-922-1. Authority and Purpose.

- (1) This rule is authorized by:
- (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
 - (c) Title 53A, Chapter 1, Part 14, Digital Teaching and Learning Grant Program, which requires the Board to:
 - (i) establish a qualifying grant program; and
 - (ii) adopt rules related to administration of the Digital Teaching and Learning Grant Program.
- (2) The purpose of this rule is to:
- (a) establish an application and grant review committee and process;
 - (b) give direction to LEAs participating in the Digital Teaching and Learning Program.

R277-922-2. Definitions.

- (1) "Advisory committee" means the Digital Teaching and Learning Advisory Committee:
- (a) established by the Board as required in Section 53A-1-1406; and
 - (b) required to perform the duties described in R277-922-4.
- (2) "LEA plan" has the same meaning as that term is defined in Section 53A-1-1402.
- (3) "Master plan" means Utah's Master Plan: Essential Elements for Technology-Powered Learning incorporated by reference in R277-922-3.
- (4) "Program" has the same meaning as that term is defined in Section 53A-1-1402.
- (5) "Participating LEA" means an LEA that:
- (a) has an LEA plan approved by the Board; and
 - (b) receives a grant under the program.

R277-922-3. Incorporation of Utah's Master Plan by Reference.

- (1) This rule incorporates by reference Utah's Master Plan: Essential Elements for Technology-Powered Learning, October 9, 2015, which establishes:

(a) the application process for an LEA to receive a grant under the program; and

(b) a more detailed description of the requirements of an LEA plan.

(2) A copy of the Master Plan is located at:

(a) <http://www.schools.utah.gov/edtech/>; and

(b) the Utah State Office of Education - 250 East 500 South, Salt Lake City, Utah 84111.

R277-922-4. Digital Teaching and Learning Advisory Committee Duties.

(1) The advisory committee shall include the following individuals who will serve as non-voting chairs:

(a) the Deputy Superintendent of Instructional Services or designee; and

(b) the Director of the Utah Education and Telehealth Network or designee.

(2) In addition to the chairs described in Subsection (1), the Board shall appoint five members to the advisory committee as follows:

(a) the Digital Teaching and Learning Coordinator;

(b) one member who represents a school district with expertise in digital teaching and learning;

(c) one member who represents a charter school with expertise in digital teaching and learning; and

(d) two members that have earned a national certification in education technology, that may include a certification from the Certified Education Technology Leader from the Consortium for School Networking (CoSN).

(3) The advisory committee shall:

(a) oversee review of an LEA plan to determine whether the LEA plan meets the criteria described in Section R277-922-7;

(b) make a recommendation to the Superintendent and the Board on whether the Board should approve or deny an LEA plan;

(c) make recommendations to an LEA on how the LEA may improve the LEA's plan; and

(d) perform other duties as directed by:

(i) the Board; or

(ii) the Superintendent.

(4) The advisory committee may select additional LEA plan reviewers to assist the advisory committee with the work described in Subsection (3).

(5) The advisory committee, or the Superintendent on behalf of the advisory committee, shall present the advisory committee's recommendations on whether to approve or deny each LEA plan to the Board for the Board's approval.

R277-922-5. Board Approval or Denial of LEA Plans.

(1) The Board will either approve or deny each LEA plan submitted by the advisory committee.

(2) If the Board denies an LEA's plan, the LEA may amend and re-submit the LEA's plan to the advisory committee until the Board approves the LEA plan.

R277-922-6. Pre-LEA Plan Submission Requirements.

(1) Before an LEA submits an LEA plan to the advisory committee for approval by the Board, an LEA shall:

_____ (a) send an LEA representative to a pre-grant submission training conducted by the Superintendent;

_____ (b) require the following individuals to participate in a leadership and change management training conducted by the Superintendent:

_____ (i) the principal of each school participating in the program;

_____ (ii) the school district superintendent or charter school executive director;

_____ (iii) the LEA's technology director; and

_____ (iv) the LEA's curriculum director; and

_____ (c) complete the readiness assessment required in Section 53A-1-1405.

_____ (2) A member of an LEA's local school board or charter school governing board and other staff identified by the LEA may participate in:

_____ (a) a pre-grant submission training conducted by the Superintendent as described in Subsection (1)(a); or

_____ (b) a leadership and change management training conducted by the Superintendent as described in Subsections (1)(b).

R277-922-7. LEA Plan Requirements.

_____ (1) An LEA shall develop an LEA plan in cooperation with educators, paraeducators, and parents.

_____ (2) An LEA plan shall include:

_____ (a) an LEA's results on the readiness assessment required in Section 53A-1-1404;

_____ (b) a statement of purpose that describes the learning objectives, goals, measurable outcomes, and metrics of success an LEA will accomplish by implementing the program, including the following outcomes:

_____ (i) a 5% increase on each school's performance on SAGE using a baseline of the school's 2015-16 SAGE proficiency scores by the end of the third year of the LEA's implementation of the program; or

_____ (ii) a school level outcome:

_____ (A) selected by the LEA;

_____ (B) included in the LEA's plan; and

_____ (C) approved by the advisory committee;

_____ (c) long-term, intermediate, and direct outcomes as defined in the Master Plan and identified by an LEA that may include:

_____ (i) student achievement on statewide assessments;

_____ (ii) cost savings and improved efficiency relating to instructional materials, facilities, and maintenance;

_____ (iii) attendance;

_____ (iv) discipline incidents;

_____ (v) parental involvement;

_____ (vi) citizen involvement;

_____ (vii) graduation rates;

_____ (viii) student enrollment in higher education;

_____ (ix) dropout rates;

_____ (x) student technology proficiency for college and career readiness;

_____ (xi) teacher satisfaction and engagement; or

_____ (xii) other school level outcomes approved by the advisory committee or the Board;

_____ (d) an implementation process structured to yield an LEA's school level outcomes;

_____ (e) a plan for infrastructure acquisition;

_____ (f) a process for procurement and distribution of the goods and services an LEA intends to use as part of an LEA's implementation of the program;

_____ (g) a description of necessary high quality digital instructional materials;

_____ (h) a detailed plan for student engagement in personalized learning;

_____ (i) technical support standards for implementation and maintenance of the program that:

_____ (i) include support for hardware and Internet access; and

_____ (ii) remove technical support burdens from the classroom teacher;

_____ (j) proposed security policies, including security audits, student data privacy, and remediation of identified lapses;

_____ (k) an inventory of an LEA's current technology resources, including software, and a description of how an LEA will integrate those resources into the LEA's implementation of the program;

_____ (l) a disclosure by an LEA of the LEA's current technology expenditures;

_____ (m) the LEA's overall financial plan, including use of additional LEA non-grant funds, to be utilized to adequately fund the LEA plan;

_____ (n) a description of how an LEA will:

_____ (i) provide high quality professional learning for educators, administrators, and support staff participating in the program, including ongoing periodic coaching; and

_____ (ii) provide special education students with appropriate software;

_____ (o) a plan for digital citizenship curricula and implementation;

_____ (p) a plan for how an LEA will ensure that schools use software programs with fidelity in accordance with:

_____ (i) the recommended usage requirements of the software provider; and

_____ (ii) the best practices recommended by the software or hardware provider; and

_____ (q) a plan for how an LEA will monitor student and teacher usage of the program technology.

_____ (2)(a) An LEA shall include the LEA's proposed implementation of the program over multiple years in the LEA plan.

_____ (b) An LEA must demonstrate the financial ability to fully fund the LEA plan using both grant and non-grant funds.

_____ (3) An LEA's approved LEA plan is valid for three years, and may be required to be reapproved by the advisory committee and the Board after three years of implementation.

_____ (4) An LEA is not required to implement the program in kindergarten through grade 4.

R277-922-8. Distribution of Grant Money to Participating LEAs.

_____ (1) If an LEA's plan is approved by the Board, the Superintendent shall distribute grant money to the participating LEA as described in this section.

_____ (2)(a) The amount available to distribute to participating charter schools is an amount equal to the product of:

(i) ADM plus growth in the prior year at charter schools statewide, divided by ADM plus growth in the prior year in public schools statewide; and

(ii) the total amount available for distribution under the program.

(b) The Superintendent shall distribute to participating charter schools the amount available for distribution to participating charter schools in proportion to each participating charter school's enrollment as a percentage of the total enrollment in participating charter schools.

(3) The Superintendent shall distribute grant money to the Utah Schools for the Deaf and the Blind in an amount equal to the product of:

(a) ADM plus growth in the prior year at the Utah Schools for the Deaf and the Blind, divided by ADM plus growth in the prior year in public schools statewide; and

(b) the total amount available for distribution under this section.

(4) Of the funds available for distribution under the program after the allocation of funds for the Utah Schools for the Deaf and the Blind and participating charter schools, the Superintendent shall distribute grant money to participating LEAs that are school districts as follows:

(a) the Superintendent shall distribute 10 percent of the total funding available for participating LEAs that are school districts to the participating LEAs as a base amount on an equal basis; and

(b) the superintendent shall distribute the remaining 90% of the funds to the participating LEAs on a per-student basis.

(5)(a) If an LEA's plan is not approved during year one of the program, the advisory committee and the Digital Teaching and Learning Coordinator shall provide additional supports to help the LEA become a qualifying LEA.

(b) The Superintendent shall redistribute the funds an LEA would have been eligible to receive, in accordance with the distribution formulas described in this section, to other qualifying LEAs if the LEA's plan is not approved:

(i) after additional support described in Subsection (5)(a) is given; and

(ii) by no later than December 31 of the school year for which the grant is being awarded.

(6) A non-qualifying LEA may reapply for grant money in subsequent years based on the LEA's plan being approved by the Board.

R277-922-9. Prohibited Uses of Grant Money.

A participating LEA may not use grant money:

(1) to fund nontechnology programs;

(2) to purchase mobile telephones; or

(3) to fund voice or data plans for mobile telephones.

R277-922-10. Participating LEA Reporting Requirements.

Beginning with the school year after a participating LEA's first year implementation of an LEA plan, a participating LEA shall annually:

(1) review how the participating LEA:

(a) redirected funds through the participating LEA's implementation of the LEA plan; and

(b) made progress toward implementation; and

(2) on or before October 1, report the potential savings identified in Subsection (1) to the Superintendent.

R277-922-11. Evaluation of LEA Program Implementation.

(1) An evaluation conducted by the independent evaluator described in Section 53A-1-1407 shall include a review of:

(a) a participating LEA's implementation of the program in accordance with the participating LEA's LEA plan;

(b) a participating LEA's progress toward meeting the school level outcomes in the participating LEA's LEA plan.

(2) After an evaluation described in Subsection (1), if the Superintendent determines that a participating LEA is not meeting the requirements of the participating LEA's LEA plan the Superintendent:

(a) shall:

(i) provide assistance to the participating LEA; and

(ii) recommend changes to the LEA's LEA plan; or

(b) after at least two findings of failure to meet the requirements of the participating LEA's LEA plan, may recommend that the Board terminate the participating LEA's grant money.

KEY: digital teaching and learning, grant programs

Date of Enactment of Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; Title 53A, Chapter 1, Part 14.

**Environmental Quality, Waste
Management and Radiation Control,
Radiation
R313-19-13
Exemptions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40322

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the change is to incorporate changes requested by the U.S. Nuclear Regulatory (NRC) in a letter dated 11/13/2015 (ML15267 A359) to maintain compatibility with the corresponding federal radioactive materials regulations. As an Agreement State with the NRC, Utah is required to maintain rules that are compatible with those promulgated by the NRC. The proposed rule changes are required in order to maintain regulatory compatibility.

SUMMARY OF THE RULE OR CHANGE: The NRC requested that selected references to the federal "Atomic Energy Act" be removed since the agency does not have the authority to allow exemptions from federal statute.

Additionally, the NRC also requested the correction of certain rule citations for regulatory compatibility with the corresponding federal requirements.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-3-104(4)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The proposed rule changes do not impact the state budget since they are simply correcting selected rule citations and removing certain references to a federal law in order to maintain regulatory compatibility, as requested by the NRC.

◆ LOCAL GOVERNMENTS: The proposed rule changes do not impact local government since they are simply correcting selected rule citations and removing certain references to a federal law in order to maintain regulatory compatibility, as requested by the NRC.

◆ SMALL BUSINESSES: The proposed rule changes do not impact small businesses that may have a radioactive materials license since they are simply correcting selected rule citations and removing certain references to a federal law in order to maintain regulatory compatibility, as requested by the NRC.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed rule changes do not impact other businesses or local government entities that may have a radioactive materials license since they are simply correcting selected rule citations and removing certain references to a federal law in order to maintain regulatory compatibility, as requested by the NRC.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule changes do not impose any compliance costs for any radioactive materials licensees since they are simply correcting selected rule citations and removing certain references to a federal law in order to maintain regulatory compatibility, as requested by the NRC.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule changes incorporate federal radioactive materials revisions requested by the NRC regarding corrections to rule citations and selected references to federal law. The changes were requested in order to maintain regulatory compatibility with corresponding federal regulations promulgated by NRC. Consequently, there are no costs or savings to any Utah radioactive materials licensees.

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

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, RADIATION
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/10/2016

AUTHORIZED BY: Brad Johnson, Deputy Director

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-19. Requirements of General Applicability to Licensing of Radioactive Material.

R313-19-13. Exemptions.

(1) Source material.

(a) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses, owns, or transfers source material in a chemical mixture, compound, solution or alloy in which the source material is by weight less than 1/20 of one percent (0.05 percent) of the mixture, compound, solution, or alloy.

(b) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers unrefined and unprocessed ore containing source material; provided, that, except as authorized in a specific license, such person shall not refine or process the ore.

(c) A person is exempt from Rules R313-19, R313-21, and R313-22 to the extent that the person receives, possesses, uses or transfers:

(i) any quantities of thorium contained in:

(A) incandescent gas mantles,

(B) vacuum tubes,

(C) welding rods,

(D) electric lamps for illuminating purposes: provided that, each lamp does not contain more than 50 milligrams of thorium,

(E) germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting provided that each lamp does not contain more than two grams of thorium,

(F) rare earth metals and compounds, mixtures, and products containing not more than 0.25 percent by weight thorium, uranium, or any combination of these, or

(G) personnel neutron dosimeters provided that each dosimeter does not contain more than 50 milligrams of thorium;

(ii) source material contained in the following products:

(A) glazed ceramic tableware, provided that the glaze contains not more than 20 percent by weight source material,

(B) piezoelectric ceramic containing not more than two percent by weight source material, or

(C) glassware containing not more than ten percent by weight source material, but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass or ceramic used in construction;

(iii) photographic film, negatives and prints containing uranium or thorium;

(iv) a finished product or part fabricated of, or containing, tungsten-thorium or magnesium-thorium alloys, provided that the

thorium content of the alloy does not exceed four percent by weight and that this exemption shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of the product or part;

(v) uranium contained in counterweights installed in aircraft, rockets, projectiles, and missiles, or stored or handled in connection with installation or removal of the counterweights, provided that:

(A) the counterweights are manufactured in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission authorizing distribution by the licensee pursuant to 10 CFR Part 40,

(B) each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "DEPLETED URANIUM",

(C) each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED",

(D) The requirements specified in Subsections R313-19-13(1)(c)(v)(B) and (C) need not be met by counterweights manufactured prior to December 31, 1969, provided that such counterweights are impressed with the legend, "CAUTION - RADIOACTIVE MATERIAL - URANIUM", as previously required by the rules, and

(E) the exemption contained in Subsection R313-19-13(1)(c)(v) shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of counterweights other than repair or restoration of any plating or other covering;

(vi) natural or depleted uranium metal used as shielding constituting part of a shipping container which is conspicuously and legibly impressed with the legend "CAUTION - RADIOACTIVE SHIELDING - URANIUM" and the uranium metal is encased in mild steel or equally fire resistant metal of minimum wall thickness of one eighth inch (3.2 mm);

(vii) thorium contained in finished optical lenses, provided that each lens does not contain more than 30 percent by weight of thorium, and that this exemption shall not be deemed to authorize either:

(A) the shaping, grinding, or polishing of a lens or manufacturing processes other than the assembly of such lens into optical systems and devices without alteration of the lens, or

(B) the receipt, possession, use, or transfer of thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments;

(viii) uranium contained in detector heads for use in fire detection units, provided that each detector head contains not more than 0.005 microcurie (185.0 Bq) of uranium; or

(ix) thorium contained in a finished aircraft engine part containing nickel-thoria alloy, provided that:

(A) the thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide), and

(B) the thorium content in the nickel-thoria alloy does not exceed four percent by weight.

(d) The exemptions in Subsection R313-19-13(1)(c) do not authorize the manufacture of any of the products described.

(2) Radioactive material other than source material.

(a) Exempt concentrations.

(i) Except as provided in Subsection R313-19-13(2)(a)(iii) a person is exempt from Rules R313-19, R313-21 and R313-22 to the

extent that the person receives, possesses, uses, transfers, owns or acquires products or materials containing:

(A) radioactive material introduced in concentrations not in excess of those listed in Section R313-19-70, or

(B) diffuse sources of natural occurring radioactive materials containing less than 15 picocuries per gram radium-226.

(ii) A manufacturer, processor, or producer of a product or material is exempt from the requirements for a license set forth in Rules R313-19, R313-21 and R313-22 and Rules R313-32, R313-34, R313-36, and R313-38 to the extent that the person transfers:

(A) radioactive material contained in a product or material in concentrations not in excess of those specified in R313-19-70; and

(B) introduced into the product or material by a licensee holding a specific license issued by the U.S. Nuclear Regulatory Commission authorizing the introduction.

(C) The exemption in R313-19-13-2(a)(ii)(A) and R313-19-13-2(a)(ii)(B) does not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(iii) A person may not introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under Subsection R313-19-13(2)(a)(i) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except in accordance with a specific license issued pursuant to Subsection R313-22-75(1).

(b) Exempt quantities.

(i) Except as provided in Subsections R313-19-13(2)(b)(ii) through (iv) a person is exempt from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires radioactive material in individual quantities which do not exceed the applicable quantity set forth in Section R313-19-71.

(ii) Subsection R313-19-13(2)(b) does not authorize the production, packaging or repackaging of radioactive material for purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution.

(iii) A person may not, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in Section R313-19-71, knowing or having reason to believe that the quantities of radioactive material will be transferred to persons exempt under Subsection R313-19-13(2)(b) or equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State, except in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, pursuant to 10 CFR Part 32 or by the Director pursuant to Subsection R313-22-75(2), which license states that the radioactive material may be transferred by the licensee to persons exempt under Subsection R313-19-13(2)(b) or the equivalent regulations of a Licensing State, the U.S. Nuclear Regulatory Commission or an Agreement State.

(iv) A person who possesses radioactive material received or acquired prior to September 25, 1971, under the general license formerly provided in 10 CFR Part 31.4 or equivalent regulations of a State is exempt from the requirements for a license set forth in Rule R313-19 to the extent that the person possesses, uses, transfers or owns radioactive material. This exemption does not apply for diffuse sources of radium-226.

(v) No person may, for purposes of producing an increased radiation level, combine quantities of radioactive material covered by

this exemption so that the aggregate quantity exceeds the limits set forth in R313-19-71, except for radioactive material combined within a device placed in use before May 3, 1999, or as otherwise provided by these rules.

(c) Exempt items.

(i) Certain items containing radioactive material. Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, a person is exempt from these rules to the extent that person receives, possesses, uses, transfers, owns or acquires the following products:

(A) Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

(I) 25 millicuries (925.0 MBq) of tritium per timepiece;

(II) five millicuries (185.0 MBq) of tritium per hand;

(III) 15 millicuries (555.0 MBq) of tritium per dial. Bezels when used shall be considered as part of the dial;

(IV) 100 microcuries (3.7 MBq) of promethium-147 per watch or 200 microcuries (7.4 MBq) of promethium-147 per any other timepiece;

(V) 20 microcuries (0.74 MBq) of promethium-147 per watch hand or 40 microcuries (1.48 MBq) of promethium-147 per other timepiece hand;

(VI) 60 microcuries (2.22 MBq) of promethium-147 per watch dial or 120 microcuries (4.44 MBq) of promethium-147 per other timepiece dial. Bezels when used shall be considered as part of the dial;

(VII) the radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

for wrist watches, 0.1 millirad (1.0 uGy) per hour at ten centimeters from any surface;

for pocket watches, 0.1 millirad (1.0 uGy) per hour at one centimeter from any surface;

for other timepieces, 0.2 millirad (2.0 uGy) per hour at ten centimeters from any surface;

(VIII) one microcurie (37.0 kBq) of radium-226 per timepiece in timepieces manufactured prior to November 30, 2007.

(B)(I) Static elimination devices which contain, as sealed source or sources, radioactive material consisting of a total of not more than 18.5 MBq (500 uCi) of polonium-210 per device.

(II) Ion generating tubes designed for ionization of air that contain, as a sealed source or sources, byproduct material consisting of a total of not more than 18.5 MBq (500 uCi) of polonium-210 per device or of a total of not more than 1.85 GBq (50 mCi) of hydrogen-3 (tritium) per device.

(III) Such devices authorized before October 23, 2012 for use under the general license then provided in 10 CFR 31.3 (January 1, 2012) or equivalent regulations of the Commission or an Agreement State and manufactured, tested, and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the Commission or Agreement State.

(C) Precision balances containing not more than one millicurie (37.0 MBq) of tritium per balance or not more than 0.5 millicurie (18.5 MBq) of tritium per balance part manufactured before June 9, 2010.

(D) Marine compasses containing not more than 750 millicuries (27.8 GBq) of tritium gas and other marine navigational

instruments containing not more than 250 millicuries (9.25 GBq) of tritium gas manufactured before June 9, 2010.

(E) Ionization chamber smoke detectors containing not more than 1 microcurie (37 kBq) of americium-241 per detector in the form of a foil and designed to protect life and property from fires.

(F) Electron tubes, including spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes, and other completely sealed tubes that are designed to conduct or control electrical currents; provided that each tube does not contain more than one of the following specified quantities of radioactive material:

(I) 150 millicuries (5.55 GBq) of tritium per microwave receiver protector tube or ten millicuries (370.0 MBq) of tritium per any other electron tube;

(II) one microcurie (37.0 kBq) of cobalt-60;

(III) five microcuries (185.0 kBq) of nickel-63;

(IV) 30 microcuries (1.11 MBq) of krypton-85;

(V) five microcuries (185.0 kBq) of cesium-137;

(VI) 30 microcuries (1.11 MBq) of promethium-147;

(VII) one microcurie (37.0 kBq) of radium-226;

and provided further, that the radiation dose rate from each electron tube containing radioactive material will not exceed one millirad (10.0 uGy) per hour at one centimeter from any surface when measured through seven milligrams per square centimeter of absorber.

(G) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material, provided that:

(I) each source contains no more than one exempt quantity set forth in Section R313-19-71; and

(II) each instrument contains no more than ten exempt quantities. For purposes of this requirement, an instrument's source(s) may contain either one type or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of exempt quantities in Section R313-19-71, provided that the sum of the fractions shall not exceed unity;

(III) for purposes of Subsection R313-19-13(2)(c)(i)(G), 0.05 microcurie (1.85 kBq) of americium-241 is considered an exempt quantity under Section R313-19-71.

(ii) Self-luminous products containing radioactive material.

(A) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147, and except as provided in R313-19-13(2)(c)(ii)(C), any person is exempt[~~from the requirements for a license set forth in Section 274 b. of the Atomic Energy Act of 1954 and~~] from the regulations in R313-15, R313-19, ~~R313-21, R313-22,~~ R313-32, R313-34, R313-36, ~~[R313-37,]~~ and R313-38 to the extent that such a person receives, possesses, uses, transfers, owns, or acquires tritium, krypton-85, or promethium-147 in self-luminous products manufactured, processed, produced, or initially transferred in accordance with a specific license issued pursuant to 10 CFR 32.22 (2015), which license authorizes the initial transfer of the product for use.

(B) Any person who desires to manufacture, process, or produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147 for use under R313-19-13(2)(c)(ii)(A), should apply for a license under 10 CFR 32.22 (2015) and for a certificate of registration in accordance with 10 CFR 32.210 (2015).

(C) The exemption in R313-19-13(2)(c)(ii)(A) does not apply to tritium, krypton-85, or promethium-147 used in products primarily for frivolous purposes or in toys or adornments.

(D) Radium-226. A person is exempt from these rules, to the extent that such person receives, possesses, uses, transfers, or owns articles containing less than 0.1 microcurie (3.7 kBq) of radium-226 which were acquired prior to the effective date of these rules.

(iii) Gas and aerosol detectors containing radioactive material.

(A) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing radioactive material, any person is exempt ~~from the requirements for a license set forth in Section 274 b. of the Atomic Energy Act of 1954 and~~ from the regulations in parts R313-18, R313-15, R313-19, R313-21, R313-22, R313-32, R313-34, R313-36, ~~[R313-37]~~ and R313-38 to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material in gas and aerosol detectors designed to protect health, safety, or property, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued under 10 CFR 32.26 (2015), which license authorizes the initial transfer of the product for use under this section. This exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007, in accordance with a specific license issued by a State under comparable provisions to 10 CFR 32.26 (2015) authorizing distribution to persons exempt from regulatory requirements.

(B) Any person who desires to manufacture, process, or produce gas and aerosol detectors containing byproduct material, or to initially transfer such products for use under paragraph (a) of this section, should apply for a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR Part 32.26 (2015) and for a certificate of registration in accordance with R313-22-210 or equivalent regulations of an Agreement State.

(iv) Capsules containing carbon-14 urea for "in vivo" diagnostic use for humans.

(A) Except as provided in Subsection R313-19-13(2)(c)(iv) (B), any person is exempt from the requirements in Rules R313-19 and R313-32 provided that the person receives, possesses, uses, transfers, owns, or acquires capsules containing 37 kBq (1 uCi) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in vivo" diagnostic use for humans.

(B) Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to Rule R313-32.

(C) Nothing in Subsection R313-19-13(2)(c)(iv) relieves persons from complying with applicable United States Food and Drug Administration, other Federal, and State requirements governing receipt, administration, and use of drugs.

(v) Certain industrial devices.

(A) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing radioactive material designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing an ionized atmosphere, any person is exempt ~~from the requirements for a license set forth in Section 274 b. of the Atomic Energy Act of 1954 and~~ from the regulations in parts R313-18, R313-15, R313-18, R313-15, R313-19, R313-21, R313-22, R313-32, R313-34, R313-36, ~~[R313-37]~~ and

R313-38 to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material, in these certain detecting, measuring, gauging, or controlling devices and certain devices for producing an ionized atmosphere, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued under 10 CFR 32.30 (2015), which license authorizes the initial transfer of the device for use under this rule. This exemption does not cover sources not incorporated into a device, such as calibration and reference sources.

(B) Any person who desires to manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material for use under R313-19-13(2)(c)(v)(A), should apply for a license under 10 CFR 32.30 (2015) and for a certificate of registration in accordance with R313-22-210.

(vi) With respect to Subsections R313-19-13(2)(b)(iii), R313-19-13(2)(c)(i), (iii) and (iv), the authority to transfer possession or control by the manufacturer, processor, or producer of equipment, devices, commodities, or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons is exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

KEY: licenses, reciprocity, transportation, exemptions

Date of Enactment or Last Substantive Amendment: ~~[March 15,]~~ 2016

Notice of Continuation: September 23, 2011

Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-107

Environmental Quality, Waste Management and Radiation Control, Radiation **R313-22** Specific Licenses

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40323

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the rule change is to incorporate changes requested by the U.S. Nuclear Regulatory (NRC) in a letter dated 11/13/2015 (ML15267A359) to maintain compatibility with the corresponding federal radioactive materials regulations. As an Agreement State with the NRC, Utah is required to maintain rules that are compatible with those promulgated by the NRC. The proposed rule changes are required in order to maintain regulatory compatibility.

SUMMARY OF THE RULE OR CHANGE: The NRC requested revising selected rule citations in Section R313-22-32 to the corresponding federal radioactive materials

regulations (10 CFR 32.210(c)) in order to maintain regulatory compatibility. Additionally, the NRC requested correcting an error in subsection numbering, as well as correcting the location of a subsection referencing the Sealed Source and Device Registry within Section R313-22-75.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-3-104(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The proposed rule changes do not impact the state budget since they are simply correcting selected rule citations, correcting subsection numbering, and moving a subsection referencing the Sealed Source and Device Registry to its correct location in order to maintain regulatory compatibility, as requested by the NRC.

◆ **LOCAL GOVERNMENTS:** The proposed rule changes do not impact local government since they are simply correcting selected rule citations, correcting subsection numbering, and moving a subsection referencing the Sealed Source and Device Registry to its correct location in order to maintain regulatory compatibility, as requested by the NRC.

◆ **SMALL BUSINESSES:** The proposed rule changes do not impact small businesses that may have a radioactive materials license since they are simply correcting selected rule citations, correcting paragraph numbering, and moving a subsection referencing the Sealed Source and Device Registry to its correct location in order to maintain regulatory compatibility, as requested by the NRC.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed rule changes do not impact other businesses or local government entities that may have a radioactive materials license since they are simply correcting selected rule citations, correcting subsection numbering, and moving a subsection referencing the Sealed Source and Device Registry to its correct location in order to maintain regulatory compatibility, as requested by the NRC.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule changes do not impose any compliance costs for any radioactive materials licensees since they are simply correcting selected rule citations, correcting subsection numbering, and moving a subsection referencing the Sealed Source and Device Registry to its correct location in order to maintain regulatory compatibility, as requested by the NRC.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule changes incorporate federal radioactive materials revisions requested by the NRC regarding rule citations corrections, subsection numbering corrections, and the proper location of a selected subsection. The changes were requested in order to maintain regulatory compatibility with corresponding federal regulations promulgated by NRC. Consequently, there are no costs or savings to any Utah radioactive materials licensees.

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

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, RADIATION
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/10/2016

AUTHORIZED BY: Brad Johnson, Deputy Director

R313. Environmental Quality, Waste Management and Radiation Control, Radiation.

R313-22. Specific Licenses.

R313-22-32. Filing Application for Specific Licenses.

(1) Applications for specific licenses shall be filed on a form prescribed by the Director.

(2) The Director may, after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Director to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(3) Applications shall be signed by the applicant or licensee or a person duly authorized to act for and on the applicant's behalf.

(4) An application for a license may include a request for a license authorizing one or more activities.

(5) In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Director, provided the references are clear and specific.

(6)(i) Except as provided in R313-22 (6)(ii), (iii) or (iv) of this section, an application for a specific license to use byproduct material in the form of a sealed source or in a device that contains the sealed source must either---

(A) Identify the source or device by manufacturer and model number as registered with the sealed source and device registry under R313-22-210; or

(B) Contain the information identified in [\[R313-22-210\]10 CFR 32.210\(c\) \(January 1, 2015\)](#).

(ii) For sources or devices manufactured before October 23, 2012 that are not registered with sealed source and device registry under R313-22-210 and for which the applicant is unable to provide all categories of information specified in [\[R313-22-210\]10 CFR 32.210\(c\) \(January 1, 2015\)](#), the application must include:

(A) All available information identified in ~~[R313-22-210]~~10 CFR 32.210(c) (January 1, 2015) concerning the source, and, if applicable, the device; and

(B) Sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of a recent leak test.

(iii) For sealed sources and devices allowed to be distributed without registration of safety information in accordance with 10 CFR 32.210(g)(1) (2015), the applicant may supply only the manufacturer, model number, and radionuclide and quantity.

(iv) If it is not feasible to identify each sealed source and device individually, the applicant may propose constraints on the number and type of sealed sources and devices to be used and the conditions under which they will be used, in lieu of identifying each sealed source and device.

(7) As provided by Section R313-22-35, certain applications for specific licenses filed under these rules shall contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning. In the case of renewal applications submitted before January 1, 1995, this submittal may follow the renewal application but shall be submitted on or before January 1, 1995.

(8)(a) Applications to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in Section R313-22-90, "Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release", shall contain either:

(i) An evaluation showing that the maximum dose to a individual off-site due to a release of radioactive materials would not exceed one rem effective dose equivalent or five rems to the thyroid; or

(ii) An emergency plan for responding to a release of radioactive material.

(b) One or more of the following factors may be used to support an evaluation submitted under Subsection R313-22-32(8)(a)(i):

(i) The radioactive material is physically separated so that only a portion could be involved in an accident;

(ii) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(iii) The release fraction in the respirable size range would be lower than the release fraction shown in Section R313-22-90 due to the chemical or physical form of the material;

(iv) The solubility of the radioactive material would reduce the dose received;

(v) Facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in Section R313-22-90;

(vi) Operating restrictions or procedures would prevent a release fraction as large as that shown in Section R313-22-90; or

(vii) Other factors appropriate for the specific facility.

(c) An emergency plan for responding to a release of radioactive material submitted under Subsection R313-22-32(8)(a)(ii) shall include the following information:

(i) Facility description. A brief description of the licensee's facility and area near the site.

(ii) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(iii) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(iv) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(v) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers on-site, and a description of the program for maintaining equipment.

(vi) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(vii) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying off-site response organizations and the Director; also responsibilities for developing, maintaining, and updating the plan.

(viii) Notification and coordination. A commitment to and a brief description of the means to promptly notify off-site response organizations and request off-site assistance, including medical assistance for the treatment of contaminated injured on-site workers when appropriate. A control point shall be established. The notification and coordination shall be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the Director immediately after notification of the appropriate off-site response organizations and not later than one hour after the licensee declares an emergency.

NOTE: These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499 or other state or federal reporting requirements, including 40 CFR 302, 2010.

(ix) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to off-site response organizations and to the Director.

(x) Training. A brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site including the use of team training for the scenarios.

(xi) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(xii) Exercises. Provisions for conducting quarterly communications checks with off-site response organizations and biennial on-site exercises to test response to simulated emergencies. Quarterly communications checks with off-site response organizations

shall include the check and update of all necessary telephone numbers. The licensee shall invite off-site response organizations to participate in the biennial exercises. Participation of off-site response organizations in biennial exercises although recommended is not required. Exercises shall use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises shall evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques shall be corrected.

(xiii) Hazardous chemicals. A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499, if applicable to the applicant's activities at the proposed place of use of the radioactive material.

(d) The licensee shall allow the off-site response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the Director. The licensee shall provide any comments received within the 60 days to the Director with the emergency plan.

(9) An application from a medical facility, educational institution, or Federal facility to produce Positron Emission Tomography (PET) radioactive drugs for non-commercial transfer to licensees in its consortium authorized for medical use under Rule R313-32 shall include:

(a) A request for authorization for the production of PET radionuclides or evidence of an existing license issued pursuant to 10 CFR Part 30 or equivalent Agreement State requirements for a PET radionuclide production facility within its consortium from which it receives PET radionuclides.

(b) Evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in Subsection R313-22-75(9)(a)(ii).

(c) Identification of the individual(s) authorized to prepare the PET radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in Rule R313-32.

(d) Information identified in Subsection R313-22-75(9)(a)(iii) on the PET drugs to be noncommercially transferred to members of its consortium.

R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material.

(1) Licensing the introduction of radioactive material in exempt concentrations into products or materials, and transfer of ownership or possession of the products and materials.

(a) The authority to introduce radioactive material in exempt concentrations into equipment, devices, commodities or other products may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555; and

(b) The manufacturer, processor or producer of equipment, devices, commodities or other products containing exempt concentrations of radioactive materials may obtain the authority to transfer possession or control of the equipment, devices, commodities, or other products containing exempt concentrations to persons who are

exempt from regulatory requirements only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) Licensing the distribution of radioactive material in exempt quantities. Authority to transfer possession or control by the manufacturer, processor or producer of equipment, devices, commodities or other products containing byproduct material whose subsequent possession, use, transfer, and disposal by other persons who are exempted from regulatory requirements may be obtained only from the Nuclear Regulatory Commission, Washington, D.C. 20555.

(3) Reserved

(4) Licensing the manufacture and distribution of devices to persons generally licensed under Subsection R313-21-22(4).

(a) An application for a specific license to manufacture or distribute devices containing radioactive material, excluding special nuclear material, to persons generally licensed under Subsection R313-21-22(4) or equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State will be approved if:

(i) the applicant satisfies the general requirements of Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

~~[(iii) the device has been registered in the Sealed Source and Device Registry.]~~

(A) the device can be safely operated by persons not having training in radiological protection,

(B) under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that a person will receive in one year, a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1), and

(C) under accident conditions, such as fire and explosion, associated with handling, storage and use of the device, it is unlikely that a person would receive an external radiation dose or dose commitment in excess of the following organ doses:

TABLE

Whole body; head and trunk; active blood-forming organs; gonads; or lens of eye	150.0 mSv (15 rems)
Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one square centimeter	2.0 Sv (200 rems)
Other organs	500.0 mSv (50 rems); and

(iii) each device bears a durable, legible, clearly visible label or labels approved by the Director, which contain in a clearly identified and separate statement:

(A) instructions and precautions necessary to assure safe installation, operation and servicing of the device; documents such as operating and service manuals may be identified in the label and used to provide this information,

(B) the requirement, or lack of requirement, for leak testing, or for testing an "on-off" mechanism and indicator, including the maximum time interval for testing, and the identification of radioactive material by radionuclide, quantity of radioactivity, and date of determination of the quantity, and

(C) the information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(I) "The receipt, possession, use and transfer of this device, Model No., Serial No., are subject to a general license or the equivalent, and the regulations of the Nuclear Regulatory Commission or a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION -RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(II) "The receipt, possession, use and transfer of this device, Model No., Serial No., are subject to a general license or the equivalent, and the regulations of a Licensing State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited." The label shall be printed with the words "CAUTION - RADIOACTIVE MATERIAL" and the name of the manufacturer or distributor shall appear on the label. The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

~~(D)~~(iv) Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words, "Caution-Radioactive Material," the radiation symbol described in Section R313-15-901, and the name of the manufacturer or initial distributor.

~~(E)~~(v) Each device meeting the criteria of Subsection R313-21-22(4)(c)(xiii)(A), bears a permanent label, for example, embossed, etched, stamped, or engraved, affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "Caution-Radioactive Material," and, if practicable, the radiation symbol described in Section R313-15-901.

(vi) The device has been registered in the Sealed Source and Device Registry.

(b) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the "on-off" mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the "on-off" mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the Director will consider information which includes, but is not limited to:

- (i) primary containment, or source capsule;
- (ii) protection of primary containment;
- (iii) method of sealing containment;

- (iv) containment construction materials;
- (v) form of contained radioactive material;
- (vi) maximum temperature withstood during prototype tests;

- (vii) maximum pressure withstood during prototype tests;
- (viii) maximum quantity of contained radioactive material;
- (ix) radiotoxicity of contained radioactive material; and
- (x) operating experience with identical devices or similarly designed and constructed devices.

(c) In the event the applicant desires that the general licensee under Subsection R313-21-22(4), or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the "on-off" mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with this activity or activities, and basis for these estimates. The submitted information shall demonstrate that performance of this activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1).

(d)(i) If a device containing radioactive material is to be transferred for use under the general license contained in Subsection R313-21-22(4), each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(i)(A) through (E) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(A) a copy of the general license contained in Subsection R313-21-22(4); if Subsections R313-21-22(4)(c)(ii) through (iv) or R313-21-22(4)(c)(xiii) do not apply to the particular device, those paragraphs may be omitted;

(B) a copy of Sections R313-12-51, R313-15-1201, and R313-15-1202;

(C) a list of services that can only be performed by a specific licensee;

(D) Information on acceptable disposal options including estimated costs of disposal; and

(E) An indication that the Director's policy is to issue civil penalties for improper disposal.

(ii) If radioactive material is to be transferred in a device for use under an equivalent general license of the Nuclear Regulatory Commission, an Agreement State, or Licensing State, each person that is licensed under Subsection R313-22-75(4) shall provide the information specified in Subsections R313-22-75(4)(d)(ii)(A) through (D) to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information must also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(A) A copy of an Agreement State's or Licensing State's regulations equivalent to Sections R313-12-51, R313-15-1201, R313-

15-1202, and Subsection R313-21-22(4) or a copy of 10 CFR 31.5, 10 CFR 31.2, 10 CFR 30.51, 10 CFR 20.2201, and 10 CFR 20.2202. If a copy of the Nuclear Regulatory Commission regulations is provided to a prospective general licensee in lieu of the Agreement State's or Licensing State's regulations, it shall be accompanied by a note explaining that use of the device is regulated by the Agreement State or Licensing State; if certain paragraphs of the regulations do not apply to the particular device, those paragraphs may be omitted;

(B) A list of services that can only be performed by a specific licensee;

(C) Information on acceptable disposal options including estimated costs of disposal; and

(D) The name or title, address, and phone number of the contact at the Nuclear Regulatory Commission, Agreement State, or Licensing State from which additional information may be obtained.

(iii) An alternative approach to informing customers may be proposed by the licensee for approval by the Director.

(iv) Each device that is transferred after February 19, 2002 must meet the labeling requirements in Subsection R313-22-75(4)(a)(iii).

(v) If a notification of bankruptcy has been made under Section R313-19-34 or the license is to be terminated, each person licensed under Subsection R313-22-75(4) shall provide, upon request, to the Director, the Nuclear Regulatory Commission, or an appropriate Agreement State or Licensing State, records of final disposition required under Subsection R313-22-75(4)(d)(vii)(H).

(vi) Each person licensed under Subsection R313-22-75(4) to initially transfer devices to generally licensed persons shall comply with the requirements of Subsections R313-22-75(4)(d)(vi) and (vii).

(A) The person shall report all transfers of devices to persons for use under the general license under Subsection R313-21-22(4) and all receipts of devices from persons licensed under Subsection R313-21-22(4) to the Director. The report must be submitted on a quarterly basis on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(B) The required information for transfers to general licensees includes:

(I) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(C) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(D) For devices received from a Subsection R313-21-22(4) general licensee, the report must include the identity of the general

licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(E) If the licensee makes changes to a device possessed by a Subsection R313-21-22(4) general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(F) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(G) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(H) If no transfers have been made to or from persons generally licensed under Subsection R313-21-22(4) during the reporting period, the report must so indicate.

(vii) The person shall report all transfers of devices to persons for use under a general license in the Nuclear Regulatory Commission's, an Agreement State's, or Licensing State's regulations that are equivalent to Subsection R313-21-22(4) and all receipts of devices from general licensees in the Nuclear Regulatory Commission's, Agreement State's, or Licensing State's jurisdiction to the Nuclear Regulatory Commission, or to the responsible Agreement State or Licensing State agency. The report must be submitted on Form 653, "Transfers of Industrial Devices Report" as prescribed by the Nuclear Regulatory Commission, or in a clear and legible report containing all of the data required by the form.

(A) The required information for transfers to general licensee includes:

(I) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee shall be submitted along with information on the actual location of use.

(II) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(III) The date of transfer;

(IV) The type, model number, and serial number of the device transferred; and

(V) The quantity and type of radioactive material contained in the device.

(B) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate persons.

(C) For devices received from a general licensee, the report must include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(D) If the licensee makes changes to a device possessed by a general licensee, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(E) The report must cover each calendar quarter, must be filed within 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(F) The report must clearly identify the specific licensee submitting the report and must include the license number of the specific licensee.

(G) If no transfers have been made to or from a Nuclear Regulatory Commission licensee, or to or from a particular Agreement State or Licensing State licensee during the reporting period, this information shall be reported to the Nuclear Regulatory Commission or the responsible Agreement State or Licensing State agency upon request of the agency.

(H) The person shall maintain all information concerning transfers and receipts of devices that supports the reports required by Subsection R313-22-75(4)(d)(vii). Records required by Subsection R313-22-75(4)(d)(vii)(H) must be maintained for a period of three years following the date of the recorded event.

(5) Special requirements for the manufacture, assembly or repair of luminous safety devices for use in aircraft. An application for a specific license to manufacture, assemble or repair luminous safety devices containing tritium or promethium-147 for use in aircraft for distribution to persons generally licensed under Subsection R313-21-22(5) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.53 through 32.56 (2015) or their equivalent.

(6) Special requirements for license to manufacture or initially transfer calibration sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection R313-21-22(7). An application for a specific license to manufacture calibration and reference sources containing americium-241, plutonium or radium-226 to persons generally licensed under Subsection R313-21-22(7) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the applicant satisfies the requirements of 10 CFR 32.57 through 32.59, and 10 CFR 70.39 (2015), or their equivalent.

(7) Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general license. An application for a specific license to manufacture or distribute radioactive material for use under the general license of Subsection R313-21-22(9) will be approved if:

(a) the applicant satisfies the general requirements specified in Section R313-22-33;

(b) the radioactive material is to be prepared for distribution in prepackaged units of:

(i) iodine-125 in units not exceeding 370 kilobecquerel (ten uCi) each;

(ii) iodine-131 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iii) carbon-14 in units not exceeding 370 kilobecquerel (ten uCi) each;

(iv) hydrogen-3 (tritium) in units not exceeding 1.85 megabecquerel (50 uCi) each;

(v) iron-59 in units not exceeding 740.0 kilobecquerel (20 uCi) each;

(vi) cobalt-57 in units not exceeding 370 kilobecquerel (ten uCi) each;

(vii) selenium-75 in units not exceeding 370 kilobecquerel (ten uCi) each; or

(viii) mock iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each;

(c) prepackaged units bear a durable, clearly visible label:

(i) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 370 kilobecquerel (ten uCi) of iodine-125, iodine-131, carbon-14, cobalt-57, or selenium-75; 1.85 megabecquerel (50 uCi) of hydrogen-3 (tritium); 740.0 kilobecquerel (20 uCi) of iron-59; or Mock Iodine-125 in units not exceeding 1.85 kilobecquerel (0.05 uCi) of iodine-129 and 1.85 kilobecquerel (0.05 uCi) of americium-241 each; and

(ii) displaying the radiation caution symbol described in Section R313-15-901 and the words, "CAUTION, RADIOACTIVE MATERIAL", and "Not for Internal or External Use in Humans or Animals";

(d) one of the following statements, as appropriate, or a substantially similar statement which contains the information called for in one of the following statements, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

(i) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the Nuclear Regulatory Commission or of a state with which the Nuclear Regulatory Commission has entered into an agreement for the exercise of regulatory authority.

.....
Name of Manufacturer"

(ii) "This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of a Licensing State.

.....
Name of Manufacturer"

(e) the label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing radioactive material. In the case of the Mock Iodine-125 reference or calibration source, the information accompanying the source shall also contain directions to the licensee regarding the waste disposal requirements set out in Section R313-15-1001.

(8) Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Subsection R313-21-22(10) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the criteria of 10 CFR 32.61, 32.62, 2015 ed. are met.

(9) Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing radioactive material for medical use under R313-32.

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to Rule R313-32 will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits evidence that the applicant is at least one of the following:

(A) registered with the U.S. Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR 207.20(a);

(B) registered or licensed with a state agency as a drug manufacturer;

(C) licensed as a pharmacy by a State Board of Pharmacy;

or
(D) operating as a nuclear pharmacy within a medical institution; or

(E) registered with a State Agency as a Positron Emission Tomography (PET) drug production facility.

(iii) the applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(iv) the applicant satisfies the following labeling requirements:

(A) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(B) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(b) A licensee described by Subsections R313-22-75(9)(a) (ii)(C) or (D):

(i) May prepare radioactive drugs for medical use, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in Subsections R313-22-75(9)(b)(ii) and (iv), or an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by reference).

(ii) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(A) this individual qualifies as an authorized nuclear pharmacist as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference);

(B) this individual meets the requirements specified in Rule R313-32 (incorporating 10 CFR 35.55(b) and 10 CFR 35.59 by reference) and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(C) this individual is designated as an authorized nuclear pharmacist in accordance with Subsection R313-22-75(9)(b)(iv).

(iii) The actions authorized in Subsections R313-22-75(9)(b)(i) and (ii) are permitted in spite of more restrictive language in license conditions.

(iv) May designate a pharmacist, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), as an authorized nuclear pharmacist if:

(A) The individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator produced radioactive material, and

(B) The individual practiced at a pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC.

(v) Shall provide to the Director:

(A) a copy of each individual's certification by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or Agreement State as specified in Rule R313-32 (incorporating 10 CFR 35.55(a) by reference) with the written attestation signed by a preceptor as required by Rule R313-32 (incorporating 10 CFR 35.55(b)(2) by reference); or

(B) the Nuclear Regulatory Commission or Agreement State license; or

(C) the permit issued by a licensee or Commission master materials permittee of broad scope or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or

(D) the permit issued by a U.S. Nuclear Commission master materials licensee; or

(E) documentation that only accelerator produced radioactive materials were used in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007 or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC; and

(F) a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to Subsections R313-22-75(9)(b)(ii)(A) and R313-22-75(9)(b)(ii)(C), the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(i) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(ii) check each instrument for constancy and proper operation at the beginning of each day of use.

(d) Nothing in Subsection R313-22-75(9) relieves the licensee from complying with applicable FDA, or Federal, and State requirements governing radioactive drugs.

(10) Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed under Rule R313-32 for use as a calibration, transmission, or reference source or for the uses listed in Rule R313-32 (incorporating 10 CFR 35.400, 10 CFR 35.500, 10 CFR 35.600, and 35.1000 by reference) will be approved if:

(a) the applicant satisfies the general requirements in Section R313-22-33;

(b) the applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(i) the radioactive material contained, its chemical and physical form and amount,

(ii) details of design and construction of the source or device,

(iii) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents,

(iv) for devices containing radioactive material, the radiation profile of a prototype device,

(v) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests,

(vi) procedures and standards for calibrating sources and devices,

(vii) legend and methods for labeling sources and devices as to their radioactive content, and

(viii) instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device; provided that instructions which are too lengthy for a label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

(c) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the source or device is licensed by the Director for distribution to persons licensed pursuant to Rule R313-32 (incorporating 10 CFR 35.18, 10 CFR 35.400, 10 CFR 35.500, and 10 CFR 35.600 by reference) or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State; provided that labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source;

(d) the source or device has been registered in the Sealed Source and Device Registry.

(e) in the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that a longer interval

is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

(f) in determining the acceptable interval for test of leakage of radioactive material, the Director shall consider information that includes, but is not limited to:

(i) primary containment or source capsule,

(ii) protection of primary containment,

(iii) method of sealing containment,

(iv) containment construction materials,

(v) form of contained radioactive material,

(vi) maximum temperature withstood during prototype

tests,

(vii) maximum pressure withstood during prototype tests,

(viii) maximum quantity of contained radioactive material,

(ix) radiotoxicity of contained radioactive material, and

(x) operating experience with identical sources or devices or similarly designed and constructed sources or devices.

(11) Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

(a) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection R313-21-21(5) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive a radiation dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1); and

(iii) the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(b) In the case of an industrial product or device whose unique benefits are questionable, the Director will approve an application for a specific license under Subsection R313-22-75(11) only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(c) The Director may deny an application for a specific license under Subsection R313-22-75(11) if the end use of the industrial product or device cannot be reasonably foreseen.

(d) Persons licensed pursuant to Subsection R313-22-75(11) (a) shall:

(i) maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(ii) label or mark each unit to:

(A) identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(B) state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the Nuclear Regulatory Commission or an Agreement State;

(iii) assure that the uranium before being installed in each product or device has been impressed with the following legend clearly legible through a plating or other covering: "Depleted Uranium";

(iv) furnish to each person to whom depleted uranium in a product or device is transferred for use pursuant to the general license contained in Subsection R313-21-21(5) or its equivalent:

(A) a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DWMRC-12; or

(B) a copy of the general license contained in the Nuclear Regulatory Commission's or Agreement State's regulation equivalent to Subsection R313-21-21(5) and a copy of the Nuclear Regulatory Commission's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DWMRC-12 with a note explaining that use of the product or device is regulated by the Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in Subsection R313-21-21(5);

(v) report to the Director all transfers of industrial products or devices to persons for use under the general license in Subsection R313-21-21(5). The report shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the Director and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of the calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under Subsection R313-21-21(5) during the reporting period, the report shall so indicate;

(vi) provide certain other reports as follows:

(A) report to the Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the Nuclear Regulatory Commission general license in 10 CFR 40.25 (2010);

(B) report to the responsible state agency all transfers of devices manufactured and distributed pursuant to Subsection R313-22-75(11) for use under a general license in that state's regulations equivalent to Subsection R313-21-21(5),

(C) reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person,

(D) if no transfers have been made to Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the Nuclear Regulatory Commission, and

(E) if no transfers have been made to general licensees within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon the request of that agency; and

(vii) records shall be kept showing the name, address and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in Subsection R313-21-21(5) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in the product or device transferred, and compliance with the report requirements of Subsection R313-22-75(11).

KEY: specific licenses, decommissioning, broad scope, radioactive materials

Date of Enactment or Last Substantive Amendment: [~~August 26, 2015~~]2016

Notice of Continuation: September 23, 2011

Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-6-107

Environmental Quality, Waste Management and Radiation Control, Waste Management **R315-124-34** Public Participation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40312

FILED: 04/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule change is in response to public comments made during the February 1, 2016, through March 3, 2016, comment period on the proposed rule. During the comment period on the adoption of Rule R315-124, a commenter ask the Division to review all the rules being proposed for adoption to check for errors. The requirement for investigation of complaints was found to one item that is required by federal rule and was not included in the proposed Rule R315-124. (DAR NOTE: The proposed new Rule R315-124 was published under DAR No. 40106 in the February 1, 2016, issue of the Bulletin and was made effective on 04/15/2016.)

SUMMARY OF THE RULE OR CHANGE: The change adds a sentence to require investigation of complaints.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The rule change will have no affect on the current rule as the rule change does not add any requirements that have to meet that are not already in place.
- ◆ **LOCAL GOVERNMENTS:** No cost or savings for local governments as the rule change does not add any requirements that local governments have to meet that are not already in place.
- ◆ **SMALL BUSINESSES:** No cost or savings for small business as the rule change does not add any requirements that small businesses will have to meet that are not already in place.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No cost or savings for other persons as the rule change does not add any requirements that they have to meet that are not already in place.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs will result from this change as the change does not add any new requirements that affected persons will have to meet.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No compliance costs will result to business from this change.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 WASTE MANAGEMENT AND RADIATION
 CONTROL, WASTE MANAGEMENT
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-124. Procedures for Decisionmaking.
R315-124-34. Public Participation.

In addition to hearings required under the State Administrative Procedures Act and proceedings otherwise outlined or referenced in these rules, the Director will investigate and provide written response to all citizen complaints duly submitted.

In addition, the Director shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute, rule or regulation. The Director shall publish notice of and provide at least 30 days for public comment on any proposed settlement of any enforcement action.

KEY: hazardous waste

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

**Environmental Quality, Waste
 Management and Radiation Control,
 Waste Management
 R315-260
 Hazardous Waste Management
 System**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40307

FILED: 04/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule change is in response to public comments made during the February 1, 2016, through March 3, 2016, comment period on the proposed rule and corrects errors in the rule. (DAR NOTE: The public comment period was for the proposed new Rule R315-260 that was published under DAR No. 40107 in the February 1, 2016, issue of the Bulletin and was made effective on 04/15/2016.)

SUMMARY OF THE RULE OR CHANGE: In Section R315-260-10, references are corrected, and a reference that was omitted in the original filing is added. In Section R315-260-12, the definitions that are in the rule are removed and definitions from Subsection R315-260-1(h), which is being removed, are added. In Section R315-260-21, "the Board" was omitted from the rule as filed and is inserted.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106 and Section 19-6-301 and Section 63G-4-503 and Sections 63G-4-201 through 63G-4-205

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The rule changes will have no affect on the administration of the rule and will have no cost to the state.
- ◆ **LOCAL GOVERNMENTS:** There will be no cost or savings to local government as the rule does not affect local

government. The changes in the definitions will have no cost or savings as they do not change the requirements of the rule.

♦ **SMALL BUSINESSES:** There will be no cost or savings to small business as the administration of the rule will not change.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no cost or savings to persons other than small business as the administration of the rule will not change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes made do not affect the way the rule is administrated and will not have any compliance cost increases.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes made do not affect the way the rule is administrated and will not have any compliance cost increases.

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

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, WASTE MANAGEMENT
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-260. Hazardous Waste Management System.

R315-260-10. Definitions.

(a) Terms used in Rules R315-15, R315-260 through 266, R315-268, R315-270, R315-273, and Rule R315-101 are defined in Sections 19-1-103 and 19-6-102.

(b) Terms used in Rule R315-15 are also defined in Sections 19-6-703 and 19-6-706(b).

(c) Additional terms used in Rules R315-260 through 266, R315-268, R315-270, R315-273, and Rule R315-101 are defined as follows:

(1) "Above ground tank" means a device meeting the definition of "tank" in Section R315-260-10 and that is situated in such a way that the entire surface area of the tank is completely

above the plane of the adjacent surrounding surface and the entire surface area of the tank, including the tank bottom, is able to be visually inspected.

(2) "Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Director receives certification of final closure.

(3) "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after November 19, 1980 and which is not a closed portion. See also "closed portion" and "inactive portion."

(4) "Approved hazardous waste management facility" or "approved facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit in accordance with federal requirements, has been approved under Section 19-6-108 and Rule R315-270, or has been permitted or approved under any other EPA authorized hazardous waste state program.

(5) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

(6) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

(7) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit, i.e., part of a facility, e.g., the plant manager, superintendent or person of equivalent responsibility.

(8) "Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections, electrical and mechanical, as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

(9) "Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

(i)(A) The unit shall have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(B) The unit's combustion chamber and primary energy recovery sections(s) shall be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s), such as waterwalls and superheaters, shall be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment, such as economizers or air preheaters, need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters, units that transfer energy directly to a process stream, and fluidized bed combustion units; and

(C) While in operation, the unit shall maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms

of the recovered energy compared with the thermal value of the fuel; and

(D) The unit shall export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps; or

(ii) The unit is one which the Board has determined, on a case-by-case basis, to be a boiler, after considering the standards in Section R315-260-32

(10) "Carbon dioxide stream" means carbon dioxide that has been captured from an emission source, e.g., power plant, plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

(11) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(12) "Cathode ray tube" or "CRT" means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

(13) "Certification" means a statement of professional opinion based upon knowledge and belief.

(14) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. See also "active portion" and "inactive portion".

(15) "Component" means either the tank or ancillary equipment of a tank system.

(16) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

(17) "Contained" means held in a unit, including a land-based unit as defined in R315-260-10, that meets the following criteria:

(i) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit, such as a permit to discharge to water or air, and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(ii) The unit is properly labeled or otherwise has a system, such as a log, to immediately identify the hazardous secondary materials in the unit; and

(iii) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(iv) Hazardous secondary materials in units that meet the applicable requirements of Rules R315-264 or 265 are presumptively contained.

(18) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

(19) "Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of Subsections R315-264-1100 through 1102 or 40 CFR 265.1100 through 1102, which are adopted and incorporated by reference.

(20) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(21) "Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(22) "CRT collector" means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

(23) "CRT glass manufacturer" means an operation or part of an operation that uses a furnace to manufacture CRT glass.

(24) "CRT processing" means conducting all of the following activities:

- (i) Receiving broken or intact CRTs; and
- (ii) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and
- (iii) Sorting or otherwise managing glass removed from CRT monitors.

(25) "Designated facility" means:

(i) A hazardous waste treatment, storage, or disposal facility which:

(A) Has received a permit, or interim status, in accordance with the requirements of Rule R315-270 and 124;

(B) Has received a permit, or interim status, from a State authorized in accordance with 40 CFR 271; or

(C) Is regulated under Subsection R315-261-6(c)(2) or Section R315-266-70; and

(D) That has been designated on the manifest by the generator pursuant to Section R315-262-20.

(ii) "Designated facility" also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with Subsections R315-264-72(f) or 40 CFR 265.72(f), which is adopted and incorporated by reference.

(iii) If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility shall be a facility allowed by the receiving State to accept such waste.

(26) "Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in Subsection R315-273-13(a) and (c) and Section R315-273-33. A facility at which a

particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

(27) "Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(28) "Dioxins and furans (D/F)" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(29) "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

(30) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(31) "Division" means the Division of Waste Management and Radiation Control.

(32) "Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(33) "Elementary neutralization unit" means a device which:

(i) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in Section R315-261-22, or they are listed in Sections R315-261-30 through 35 only for this reason; and

(ii) Meets the definition of tank, tank system, container, transport vehicle, or vessel in Sections R315-260-10.

(34) "Electronic manifest, or e-Manifest" means the electronic format of the hazardous waste manifest that is obtained from EPA's national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22, Manifest, and 8700-22A, Continuation Sheet.

(35) "Electronic Manifest System, or e-Manifest System" means EPA's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

(36) "EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in Sections R315-261-30 through 35 and to each characteristic identified in Sections R315-261-20 through 24.

(37) "EPA identification number" means the number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility.

(38) "EPA region" means the states and territories found in any one of the following ten regions:

(i) Region I-Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

(ii) Region II-New York, New Jersey, Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(iii) Region III-Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.

(iv) Region IV-Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.

(v) Region V-Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio.

(vi) Region VI-New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.

(vii) Region VII-Nebraska, Kansas, Missouri, and Iowa.

(viii) Region VIII-Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.

(ix) Region IX-California, Nevada, Arizona, Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands.

(x) Region X-Washington, Oregon, Idaho, and Alaska.

(39) "Equivalent method" means any testing or analytical method approved by the Director under Sections R315-260-~~20~~ and 21[~~and 22~~].

(40) "Existing hazardous waste management (HWM) facility" or "existing facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

(i) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either

(ii)(A) A continuous on-site, physical construction program has begun; or

(B) The owner or operator has entered into contractual obligations[~~---~~]-which cannot be cancelled or modified without substantial loss[~~---~~]-for physical construction of the facility to be completed within a reasonable time.

(41) "Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(42) "Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315. A non-HSWA existing tank system or non-HSWA tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. Installation shall be considered to have commenced if the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(i) a continuous on-site physical construction or installation program has begun; or

(ii) the owner or operator has entered into contractual obligations[~~---~~]-which cannot be canceled or modified without substantial loss[~~---~~]-for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(43) "Facility" means:

(i) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of

several treatment, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(ii) For the purpose of implementing corrective action under Section R315-264-101, all contiguous property under the control of the owner or operator seeking a permit under Section 19-6-108. This definition also applies to facilities implementing corrective action under ~~[Utah reference]~~Section R315-263-31 and Rule R315-101.

(iii) Notwithstanding Subsection R315-1-10(43)(ii), a remediation waste management site is not a facility that is subject to Section R315-264-101, but is subject to corrective action requirements if the site is located within such a facility.

(44) "Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

(45) "Federal, State and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

(46) "Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Rules R315-264 and 265 are no longer conducted at the facility unless subject to the provisions in Section R315-262-34.

(47) "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(48) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(49) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(50) "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Rule R315-261 or whose act first causes a hazardous waste to become subject to regulation.

(51) "Ground water" means water below the land surface in a zone of saturation.

(52) "Hazard class" means:

(i) The DOT hazard class identified in 49 CFR 172; and

(ii) If the DOT hazard class is "OTHER REGULATED MATERIAL," ORM, the EPA hazardous waste characteristic exhibited by the waste and identified in Sections R315-261-20 through 24.

(53) "Hazardous secondary material" means a secondary material, e.g., spent material, by-product, or sludge, that, when discarded, would be identified as hazardous waste under Rule R315-261.

(54) "Hazardous secondary material generator" means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of Subsection R315-260-10(c)([59]54), "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of Subsections R315-261-2(a)(2)(ii) and R315-261-4(a)(23), a facility that collects

hazardous secondary materials from other persons is not the hazardous secondary material generator.

(55) "Hazardous waste constituent" means a constituent that caused the Board to list the hazardous waste in Sections R315-261-30 through 35, or a constituent listed in table 1 of Section R315-261-24.

(56) "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

(57) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(58) "Inactive portion" means that portion of a facility which is not operated after November 19, 1980. See also "active portion" and "closed portion".

(59) "Incinerator" means any enclosed device that:

(i) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(ii) Meets the definition of infrared incinerator or plasma arc incinerator.

(60) "Incompatible waste" means a hazardous waste which is unsuitable for:

(i) Placement in a particular device or facility because it may cause corrosion or decay of containment materials, e.g., container inner liners or tank walls; or

(ii) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(61) "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(62) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(i) Cement kilns;

(ii) Lime kilns;

(iii) Aggregate kilns;

(iv) Phosphate kilns;

(v) Coke ovens;

(vi) Blast furnaces;

(vii) Smelting, melting and refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces;

(viii) Titanium dioxide chloride process oxidation reactors;

(ix) Methane reforming furnaces;

- (x) Pulping liquor recovery furnaces;
- (xi) Combustion devices used in the recovery of sulfur values from spent sulfuric acid;
- (xii) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.
- (xiii) Such other devices as the Board may, after notice and comment, add to this list on the basis of one or more of the following factors:
 - (A) The design and use of the device primarily to accomplish recovery of material products;
 - (B) The use of the device to burn or reduce raw materials to make a material product;
 - (C) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;
 - (D) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
 - (E) The use of the device in common industrial practice to produce a material product; and
 - (F) Other factors, as appropriate.
- (63) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.
- (64) "Inground tank" means a device meeting the definition of "tank" in Section R315-260-10 whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.
- (65) "Injection well" means a well into which fluids are injected. See also "underground injection".
- (66) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.
- (67) "Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.
- (68) "Intermediate facility" means any facility that stores hazardous secondary materials for more than 10 days, other than a hazardous secondary material generator or reclaimer of such material.
- (69) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.
- (70) "Lamp," also referred to as "universal waste lamp", is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high

intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

(71) "Land-based unit" means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

(72) "Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(73) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(74) "Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

(75) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

(76) "Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system shall employ operational controls, e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks, or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

(77) "Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

(78) "Management" or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(79) "Manifest" is defined in Subsection 19-6-102(14) and is further defined as: the shipping document EPA Form 8700-22, including, if necessary, EPA Form 8700-22A, or the electronic manifest, originated and signed in accordance with the applicable requirements of Rules R315-262 through 265.

(80) "Manifest tracking number" means: The alphanumeric identification number, i.e., a unique three letter suffix preceded by nine numerical digits, which is pre-printed in Item 4 of the Manifest by a registered source.

(81) "Mercury-containing equipment" means a device or part of a device, including thermostats, but excluding batteries and lamps, that contains elemental mercury integral to its function.

(82) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

(83) "Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR 146, containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under Section R315-270-65, or staging pile.

(84) "Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, ground water, surface water, or soils.

(85) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

(86) "New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after November 19, 1980. See also "Existing hazardous waste management facility".

(87) "New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of Subsections R315-264-193(g)(2) and 40 CFR 265.193(g)(2), which is adopted and incorporated by reference, a new tank system is one for which construction commences after July 14, 1986, or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315; except, however, for purposes of 40 CFR 265-193(g)(2), which is adopted and incorporated by reference, and Subsection R315-264-193(g)(2), a new tank system is one which construction commences after July 14, 1986. A non-HSWA new tank system or non-HSWA new tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1. See also "existing tank system."

(88) "No free liquids, as used in Subsections R315-261-4(a)(26) and R315-261-4(b)(18)", means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B, Paint Filter Liquids Test, included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, and that there is no free liquid in the container holding the wipes. No free liquids may also be determined using another standard or test method as defined by the Director.

(89) "On ground tank" means a device meeting the definition of "tank" in Section R315-260-10 and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(90) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(91) "Open burning" means the combustion of any material without the following characteristics:

(i) Control of combustion air to maintain adequate temperature for efficient combustion,

(ii) Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(iii) Control of emission of the gaseous combustion products. See also "incineration" and "thermal treatment".

(92) "Operator" means the person responsible for the overall operation of a facility.

(93) "Owner" means the person who owns a facility or part of a facility.

(94) "Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Rules R315-264 and 265 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank, including its associated piping and underlying containment systems, landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(95) "Polychlorinated biphenyl, PCB" and "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances which contains such substance. PCB and PCBs as contained in PCB items are defined in Section R315-260-10. For any purposes under Rules R315-260 through 266, 268, 270, 273, R315-15, and R315-5-101, inadvertently generated non-Aroclor PCBs are defined as the total PCBs calculated following division of the quantity of monochlorinated biphenyls by 50 and dichlorinated biphenyls by 5.

(96) "PCB Item" means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

(97) "Permit" means the plan approval as required by subsection 19-6-108(3)(a), or equivalent control document issued by the Director to implement the requirements of the Utah Solid and Hazardous Waste Act;

(98) "Permittee" is defined in Subsection 19-6-102(18) and includes any person who has received an approval of a hazardous waste operation plan under Section 19-6-108 and Rule R315-262 or a Federal RCRA permit for a treatment, storage, or disposal facility.

(99) "Person" means an individual, trust, firm, joint stock company, Federal Agency, corporation, including a government corporation, partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

(100) "Personnel" or "facility personnel" means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of Rules R315-264 or 265.

(101) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(i) Is a new animal drug under FFDCA section 201(w), or

(ii) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(iii) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by Subsection R315-260-10([+07]101)(i) or (ii).

(102) "Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

(103) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(104) "POHC's" means principle organic hazardous constituents.

(105) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(106) "Precipitation run-off" means water generated from naturally occurring storm events. If the precipitation run-off has been in contact with a waste defined in Sections R315-261-20 through 24, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in Section R315-261-20 through 24. If the precipitation run-off has been in contact with a waste listed in Sections R315-261-30 through 35, then it qualifies as "precipitation run-off" when the water has been excluded under Section R315-260-22. Water containing any leachate does not qualify as "precipitation run-off".

(107) "Publicly owned treatment works" or "POTW" means any device or system used in the treatment, including recycling and reclamation, of municipal sewage or industrial wastes of a liquid nature which is owned by the State or a political subdivision within the State. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(108) "Qualified Ground-Water Scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgements regarding ground-water monitoring and contaminant fate and transport.

(109) "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901 et seq.

(110) "Remanufacturing" means processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

(111) "Remediation waste" means all solid and hazardous wastes, and all media, including ground water, surface water, soils, and sediments, and debris, that are managed for implementing cleanup.

(112) "Remediation waste management site" means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under Section R315-264-101, but is subject to corrective action requirements if the site is located in such a facility.

(113)(i) "Replacement unit" means a landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all of the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste.

(ii) "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with a closure plan approved by the Director or a corrective action approved by the Director.

(114) "Representative sample" means a sample of a universe or whole, e.g., waste pile, lagoon, ground water, which can be expected to exhibit the average properties of the universe or whole.

(115) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(116) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(117) "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

(118) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(119) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

(120) "Small Quantity Generator" means a generator who generates less than 1000 kg of hazardous waste in a calendar month.

(121) "Solid Waste Management Unit" means any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

(122) "Solvent-contaminated wipe" means:

(i) A wipe that, after use or after cleaning up a spill, either:

(A) Contains one or more of the F001 through F005 solvents listed in Section R315-261-31 or the corresponding P- or U-listed solvents found in Section R315-261-33;

(B) Exhibits a hazardous characteristic found in Sections R315-261-20 through 24 when that characteristic results from a solvent listed in Rule R315-261; and/or

(C) Exhibits only the hazardous waste characteristic of ignitability found in Section R315-261-21 due to the presence of one or more solvents that are not listed in Rule R315-261.

(ii) Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at Subsections R315-261-4(a)(26) and R315-261-4(b)(18).

(123) "Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

(124) "Sorb" means to either adsorb or absorb, or both.

(125) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(126) "Spill" means the accidental discharging, spilling, leaking, pumping, pouring, emitting, emptying, releasing, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes, into or on any land or water.

(127) "Staging pile" means an accumulation of solid, non-flowing remediation waste, as defined in Section R315-260-10, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles shall be designated by the Director according to the requirements of Section R315-264-554.

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

(129) "Storage" is defined in Subsection 19-6-102(20) and includes the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

(130) "Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(131) "Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials, although it may be lined with man-made materials, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(132) "Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials, e.g., wood, concrete, steel, plastic, which provide structural support.

(133) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

(134) "TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

(135) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. See also "incinerator" and "open burning".

(136) "Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of Subsections R315-273-13(c)(2) or R315-273-33(c)(2).

(137) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

(138) "Transfer facility" means any transportation-related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.

(139) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body; trailer, railroad freight car, etc.; is a separate transport vehicle.

(140) "Transportation" is defined in Subsection 19-6-102(21) and includes the movement of hazardous waste by air, rail, highway, or water.

(141) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(142)(i) "Treatability Study" means a study in which a hazardous waste is subjected to a treatment process to determine:

(A) Whether the waste is amenable to the treatment process,

(B) what pretreatment, if any, is required,

(C) the optimal process conditions needed to achieve the desired treatment,

(D) the efficiency of a treatment process for a specific waste or wastes, or

(E) the characteristics and volumes of residuals from a particular treatment process.

(ii) Also included in this definition for the purpose of the Subsection R315-261-4 (e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

(iii) A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

(143) "Treatment" is defined in Subsection 19-6-102(22) and includes any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

(144) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

(145) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. See also "injection well".

(146) "Underground tank" means a device meeting the definition of "tank" in Section R315-260-10 whose entire surface area is totally below the surface of and covered by the ground.

(147) "Unfit-for use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

(148) "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(149) "Universal waste" means any of the following hazardous wastes that are managed under the universal waste requirements of Rule R315-273:

(i) Batteries as described in Section R315-273-2;
 (ii) Pesticides as described in Section R315-273-3;
 (iii) Mercury-containing equipment as described in Section R315-273-4;

(iv) Lamps as described in Section R315-273-5;
 (v) Antifreeze as described in Subsection R315-273-6(a);
 and

(vi) Aerosol cans as described in Subsection R315-273-6(b).

(150) Universal Waste Handler

(i) Means:

(A) A generator of universal waste; or

(B) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(ii) Does not mean:

(A) A person who treats, except under the provisions of Subsection R315-273-13(a) or (c), or R315-273-33(a) or (c), disposes of, or recycles universal waste; or

(B) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

(151) "Universal Waste Transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

(152) "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

(153) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(154) Used oil is defined in Subsection 19-6-703(19).

(155) "User of the electronic manifest system" means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

(i) Is required to use a manifest to comply with:

(A) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or

(B) Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

(ii) Elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the EPA electronic manifest system, or

(iii) Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest, or data from such a paper copy, in accordance with Subsections R315-264-71(a)(2)(v) or 40 CFR 265.71(a)(2)(v) which is adopted and incorporated by reference. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

(156) "Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

(157) "Waste management area" means the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

(158) "Wastewater treatment unit" means a device which:

(i) Is part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and

(ii) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in Section R315-261-3, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in Section R315-261-3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section R315-261-3; and

(iii) Meets the definition of tank or tank system in Section R315-260-10.

(159) "Water, bulk shipment" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

(160) "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(161) "Well injection": See "underground injection"

(162) "Wipe" means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

(163) "Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

R315-260-12. Definitions for Rule R315-101.

(a) For purposes of Rule R315-101 regarding cleanup action and Risk-Based Closure Standards, the following terms are defined:

~~(1) "Acceptable Risk" means Cancer Risk greater than 1×10^{-6} but less than or equal to 1×10^{-4} or a Hazard Index less than or equal to one with justifiable, reasonable and practicable measures in place to reduce and control risk within the range.~~

~~(2) "Appropriate Site Management Activities" means measures that are reasonable and practical that will be taken to control and reduce risks greater than 1×10^{-6} and less than 1×10^{-4} for carcinogen and Hazard Index equal to or less than one for non-carcinogens under both current and reasonably anticipated future land use conditions, e.g. institutional controls, engineering controls, groundwater monitoring, post-closure care, or corrective action and ensuring that all assumptions made in the estimation of Cancer Risk and non-cancer hazard in the risk assessment report are not violated.~~

~~(3) "Area of Contamination" means a Hazardous Waste Management Unit or a Solid Waste Management Unit or an area where a release has occurred.~~

~~(4) "The boundary" is defined as the furthest extent where contamination from a defined source has migrated in any medium at the time the release is first identified.~~

~~(5) "Cleanup" Means the range of corrective action activities that occur in the context of addressing environmental~~

contamination at RCRA sites to lower contaminant concentration or decrease chemical toxicity. Activities may include waste removal, contaminated media removal or source reduction (e.g. excavation, pumping), in-place treatment of waste or contaminated media (e.g. bioremediation), containment of waste or contaminated media, (e.g. barrier walls, low permeability covers, liners), or various combination of these approaches. Waste cover up or capping is not considered waste cleanup.

(6) "Concentration Term - 95% Upper Confidence Limit" or "C" means the intake variable and it is an estimate of the arithmetic average concentration for a contaminant based on a set of site sampling results. Because of the uncertainty associated with estimating the true average concentration at a site, the 95% Upper Confidence Limit of the arithmetic mean is used to represent this variable and provides reasonable confidence that the true site average will not be underestimated.

(7) "Contaminate" means to render a medium polluted through the introduction of hazardous waste or hazardous constituents as identified in Rule R315-261, Appendix VIII.

(8) "Corrective Action" means the cleanup process or program under RCRA and all activities related to the investigation, characterization, and cleanup of release of hazardous waste or hazardous constituents from Solid Waste Management Units or Hazardous Waste Management Units at a permitted or interim status Treatment Storage Disposal Facilities or any environmental medium.

(9) "Corrective Action Complete With Controls" is a condition of a Solid Waste Management Unit, a Hazardous Waste Management Unit, an Area of Contamination or a contaminated site at closure meeting the requirements of R315-101-6(k)(4):

(10) "Corrective Action Complete Without Controls" is a condition of a Solid Waste Management Unit, a Hazardous Waste Management Unit, or a contaminated site at closure equivalent to a no further action meeting the requirements of R315-101-6(k)(5) or R315-101-6(f) or R315-101-6(j):

(11) Environment means the surroundings or conditions in which a person, animal, or plant lives or operates.

(12) "Hazard Index" means the sum of Hazard Quotients.

(13) "Hazard Quotient" means the ratio of exposed dose to some Reference Dose or Reference Concentration.

(14) "Natural Resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources.

(15) "No Further Action" means the state of a Solid Waste Management Unit, a Hazardous Waste Management Unit, or a contaminated site at closure meeting the requirements in R315-101-6(f) or R315-101-6(j) and it is equivalent to Corrective Action Complete Without Controls if the site was under corrective action activities. No further action is equivalent to unrestricted land use.

(16) "Potentially Complete Exposure Pathway" is a pathway which, due to current site conditions is incomplete, but could become complete at a future time because of changing site practices. An example would be the ingestion pathway of groundwater from a residential well in a high total dissolved solids aquifer. This pathway could be complete if treatment technologies like reverse osmosis become economically feasible and are observed to be employed successfully in that aquifer.

(17) "Reasonable Maximum Exposure" means the highest exposure that is reasonably expected to occur at a site. Reasonable Maximum Exposure combines upper-bound and mid-range exposure

factors so that the result represents an exposure scenario that is both protective and reasonable; not the worst possible case.

(18) "Release" means spill or discharge of hazardous waste, hazardous constituents, or material that becomes hazardous waste when released to the environment.

(19) "Responsible Party" means the owner or operator of a facility, or any other person responsible for the release of hazardous waste or hazardous constituents.

(20) "Risk-Based Clean Closure" means closure of a site where hazardous waste was managed or any medium that has been contaminated by a release of hazardous waste or hazardous constituents, and where hazardous waste or hazardous constituents remain at the site in any medium at concentrations determined, in this rule, to cause minimal levels of risk to human health and the environment so as to require no further action or monitoring on the part of the Responsible Party nor any notice of hazardous waste management on the deed to the property.

(21) "Risk Based Concentration" means the concentration of a contaminant the values of which are derived from equations combining toxicity factors with standard exposure scenarios to calculate chemical concentrations corresponding to some fixed levels of risks in any media (water, air, fish tissue, sediment, and soil).

(22) "Robust Statistic" means a statistic that is resistant to errors in the results, produced by deviations from assumptions, e.g., of normality. This means that the limits are not susceptible to outliers, or distributional assumptions. For example, if the limits are centered on the median, instead of on the mean, or on a modified, "robust mean", and constructed with suitable weighting, or influence, function, they could be considered "robust."

(23) "Site" means the Area of Contamination and any other area that could be impacted by the released contaminants, or could influence the migration of those contaminants, regardless of whether the site is owned by the Responsible Party.

(24) "Target Risk" means any specified risk level: (1) "The concentration term, C" is calculated as the 95% upper confidence limit, UCL, on the arithmetic average for normally distributed data, or as the 95% upper confidence limit on the arithmetic average for lognormally distributed data. For normally distributed data, $C = \text{Mean} + t \times \text{Standard Deviation}/n^{1/2}$, where n is the number of observations, and t is Student's t distribution (at the 95% one-sided confidence level and n-1 degrees of freedom), tables of which are printed in most introductory statistics textbooks. For lognormally distributed data, $C = \exp(\text{Mean of lognormal-transformed data} + 0.5 \times \text{Variance of lognormal-transformed data} + \text{Standard Deviation of lognormal-transformed data} \times H/(n - 1)^{1/2})$, where n is the number of observations, and H is Land's H statistic (at the 95% one-sided confidence level), tables of which are printed in advanced statistics books. For data which are not normally nor lognormally distributed, appropriate statistics, such as nonparametric confidence limits, shall be applied.

(2) "Area of contamination" means a hazardous waste management unit or an area where a release has occurred. The boundary is defined as the furthest extent where contamination from a defined source has migrated in any medium at the time the release is first identified.

(3) "Contaminate" means to render a medium polluted through the introduction of hazardous waste or hazardous constituents as identified in R315-261, Appendix VIII.

(4) "Hazard index" means the sum of more than one hazard quotient for multiple substances, multiple exposure pathways, or both.

The Hazard Index is calculated separately for chronic, subchronic, and shorter duration exposures.

(5) "Hazard quotient" means the ratio of a single substance exposure level over a specified time period, e.g. subchronic, to a reference dose for that substance derived from a similar exposure period.

(6) "Risk-based closure" means closure of a site where hazardous waste was managed or any medium has been contaminated by a release of hazardous waste or hazardous constituents, and where hazardous waste or hazardous constituents remain at the site in any medium at concentrations determined, under Rule R315-101, to cause minimal levels of risk to human health and the environment so as to require no further action or monitoring on the part of the responsible party nor any notice of hazardous waste management on the deed to the property.

(7) "Reasonable maximum exposure (RME)" means the highest exposure that is reasonably expected to occur at a site. The goal of RME is to combine upper-bound and mid-range exposure factors so that the result represents an exposure scenario that is both protective and reasonable; not the worst possible case.

(8) "Release" means spill or discharge of hazardous waste, hazardous constituents, or material that becomes hazardous waste when released to the environment.

(9) "Responsible party" means the owner or operator of a facility, or any other person responsible for the release of hazardous waste or hazardous constituents.

(10) "Site" means the area of contamination and any other area that could be impacted by the released contaminants, or could influence the migration of those contaminants, regardless of whether the site is owned by the responsible party.

R315-260-21. Petitions for Equivalent Testing or Analytical Methods.

(a) Any person seeking to add a testing or analytical method to Rules R315-261, R315-264, or R315-265 may petition for a regulatory amendment under Section R315-260-21 and Section R315-260-20. To be successful, the person shall demonstrate to the satisfaction of the Board that the proposed method is equal to or superior to the corresponding method prescribed in Rules R315-261, R315-264, or R315-265, in terms of its sensitivity, accuracy, and precision, i.e., reproducibility.

(b) Each petition shall include, in addition to the information required by Section R315-260-20:

(1) A full description of the proposed method, including all procedural steps and equipment used in the method;

(2) A description of the types of wastes or waste matrices for which the proposed method may be used;

(3) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in Rules R315-261, R315-264, or R315-265;

(4) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

(5) A description of the quality control procedures necessary to ensure the sensitivity, accuracy and precision of the proposed method.

(c) After receiving a petition for an equivalent method, the Board may request any additional information on the proposed method which ~~he~~the Board may reasonably require to evaluate the method.

(d) If the Board amends the rules to permit use of a new testing method, the method shall be incorporated by reference in Section R315-260-11.

(e) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.21 to have an alternative analytical method approved by EPA. In the event approval is granted, the petitioner shall so notify the Board and the Director and the decision of EPA shall be binding upon the Board and the Director.

KEY: hazardous waste

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-106; 63G-4-201 through 63G-4-205; 63G-4-503

Environmental Quality, Waste Management and Radiation Control, Waste Management **R315-261** General Requirements - Identification and Listing of Hazardous Waste

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40308

FILED: 04/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule change is in response to public comments made during the February 1, 2016, through March 3, 2016, comment period on the proposed rule. (DAR NOTE: The public comment period was for the proposed new Rule R315-261 that was published under DAR No. 40108 in the February 1, 2016, issue of the Bulletin and was made effective on 04/15/2016.)

SUMMARY OF THE RULE OR CHANGE: In Section R315-261-2, "Table 1" is removed, and the correct rule reference is inserted. In Section R315-261-31, the list of chemicals is corrected. In Section R315-261-39, references are corrected, and language that was repeated is removed. In Section R315-261-141, references that were omitted are added.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The rule changes will have no affect on the administration of the rule and will have no cost to the state.

◆ **LOCAL GOVERNMENTS:** There will be no cost or savings to local government as the rule change will not change the administration of the rule.

♦ **SMALL BUSINESSES:** The rule changes will not affect the administration of the rule and will not have any cost or savings to small business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The rule changes will not affect the administration of the rule and will not have any cost or savings to persons other than small business.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule changes will not affect the administration of the rule and will not have any cost to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule changes will not affect the administration of the rule and will not have any cost or savings to business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 WASTE MANAGEMENT AND RADIATION CONTROL, WASTE MANAGEMENT
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-261. General Requirements - Identification and Listing of Hazardous Waste.

R315-261-2. Definition of Solid Waste.

(a)(1) A solid waste is any discarded material that is not excluded by Subsection R315-261-4(a) or that is not excluded by variance granted under Sections R315-260-30 and R315-260-31 or that is not excluded by a non-waste determination under Sections R315-260-30 and R315-260-34.

(2)(i) A discarded material is any material which is:

- (A) Abandoned, as explained in Subsection R315-261-2(b); or
- (B) Recycled, as explained in Subsection R315-261-2(c); or
- (C) Considered inherently waste-like, as explained in Subsection R315-261-2(d).

(b) Materials are solid waste if they are abandoned by being:

- (1) Disposed of; or
- (2) Burned or incinerated; or
- (3) Accumulated, stored, or treated, but not recycled, before or in lieu of being abandoned by being disposed of, burned, or incinerated; or
- (4) Sham recycled, as explained in Subsection R315-261-2(g)

(c) Materials are solid wastes if they are recycled-or accumulated, stored, or treated before recycling-as specified in Subsections R315-261-2(c)(1) through (4).

- (1) Used in a manner constituting disposal.
- (i) Materials noted with a "*" in Column 1 of Table 1 are solid wastes when they are:

- (A) Applied to or placed on the land in a manner that constitutes disposal; or
- (B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

(ii) However, commercial chemical products listed in Section R315-261-33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) Burning for energy recovery.

(i) Materials noted with a "*" in column 2 of Table 1 are solid wastes when they are:

- (A) Burned to recover energy;
- (B) Used to produce a fuel or are otherwise contained in fuels, in which cases the fuel itself remains a solid waste.

(ii) However, commercial chemical products listed in Section R315-261-33 are not solid wastes if they are themselves fuels.

(3) Reclaimed. Materials noted with a "-" in column 3 of Table 1 are not solid wastes when reclaimed. Materials noted with an "*" in column 3 of Table 1 are solid wastes when reclaimed unless they meet the requirements of Subsections R315-261-4(a)(17), or R315-261-4(a)(23), R315-261-4(a)(24) or R35-261-4(a)(27).

(4) Accumulated speculatively. Materials noted with a "*" in column 4 of Table 1 are solid wastes when accumulated speculatively.

TABLE 1

	Use Constituting Disposal 261-2(c)(1)	Energy recovery/fuel 261-2(c)(2)	Reclamation 261-2(c)(3) except as provided in 261-4(a)(17) 261-4(a)(23) 261-4(a)(24) or 261-4(a)(27)	Speculative accumulation 261-2(c)(4)
	1	2	3	4
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in 261-31 or 261-32)	(*)	(*)	(*)	(*)

Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
By-products (listed in 261-31 or 261-32)	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	-	(*)
Commercial chemical products listed in 261-33	(*)	(*)	-	-
Scrap metal that is not excluded under 261-4(a)(13)	(*)	(*)	(*)	(*)

Note 1: All rule references in Table 1 are to R315.
 Note 2: The terms "spent materials," "sludges," "by-products," and "scrap metal" and "processed scrap metal" are defined in Section R315-261-1.

(d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

(1) Hazardous Waste Nos. F020; F021, unless used as an ingredient to make a product at the site of generation; F022; F023; F026; and F028.

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in Sections R315-261-20 through 24 and 30 through 35, except for brominated material that meets the following criteria:

(i) The material shall contain a bromine concentration of at least 45%; and

(ii) The material shall contain less than a total of 1% of toxic organic compounds listed in Rule R315-261 appendix VIII; and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance, hard piping.

(3) The Board shall use the following criteria to add wastes to ~~[the list found in Table 1 of Section R315-261-2]~~ Subsections R315-261-2(d)(1) or (2):

(i)(A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in appendix VIII of Rule R315-261 and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) Materials that are not solid waste when recycled.

(1) Materials are not solid wastes when they can be shown to be recycled by being:

(i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

(ii) Used or reused as effective substitutes for commercial products; or

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material shall be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials shall be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at Subsection R315-261-4(a)(17) apply rather than Subsection R315-261-2(e)(1)(iii).

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process described in Subsections R315-261-2(e)(1)(i) through (iii):

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively; or

(iv) Materials listed in Subsections R315-261-2(d)(1) and (d)(2).

(f) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce rules implementing Sections 19-6-101 through 125 who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, shall demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they shall provide appropriate documentation, such as contracts showing that a second person uses the material as an ingredient in a production process, to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials shall show that they have the necessary equipment to do so.

(g) Sham recycling. A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in Section R315-260-43.

R315-261-3. Definition of Hazardous Waste.

(a) A solid waste, as defined in Section R315-261-2, is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under Subsection R315-261-4(b); and

(2) It meets any of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in Sections R315-261-20 through 24. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under Subsection R315-261-4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under Sections R315-261-20 through 24 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity

Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table 1 to Section R315-261-24 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(ii) It is listed in Sections R315-261-30 through 35 and has not been excluded from the lists in Sections R315-261-30 through 35 under Sections R315-260-.20 and R315-260-22.

(iii) (Reserved)

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in Sections R315-261-30 through 35 and has not been excluded from Subsection R315-261-3(a)(2) under Sections R315-260-20 and R315-260-22, Subsection R315-261-3(g), or Subsection R315-261-3(h); however, the following mixtures of solid wastes and hazardous wastes listed in Sections R315-261-30 through 35 are not hazardous wastes, except by application of Subsections R315-261-3(a)(2)(i) or (ii), if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act, including wastewater at facilities which have eliminated the discharge of wastewater, and;

(A) One or more of the following spent solvents listed in Section R315-261-31: benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived-from the combustion of these spent solvents-Provided, That the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million, or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system, at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions, does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption shall use an aerated biological wastewater treatment system and shall use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels shall file a copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(B) One or more of the following spent solvents listed in Section R315-261-31: methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, 2-ethoxyethanol, or the scrubber waters derived-from the combustion of these spent solvents-Provided That the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million, or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system; at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions; does not exceed 25 parts per million on an average weekly basis. Facilities that choose to measure concentration levels shall file a copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(C) One of the following wastes listed in Section R315-261-32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation-heat exchanger bundle cleaning sludge from the petroleum refining industry, EPA Hazardous Waste No. K050; crude oil storage tank sediment from petroleum refining operations, EPA Hazardous Waste No. K169; clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations, EPA Hazardous Waste No. K170; spent hydrotreating catalyst, EPA Hazardous Waste No. K171; and spent hydrorefining catalyst, EPA Hazardous Waste No. K172; or

(D) A discarded hazardous waste, commercial chemical product, or chemical intermediate listed in Sections R315-261-31 through R315-261-33, arising from de minimis losses of these materials. For purposes of this Subsection R315-261-3(a)(2)(iv) (D), de minimis losses are inadvertent releases to a wastewater treatment system, including those from normal material handling operations, e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials; minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from

containers that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for de minimis quantities of wastes listed in Sections R315-261-31 through R315-261-32, or any nonmanufacturing facility that claims an exemption for de minimis quantities of wastes listed in Sections R315-261-30 through 35 shall either have eliminated the discharge of wastewaters or have included in its Clean Water Act permit application or submission to its pretreatment control authority the constituents for which each waste was listed in Rule R315-261 appendix VII; and the constituents in the table "Treatment Standards for Hazardous Wastes" in Section R315-268-40 for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents). A facility is eligible to claim the exemption once the permit writer or control authority has been notified of possible de minimis releases via the Clean Water Act permit application or the pretreatment control authority submission. A copy of the Clean Water permit application or the submission to the pretreatment control authority shall be placed in the facility's on-site files; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Sections R315-261-30 through 35, Provided, That the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

(F) One or more of the following wastes listed in Section R315-261.32: wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157 - Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine, including all amounts that cannot be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized, divided by the average weekly flow of process wastewater prior to any dilution into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 parts per million on an average weekly basis. Facilities that choose to measure concentration levels shall file copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and

analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(G) Wastewaters derived-from the treatment of one or more of the following wastes listed in Section R315-261-32: organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156. Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Utah Air Conservation Act, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels shall file copy of their sampling and analysis plan with the Director. A facility shall file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan shall include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Director. The Director may reject the sampling and analysis plan if the Director finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Director rejects the sampling and analysis plan or if the Director finds that the facility is not following the sampling and analysis plan, the Director shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected.

(v) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Sections R315-261-30 through 35. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste; for example, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of Rule R315-261.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(b) A solid waste which is not excluded from regulation under Subsection R315-261-3(a)(1) becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in Sections R315-261-30 through 35, when the waste first meets the listing description set forth in R315-261-30 through 35.

(2) In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in R315-261-30 through 35 is first added to the solid waste.

(3) In the case of any other waste, including a waste mixture, when the waste exhibits any of the characteristics identified in Sections R315-261-20 through 24.

(c) Unless and until it meets the criteria of Subsection R315-261-3(d):

(1) A hazardous waste shall remain a hazardous waste.

(2)(i) Except as otherwise provided in Subsections R315-261-3(c)(2)(ii), or (g), any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash emission control dust, or leachate, but not including precipitation run-off, is a hazardous waste. However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry, SIC Codes 331 and 332.

(B) Waste from burning any of the materials exempted from regulation by Subsection R315-261-6(a)(3)(iii) and (iv).

(C)(I) Nonwastewater residues, such as slag, resulting from high temperature metals recovery processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces, as defined in Section R315-260-10, that are disposed in solid waste landfills regulated under Rules R315-301 through R315-320, provided that these residues meet the generic exclusion levels identified in the tables below for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements shall be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues shall be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action shall have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

TABLE

Constituent Maximum for any single composite sample - TCLP (mg/l)

Generic exclusion levels for K061 and K062 nonwastewater high temperature metals recovery residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050

Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Generic exclusion levels for F006 nonwastewater high temperature metals recovery residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(2) A one-time notification and certification shall be placed in the facility's files and sent to the Director for K061, K062 or F006 high temperature metals recovery residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste landfills regulated under Rules R315-301 through R315-320. The notification and certification that is placed in the generators or treaters files shall be updated if the process or operation generating the waste changes and/or if the landfill receiving the waste changes. However, the generator or treater need only notify the Director on an annual basis if such changes occur. Such notification and certification should be sent to the Director by the end of the calendar year, but no later than December 31. The notification shall include the following information: [-]The name and address of the solid waste landfill regulated under Rules R315-301 through R315-320 receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(D) Biological treatment sludge from the treatment of one of the following wastes listed in Section R315-261-32: organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156, and wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157.

(E) Catalyst inert support media separated from one of the following wastes listed in Section R315-261-32: - Spent

hydrotreating catalyst, EPA Hazardous Waste No. K171), and Spent hydrorefining catalyst (EPA Hazardous Waste No. K172).

(d) Any solid waste described in Subsection R315-261-3(c) is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in Sections R315-261-20 through 24. However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of Rule R315-268, even if they no longer exhibit a characteristic at the point of land disposal.

(2) In the case of a waste which is a listed waste under Sections R315-261-30 through 35, contains a waste listed under Sections R315-261-30 through 35 or is derived from a waste listed in Sections R315-261-30 through 35, it also has been excluded from Subsection R315-261-3(c) under Sections R315-260-20 and R315-260-22.

(e) (Reserved)

(f) Notwithstanding Subsections R315-261-3(a) through (d) and provided the debris as defined in Rule R315-268 does not exhibit a characteristic identified in Sections R315-261-20 through 24, the following materials are not subject to regulation under Rules R315-260 through 266, R315-268, or R315-270:

(1) Hazardous debris as defined in Rule R315-268 that has been treated using one of the required extraction or destruction technologies specified in Table 1 of Section R315-268-45; persons claiming this exclusion in an enforcement action shall have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(2) Debris as defined in Rule R315-268 that the Director, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

(g)(1) A hazardous waste that is listed in Sections R315-261-30 through 35 solely because it exhibits one or more characteristics of ignitability as defined under Section R315-261-21, corrosivity as defined under Section R315-261-22, or reactivity as defined under Section R315-261-23 is not a hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in Sections R315-261-20 through 24.

(2) The exclusion described in Subsection R315-261-3(g) (1) also pertains to:

(i) Any mixture of a solid waste and a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(a)(2)(iv); and

(ii) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(c)(2)(i).

(3) Wastes excluded under Subsection R315-261-3(g) are subject to Rule R315-268, as applicable, even if they no longer exhibit a characteristic at the point of land disposal.

(4) Any mixture of a solid waste excluded from regulation under Subsection R315-261-4(b)(7) and a hazardous waste listed in Sections R315-261-30 through 35 solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under Subsection R315-261-3(a)(2)(iv) is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in Sections

R315-261-20 through 24 for which the hazardous waste listed in Sections R315-261-30 through 35 was listed. [

~~(h)(1) Hazardous waste containing radioactive waste is no longer a hazardous waste when it meets the eligibility criteria and conditions of Sections R315-266-210 through 360.~~

~~(2) The exemption described in Subsection R315-261-3(h)(1) also pertains to:~~

~~(i) Any mixture of a solid waste and an eligible radioactive mixed waste; and~~

~~(ii) Any solid waste generated from treating, storing, or disposing of an eligible radioactive mixed waste.]~~

(3) Waste exempted under Section R315-261-3 shall meet the eligibility criteria and specified conditions in Sections R315-266-225 and R315-266-230, for storage and treatment, and in Sections R315-266-310 and R315-266-315, for transportation and disposal. Waste that fails to satisfy these eligibility criteria and conditions is regulated as hazardous waste.

R315-261-31. Lists of Hazardous Wastes - Hazardous Wastes from Non-Specific Sources.

(a) The following solid wastes are listed hazardous wastes from non-specific sources unless they are excluded under Sections R315-260-20 and 22 and listed in R315-260 appendix IX which incorporates 40 CFR 260 appendix IX by reference.

TABLE 2
Hazardous Wastes From Non-specific Sources

Industry and EPA hazardous waste No. Generic:	Hazardous waste	Hazard Code
F001	The following spent halogenated solvents used in degreasing: Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more, by volume, of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(T)
F002	The following spent halogenated solvents: Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures	(T)
F003	The following spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, [alcohol, cyclohexanone, and methanol]; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before-	(I)*

<p>use, one or more of the above non-halogenated solvents, and, a total of ten percent or more, by volume, of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures] methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures</p>	<p>F019</p>	<p>Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be subject to this listing at the point of generation if the wastes are not placed outside on the land prior to shipment to a landfill for disposal and are either: disposed in a Subtitle D municipal or industrial landfill unit that is equipped with a single clay liner and is permitted, licensed or otherwise authorized by the state; or disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements in Sections R315-258-40, R315-264-301 or 40 CFR 265.301, which is adopted by reference. For the purposes of this listing, motor vehicle manufacturing is defined in Subsection R315-261-31(b)(4)(i) and Subsection R315-261-31(b)(4)(ii) [describes the recordkeeping requirements for motor vehicle manufacturing facilities]</p> <p><u>Describes the Recordkeeping requirements for motor vehicle manufacturing facilities</u></p>	<p>(T)</p>	
<p>F004</p>	<p>The following spent non-halogenated solvents: Cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures</p>	<p>(T)</p>	<p></p>	
<p>F005</p>	<p>The following spent non-halogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more, by volume, of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures</p>	<p>(I,T)</p>	<p>F020</p> <p>Wastes, except wastewater and spent carbon from hydrogen chloride purification, from the production or manufacturing use[—](as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. This listing does not include wastes from the production of Hexachlorophene from highly purified 2,4,5-trichlorophenol.</p>	<p>(H)</p>
<p>F006</p>	<p>Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating, segregated basis, on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum</p>	<p>(T)</p>	<p>F021</p> <p>Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use[—](as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives</p>	<p>(H)</p>
<p>F007</p>	<p>Spent cyanide plating bath solutions from electroplating operations</p>	<p>(R,T)</p>	<p>F022</p> <p>Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use; as a reactant, chemical intermediate, or component in a formulating process; of tetra-, penta-, or hexachlorobenzenes under alkaline conditions</p>	<p>(H)</p>
<p>F008</p>	<p>Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process</p>	<p>(R,T)</p>	<p>F023</p> <p>Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use; as a reactant, chemical intermediate, or component in a formulating process; of tri- and tetrachlorophenols. This listing does not include wastes from equipment used only for the production or use of Hexachlorophene from highly purified 2,4,5-trichlorophenol.</p>	<p>(H)</p>
<p>F009</p>	<p>Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process</p>	<p>(R,T)</p>	<p>F024</p> <p>Process wastes, including but not limited to, distillation residues, heavy ends, tars, and reactor clean-out wastes, from the production of certain chlorinated aliphatic hydrocarbons by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain</p>	<p>(T)</p>
<p>F010</p>	<p>Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process</p>	<p>(R,T)</p>		<p></p>
<p>F011</p>	<p>Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations</p>	<p>(R,T)</p>		<p></p>
<p>F012</p>	<p>Quenching waste water treatment sludges from metal heat treating operations where cyanides are used in the process</p>	<p>(T)</p>		<p></p>

lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution. This listing does not include wastewaters, wastewater treatment sludges, spent catalysts, and wastes listed in Sections R315-261.31 or 32.

- F025 Condensed light ends, spent filters and filter aids, and spent desiccant wastes from the production of certain chlorinated aliphatic hydrocarbons, by free radical catalyzed processes. These chlorinated aliphatic hydrocarbons are those having carbon chain lengths ranging from one to and including five, with varying amounts and positions of chlorine substitution (T)

process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol
- F026 Wastes, except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use, as a reactant, chemical intermediate, or component in a formulating process, of tetra-, penta-, or hexachlorobenzene under alkaline conditions (H)

F037 Petroleum refinery primary oil/water/solids separation sludge-Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in Subsection R315-261-31(b)(2), including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units, and K051 wastes are not included in this listing. This listing does include residuals generated from processing or recycling oil-bearing hazardous secondary materials excluded under Subsection R315-261-4(a)(12)(i), if those residuals are to be disposed of (T)
- F027 Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. This listing does not include formulations containing Hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component. (H)
- F028 Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027 (T)

F038 Petroleum refinery secondary (emulsified) oil/water/solids separation sludge-Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in Subsection R315-261-31(b)(2), including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing (T)
- F032 Wastewaters, except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations, except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with Section R315-261-35 or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes, i.e., F034 or F035, and where the generator does not resume or initiate use of chlorophenolic formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol (T)
- F034 Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol (T)

F039 Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under Sections R316-261-30 through 35. Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028. (T)
- F035 Wastewaters (except those that have not come into contact with process contaminants), (T)

999 Residues from demilitarization, treatment, and testing of nerve, military, and chemical agents CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX. R,T,C,H)

*(I,T) should be used to specify mixtures that are ignitable and contain toxic constituents.

(b) Listing Specific Definitions:

(1) For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil and/or water and/or solids.

(2)(i) For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one of the following four treatment methods: activated sludge; trickling filter; rotating biological contactor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate aeration is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhance biological activity, and

(A) the units employ a minimum of 6 hp per million gallons of treatment volume; and either

(B) the hydraulic retention time of the unit is no longer than 5 days; or

(C) the hydraulic retention time is no longer than 30 days and the unit does not generate a sludge that is a hazardous waste by the Toxicity Characteristic.

(ii) Generators and treatment, storage and disposal facilities have the burden of proving that their sludges are exempt from listing as F037 and F038 wastes under this definition. Generators and treatment, storage and disposal facilities shall maintain, in their operating or other onsite records, documents and data sufficient to prove that:

(A) the unit is an aggressive biological treatment unit as defined in this subsection; and

(B) the sludges sought to be exempted from the definitions of F037 and/or F038 were actually generated in the aggressive biological treatment unit.

(3)(i) For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement.

(ii) For the purposes of the F038 listing,

(A) sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement and

(B) floats are considered to be generated at the moment they are formed in the top of the unit.

(4) For the purposes of the F019 listing, the following apply to wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process.

(i) Motor vehicle manufacturing is defined to include the manufacture of automobiles and light trucks/utility vehicles, including light duty vans, pick-up trucks, minivans, and sport utility vehicles. Facilities shall be engaged in manufacturing complete vehicles, body and chassis or unibody, or chassis only.

(ii) Generators shall maintain in their on-site records documentation and information sufficient to prove that the wastewater treatment sludges to be exempted from the F019 listing meet the conditions of the listing. These records shall include: the volume of waste generated and disposed of off site; documentation

showing when the waste volumes were generated and sent off site; the name and address of the receiving facility; and documentation confirming receipt of the waste by the receiving facility. Generators shall maintain these documents on site for no less than three years. The retention period for the documentation is automatically extended during the course of any enforcement action or as requested by the Director.

R315-261-39. Exclusions and Exemptions - Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

Used, broken CRTs are not solid wastes if they meet the following conditions:

(a) Prior to processing: These materials are not solid wastes if they are destined for recycling and if they meet the following requirements:

(1) Storage. The broken CRTs shall be either:

(i) Stored in a building with a roof, floor, and walls, or

(ii) Placed in a container, i.e., a package or a vehicle, that is constructed, filled, and closed to minimize releases to the environment of CRT glass, including fine solid materials.

(2) Labeling. Each container in which the used, broken CRT is contained shall be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s)-contains leaded glass" or "Leaded glass from televisions or computers." It shall also be labeled: "Do not mix with other glass materials."

(3) Transportation. The used, broken CRTs shall be transported in a container meeting the requirements of Subsections R315-261-39(a)(1)(ii) and (2).

(4) Speculative accumulation and use constituting disposal. The used, broken CRTs are subject to the limitations on speculative accumulation as defined in Subsection R315-261-39(c)(8). If they are used in a manner constituting disposal, they shall comply with the applicable requirements of Sections R315-266-20 through 23 instead of the requirements of Section R315-261-39.

(5) Exports. In addition to the applicable conditions specified in Subsections R315-261-39(a)(1) through (4), exporters of used, broken CRTs shall comply with the following requirements:

(i) Notify EPA of an intended export before the CRTs are scheduled to leave the United States. A complete notification should be submitted sixty days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve month or lesser period. The notification shall be in writing, signed by the exporter, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number, if applicable, of the exporter of the CRTs.

(B) The estimated frequency or rate at which the CRTs are to be exported and the period of time over which they are to be exported.

(C) The estimated total quantity of CRTs specified in kilograms.

(D) All points of entry to and departure from each foreign country through which the CRTs will pass.

(E) A description of the means by which each shipment of the CRTs will be transported; e.g., mode of transportation vehicle, air, highway, rail, water, etc.; type(s) of container, drums, boxes, tanks, etc.

(F) The name and address of the recycler or recyclers and the estimated quantity of used CRTs to be sent to each facility, as well as the names of any alternate recyclers.

(G) A description of the manner in which the CRTs will be recycled in the foreign country that will be receiving the CRTs.

(H) The name of any transit country through which the CRTs will be sent and a description of the approximate length of time the CRTs will remain in such country and the nature of their handling while there.

(ii) Notifications submitted by mail should be sent to the following mailing address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 1200 Pennsylvania Ave., NW., Washington, DC. In both cases, the following shall be prominently displayed on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

(iii) Upon request by EPA, the exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(iv) EPA shall provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of Subsection R315-261-39(a)(5)(i). Where a claim of confidentiality is asserted with respect to any notification information required by Subsection R315-261-39(a)(5)(i), EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(v) The export of CRTs is prohibited unless the receiving country consents to the intended export. When the receiving country consents in writing to the receipt of the CRTs, EPA shall forward an Acknowledgment of Consent to Export CRTs to the exporter. Where the receiving country objects to receipt of the CRTs or withdraws a prior consent, EPA shall notify the exporter in writing. EPA shall also notify the exporter of any responses from transit countries.

(vi) When the conditions specified on the original notification change, the exporter shall provide EPA with a written renotification of the change, except for changes to the telephone number in Subsection R315-261-39(a)(5)(i)(A) and decreases in the quantity indicated pursuant to Subsection R315-261-39(a)(5)(i)(C). The shipment cannot take place until consent of the receiving country to the changes has been obtained, except for changes to information about points of entry and departure and transit countries pursuant to Subsections R315-261-39(a)(5)(i)(D) and (a)(5)(i)(H), and the exporter of CRTs receives from EPA a copy of the Acknowledgment of Consent to Export CRTs reflecting the receiving country's consent to the changes.

(vii) A copy of the Acknowledgment of Consent to Export CRTs shall accompany the shipment of CRTs. The shipment shall conform to the terms of the Acknowledgment.

(viii) If a shipment of CRTs cannot be delivered for any reason to the recycler or the alternate recycler, the exporter of CRTs

shall renotify EPA of a change in the conditions of the original notification to allow shipment to a new recycler in accordance with Subsection R315-261-39(a)(5)(vi) and obtain another Acknowledgment of Consent to Export CRTs.

(ix) Exporters shall keep copies of notifications and Acknowledgments of Consent to Export CRTs for a period of three years following receipt of the Acknowledgment.

(x) CRT exporters shall file with EPA no later than March 1 of each year, an annual report summarizing the quantities, in kilograms; frequency of shipment; and ultimate destination(s), i.e., the facility or facilities where the recycling occurs, of all used CRTs exported during the previous calendar year. Such reports shall also include the following:

(A) The name; EPA ID number, if applicable; and mailing and site address of the exporter;

(B) The calendar year covered by the report;

(C) A certification signed by the CRT exporter that states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

(xi) Annual reports shall be submitted to the office specified in Subsection R315-261-39(a)(5)(ii). Exporters shall keep copies of each annual report for a period of at least three years from the due date of the report.

(b) Requirements for used CRT processing: Used, broken CRTs undergoing CRT processing as defined in Section R315-260-10 are not solid wastes if they meet the following requirements:

(1) Storage. Used, broken CRTs undergoing processing are subject to the requirement of Subsection R315-261-39(a)(4).

(2) Processing.

(i) All activities specified in Subsections ~~R315-260-10(23)~~(ii) and (iii) of the definition of CRT Processing in Section R315-260-10 shall be performed within a building with a roof, floor, and walls; and

(ii) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(c) Processed CRT glass sent to CRT glass making or lead smelting: [-] Glass from used CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in Subsection R315-261-1(c)(8).

(d) Use constituting disposal: [-] Glass from used CRTs that is used in a manner constituting disposal shall comply with the requirements of Section R315-266-20 through 23 instead of the requirements of Section R315-261-39.

~~[-] CRT exporters shall file with EPA no later than March 1 of each year, an annual report summarizing the quantities, in kilograms; frequency of shipment; and ultimate destination(s), i.e., the facility or facilities where the recycling occurs, of all used CRTs exported during the previous calendar year. Such reports shall also include the following:~~

~~(A) The name, EPA ID number, if applicable, and mailing and site address of the exporter;~~

~~(B) The calendar year covered by the report;~~
~~(C) A certification signed by the CRT exporter that states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents and that, based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."~~
~~(xi) Annual reports shall be submitted to the office specified in Subsection R315-261-39(a)(5)(ii). Exporters shall keep copies of each annual report for a period of at least three years from the due date of the report.]~~

R315-261-141. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Definitions of Terms as Used in Sections R315-261-140 Through 151.

The terms defined in 40 CFR 265.141(d), (f), (g), and (h), which are adopted by reference, have the same meaning in Sections R315-140 through 143 and R315-261-147 through 151 as they do in 40 CFR 265.141, which is adopted by reference.

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: 2016
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

Environmental Quality, Waste Management and Radiation Control, Waste Management
R315-262-10
Purpose, Scope, and Applicability

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 40309
 FILED: 04/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the amendment is to correct omissions in the rule as originally adopted. (DAR NOTE: The proposed new Rule R315-262 was published under DAR No. 40109 in the February 1, 2016, issue of the Bulletin and was made effective on 04/15/2016.)

SUMMARY OF THE RULE OR CHANGE: This amendment changes language that was omitted from Section R315-262-10 when it was adopted.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** The rule changes will have no affect on the administration of the rule and will have no cost to the state.
 ♦ **LOCAL GOVERNMENTS:** The rule changes will have no affect on the administration of the rule and will have no cost or savings to local government.
 ♦ **SMALL BUSINESSES:** The rule changes will have no affect on the administration of the rule and will have no cost or savings to small business.
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The rule changes will have no affect on the administration of the rule and will have no cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule changes will not affect the administration of the rule and will not have any cost to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule changes will not affect the administration of the rule and will not have any cost or savings to business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 WASTE MANAGEMENT AND RADIATION CONTROL, WASTE MANAGEMENT
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.
R315-262. Hazardous Waste Generator Requirements.
R315-262-10. Purpose, Scope, and Applicability.

(a) Rule R315-262 establish standards for generators of hazardous waste.
 (b) Subsections R315-261-5(c) and (d) shall be used to determine the applicability of provisions of Rule R315-262 that are dependent on calculations of the quantity of hazardous waste generated per month.

(c) A generator who treats, stores, or disposes of hazardous waste on-site shall only comply with the following Subsections of Rule R315-262 with respect to that waste: Subsection R315-262-11 for determining whether or not he has a hazardous waste, Subsection R315-262-12 for obtaining an EPA identification number, Subsection R315-262-34 for accumulation of hazardous waste, Subsection R315-262-40[-](c) and (d) for recordkeeping, Subsection R315-262-43 for additional reporting, and if applicable, Subsection R315-262-70 for farmers.

(d) Any person who exports or imports wastes that are considered hazardous under U.S. national procedures to or from the countries listed in Subsection R315-262[-]-58(a)(1) for recovery shall comply with Sections R315-262-80 through 89. A waste is considered hazardous under U.S. national procedures if the waste meets the definition of hazardous waste in Section R315-261-3 and is subject to either the manifesting requirements at Sections R315-262-20 through 25 and 27, the universal waste management standards of Rule R315-273, the export requirements in the spent lead-acid battery management standards of Section R315-266-80.

(e) Any person who imports hazardous waste into the United States shall comply with the standards applicable to generators established in Rule R315-262.

(f) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of Section R315-262-70 is not required to comply with other standards in Rule R315-262 or Rules R315- 270, 264, 265, or 268 with respect to such pesticides.

(g) A person who generates a hazardous waste as defined Rule R315-261 is subject to the compliance requirements and penalties prescribed in The Utah Solid and Hazardous Waste Act if he does not comply with the requirements of Rule R315-262.

(h) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility shall comply with the generator standards established in Rule R315-262.

Note 1: The provisions of Section R315-262-34 are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of Section R315-262-34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

Note 2: A generator who treats, stores, or disposes of hazardous waste on-site shall comply with the applicable standards and permit requirements set forth in Rules R315-264, 265, 266, 268, and 270.

- (i) Reserved
- (j) Reserved
- (k) Reserved

(l) The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of Sections R315-262-200 through 216 are not subject to (for purposes of Subsection R315-262-10(l), the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in Section R315-262-200).

(1) The requirements of Section R315-262-11 or Subsection R315-262-34(c), for large quantity generators and small quantity generators, except as provided in Sections R315-262-200 through 216, and

(2) The conditions of Subsection R315-261-5(b), for conditionally exempt small quantity generators, except as provided in Sections R315-262-200 through 216.

(m) Generators of lamps, as defined in Section R315-273-9, using a drum-top crusher, as defined in Section R315-273-9, shall meet the requirements of Subsection R315-273-13(d)(3), except for the registration requirement; and Subsections R315-273-13(d)(4) and (5).

Note 1: The provisions of Section R315-262-34 are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of Section R315-262-34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

Note 2: A generator who treats, stores, or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in Rules R315-264, 265, 266, 268, and 270.

KEY: hazardous waste, generators

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

Environmental Quality, Waste Management and Radiation Control, Waste Management **R315-264-1** Purpose, Scope and Applicability

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40310

FILED: 04/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change adds two universal wastes that have been added to the universal waste rule (Rule R315-273) and need to be added to Rule R315-264 to complete the regulatory cycle. It also corrects references.

SUMMARY OF THE RULE OR CHANGE: The changes add antifreeze and aerosol cans to the list of universal wastes in Section R315-264-1, and it corrects references.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Antifreeze and aerosol cans have been previously included in the universal waste rule (Rule R315-273). The change will add these wastes to the list of universal wastes in Rule R315-264. As the rule is already in effect, the change will have no cost or savings to the state.

♦ **LOCAL GOVERNMENTS:** Local government will see no costs or savings as the rule is already in effect in Rule R315-273. (DAR NOTE: The proposed new Rule R315-273 was

published under DAR No. 40116 in the February 1, 2016, issue of the Bulletin and was made effective on 04/15/2016.)

◆ **SMALL BUSINESSES:** Small business will see no costs or savings as the rule is already in effect in Rule R315-273.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons not listed above will see no costs or savings as the rule is already in effect in Rule R315-273.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs to affected persons as the rule is already in effect in Rule R315-273.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs or savings to affected persons as the rule is already in effect in Rule R315-273.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 WASTE MANAGEMENT AND RADIATION
 CONTROL, WASTE MANAGEMENT
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management.

R315-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

R315-264-1. Purpose, Scope and Applicability.

(a) The purpose of Rule R315-264 is to establish minimum State of Utah standards which define the acceptable management of hazardous waste.

(b) The standards in Rule R315-264 apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in Rules R315-264 or 261.

(c) Reserved[-]

(d) The requirements of Rule R315-264 apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking

Water Act only to the extent they are required by 40 CFR 144.14. Rule R315-264 applies to the above-ground treatment or storage of hazardous waste before it is injected underground.

(e) The requirements of Rule R315-264 apply to the owner or operator of a POTW which treats, stores, or disposes of hazardous waste only to the extent they are included in a RCRA permit by rule granted to such a person under Rule R315-270.

(f) Reserved

(g) The requirements of Rule R315-264 do not apply to:

(1) The owner or operator of a facility permitted under Rules R315-301 through 320 to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under Section R315-261-5;

(2) The owner or operator of a facility managing recyclable materials described in Subsections R315-261-6(a)(2), (3), and (4), except to the extent they are referred to in Rule R315-15 or Sections R315-266-20 through 23, 70, 80, or 100 through 112.

(3) A generator accumulating waste on-site in compliance with Section R315-262-34;

(4) A farmer disposing of waste pesticides from his own use in compliance with Section R315-262-70; or

(5) The owner or operator of a totally enclosed treatment facility, as defined in Section R315-260-10.

(6) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in Section R315-260-10, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes, other than the D001 High TOC Subcategory defined in Section R315-268-40, or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator shall comply with the requirements set out in Subsection R315-264-17(b).

(7) Reserved

(8)(i) Except as provided in Subsection R315-264-1(g)(8)

(ii), a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) An owner or operator of a facility otherwise regulated by Rule R315-264 shall comply with all applicable requirements of Sections R315-264-30 through 35, 37 and 50 through 56.

(iii) Any person who is covered by Subsection R315-264-1(g)(8)(i) and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of Rule R315-264 and 40 CFR 122 and 123 and Rule R315-124 for those activities.

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's

organizational unit shall retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(9) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of Section R315-262-30 at a transfer facility for a period of ten days or less.

(10) The addition of absorbent material to waste in a container, as defined in Section R315-260-10, or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and Subsections R315-264-17(b), 264-171, and 264-172 are complied with.

(11) Universal waste handlers and universal waste transporters, as defined in Section R315-260-10, handling the wastes listed below. These handlers are subject to regulation under Rule R315-273, when handling the below listed universal wastes.

(i) Batteries as described in Section R315-273-2;

(ii) Pesticides as described in Section R315-273-3;

(iii) Mercury-containing equipment as described in Section R315-273-4; ~~and~~

(iv) Lamps as described in Section R315-273-5;

(v) Antifreeze as described in Subsection R315-272-6(a); and

(vi) Aerosol cans as described in Subsection R315-273-6(b).

(h) The requirements of Rule R315-264 apply to owners or operators of all facilities which treat, store, or dispose of hazardous wastes referred to in Rule R315-268.

(i) Reserved

(j) The requirements of Sections R315-264-10 through 19, 30 through 37, 50 through 56, and 101 do not apply to remediation waste management sites. However, some remediation waste management sites may be a part of a facility that is subject to a traditional hazardous waste permit because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, Sections R315-264-10 through 19, 30 through 37, 50 through 56, and 101 do apply to the facility subject to the traditional hazardous waste permit. Instead of the requirements of Sections R315-264-10 through 19, 30 through 37, and 50 through 56, owners or operators of remediation waste management sites shall:

(1) Obtain an EPA identification number by applying to the Administrator using EPA Form 8700-12;

(2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis shall contain all of the information which shall be known to treat, store or dispose of the waste according to Rules R315-264 and 268, and shall be kept accurate and up to date;

(3) Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Director that:

(i) Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site shall not injure people or livestock who may enter the active portion of the remediation waste management site; and

(ii) Disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site, shall not cause a violation of the requirements of Rule R315-264;

(4) Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator shall conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and shall remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner/operator shall take remedial action immediately;

(5) Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of Rule R315-264, and on how to respond effectively to emergencies;

(6) Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive and incompatible waste;

(7) For remediation waste management sites subject to regulation under Sections R315-264-170 through 179, 190 through 200, 220 through 232, 250 through 259, 270 Through 283, 300 through 317, 340 through 351, and 600 through 603, the owner/operator shall design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner/operator can meet the demonstration of Subsection R315-264-18(b);

(8) Not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave;

(9) Develop and maintain a construction quality assurance program for all surface impoundments, waste piles and landfill units that are required to comply with Subsections R315-264-221(c) and (d), 264-251(c) and (d), and 264-301(c) and (d) at the remediation waste management site, according to the requirements of Section R315-264-19;

(10) Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures shall address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan shall be to minimize the possibility of, and the hazards from a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan shall explain specifically how to treat, store and dispose of the hazardous remediation waste in question, and shall be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;

(11) Designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. This emergency coordinator shall

be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan;

(12) Develop, maintain and implement a plan to meet the requirements in Subsections R315-264-1(j)(2) through (j)(6) and (j)(9) through (j)(10); and

(13) Maintain records documenting compliance with Subsections R315-264-1(j)(1) through (j)(12).

KEY: hazardous waste

Date of Enactment or Last Substantive Amendment: 2016
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

**Environmental Quality, Waste
 Management and Radiation Control,
 Waste Management
 R315-273
 Standards For Universal Waste
 Management**

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 40311
 FILED: 04/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: When adopted, the rule did not have an exemption for facilities owned by the state or federal government. This exemption is required and is being added. (DAR NOTE: The proposed new Rule R315-273 was published under DAR No. 40116 in the February 1, 2016, issue of the Bulletin and was made effective on 04/15/2016.)

SUMMARY OF THE RULE OR CHANGE: The changes to Sections R315-273-13 and R315-273-33 add the exemption for state and federal facilities using drum-top lamp crushers from the requirements for costs estimates and financial assurance.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-106

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Any state facility that uses drum-top lamp crushers will have reduced cost as they will not have to present cost estimates and provide financial assurance. The actual costs savings are unknown.

◆ **LOCAL GOVERNMENTS:** There will be no costs or savings to local government as the rule change will only affect facilities operated by the state or federal government.

◆ **SMALL BUSINESSES:** There will be no costs or savings to small business as the rule change will only affect facilities operated by the state or federal government.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs or savings to persons not listed above as the rule change will only affect facilities operated by the state or federal government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no cost to any person as a result of the rule change as the change only affects facilities operated by the state or federal government, and the affected state and federal government operated facilities will see a cost decrease.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs to business as the rule change does not affect them.

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

ENVIRONMENTAL QUALITY
 WASTE MANAGEMENT AND RADIATION
 CONTROL, WASTE MANAGEMENT
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ralph Bohn by phone at 801-536-0212, by FAX at 801-536-0222, or by Internet E-mail at rbohn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

AUTHORIZED BY: Scott Anderson, Director

R315. Environmental Quality, Waste Management and Radiation Control, Waste Management. R315-273. Standards for Universal Waste Management. R315-273-13. Standards for Universal Waste Management, Standards for Small Quantity Handlers of Universal Waste -- Waste management.

(a) Batteries. A small quantity handler of universal waste shall manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall contain any universal waste battery that shows evidence of leakage,

spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the battery, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed, except that cells may be opened to remove electrolyte but shall be immediately closed after removal:

- (i) Sorting batteries by type;
- (ii) Mixing battery types in one container;
- (iii) Discharging batteries so as to remove the electric charge;
- (iv) Regenerating used batteries;
- (v) Disassembling batteries or battery packs into individual batteries or cells;
- (vi) Removing batteries from consumer products; or
- (vii) Removing electrolyte from batteries.

(3) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, e.g., battery pack materials, discarded consumer products, as a result of the activities listed above, shall determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24.

(i) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of Rules R315-260 through 266, 268 and 270. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to Rule R315-262.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Pesticides. A small quantity handler of universal waste shall manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides shall be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of Subsection R315-273-13(b)(1), provided that the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-13(b)(1); or

(3) A tank that meets the requirements of Sections R315-265-190 through 202, except for Subsection R315-265-197(c) and Sections R315-265-200 and 201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Mercury-containing equipment. A small quantity handler of universal waste shall manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container shall be closed, structurally sound, compatible with the contents of the device, shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and shall be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes the ampules only over or in a containment device, e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage;

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that meets the requirements of Section R315-262-34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of Section R315-262-34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(3) A small quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under Subsection R315-273-13(c)(2); and

(4)(i) A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing shall determine whether the following exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24:

(A) Mercury or clean-up residues resulting from spills or leaks; and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings, e.g., the remaining mercury-containing device.

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of Rules R315-260 through 266, 268, and 270. The handler is considered the generator of the mercury, residues, and/or other waste and shall manage it in compliance with Rule R315-262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(d) Lamps. A small quantity handler of universal waste shall manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and shall place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps and shall lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

(3) A small quantity handler of universal waste may crush universal waste lamps using a drum-top lamp crusher designed specifically for crushing lamps provided that the small quantity handler submits a drum-top lamp crusher registration application to and receives approval from the Director. The registration application shall demonstrate that the small quantity handler shall operate the drum-top lamp crusher to ensure the following:

(i) The lamps are crushed in a closed accumulation container designed specifically for crushing lamps;

(ii) The lamps are crushed in a controlled manner that prevents the release of mercury vapor or other contaminants in exceedance of the manufacturer's specifications;

(iii) The drum-top lamp crusher shall consist of a bag filter followed in series by a HEPA filter and an activated carbon filter;

(iv) The drum-top lamp crusher is installed, maintained, and operated in accordance with written procedures developed by the manufacturer of the equipment including specific instructions for the frequency of filter changes;

(v) Filters are either characterized to demonstrate that they are not a hazardous waste or managed as a hazardous waste;

(vi) A spill clean-up kit is available;

(vii) The area in which the drum-top crusher is operated is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(viii) An employee using the drum-top lamp crusher is trained annually on the written operating, safety, personal protection and maintenance procedures of the system;

(ix) An employee using the drum-top lamp crusher is trained annually in emergency procedures;

(x) An operating record is kept and consists of the following:

(A) the number and size of lamps crushed per calendar day, per calendar month, and per calendar year;

(B) the schedule for the change out of filters;

(C) date and time of filter change out;

(D) date, type, and time of equipment maintenance;

(E) any occurrence of equipment malfunction; and

(F) procedures for preventing equipment malfunctions.

(4) The operating record shall be maintained for at least three years.

(5) When a drum-top crusher is no longer used or is relocated, the area where the crusher was located shall be decontaminated of all mercury and other contaminants caused by the use of the drum-top lamp crusher. A report documenting the decontamination steps as well as supporting analytical data demonstrating successful remediation shall be submitted to the Director for approval within 30 days following completion of decontamination.

(6) The small quantity handler shall provide a closure plan along with a detailed written estimate, in current dollars, of the cost of disposing of the drum-top lamp crusher; decontamination of the area surrounding the drum-top lamp crusher, and any analytical costs required to show that decontamination is complete. Drum-top lamp crushers operated by the state or the federal government are exempt from the cost estimate requirement of Subsection R315-273-13(d)(6).

(7) The small quantity handler shall demonstrate financial assurance for the detailed cost estimates determined in Subsection R315-273-13(d)(6) using one of the options in Subsections R315-261-143(a) through (e). Drum-top lamp crushers operated by the state or the federal government are exempt from the financial assurance requirement of Subsection R315-273-13(d)(7).

(8) Crushed universal waste lamps may be managed as universal waste lamps under Rule R315-273 or they may be managed as hazardous waste in accordance with all applicable requirements of Rules R315-260 through 266 and 268.

(e) Antifreeze. A small quantity handler of universal waste shall manage universal waste antifreeze in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste antifreeze shall be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of Subsection R315-273-13(e)(1), provided that the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-13(e)(1); or

(3) A tank that meets the requirements of Sections R315-265-190 through 202, except for Subsection R315-265-197(c) and Sections R315-265-200 and 201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(f) Aerosol cans. A small quantity handler of universal waste shall manage universal waste aerosol cans in a way that prevents release of any universal waste or component of a universal waste or accelerant to the environment as follows:

(1) A small quantity handler of universal waste shall immediately contain any universal waste aerosol can that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a separate individual container. The individual container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may accumulate universal waste aerosol cans in a specially designated accumulation container provided it is clearly marked for such use. The accumulation container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The universal waste aerosol cans shall be sorted by type and compatibility of contents to ensure that incompatible materials are segregated and managed appropriately in separate accumulation containers.

(3) A small quantity handler of universal waste may puncture universal waste aerosol cans to remove and collect the contents of the aerosol can provided the handler:

(i) Ensures that the universal waste aerosol can is punctured in a manner designed to prevent the release of any universal waste or component of universal waste or accelerant to the environment;

(ii) Ensures that the puncturing operations are performed safely by developing and implementing a written procedure detailing how to safely puncture universal waste aerosol cans. This procedure shall include:

(A) the type of equipment to be used to puncture the universal waste aerosol cans safely;

(B) operation and maintenance of the unit;

(C) segregation of incompatible wastes;

(D) proper waste management practices, i.e., ensuring that flammable wastes are stored away from heat or open flames; and

(E) waste characterization;

(iii) Ensures that a spill clean-up kit is readily available to immediately clean up spills or leaks of the contents of the universal waste aerosol can which may occur during the can-puncturing operation;

(iv) Immediately transfers the contents of the universal waste aerosol can, or puncturing device if applicable, to a container that meets the requirements of Section R315-262-34;

(v) Ensures that the area in which the universal waste aerosol cans are punctured is well ventilated; and

(vi) Ensures that employees are thoroughly familiar with the procedure for sorting and puncturing universal waste aerosol cans, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

(4)(i) A small quantity handler of universal waste who punctures universal waste aerosol cans to remove the contents of the aerosol can, or who generates other solid waste as a result of the activities listed above, shall determine whether the contents of the

universal waste aerosol can, residues and/or other solid wastes exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24, or are listed as a hazardous waste identified in Sections R315-261-30 through 35.

(ii) If the contents of the universal waste aerosol can, residues and/or other solid waste exhibit a characteristic of hazardous waste or are listed hazardous wastes, they shall be managed in compliance with all applicable requirements of Rules R315-260 through 266, 268, 270 and 124. The handler is considered the generator of the contents of the universal waste aerosol can, residues, and/or other waste and is subject to the requirements of Rule R315-262. In addition to the Rule R315-262 labeling requirements, the container used to accumulate, store, or transport the hazardous waste contents removed from the punctured universal waste aerosol can shall be labeled with all applicable EPA Hazardous Waste Codes found in Sections R315-261-20 through 24 and Sections R315-261-30 through 35.

(iii) If the contents of the universal waste aerosol can, residues, and/or other solid waste are not hazardous, the handler may manage the waste in a way that is in compliance with applicable federal, state or local solid waste regulations.

R315-273-33. Standards for Universal Waste Management, Standards for Large Quantity Handlers of Universal Waste -- Waste Management.

(a) Batteries. A large quantity handler of universal waste shall manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container shall be closed, structurally sound, compatible with the contents of the battery, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed, except that cells may be opened to remove electrolyte but shall be immediately closed after removal:

(i) Sorting batteries by type;

(ii) Mixing battery types in one container;

(iii) Discharging batteries so as to remove the electric charge;

(iv) Regenerating used batteries;

(v) Disassembling batteries or battery packs into individual batteries or cells;

(vi) Removing batteries from consumer products; or

(vii) Removing electrolyte from batteries.

(3) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste, e.g., battery pack materials, discarded consumer products, as a result of the activities listed above, shall determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24.

(i) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of Rules R315-260 through 266,

268 and 270. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to Rule R315-262.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Pesticides. A large quantity handler of universal waste shall manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides shall be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of Subsection R315-273-33(b)(1), provided that the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-33(b)(1); or

(3) A tank that meets the requirements of Sections R315-265-190 through 202, except for Subsection R315-265-197(c) and Sections R315-265-200, and 201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(c) Mercury-containing equipment. A large quantity handler of universal waste shall manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container shall be closed, structurally sound, compatible with the contents of the device, shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and shall be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;

(ii) Removes the ampules only over or in a containment device, e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage;

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules from that containment device to a container that meets the requirements of Section R315-262-34;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of Section R315-262-34;

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;

(3) A large quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under Subsection R315-273-33(c)(2); and

(4)–(i) A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing shall determine whether the following exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24:

(A) Mercury or clean-up residues resulting from spills or leaks and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings, e.g., the remaining mercury-containing device.

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it shall be managed in compliance with all applicable requirements of Rules R315-260 through 266, 268 and 270. The handler is considered the generator of the mercury, residues, and/or other waste and shall manage it in compliance with Rule R315-262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(d) Lamps. A large quantity handler of universal waste shall manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages shall remain closed and shall lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and shall place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps and shall lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other

hazardous constituents to the environment under reasonably foreseeable conditions.

(3) A large quantity handler of universal waste may crush universal waste lamps using a drum-top lamp crusher designed specifically for crushing lamps provided that the Large quantity handler submits a drum-top lamp crusher registration application to and receives approval from the Director. The registration application shall demonstrate that the large quantity handler shall operate the drum-top lamp crusher to ensure the following:

(i) The lamps are crushed in a closed accumulation container designed specifically for crushing lamps;

(ii) The lamps are crushed in a controlled manner that prevents the release of mercury vapor or other contaminants in exceedance of the manufacturer's specifications;

(iii) The drum-top lamp crusher shall consist of a bag filter followed in series by a HEPA filter and an activated carbon filter;

(iv) The drum-top lamp crusher is installed, maintained, and operated in accordance with written procedures developed by the manufacturer of the equipment including specific instructions for the frequency of filter changes;

(v) Filters are either characterized to demonstrate that they are not a hazardous waste or managed as a hazardous waste;

(vi) A spill clean-up kit is available;

(vii) The area in which the drum-top crusher is operated is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;

(viii) The employee using the drum-top lamp crusher is trained annually on the written operating, safety, personal protection and maintenance procedures of the system;

(ix) The employee using the drum-top lamp crusher is trained annually in emergency procedures;

(x) An operating record is kept and consists of the following:

(A) the number and size of lamps crushed per calendar day, per calendar month, and per calendar year;

(B) the schedule for the change out of filters;

(C) date and time of filter change out;

(D) date, type, and time of equipment maintenance;

(E) any occurrence of equipment malfunction; and

(F) procedures for preventing equipment malfunctions.

(4) The operating record shall be maintained for at least three years.

(5) When a drum-top crusher is no longer used or is relocated, the area where the crusher was located shall be decontaminated of all mercury and other contaminants caused by the use of the drum-top lamp crusher. A report documenting the decontamination steps as well as supporting analytical data demonstrating successful remediation shall be submitted to the Director for approval within 30 days following completion of decontamination.

(6) The large quantity handler shall provide a closure plan along with a detailed written estimate, in current dollars, of the cost of disposing the drum-top lamp crusher; decontamination of the area surrounding the drum-top lamp crusher, and any analytical costs required to show that decontamination is complete. Drum-top lamp crushers operated by the state or the federal government are exempt from the cost estimate requirement of Subsection R315-273-33(d)(6).

(7) The large quantity handler shall demonstrate financial assurance for the detailed cost estimates determined in Subsection R315-273-33(d)(6) using one of the options in Subsections R315-261-143(a) through (e). Drum-top lamp crushers operated by the state or the federal government are exempt from the financial assurance requirement of Subsection R315-273-33(d)(7).

(8) Crushed universal waste lamps may be managed as universal waste lamps under Rule R315-273 or they may be managed as hazardous waste in accordance with all applicable requirements of Rules R315-260 through 266 and 268.

(e) Antifreeze. A large quantity handler of universal waste shall manage universal waste antifreeze in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste antifreeze shall be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of Subsection R315-273-13(e)(1), provided that the unacceptable container is overpacked in a container that does meet the requirements of Subsection R315-273-13(e)(1); or

(3) A tank that meets the requirements of Sections R315-265-190 through 202, except for Subsection R315-265-197(c) and Sections R315-265-200 and 201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the antifreeze, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(f) Aerosol cans. A large quantity handler of universal waste shall manage universal waste aerosol cans in a way that prevents release of any universal waste or component of a universal waste or accelerant to the environment as follows:

(1) A large quantity handler of universal waste shall immediately contain any universal waste aerosol can that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a separate individual container. The individual container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may accumulate universal waste aerosol cans in a specially designated accumulation container provided it is clearly marked for such use. The accumulation container shall be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The universal waste aerosol cans shall be sorted by type and compatibility of contents to ensure that incompatible materials are segregated and managed appropriately in separate accumulation containers.

(3) A large quantity handler of universal waste may puncture universal waste aerosol cans to remove and collect the contents of the aerosol can provided the handler:

(i) Ensures that the universal waste aerosol can is punctured in a manner designed to prevent the release of any universal waste or component of universal waste or accelerant to the environment;

(ii) Ensures that the puncturing operations are performed safely by developing and implementing a written procedure detailing how to safely puncture universal waste aerosol cans. This procedure shall include:

- (A) the type of equipment to be used to puncture the universal waste aerosol cans safely;
- (B) operation and maintenance of the unit;
- (C) segregation of incompatible wastes;
- (D) proper waste management practices, i.e., ensuring that flammable wastes are stored away from heat or open flames; and

(E) waste characterization;

(iii) Ensures that a spill clean-up kit is readily available to immediately clean up spills or leaks of the contents of the universal waste aerosol can which may occur during the can-puncturing operation;

(iv) Immediately transfers the contents of the universal waste aerosol can, or puncturing device if applicable, to a container that meets the requirements of Section R315-262-34;

(v) Ensures that the area in which the universal waste aerosol cans are punctured is well ventilated; and

(vi) Ensures that employees are thoroughly familiar with the procedure for sorting and puncturing universal waste aerosol cans, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

(4)(i) A large quantity handler of universal waste who punctures universal waste aerosol cans to remove the contents of the aerosol can, or who generates other solid waste as a result of the activities listed above, shall determine whether the contents of the universal waste aerosol can, residues and/or other solid wastes exhibit a characteristic of hazardous waste identified in Sections R315-261-20 through 24, or are listed as a hazardous waste identified in Sections R315-261-30 through 35.

(ii) If the contents of the universal waste aerosol can, residues and/or other solid waste exhibit a characteristic of hazardous waste or are listed hazardous wastes, they shall be managed in compliance with all applicable requirements of Rules R315-260 through 266, 268, 270 and 124. The handler is considered the generator of the contents of the universal waste aerosol can, residues, and/or other waste and is subject to the requirements of Rule R315-262. In addition to the Rule R315-262 labeling requirements, the container used to accumulate, store, or transport the hazardous waste contents removed from the punctured universal waste aerosol can shall be labeled with all applicable EPA Hazardous Waste Codes found in Sections R315-261-20 through 24 and Sections R315-261-30 through 35.

(iii) If the contents of the universal waste aerosol can, residues, and/or other solid waste are not hazardous, the handler may manage the waste in a way that is in compliance with applicable federal, state or local solid waste regulations.

KEY: hazardous waste

**Date of Enactment or Last Substantive Amendment: 2016
 Authorizing, and Implemented or Interpreted Law: 19-6-105;
 19-6-106**

**Health, Children's Health Insurance
 Program
 R382-10-17
 Effective Date of Enrollment and
 Renewal**

**NOTICE OF PROPOSED RULE
 (Amendment)**

DAR FILE NO.: 40295
 FILED: 04/04/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to extend the reporting requirement for the Children's Health Insurance Program (CHIP) when adding a newborn or newly adopted child to eliminate gaps in coverage for individuals who transfer from the Federally Facilitated Marketplace (FFM).

SUMMARY OF THE RULE OR CHANGE: This amendment extends the reporting requirement for CHIP when adding a newborn or newly adopted child when the change report comes from FFM.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this amendment neither increases nor decreases the number of individuals who become eligible for CHIP.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither fund nor provide CHIP services to CHIP recipients.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this amendment neither increases nor decreases the number of individuals who become eligible for CHIP.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to CHIP providers and to CHIP recipients because this amendment neither increases nor decreases the number of individuals who become eligible for CHIP.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single CHIP provider or to a CHIP recipient because this amendment neither increases nor decreases the number of individuals who become eligible for CHIP.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because the amendment does not change the number of recipients eligible for CHIP.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R382. Health, Children's Health Insurance Program.

R382-10. Eligibility.

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

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

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

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

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

(3) For a family who has a child enrolled in CHIP and who adds a newborn or adopted child, the effective date of enrollment is the date of birth or placement for adoption if the family requests the coverage within ~~[3]60~~ days of the birth or adoption. If the family makes the request more than ~~[3]60~~ days after the birth or adoption, enrollment in CHIP ~~[will be effective beginning]~~ becomes effective the first day of the month in which the date of report occurs, subject to the limitations in Section R414-306-6, Section R382-10-10, and the provisions of Subsection R382-10-17(2).

(4) For an individual who transfers from the Federally Facilitated Marketplace (FFM), the effective date of enrollment to add a newborn or adopted child is the date of birth or placement for adoption if the individual requests FFM coverage within 60 days of the birth or adoption. If the request is more than 60 days after the birth or adoption, enrollment in CHIP becomes effective the first day of the month in which the date of report occurs, subject to the limitations in

Section R414-306-6, Section R382-10-10, and the provisions of Subsection R382-10-17(2).

(~~5~~[4]) The effective date of enrollment for a new certification period after the review month is the first day of the month after the review month, if the review process is completed by the end of the review month. If a due process month is approved, the effective date of enrollment for a renewal is the first day of the month after the due process month if the review process is completed by the end of the due process month. The enrollee must complete the review process and continue to be eligible to be reenrolled in CHIP at review.

KEY: children's health benefits

Date of Enactment or Last Substantive Amendment: [~~November 16, 2015~~]2016

Notice of Continuation: May 9, 2013

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

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-1-5
Incorporations by Reference

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40320

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 26-18-3(2)(a) requires the Medicaid program to implement policy through administrative rules. The Department, in order to draw down federal funds, must have an approved state plan with the Centers for Medicare and Medicaid Services (CMS). The purpose of this change, therefore, is to incorporate the most current Medicaid state plan by reference.

SUMMARY OF THE RULE OR CHANGE: The Department incorporates by reference the "Utah Medicaid State Plan" and approved "State Plan Amendments (SPAs)" to 04/01/2016. Specifically, the Department incorporates by reference SPA 15-0013-UT Reimbursement for Clinic Services, which updates the effective date of rates for clinic services to 07/01/2015, and removes from the State Plan unnecessary provisions for physical and occupational therapy, alcohol and drug centers, and maternal and child health clinics. The Department also incorporates by reference SPA 16-0001-UT Licensed Psychologists, which removes provisions for psychology services already described in the Rehabilitative section of the State Plan. This proposed rule also incorporates by reference the Medical Supplies Utah Medicaid Provider Manual, and the manual's attachment for Donor Human Milk Request Form, effective 04/01/2016; incorporates by reference the Hospital Services Utah Medicaid Provider Manual with its attachments, effective

04/01/2016; incorporates by reference the Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid, effective 04/01/2016; incorporates by reference the Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference the Hospice Care Utah Medicaid Provider Manual, and the manual's attachment for the Utah Medicaid Prior Authorization Request for Hospice Services, effective 04/01/2016; incorporates by reference the Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual, with its attachments, effective 04/01/2016; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference the Personal Care Utah Medicaid Provider Manual, and the manual's attachment for the Request for Prior Authorization: Personal Care and Capitated Programs effective 04/01/2016; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference the Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference the Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference the Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference the Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference the Office of Inspector General (OIG) Administrative Hearings Procedures Manual, effective 04/01/2016; incorporates by reference the Pharmacy Services Utah Medicaid Provider Manual with its attachments, effective 04/01/2016; incorporates by reference the Coverage and Reimbursement Code Look-up Tool, effective 04/01/2016; incorporates by reference the CHEC Services Utah Medicaid Provider Manual with its attachments, effective 04/01/2016; incorporates by reference the Chiropractic Medicine Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference the General Attachments (All Providers) for the Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference the Indian Health Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference the Laboratory Services Utah Medicaid Provider Manual with its attachments, effective 04/01/2016; incorporates by reference the Medical Transportation Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference the Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with attachment, effective

04/01/2016; incorporates by reference the Licensed Nurse Practitioner Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference the Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables, effective 04/01/2016; incorporates by reference the Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual with its attachments, effective 04/01/2016; incorporates by reference the Podiatric Services Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference the Primary Care Network Utah Medicaid Provider Manual with its attachments, effective 04/01/2016; incorporates by reference the Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference the Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference the School-Based Skills Development Services Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference Section I: General Information Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference the Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference Vision Care Services Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference Women's Services Utah Medicaid Provider Manual, effective 04/01/2016; incorporates by reference Medically Complex Children's Waiver Utah Medicaid Provider Manual, effective 04/01/2016; and incorporates by reference Autism Spectrum Disorder Related Services for EPSDT Eligible Individuals Utah Medicaid Provider Manual, effective 04/01/2016.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates General Attachments (All Providers) for the Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Coverage and Reimbursement Code Look-up Tool, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Hospital Services Utah Medicaid Provider Manual with attachments, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016

- ◆ Updates Podiatric Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Indian Health Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Medically Complex Children's Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates School-Based Skills Development Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with attachment, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Licensed Nurse Practitioner Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Vision Care Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual, with attachments, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates CHEC Services Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Utah Medicaid State Plan, published by Centers for Medicare and Medicaid Services, 04/01/2016
- ◆ Updates Section I: General Information Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Autism Spectrum Disorder Related Services for EPSDT Eligible Individuals Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Hospice Care Utah Medicaid Provider Manual, and Utah Medicaid Prior Authorization Request for Hospice Services, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Pharmacy Services Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Primary Care Network Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Medical Transportation Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Women's Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Updates Office of Inspector General Administrative Hearings Procedures Manual, published by Office of Inspector General of Medicaid Services, 04/01/2016
- ◆ Updates Home Health Agencies Utah Medicaid Provider Manual, and the Private Duty Nursing Acuity Grid, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Laboratory Services Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 04/01/2016

- ◆ Updates Personal Care Utah Medicaid Provider Manual, and Request for Prior Authorization: Personal Care and Capitated Programs, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Chiropractic Medicine Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Medical Supplies Utah Medicaid Provider Manual, and Donor Human Milk Request Form, published by Division of Medicaid and Health Financing, 04/01/2016
- ◆ Updates Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables, published by Division of Medicaid and Health Financing, 04/01/2016

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to the Department or other state agencies.
- ◆ **LOCAL GOVERNMENTS:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to local governments.
- ◆ **SMALL BUSINESSES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to Medicaid recipients and to Medicaid providers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to a single Medicaid recipient or to a Medicaid provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because all changes are already in the State Plan.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-1. Utah Medicaid Program.

R414-1-5. Incorporations by Reference.

The Department incorporates the ~~January~~ April 1, 2016, versions of the following by reference:

- (1) Utah Medicaid State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;
- (2) Medical Supplies Utah Medicaid Provider Manual, Section 2, Medical Supplies, as applied in Rule R414-70, and the manual's attachment for Donor Human Milk Request Form;
- (3) Hospital Services Utah Medicaid Provider Manual with its attachments;
- (4) Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;
- (5) Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual;

(6) Hospice Care Utah Medicaid Provider Manual, and the manual's attachment for the Utah Medicaid Prior Authorization Request for Hospice Services;

(7) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;

(8) Personal Care Utah Medicaid Provider Manual and the manual's attachment for the Request for Prior Authorization: Personal Care and Capitated Programs;

(9) Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual;

(10) Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual;

(11) Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;

(12) Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities Utah Medicaid Provider Manual;

(13) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;

(14) Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;

(15) Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual;

(16) Office of Inspector General Administrative Hearings Procedures Manual;

(17) Pharmacy Services Utah Medicaid Provider Manual with its attachments;

(18) Coverage and Reimbursement Code Look-up Tool found at <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php> ;

(19) CHEC Services Utah Medicaid Provider Manual with its attachments;

(20) Chiropractic Medicine Utah Medicaid Provider Manual;

(21) Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual;

(22) General Attachments (All Providers) for the Utah Medicaid Provider Manual;

(23) Indian Health Utah Medicaid Provider Manual;

(24) Laboratory Services Utah Medicaid Provider Manual with its attachments;

(25) Medical Transportation Utah Medicaid Provider Manual;

(26) Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with ~~its attachments~~ attachment;

(27) Licensed Nurse Practitioner Utah Medicaid Provider Manual;

(28) Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables;

(29) Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual with its attachments;

(30) Podiatric Services Utah Medicaid Provider Manual;

(31) Primary Care Network Utah Medicaid Provider Manual with its attachments;

(32) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;

(33) Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual;

(34) School-Based Skills Development Services Utah Medicaid Provider Manual;

(35) Section I: General Information Utah Medicaid Provider Manual;

(36) Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual;

(37) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual;

(38) Vision Care Services Utah Medicaid Provider Manual;

(39) Women's Services Utah Medicaid Provider Manual;

(40) Medically Complex Children's Waiver Utah Medicaid Provider Manual; and

(41) Autism Spectrum Disorder Related Services for EPSDT Eligible Individuals Utah Medicaid Provider Manual.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: 2016

Notice of Continuation: March 2, 2012

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-34-2

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-310-6
Creditable Health Coverage**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 40296

FILED: 04/04/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to eliminate the sanction period for the Primary Care Network (PCN) when terminating health coverage through the Federally Facilitated Marketplace (FFM).

SUMMARY OF THE RULE OR CHANGE: This amendment aligns PCN with the Children's Health Insurance Program and Utah's Premium Partnership for health insurance when PCN eliminates the sanction period for terminating health coverage through FFM.

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

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 42 CFR 433.138(b) and 435.610, published by Government Printing Office, 10/01/2015
- ◆ Updates Section 1915(b) of the Compilation of the Social Security Laws, published by Social Security Administration, 01/01/2016

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this amendment neither increases nor decreases the number of individuals who become eligible for PCN.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither fund nor provide PCN services to PCN recipients.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this amendment neither increases nor decreases the number of individuals who become eligible for PCN.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to PCN providers and to PCN recipients because this amendment neither increases nor decreases the number of individuals who become eligible for PCN.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single PCN provider or to a PCN recipient because this amendment neither increases nor decreases the number of individuals who become eligible for PCN.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because the amendment does not change the number of recipients eligible for PCN.

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 05/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-310. Medicaid Primary Care Network Demonstration Waiver.

R414-310-6. Creditable Health Coverage.

(1) The Department adopts and incorporates by reference 42 CFR 433.138(b) and 435.610, October 1, 201[3]5 ed., and Section 1915(b) of the Compilation of the Social Security Laws, in effect January 1, 201[3]6.

(2) An applicant who is covered under a group health plan or other creditable health insurance coverage as defined in 29 CFR 2590.701-4, July 1, 2013 ed., is not eligible for enrollment in PCN. This includes coverage under student health insurance and the Veteran's Administration Health Care System.

(a) An individual who is enrolled in the Utah Health Insurance Pool or who can receive health coverage through Indian Health Services may enroll in PCN.

(b) An individual who could enroll in Medicare is not eligible for enrollment in PCN, even if the individual must wait for a Medicare open enrollment period to apply.

(c) An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for PCN as long as the individual applies for and takes all necessary steps to enroll. Eligibility for PCN ends once the individual's coverage in the VA Health Care System begins.

(d) Individuals who are full-time students and who can enroll in student health insurance coverage are not eligible to enroll in PCN.

(3) An individual is not eligible for PCN if the individual becomes eligible for Refugee Medical without a spenddown as defined in Section R414-303-10. An individual who is eligible for Refugee Medical with a spenddown may choose to enroll in either Refugee Medical or PCN.

(4) An individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage through an employer or a spouse's employer is not eligible for PCN if the individual's cost for the least expensive health insurance plan offered by the employer directly, or for the employer's default plan offered through Avenue H, does not exceed 15% of the countable MAGI-based income for the individual's household.

(a) The cost of coverage includes a deductible if the employer-sponsored plan has a deductible.

(b) The eligibility agency will include in the cost of coverage for the spouse, the cost to enroll the employee, if the employee must be enrolled to enroll the spouse.

(c) The eligibility agency considers the individual to have access to coverage if the individual has had at least one opportunity to enroll

(5) An individual who voluntarily terminates health insurance coverage is ineligible to enroll in PCN for 180 days from the date the coverage ended. The eligibility agency may not apply a 180-day ineligibility period in the following situations:

(a) Voluntary termination of COBRA.

(b) Voluntary termination of coverage through the Federally Facilitated Marketplace due to the loss of Advanced Premium Tax.

~~Credits (APTC)[Utah Comprehensive Health Insurance Pool coverage].~~

(6) To be eligible to enroll in PCN, the 180-day ineligibility period must end by the earlier of the following dates or the eligibility agency shall deny the application:

(a) the last day of the open enrollment period during which the individual applies for PCN; or

(b) the last day of the month that follows the month in which the individual applies for PCN, if the open enrollment period does not expire before that following month ends.

(c) Enrollment in PCN may not begin before the 180-day ineligibility period ends.

KEY: Medicaid, primary care, demonstration

Date of Enactment or Last Substantive Amendment: [~~February 1, 2015~~2016]

Notice of Continuation: June 4, 2012

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

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-320-6** Creditable Health Coverage

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40297

FILED: 04/04/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to eliminate the sanction period for Utah's Premium Partnership for Health Insurance (UPP) when terminating health coverage through the Federally Facilitated Marketplace (FFM).

SUMMARY OF THE RULE OR CHANGE: This amendment aligns UPP with the Children's Health Insurance Program and the Primary Care Network when UPP eliminates the sanction period for terminating health coverage through FFM. This amendment also clarifies that adults are not eligible for UPP if they are eligible for Refugee Medicaid.

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

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 29 CFR 2590.701-4, published by Government Printing Office, 07/01/2015

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no impact to the state budget because this amendment neither increases nor

decreases the number of individuals who become eligible for UPP.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither fund nor provide UPP services to UPP recipients.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because this amendment neither increases nor decreases the number of individuals who become eligible for UPP.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to UPP providers and to UPP recipients because this amendment neither increases nor decreases the number of individuals who become eligible for UPP.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single UPP provider or to an UPP recipient because this amendment neither increases nor decreases the number of individuals who become eligible for UPP.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because the amendment does not change the number of recipients eligible for UPP.

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 05/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.

R414-320-6. Creditable Health Coverage.

(1) The Department adopts and incorporates by reference 42 CFR 433.138(b), October 1, 201[3]5 ed.

(2) An applicant who is covered under a group health plan or other creditable health insurance coverage, as defined in 29 CFR 2590.701-4, July 1, 2013⁵ ed., is not eligible for enrollment.

(3) An applicant who is covered by COBRA coverage may be eligible for UPP enrollment.

(4) An ~~adult~~^{individual} is not eligible for UPP if the individual becomes eligible for Refugee Medical without a spenddown as defined in Section R414-303-10. An individual who is eligible for Refugee Medical with a spenddown may choose to enroll in either Refugee Medical or UPP.

(5) The following requirements apply to an individual who has access to but has not yet enrolled in employer-sponsored health insurance:

(a) If the individual's cost for the employer-sponsored coverage offered by the employer directly, or for the employer's default plan offered through Avenue H, is less than 5% of the countable MAGI-based income for the individual's household, the individual is not eligible for the UPP program.

(b) If the individual's cost for the employer-sponsored coverage offered by the employer directly, or for the employer's default plan offered through Avenue H, equals or exceeds 5% of the countable MAGI-based income for the individual's household, the individual may enroll in UPP.

(i) An eligible child may choose enrollment in either UPP or CHIP.

(ii) If the cost of coverage exceeds 15% for an adult, the individual may enroll in either UPP or PCN. To enroll in PCN, it must be an open enrollment period and the individual must meet the PCN criteria.

(c) The cost of coverage includes a deductible if the employer-sponsored plan has a deductible.

(d) The eligibility agency will include in the cost of coverage for the spouse or dependent child, the cost to enroll the employee if the employee must be enrolled to enroll the spouse or dependent child.

(6) An eligible individual who has access to or who is enrolled in a COBRA plan may choose to enroll in UPP and the COBRA plan if the individual's cost for the COBRA plan exceeds 5% of the countable MAGI-based income for the individual's household.

(7) An individual who could enroll in Medicare is not eligible for UPP enrollment, even if the individual must wait for a Medicare open enrollment period to apply.

(8) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for UPP enrollment.

(a) An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the UPP program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must apply for and take all necessary steps to enroll in the VA Health Care System.

(b) Eligibility for the UPP program ends once the individual's coverage in the VA Health Care System begins.

(9) An individual who voluntarily terminates health insurance coverage is ineligible to enroll in UPP for 90 days from the date the coverage ends.

(a) The eligibility agency may not apply a 90-day waiting period in the following situations:

(i) The premium paid by the individual or family for coverage of the individual or family member exceeded 5% of the MAGI-based household income.

(ii) The cost of the premium paid and deductible that includes the individual for the family coverage health plan exceeds 9.5% of the MAGI-based household income.

(iii) An employer stopped offering coverage under an ESI.

(iv) Loss of coverage due to a change in employment or involuntary separation.

(v) The individual has special health care needs as defined by the Department.

(vi) Loss of coverage due to the death or divorce of an UPP individual.

(vii) Voluntary termination of COBRA.

(viii) Voluntary termination of coverage through the Federally Facilitated Marketplace~~[Utah Comprehensive Health Insurance Pool coverage]~~.

(ix) Voluntary termination of coverage for an adult child from the parent's or guardian's ESI plan.

(x) Voluntary termination of coverage by a spouse who does not live in the same household as the UPP applicant.

(xi) Voluntary termination of coverage for a child from a non-custodial parent's ESI plan.

(xii) The individual is voluntarily terminated from insurance that does not provide coverage in Utah;

(xiii) The individual is voluntarily terminated from a limited health insurance plan;

(xiv) A child is terminated from a parent's insurance because ORS reverses the forced enrollment requirement due to the insurance being unaffordable.

(b) The eligibility agency will determine the individual's eligibility at the end of the waiting period without requiring a new application.

(i) The agency may request information about changes in the individual's circumstances that may affect eligibility.

(ii) If eligible, enrollment in UPP can begin in the month in which the 90-day ineligibility period ends.

(10) An individual is eligible to enroll in UPP if the individual's prior health insurance coverage expires before the end of the calendar month that follows the month in which he applies for UPP, and the individual has access to another employer-sponsored health insurance plan that meets the criteria of an UPP qualified health plan. The UPP enrollment date must be after the prior health insurance coverage ends.

(11) An eligible individual with access to an employer-sponsored health plan who also has creditable health coverage operated or financed by Indian Health Services may enroll in the UPP program.

KEY: CHIP, Medicaid, PCN, UPP

Date of Enactment or Last Substantive Amendment: ~~[December 24, 2014]~~2016

Notice of Continuation: February 1, 2016

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

**Health, Family Health and
Preparedness, Emergency Medical
Services
R426-8
Emergency Medical Services
Ambulance Rates and Charges**

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 40324
FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department, by order, has authorized agencies to adjust rates according to the agency's fiscal data, as reviewed by the Department. Currently, the published ambulance rates in rule need to be adjusted. Rule R426-8 is revised to reflect the 06/21/2016 revised ambulance rates. The last rule change was 07/01/2015.

SUMMARY OF THE RULE OR CHANGE: Fiscal Reporting Guides (FRGs) are financial and statistical data collected from all EMS agencies statewide. The data collected showed EMS rates need to be increased at 1.50% so agencies statewide will have closer revenues matching expenses. Rule R426-8 needs to be amended to reflect these ground ambulance transport rate changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** State budget will not be impacted as this is a user fee.
- ◆ **LOCAL GOVERNMENTS:** Local government budgets will not be impacted significantly. The rates listed in the rule are increased by 1.50%. The EMS agency billings increase by 1.50% which will offset declining collections, wages increases, and the increased equipment costs.
- ◆ **SMALL BUSINESSES:** Emergency Medical Service budgets will not be impacted. The ambulance transport rate increase is 1.50% from current ambulance rates to offset declining collections, wage increases, and the increased equipment costs.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Other budgets will not be impacted. The ambulance transport rate increase is 1.50% from current ambulance rates to offset declining collections, wage increases, and the increased equipment costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: EMS agencies are allowed to bill the rates listed in the proposed rule and there are no costs to the agency for compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rates will have an impact on businesses. Based on accepted accounting measures, the proposed increase is needed to maintain the solvency of ambulance service within Utah. Increase is based on a careful analysis of the cost of doing business. Individuals that use this service will experience an added cost, some of which will be borne by health insurers. Public comment will be carefully evaluated.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R426. Health, Family Health and Preparedness, Emergency Medical Services.

R426-8. Emergency Medical Services Ground Ambulance Rates and Charges.

R426-8-1. Authority and Purpose.

- (1) This rule is established under Title 26, Chapter 8a.
- (2) The purpose of this rule is to provide for the establishment of maximum ambulance transportation and rates to be charged by licensed ground ambulance providers[services] in the State of Utah.

R426-8-2. Ground Ambulance Transportation Revenues, Rates, and Charges.

(1) Licensed ground ambulance providers[services] operating under R426-3 shall not charge more than the rates described in this rule. In addition, the net income of licensed ground ambulance providers[services], including subsidies of any type, shall not exceed ~~the net income limit set by this rule.~~

[~~_____~~ (a) ~~The net income limit shall be~~] the greater of eight percent of gross revenue, or 14 percent return on average assets.

[(b)a] Licensed ground ambulance providers[Services] may change rates at their discretion after notifying the Department, provided that the rates do not exceed the maximums specified in this rule.

[(e)b] A licensed ground ambulance provider[~~An agency~~] may not charge a transportation fee for patients who are not transported.

(2) The initial regulated rates established in this rule shall be adjusted annually on July 1, based on financial data as delineated by the ~~(d)~~Department to be submitted as detailed under R426-8-2(~~9~~)10. This data shall then be used as the basis for the annual rate adjustment.

(3) Base Rates for ground transport of a patient to ~~[care]~~a hospital or patient receiving facility are as follows: ~~[facility-]~~

(a) Ground Ambulance - ~~[\$696.00]~~\$707.00 per transport[-];

(b) Advanced EMT ~~[and EMT-IA-]~~Ground Ambulance - ~~[\$919.00]~~\$933.00 per transport[-];

(c) Advanced EMT Ground Ambulance who was prior to June 30, 2016 licensed as an EMT-IA provider - \$1,149.00 per transport;

(~~[e]~~d) Paramedic Ground Ambulance - ~~[\$1,344.00]~~\$1,365.00 per transport[-];

(~~[d]~~e) Ground Ambulance with Paramedic on-board - ~~[\$1,344.00]~~\$1,365.00 per transport if:

(i) a designated Emergency Medical Service dispatch center~~[-agency]~~ dispatches a licensed paramedic provider~~[licensee]~~ to treat the individual;

(ii) the licensed paramedic provider~~[licensee]~~ has initiated advanced life support;

(iii) on-line medical control directs that a paramedic remain with the patient during transport; and

(iv) a~~[n]~~n licensed ground ambulance provider~~[-service that]~~ who interfaces with a licensed paramedic rescue service and has an inter-local or equivalent agreement in place, dealing with reimbursing the paramedic ground ambulance licensed provider~~[-agency]~~ for services provided up to a maximum of \$286.68 per transport.

~~[(4) Mileage Rate-~~

~~(a) \$31.65 per mile or fraction thereof.~~

~~(b) In all cases mileage shall be computed from the point of pickup to the point of delivery.~~

~~(c) A fuel fluctuation surcharge of \$0.25 per mile may be added when diesel fuel prices exceed \$5.10 per gallon or gasoline exceeds \$4.25 as invoiced.]~~

~~(4) Mileage rates may be charged at a rate of \$31.65 per mile or fraction thereof, and computed from the point of patient pick-up to the point of patient delivery. Fuel fluctuation surcharges of \$0.25 per mile may be added when diesel fuel prices exceed \$5.10 per gallon, or gasoline prices exceed \$4.25 per gallon as invoiced.~~

~~[(5) Surcharge-~~

~~(a) If the ambulance is required to travel for ten miles or more on unpaved roads, a surcharge of \$1.50 per mile may be assessed.]~~

~~(5) A surcharge of \$1.50 per mile may be assessed if an ambulance is required to travel ten or more miles on unpaved roads.~~

~~(6) [Special Provisions-~~

~~(a) If more than one patient is transported from the same point of origin to the same point of delivery in the same ambulance, the charges to be assessed to each individual will be determined as follows:~~

~~(i)a) Each patient will be assessed the transportation rate[-];~~

~~(i)b) The mileage rate will be computed as specified, the sum to be divided equally between the total number of patients.~~

~~(b)2) A round trip may be billed as two one-way trips.]~~

~~(e) A licensed ground ambulance provider shall provide 15 minutes of time at no charge at both point of pickup and point of delivery, and may charge \$22.05 per quarter hour or fraction thereof thereafter. On round trips, 30 minutes at no charge will be allowed~~

from the time the ambulance reaches the point of delivery until starting the return trip. At the expiration of the 30 minutes, the ambulance service may charge \$22.05 per quarter hour or fraction thereof thereafter.

~~[(7) Supplies and Medications-~~

~~(a) An ambulance licensee may charge for supplies and providing supplies, medications, and administering medications used on any response if:]~~

~~(8) A licensed ground ambulance provider may charge for supplies, providing supplies, medications, and administering medications on a response if:~~

~~(i)a) supplies shall be priced fairly and competitively with similar products in the local area;~~

~~(i)b) the individual does not refuse services; and~~

~~(i)c) the licensed ground ambulance personnel assess or treats the individual.~~

~~[(8) Uncontrollable Cost Escalation-~~

~~(a)9) In the event of a temporary escalation of costs, a~~[n]~~n licensed ground ambulance provider~~[service]~~ may petition the Department for permission to make a temporary service-specific surcharge. The petition shall specify the amount of the proposed surcharge, the reason for the surcharge, and provide sufficient financial data to clearly demonstrate the need for the proposed surcharge. Since this is intended to only provide temporary relief, the petition shall also include a recommended time limit.]~~

~~(b) The Department will make a final decision on the proposed surcharge within 30 days of receipt of the petition.~~

~~[(9)10) [-Operating report-~~

~~(a) The licensed ground ambulance provider~~[service]~~ shall file with the Department within 90 days of the end of each licensed provider's~~[service's]~~ fiscal year, an operating report in accordance with the instructions, guidelines and review criteria as specified by the Department. The Department shall provide a summary of operating reports received during the previous state fiscal year to the EMS Committee in the October quarterly meeting.~~

~~[(10) Fiscal audits-~~

~~(a) Upon receipt of licensed service fiscal reports, the Department shall review them for compliance to standards established.~~

~~(b) Where the Department determines that the audited service is not in compliance with this rule, the Department shall proceed in accordance with Section 26-8a-504.]~~

~~(11) The Department shall review licensed ground ambulance provider fiscal reports for compliance to Department established standards. The Department may perform financial audits as part of the review. If the Department determines that a licensed ground ambulance provider is not in compliance with this rule, the Department shall proceed in accordance with Utah Code Title 26-8a-504.~~

[R426-8-3. Penalty for Violation of Rule.

~~As required by Subsection 63G-3-201(5): Any person that violates any provisions of this rule may be assessed a civil money penalty as provided in Section 26-23-6.~~

KEY: emergency medical services

Date of Enactment or Last Substantive Amendment: [June 8, 2015]2016

Notice of Continuation: November 10, 2015

Authorizing, and Implemented or Interpreted Law: 26-8a

Human Services, Substance Abuse and Mental Health, State Hospital

R525-8

Forensic Mental Health Facility

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40314

FILED: 04/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to update the guidance provided by this rule.

SUMMARY OF THE RULE OR CHANGE: This amendment provides updated information by: 1) clarifying the purpose is setting the criteria for admission to the Utah State Hospital; 2) updating the statutory requirement; and 3) providing guidance on the role of the Director of the Department of Human Services in allocating resources for competency restoration services.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-15-105 and Section 62A-15-605.5 and Section 77-16a-202 and Section 77-16a-203 and Section 77-16a-204 and Subsection 62A-15-902(2)(c) and Subsection 77-18-1(13)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The changes to the rule will not have any sort of cost or expense to the state budget. The Legislature appropriated funds for the jail-based restoration; these changes just help clarify that those can be used for that service that is already funded, but these rule changes in and of themselves don't cause a cost or savings.

◆ **LOCAL GOVERNMENTS:** The changes to the rule will not have any sort of cost or expense to local government. The Legislature appropriated funds for the jail-based restoration; these changes just help clarify that those can be used for that service that is already funded, but these rule changes in and of themselves don't cause a cost or savings.

◆ **SMALL BUSINESSES:** The changes to the rule will not have any sort of cost or expense to the small businesses. The Legislature appropriated funds for the jail-based restoration; these changes just help clarify that those can be used for that service that is already funded, but these rule changes in and of themselves don't cause a cost or savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The changes to the rule will not have any sort of cost or expense to persons other than small businesses, businesses,

or local government entities. The Legislature appropriated funds for the jail-based restoration; these changes just help clarify that those can be used for that service that is already funded, but these rule changes in and of themselves don't cause a cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to the rule will not have any sort of compliance cost. The Legislature appropriated funds for the jail-based restoration; these changes just help clarify that those can be used for that service that is already funded, but these rule changes in and of themselves don't cause a cost or savings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to the rule will not have any fiscal impact on businesses. The Legislature appropriated funds for the jail-based restoration; these changes just help clarify that those can be used for that service that is already funded, but these rule changes in and of themselves don't cause a cost or savings.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH,
STATE HOSPITAL
UTAH STATE HOSPITAL
PROVO, UT 84603-0270
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonessrobbins@utah.gov
◆ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

AUTHORIZED BY: Doug Thomas, Director

R525. Human Services, Substance Abuse and Mental Health, State Hospital.

R525-8. Forensic Mental Health Facility.

R525-8-1. Authority and Purpose.

(1) This rule is adopted under the authority of Section 62A-15-105.

(2) The purpose of this rule is to explain the [allocation of] criteria for admission to beds for the Forensic Mental Health Facility at the Utah State Hospital.

R525-8-2. Forensic Mental Health Facility.

(1) Pursuant to the requirements of Section 62A-15-902(2)(c), the forensic mental health facility allocates ~~[beds to serve the following categories]~~ admits individuals in accordance with state statute as follows:

(a) ~~[prison inmates displaying mental illness, as defined in Section 62A-15-602, necessitating treatment in a secure mental health facility]persons found by a court to be incompetent to proceed in accordance with Title 77, Chapter 15, or not guilty by reason of insanity under Title 77, Chapter 14;~~

(b) criminally adjudicated persons found guilty and mentally ill or undergoing evaluation for mental illness under Title 77, Chapter 16a;

(c) criminally adjudicated persons found guilty and mentally ill or undergoing evaluation for mental illness under Title 77, Chapter 16a, who are also ~~[mentally retarded]~~intellectually disabled;

(d) ~~[persons found by a court to be incompetent to proceed in accordance with Title 77, Chapter 15, or not guilty by reason of insanity under Title 77, Chapter 14]prison inmates necessitating treatment in a secure mental health facility in accordance with Section 77-16a-202, 203, 204 and in Section 62A-15-605.5;~~ and

(e) persons who are civilly committed to the custody of a local mental health authority in accordance with Title 62A, Chapter 15, Part 6, and who may not be properly supervised by the Utah State Hospital because of a lack of necessary security, as determined by the superintendent or his designee.

(2) Additionally, the beds serve the following categories:

(a) persons undergoing an evaluation to determine competency to proceed under Title 77, Chapter 15; and

(b) persons committed to the state hospital as a condition of probation under Subsection 77-18-1(13).

(3) The Executive Director of the Department of Human Services (DHS) or their designee may allocate resources to provide competency restoration services and/or treatment for the purpose of competency restoration to those ordered to the custody of the Department of Human Services.

R525-8-3. Forensic Bed ~~[Allocation]~~Admissions.

~~[Beds]People~~ are ~~[allocated]~~identified for admission based on current psychiatric need, ~~[and]~~legal status and the date of their court order into DHS custody. Highest priority shall be given to those cases which are specifically required to be admitted to the Utah State Hospital by Utah law.

R525-8-4. No Admission Because of Capacity.

When capacity in the forensic mental health facility has been met, the hospital shall not admit any persons to the forensic mental health facility until a bed becomes available. In such an event the hospital will work cooperatively with the court to find a resolution.

KEY: forensic, mental health, facilities

Date of Enactment or Last Substantive Amendment: ~~[February 21, 2012]~~2016

Notice of Continuation: April 26, 2011

Authorizing, and Implemented or Interpreted Law: ~~62A-15-105; 62A-15-605.5; 62A-15-902(2)(c); [62A-15-105;]~~77-16a-202, 203, 204; 77-18-1(13)

Insurance, Administration R590-247 Universal Health Insurance Application Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40321

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to remove the reference to the "Producer Agreement and Compensation Disclosure" due to changes made during the 2015 General Session in H.B. 23, and to remove the last page of the application, which is where the disclosure was incorporated into the application.

SUMMARY OF THE RULE OR CHANGE: The change removes the reference to the "Producer Agreement and Compensation Disclosure" due to changes made to Subsection 31A-23a-501(4) during the 2015 General Session in H.B. 23. The change also removes the last page of the application, which is where the disclosure was incorporated into the application.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-22-635 and Section 31A-30-102

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to state budget because the change results in a form no longer being required.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local governments because the change results in a form no longer being required.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the change results in a form no longer being required.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Large employers, specifically insurers, may incur minimal programming costs to remove the last page of the Utah Individual Health Insurance Application.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any affected persons because the change merely results in a form no longer being required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change is required due to actions taken by the Utah Legislature.

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 05/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

AUTHORIZED BY: Steve Gooch, Information Specialist

R590. Insurance, Administration.

R590-247. Universal Health Insurance Application Rule.

R590-247-1. Authority.

This rule is promulgated pursuant to Sections 31A-22-635 and 31A-30-102 which direct the commissioner to create a universal health insurance application.

R590-247-2. Purpose and Scope.

(1) The purpose of this rule is to establish universal applications for all insurers offering a health benefit plan in Utah outside the Federally Facilitated Marketplace.

(2) This rule applies to:

(a) all individual health benefit plans in Utah outside the Federally Facilitated Marketplace; and
(b) all small employer health benefit plans.

R590-247-3. General Instructions.

(1) Use of the Utah Individual Health Insurance Application and the Utah Small Employer Health Insurance Application by insurers or by health insurance producers is mandatory.

(2) The Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application must be used without insurer identifying logos or addresses to facilitate multiple insurer submissions using a single application.

(3) The Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application can be downloaded from the Department's website at www.insurance.utah.gov.

(4) The Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application may be altered for:

(a) purposes of electronic application and submission, including electronic signature disclaimers;

(b) languages other than English; and

(c) reasons specifically approved by the commissioner.

(5) ~~[Section F, Producer Agreement and Compensation Disclosure section of the Utah Individual Health Insurance Application, must include all information to be disclosed as required by Section 31A-23a-501.~~

~~_____ (6)]~~All insurers shall offer compatible systems for electronic submission of the Utah Individual Health Insurance Application and the Utah Small Employer Health Insurance Application.

~~(7)(6)~~ If an employee chooses to waive coverage, an insurer shall not require such employee to complete any section of the Utah Small Employer Health Insurance Application other than the Waiver of Coverage section.

~~(8)(7)(a)(+)~~ Individual health insurers shall use the Utah Individual Insurance Application dated October 2010 for all applications with coverage effective dates prior to January 1, 2014.

(ii) Individual health insurers shall use the Utah Individual Health Insurance Application dated ~~[January 2014 for all applications with coverage effective dates on or after January 1, 2014]~~ June 2016 for coverage outside of the Federally Facilitated Marketplace.

(b)(i) Small employer insurers shall use the Utah Small Employer Health Insurance Application dated October 2010 for all applications with coverage effective dates prior to January 1, 2014.

(ii) Small employer insurers shall use the Utah Small Employer Health Insurance Application dated January 2014 for all applications with coverage effective dates on or after January 1, 2014.

R590-247-4. Penalties.

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

R590-247-5. Severability.

If any provision of this rule or its 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 provisions of this rule are declared to be severable.

KEY: universal health insurance application

Date of Enactment or Last Substantive Amendment: ~~[September 10, 2013]~~ 2016

Notice of Continuation: June 26, 2013

Authorizing, and Implemented or Interpreted Law: 31A-30-102

Pardons (Board of), Administration

R671-315-1

Pardons

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40316

FILED: 04/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule change is to clarify the applicant for a pardon must appear personally at the pardon hearing. The change also sets requirements for the Board to disclose information to the applicant and notify victims and prosecutors.

SUMMARY OF THE RULE OR CHANGE: Pardon hearings may be conducted by the full Board, a panel of Board members, or a single Board member. Applicants for a pardon must sign the application and appear personally at the pardon hearing. The Board will not consider pardons for infractions. The onus to provide verification of therapy completion and payment of fines and restitution is on the applicant. The Board will disclose information it receives to the pardon applicant. The Board is required to notify victims, the court, and the prosecutor. Family, supporters, investigators, prosecutors, or court officers may testify at the pardon hearing. Members of the public may submit written comments. If a pardon is granted, the Board provides a list of agencies that may have records on the pardoned individual that should be expunged.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article VII, Section 12 and Section 77-27-5 and Section 77-27-5.1 and Section 77-27-9 and Subsection 77-27-1(14)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The changes affect the processing of pardon applications. Any increase in workload can be absorbed with existing resources without additional costs.
- ◆ **LOCAL GOVERNMENTS:** The proposed changes affect the processing of pardon applications and the hearing. The proposed change allows local governments (investigators and prosecutors) to testify at a pardon hearing; however, there is no requirement for local governments to participate.
- ◆ **SMALL BUSINESSES:** Small businesses do not participate in the pardon process. The changes do not impose any requirements on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed changes require the pardon applicant to personally appear at the pardon hearing and clarify the requirement for the applicant to provide certain verifications.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Board does not charge any fees for a pardon application or the granting of a pardon.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses do not apply for pardons or have any requirement to participate in a hearing except businesses may be victims, and, as such, they have the option to submit comments or speak at a pardon hearing.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PARDONS (BOARD OF)
 ADMINISTRATION
 ROOM 300
 448 E 6400 S
 SALT LAKE CITY, UT 84107-8530
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Greg Johnson by phone at 801-261-6454, by FAX at 801-261-6481, or by Internet E-mail at gregjohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/20/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ◆ 06/01/2016 08:00 AM, Board of Pardons, 448 E Winchester, Suite 300, Murray, UT

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

AUTHORIZED BY: Angela Micklos, Chair

R671. Pardons (Board of), Administration.

R671-315. Pardons.

R671-315-1. Pardons.

1. A pardon is an act of grace that forgives a criminal conviction and restores the rights and privileges forfeited by or because of the criminal conviction. A pardon releases an offender from the entire punishment prescribed for a criminal offense and from disabilities that are a consequence of the criminal conviction. A pardon reinstates any civil rights lost as a consequence of conviction or punishment for a criminal offense.

[A]2.(a) The Board may consider an application for a pardon from any individual who has been convicted of an offense in the state of Utah, after the applicant has exhausted all judicial remedies, including expungement, in an effort to ameliorate the effects of the conviction.

(b) The Board [~~generally~~] will accept and consider a pardon application only after at least five years has passed since the sentence for the conviction and any enhancement period has [~~been~~] terminated or expired.

(c) The Board will not consider pardons for infractions.

[+]3.(a) A [~~ny~~] person seeking a pardon from the Board must complete and file, to the Board's satisfaction, an application in a form approved by the Board.

(b) No pardon application will be accepted unless it has been signed by the person whose convictions are sought to be pardoned.

(c) Posthumous pardon applications will not be accepted or considered.

(d) A pardon application will not be considered unless the applicant is able and willing to personally attend the pardon hearing.

~~[2]4.~~ In addition to the completed application, Board staff shall obtain and provide relevant information ~~[that shall include]~~ including, but not be limited to:

(a) all police reports concerning the conviction for which the applicant is seeking a pardon;

(b) all pre- or post- sentence reports prepared in connection with any sentence served in jail or prison, and for any conviction for which the applicant is seeking a pardon;

(c) the applicant's inmate files;

(d) a recent BCI report, NCIC report, and III report concerning the applicant;

~~[(e) the applicant's employment history;]~~

~~[(g)]~~ verification from the applicant that all imposed restitution, fines, fees, or surcharges have been paid in full; and

~~[(h)]~~ verification from the applicant that the applicant completed therapy programs ordered by any court or by the Board.

~~[2]5.~~ (a) Board staff shall summarize ~~[this-]all~~ information collected or submitted regarding the application and provide the application and additional information to the Board ~~[within 60 days from the date the completed application and all required information and documentation was received].~~

(b) Board staff shall disclose to the applicant, prior to the hearing, all information obtained or received by the Board regarding the pardon application which is not from the applicant.

(c) The Board may request additional information from staff or from the applicant.

~~[3-]6.~~ Once complete, and if otherwise compliant with all Board rules, ~~[The Board shall consider]~~ the pardon application and all available relevant information ~~[relevant to it]~~ will be considered by the Board, which shall ~~[and]~~ vote to grant or deny a pardon hearing.

~~[(a) If a pardon hearing is granted the hearing should be held within 60 days, or as soon thereafter as practicable, of the Board's decision to grant a pardon hearing.]~~

~~[4. The Board shall publish notice of the pardon hearing on its web site and on the Utah Public Notice web site.]~~

~~[B]7.~~ If a ~~[Upon scheduling a]~~ pardon hearing ~~[is granted]~~:

(a) notice of the hearing shall be published on (i) the Board's web site; and (ii) the Utah Public Notice web site; and

(b) for each conviction which is the subject of the pardon hearing, notice of the hearing shall be mailed or otherwise sent ~~[given]~~ to;

(i) any victim[s] of record, if ~~[they]~~ the victim can be located ~~[,];~~

(ii) the ~~[chief law enforcement officer of the]~~ arresting or investigative agency ~~[, the];~~

(iii) the sentencing court ~~[presiding judge where the conviction was entered,]; and~~

(iv) ~~[and the County, District, or City Attorney where the case was prosecuted]~~ the respective prosecutor's office.

8. In furtherance of the Board's obligation to conduct a full and fair hearing, the following pardon hearing procedures apply:

(a) The pardon applicant shall personally appear and shall be required to testify. The applicant may designate a few family members or other supporters to offer testimony at the hearing, if time allows.

(b) Any victim of a conviction for which a hearing has been scheduled may offer testimony, or may submit written material

concerning the pardon request. Any victim may designate a representative to testify or speak on the victim's behalf at a pardon hearing.

(c) An authorized representative of the arresting or investigative agency, sentencing court or prosecutor's office for each conviction which is the subject of the hearing may offer testimony or may submit written material concerning the pardon request.

(d) The Board may subpoena any person to attend and testify at a pardon hearing if it determines that such testimony will aid the Board in making a decision regarding the pardon request.

(e) Any person not otherwise specified in this rule may submit letters in support of or in opposition to a pardon request.

(f) All testimony or written material regarding a pardon request must be relevant, and must comply with all other Board administrative rules.

(g) Statements or other material submitted regarding a pardon application or hearing:

(i) may not be submitted anonymously;

(ii) may not be based upon hearsay; and

(iii) shall only be based upon the personal knowledge or opinion of the person submitting the statement or material.

(h) The Board may refuse to accept, remove from an offender's file or pardon application, or refuse to consider any statement or material submitted which is irrelevant, defamatory, hearsay, or which does not otherwise conform to Board rules.

9. A pardon hearing may be conducted by the full board, or by a panel or a single board member assigned by the board chair. If conducted by a panel of the board, the board chair may appoint members to the panels in any combination.

[E]10. The Board may grant a conditional pardon or an unconditional pardon. The petitioner will be notified in writing of the results as soon as practicable.

[D]11. The Board may grant or deny a pardon by majority vote. Pardon decisions are final and are not subject to judicial review.

12. Upon granting a pardon, the Board shall issue an expungement order, directing any criminal justice agency to remove the recipient's identifying information relating to the expunged convictions from its records.

(a) An expungement order, issued by the Board, has the same legal effect and authority as an order of expungement issued by a court, pursuant to Title 77, Chapter 40, Utah Expungement Act.

(b) The board shall provide clear written directions to the pardon recipient along with a list of agencies known to be affected by the expungement order.

[E]13. The Board may dispense with any requirement created by this rule for good cause.

KEY: pardons

Date of Enactment or Last Substantive Amendment: [May 22, 2013]2016

Notice of Continuation: January 31, 2012

Authorizing, and Implemented or Interpreted Law: Art. VII Sec. 12; 77-27-1(14)[-et seq-]; 77-27-5; 77-27-5.1; 77-27-9[-; Art VII Sec 12]

**Public Service Commission,
Administration
R746-360-6
Eligibility for Fund Distributions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40299

FILED: 04/06/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to set the affordable base rate that telecommunication service providers are required to charge in order to qualify for state subsidization.

SUMMARY OF THE RULE OR CHANGE: The affordable base rate for the period 07/01/2016 to 06/30/2017 is set at \$18 per residential line and \$27.50 per business line. Beginning 07/01/2017, the affordable base rate will be set at \$20 per residential line and \$29.50 per business line.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-3-1 and Section 54-4-1 and Subsection 54-8b-15(8)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The affected companies are subsidized through a state-funded program. As the companies raise rates, the subsidy for which they qualify might change, which would result in a change to the balance of the fund.

◆ **LOCAL GOVERNMENTS:** Local governments are not required to comply with or enforce the rules governing subsidized telecommunication service providers. No impact to local government is anticipated.

◆ **SMALL BUSINESSES:** Small businesses that operate as telecommunication service providers and that are subsidized by the state will see revenues increase as they adopt the Public Service Commission's (Commission) affordable base rates. Consequently, the monthly subsidies currently being disbursed might have to be reduced. The Commission intends to require the Division of Public Utilities to review the finances of each affected utility in order to determine the amount of any required deduction. If the Division recommends a deduction, the affected utility will have a full opportunity to litigate the issues before the Commission.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The subsidy at issue is funded through a surcharge that all telecommunications customers in Utah pay. If the total amount of required funding changes, the surcharge may be increased or decreased as needed. It is possible that this rule change will reduce the amount needed to fund the

account, which will result in a concomitant reduction in the surcharge.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To comply, affected telecommunication utilities must file new rates with the Commission. As long as those rates do not exceed the Commission's affordable base rates, the costs associated with the filing will be minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, business that provides subsidized telecommunication services might see a reduction in its monthly subsidy as its monthly revenues increase. The Commission will rely on the Division of Public Utilities to recommend any such reduction, which will then be subject to a full adjudication.

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:

◆ Jennie Jonsson by phone at 801-530-6763, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/31/2016 09:00 AM, Heber Wells Bldg, 160 E 300 S, Room 451 (Fourth Floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

AUTHORIZED BY: Jordan White, Legal Counsel

**R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.**

R746-360-6. Eligibility for Fund Distributions.

A. Qualification --

1. To qualify to receive USF support funds, a telecommunications corporation shall be designated an "eligible telecommunications carrier," pursuant to 47 U.S.C. Section 214(e), and shall be in compliance with Commission orders and rules. Each telecommunications corporation receiving support shall use that support only to provide basic telecommunications service and any other services or purposes approved by the Commission.

2. Additional qualification criteria for Incumbent telephone corporations - In addition to the qualification criteria of R746-360-6A.1.,

a. Non-rate-of-return Incumbent telephone corporations, except Incumbent telephone corporations subject to pricing flexibility pursuant to 54-8b-2.3 shall make Commission approved, aggregate rate reductions for public telecommunications services, provided in the State of Utah, equal to each incremental increase in USF distribution amounts received after December 1, 1999.

b. Rate-of-return Incumbent telephone corporations shall complete a Commission review of their revenue requirement and public telecommunications services' rate structure prior to any change in their USF distribution which differs from a prior USF distribution, beginning with the USF distribution for December, 1999.

B. Rate [~~Ceiling~~]Floor.[~~---~~]

1. Unless a petition brought pursuant to Subsection (B)(2) is granted, to be eligible for USF subsidization, a telecommunications corporation [may not charge retail rates in excess of the Commission determined] shall charge, at a minimum, the following Affordable Base Rates for basic telecommunications service:

a. As of July 1, 2016:

i. \$18 per residential line; and

ii. \$27.50 per business line.

b. As of July 1, 2017:

i. \$20 per residential line; and

ii. \$29.50 per business line.

2.a. A telecommunications corporation may petition the Commission to deviate from the Affordable Base Rates set forth in this Subsection (B)(1).

b. A telecommunications corporation that files a petition under this Subsection (B)(2)(a) has the burden to demonstrate that the Affordable Base Rate is not reasonable in the particular geographic area served [or vary from the terms and conditions determined by the Commission for other telecommunications services for which it receives Universal Service Fund support].

C. Lifeline Requirement -- A telecommunications corporation may qualify to receive distributions from the fund only if it offers Lifeline service on terms and conditions prescribed by the Commission.

D. Exclusion of Resale Providers -- Only facilities-based providers, will be eligible to receive support from the fund. Where service is provided through one telecommunications corporation's resale of another telecommunications corporation's service, support may be received by the latter only.

KEY: public utilities, telecommunications, universal service fund, affordable base rate

Date of Enactment or Last Substantive Amendment: [July 8, 2015] 2016

Notice of Continuation: November 13, 2013

Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; [54-7-25; 54-7-26; 54-8b-12; 54-8b-15] 54-8b-15(8)

Workforce Services, Employment Development **R986-400-402** General Provisions

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 40315

FILED: 04/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to include social security disability (SSI) terminations and all reasons for suspension as disqualifying for General Assistance (GA).

SUMMARY OF THE RULE OR CHANGE: It was recently discovered that the rule did not cover one of the reasons a SSI benefit may be suspended. This was an oversight. It is now added that if SSI benefits are suspended for fraud or terminated for the reasons listed in the CFR, the client is not eligible for GA.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-3-401 and Section 35A-3-402 and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There will be no additional costs due to this change. Since this is the first case the Department has seen like this, it is anticipated any savings will be minimal. There will be no costs because a client will not be eligible if SSI suspends or terminates benefits as outlined in the CFR. This will result in fewer people being eligible for GA, not more.

♦ **LOCAL GOVERNMENTS:** There are no costs or savings to local governments. It is anticipated this change will be within the Department's current budget.

♦ **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 because there are no costs or fees associated with these proposed changes.

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 05/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

AUTHORIZED BY: Jon Pierpont, Executive Director

R986. Workforce Services, Employment Development.

R986-400. General Assistance.

R986-400-402. General Provisions.

(1) GA provides temporary financial assistance to single persons and married couples who have no dependent children residing with them 50% or more of the time and who have a physical or mental health impairment that prevents basic work activities in any occupation. This means that the applicant or client is unable to work any number of hours at all in any occupation.

(2) The impairment must be expected to last at least 60 days after the date of application.

(3) Drug addiction and/or alcoholism alone is insufficient to meet the impairment requirement for GA as defined in Public Law 104-121.

(4) Married couples meet the impairment criteria and time limits on an individual basis. If the household includes an ineligible spouse, the income and assets of the ineligible spouse must be counted when determining the eligibility of the household and the ineligible spouse will not be included in the financial payment. The household can consist of any combination of impaired, non-impaired, short term disabled, or long term disabled as long as at least one spouse meets the eligibility requirements.

(5) GA is only available to a client who is at least 18 years old or legally or factually emancipated. Factual emancipation means the client has lived independently from his or her parents or guardians and has been economically self-supporting for a period of at least twelve consecutive months, and the client's parents have refused financial support.

(6) A client claiming factual emancipation must cooperate with the Department in locating his or her parents. The parents, once located, will be contacted by the Department. If the parents continue to refuse to support the client, a referral will be made to ORS to enforce the parents' child support obligations.

(7) A person eligible for Bureau of Indian Affairs assistance is not eligible for GA financial assistance.

(8) In addition to the residency requirements in R986-100-106, residents in a group home that is administered under a contract with a governmental unit or administered by a governmental unit are not eligible for financial assistance.

(9) An individual receiving SSI is not eligible for GA. This ineligibility includes persons whose SSI is in suspense status, has been terminated, or who is not eligible for SSI due to the imposition of a penalty as defined by 20 CFR Part 416.132[+]0 through 416.13[3]40. An individual whose SSI benefits are suspended because he or she has not attained U.S. citizenship, may be eligible for GA if the individual actively pursues U.S. citizenship to regain SSI eligibility. If SSI was terminated because the client's disability ended, the client may be eligible for GA if an unrelated physical or mental health condition develops and is verified.

KEY: general assistance

Date of Enactment or Last Substantive Amendment:
~~November 1, 2013~~ 2016

Notice of Continuation: September 3, 2015

Authorizing, and Implemented or Interpreted Law: 35A-3-401; 35A-3-402

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends May 31, 2016.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (*example*). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (.) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Division of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through August 29, 2016, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

Insurance, Administration
R590-272
Commission Compensation Reporting

NOTICE OF CHANGE IN PROPOSED RULE
(Second)

DAR FILE NO.: 39755
 FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes clarify that this rule applies only to a health benefit plan sold to a large customer. The rule is being changed based on revisions made in H.B. 36, passed during the 2016 General Session.

SUMMARY OF THE RULE OR CHANGE: The changes clarify that this rule applies only to a health benefit plan sold to a large customer based on revisions made to Subsection 31A-23a-501(4)(f) in H.B. 36, passed during the 2016 General Session. (DAR NOTE: This is the second change in proposed rule (CPR) for Rule R590-272. The original proposed new rule upon which the first CPR was based was published in the October 1, 2015, issue of the Utah State Bulletin, on page 72. The first CPR upon which this second CPR is based was published in the January 15, 2016, issue of the Utah State Bulletin, on page 124. Underlining in the rule below indicates text that has been added since the publication of the proposed new rule and the first CPR mentioned above; strike out indicates text that has been deleted. You must view the first CPR, the second CPR, and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-201(3) and Subsection 31A-23a-501(4)(f)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to state budget because the rule governs only reports required for producers who sell a health benefit plan to certain large customers.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local governments because the rule governs only reports required for producers who sell a health benefit plan to certain large customers.
- ◆ **SMALL BUSINESSES:** Small businesses may see slight savings because of a reduction in administrative costs to producers and consultants who have sold a health benefit plan to a large customer that is the state; a political subdivision of the state; a county, city, town, or local district; or a quasi-public corporation (Subsection 31A-23a-501(4)(f)(l)).

- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Large employers may see slight savings because of a reduction in administrative costs to producers and consultants who have sold a health benefit plan to a large customer that is the state; a political subdivision of the state; a county, city, town, or local district; or a quasi-public corporation (Subsection 31A-23a-501(4)(f)(l)).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any affected persons because there is no cost to comply with the changes to the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change is required due to actions taken by the Utah Legislature in H.B. 36, passed during the 2016 General Session.

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 05/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 06/07/2016

AUTHORIZED BY: Steve Gooch, Information Specialist

R590. Insurance, Administration.

R590-272. Commission Compensation Reporting.

R590-272-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(3) and 31A-23a-501(4)(f) that authorizes the commissioner to adopt a rule to educate producers, consultants, and affiliates of producers how to provide an annual accounting of commission compensation as a result of the sale or placement of [insurance]a health benefit plan to a large customer.

R590-272-2. Scope.

This rule applies to all producers, consultants, and affiliates of producers selling or placing [insurance]a health benefit plan to a large customer described in Subsection 31A-23a-501(4)(f)(A), (B), (C) or (D).

R590-272-3. Purpose.

The purpose of this rule is to create a format, other than an Internal Revenue Service Form 5500, to provide an annual reporting of commission compensation from an insurer or a third party administrator associated with the sale or placement of ~~[insurance]~~ a health benefit plan to a large customer.

R590-272-4. Annual Accounting of All Compensation for Sale or Placement of Insurance to a Large Customer.

(1) Any producer, consultant, or affiliate of a producer selling or placing ~~[insurance]~~ a health benefit plan to a large customer described in Subsection 31A-23a-501(4)(f)(A), (B), (C) or (D), shall provide the large customer an annual accounting of all commission compensation that has been received or shall be received from an insurer or third party administrator as the result of a sale or placement.

(2) The accounting shall be provided ~~[within fifteen days following the last day of the plan year]~~ prior to the last day of the seventh month after the plan year ends.

(3) A copy of this annual accounting must be kept on file from inception until three years after the completion of the contract, and must be made available upon request of the commissioner.

(4) The annual accounting must include, at minimum, one of the following:

(a) a completed Department of the Treasury Internal Revenue Form 5500, Annual Return / Report of Employee Benefit Plan, and its relevant attachments for the applicable plan year; or

(b) the following:

- (i) plan sponsor;
- (ii) name of plan;
- (iii) name and address of the plan administrator;
- (iv) name of the insurance company;
- (v) effective date of the plan;
- (vi) number of active participants at beginning of the plan year;

(vii) total commission compensation paid or due during the plan year, and shall include on separate reporting lines:

- (A) commissions;
- (B) overrides;
- (C) bonuses;
- (D) contingent bonuses; or
- (E) contingent commissions; and
- (F) the name and address of each producer, consultant or affiliate to whom commissions are paid or due; and

(viii) signature lines for the plan administrator and the employer/plan sponsor for each producer, consultant or affiliate declaration[; ~~or~~

~~— (b) a completed Department of the Treasury Internal Revenue Form 5500(2014), Annual Return / Report of Employee Benefit Plan, version 140124].~~

(5) Each item listed in R590-272-4(4)([a]b)(vii) shall be separately identified in the report.

(6) A sample form, The Large Customer Compensation Disclosure Form, is available at the department and online at <http://www.insurance.utah.gov/legalresources/currentrules.html>.

R590-272-5. Enforcement Date.

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

R590-272-6. Severability.

If any provision or clause of this rule or its application to any person or situation is held 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 provisions of this rule are declared to be severable.

KEY: agency compensation, agent compensation, insurance, producer compensation

**Date of Enactment or Last Substantive Amendment: 2016
Authorizing, and Implemented or Interpreted Law: 31A-2-201(3); 31A-23a-501(4)**

End of the Notices of Changes in Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Division of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-505**

Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 40301

FILED: 04/06/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to ensure agency compliance with reporting requirements found in 42 CFR 433.74, and to define participation requirements in the Nursing Facility Non-State Government-Owned Upper Payment Limit (NF NSGO UPL) program.

SUMMARY OF THE RULE OR CHANGE: This rule specifies source-of-seed payment requirements that comply with 42 CFR 433.74(c). It also specifies how to notify the Division of Medicaid and Health Financing (DMHF) with the intent to participate in the NF NSGO UPL program and includes

participation requirements. **(DAR NOTE: This emergency rule is now superseded by the new emergency rule for Rule R414-505 under DAR No. 40318 that is effective as of 04/15/2016 in this issue, May 1, 2016, of the Bulletin.)**

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 433.74 and Section 26-1-5 and Section 26-18-3

EMERGENCY RULE REASON AND JUSTIFICATION:
REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
JUSTIFICATION: This rule is necessary to comply with 42 CFR 433.74(c). The Department needs the rule to specify source-of-seed payments for the program.

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this rule only complies with reporting requirements found in the Code of Federal Regulations (CFR). It neither affects Medicaid services nor provider reimbursement.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because this rule only complies with reporting requirements found in the CFR. It neither affects Medicaid services nor provider reimbursement.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this rule only complies with reporting

requirements found in the CFR. It neither affects Medicaid services nor provider reimbursement.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because this rule only complies with reporting requirements found in the CFR. It neither affects Medicaid services nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to Medicaid recipient because this rule only complies with reporting requirements found in the CFR. It neither affects Medicaid services nor provider reimbursement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because the rule does not change any existing requirements or add any additional requirements for Medicaid providers or 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
◆ Nina Baker by phone at 801-538-9127, by FAX at 801-538-6412, or by Internet E-mail at nabaker@utah.gov

EFFECTIVE: 04/06/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-505. Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program.

R414-505-1. Introduction and Authority.

This rule defines the participation requirements in the Nursing Care Facility Non-State Government-Owned Upper Payment Limit (NF NSGO UPL) program. This rule is authorized under Attachment 4.19-D of the Utah Medicaid State Plan, and by Sections 26-1-5 and 26-18-3.

R414-505-2. Definitions.

In addition to the following, the definitions in Section 26-18-502 and Attachment 4.19-D of the Medicaid State Plan apply to this rule:

(1) "Non-state governmental entity (NSGE)" means a hospital authority, hospital district, healthcare district, special services district, county, or city.

(2) "Non-state government-owned (NSGO) nursing care facility" means a nursing care facility where an NSGE holds the license and is party to the facility's Medicaid contract.

(3) "Eligible nursing care facilities" means facilities that are NSGO nursing facilities which comply with the requirements described in this rule.

(4) "Public funds" means funds derived from taxes, assessments, levies, investments, governmental operations, and revenue generated by a special services district and other public revenues within the sole and unrestricted control of an NSGE that holds the license and is party to the Medicaid contract of the eligible nursing care facility. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds and may not be derived from an impermissible source, including recycled Medicaid payments, federal money precluded from use as the non-federal share, impermissible taxes, and non-bona fide provider-related donations.

R414-505-3. Nursing Care Facility Non-State Government-Owned Upper Payment Limit Payment Program.

The NF NSGO UPL supplemental payment program is governed by Attachment 4.19-D of the Medicaid State Plan.

R414-505-4. Notice of Intent to Participate.

This section applies to all nursing care facilities that, as of the effective date of this rule, have not had a state licensing determination of approval by state licensing for a change of ownership for Medicaid certification and, as applicable for Medicare-certified facilities, by Medicare.

(1) Required application. Before an NSGO nursing care facility may receive supplemental payments, the appropriate NSGE must certify certain facts, representations, and assurances regarding program requirements. The NSGE must certify the required facts using the "NF NSGO UPL Program Notice of Participation Form", prescribed by the Medicaid agency.

(2) The required application must be mailed to the correct address, as follows:

Via United States Postal Service:

Utah Department of Health

DMHF, BCRP

Attn: Reimbursement Unit

P.O. Box 143102

Salt Lake City, UT 84114-3102

Via United Parcel Service, Federal Express, and similar:

Utah Department of Health

DMHF, BCRP

Attn: Reimbursement Unit

288 North 1460 West

Salt Lake City, UT 84116-3231

(3) The "NSGO NF UPL Program Notice of Participation Form" must be complete and accurate or it will be returned. Incomplete forms shall not be considered as providing notice of intent to participate.

R414-505-5. Requirements to Participate in the NF NSGO UPL Program.

(1)(a) The nursing care facility must be owned by an NSGE.

(b) Prior to the Medicaid agency initiating a contract, the nursing care facility owner shall provide appropriate legal evidence, as determined by the Medicaid agency, demonstrating the nursing care facility is owned by an NSGE.

(c) A nursing care facility participating in this supplemental payment program must notify the Reimbursement Unit within the Bureau of Coverage and Reimbursement Policy, at the address noted above, of changes in ownership that may affect the nursing care facility's continued eligibility within 14 calendar days after such change.

(2) The Utah Medicaid provider enrollment process must be complete.

(3)(a) The NSGE must have an NF NSGO UPL contract in effect, signed by the Utah Department of Health's authorized representative.

(b) The following applies to all nursing care facilities that, as of the effective date of this rule, have not had a state licensing determination of approval by state licensing for a change of ownership for Medicaid certification and, as applicable for Medicare-certified facilities, by Medicare.

The effective date for a NF NSGO UPL contract for a nursing care facility to participate in the NF NSGO UPL supplemental payments shall be the latter of the following dates:

(i) The effective date of the Change of Ownership (CHOW);

(ii) The postmark date of the Notice of Intent to Participate as noted in Section 4;

(iii) The first date of the calendar quarter in which the determination to approve the CHOW was completed; or

(iv) The first date of the calendar quarter in which the Medicaid provider enrollment was completed.

(4) A nursing care facility may not receive monies from the NF NSGO UPL supplemental payment program until a contract is in effect.

(5) Once a contract is in effect, the payments will be made in accordance with Attachment 4.19-D of the Medicaid State Plan and the NF NSGO UPL contract.

(6)(a) State funding for supplemental payments authorized in this rule is limited to and obtained through Intergovernmental Transfer (IGT) Agreements of public funds from the NSGE that holds the license and is party to the Medicaid contract of the nursing care facility.

(b) The NSGE shall ensure that the funds provided to the Department for the non-federal share, via IGT, meet the requirements of 42 CFR 433, Subpart B.

R414-505-6. Intergovernmental Transfer (IGT) Certification.

In order to comply with 42 CFR 433.74, with its IGT, using the "IGT Certification Form" prescribed by the Medicaid agency, the NSGE shall specify the dollar amount and certify the source of the IGT funds. The information provided as supporting documentation shall furnish a detailed description and legal basis for each IGT being reported.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: April 6, 2016
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-505
Participation in the Nursing Facility
Non-State Government-Owned Upper
Payment Limit Program

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 40318

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to ensure agency compliance with reporting requirements found in 42 CFR 433.74 and to define participation requirements in the Nursing Facility Non-State Government-Owned Upper Payment Limit (NF NSGO UPL) program. **(DAR NOTE: This emergency rule supersedes the emergency rule for Rule R414-505 under DAR No. 40301 that was effective as of 04/06/2016 in this issue, May 1, 2016, of the Bulletin.)**

SUMMARY OF THE RULE OR CHANGE: This rule specifies source-of-seed payment requirements that comply with 42 CFR 433.74(c). It also specifies how to notify the Division of Medicaid and Health Financing (DMHF) with the intent to participate in the NF NSGO UPL program and includes participation requirements.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 433.74(c) and Section 26-1-5 and Section 26-18-3

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

JUSTIFICATION: This rule is necessary to comply with 42 CFR 433.74(c). The Department needs the rule to specify source-of-seed payments for the program.

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no impact to the state budget because this rule only complies with reporting requirements found in the Code of Federal Regulations (CFR). It neither affects Medicaid services nor provider reimbursement.

- ◆ LOCAL GOVERNMENTS: There is no impact to local governments because this rule only complies with reporting requirements found in the CFR. It neither affects Medicaid services nor provider reimbursement.
- ◆ SMALL BUSINESSES: There is no impact to small businesses because this rule only complies with reporting requirements found in the CFR. It neither affects Medicaid services nor provider reimbursement.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid recipients because this rule only complies with reporting requirements found in the CFR. It neither affects Medicaid services nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or Medicaid recipient because this rule only complies with reporting requirements found in the CFR. It neither affects Medicaid services nor provider reimbursement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because the rule does not change any existing requirements or add any additional requirements for Medicaid providers or 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

EFFECTIVE: 04/15/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-505. Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program.

R414-505-1. Introduction and Authority.

This rule defines the participation requirements in the Nursing Care Facility Non-State Government-Owned Upper Payment Limit (NF NSGO UPL) program. This rule is authorized under Attachment 4.19-D of the Utah Medicaid State Plan, and by Sections 26-1-5 and 26-18-3.

R414-505-2. Definitions.

In addition to the following, the definitions in Section 26-18-502 and Attachment 4.19-D of the Medicaid State Plan apply to this rule:

(1) "Non-state governmental entity (NSGE)" means a hospital authority, hospital district, healthcare district, special services district, county, or city.

(2) "Non-state government-owned (NSGO) nursing care facility" means a nursing care facility where an NSGE holds the license and is party to the facility's Medicaid contract.

(3) "Eligible nursing care facilities" means facilities that are NSGO nursing care facilities which comply with the requirements described in this rule.

(4) "Public funds" means funds derived from taxes, assessments, levies, investments, governmental operations, and revenue generated by a special services district and other public revenues within the sole and unrestricted control of an NSGE that holds the license and is party to the Medicaid contract of the eligible nursing care facility. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds and may not be derived from an impermissible source, including recycled Medicaid payments, federal money precluded from use as the non-federal share, impermissible taxes, and non-bona fide provider-related donations.

R414-505-3. Nursing Care Facility Non-State Government-Owned Upper Payment Limit Payment Program.

The NF NSGO UPL supplemental payment program is governed by Attachment 4.19-D of the Medicaid State Plan.

R414-505-4. Notice of Intent to Participate.

This section applies to all nursing care facilities that, as of the effective date of this rule, have not had a state licensing determination of approval by state licensing for a change of ownership for Medicaid certification.

(1) Required application. Before an NSGO nursing care facility may receive supplemental payments, the appropriate NSGE must certify certain facts, representations, and assurances regarding program requirements. The NSGE must certify the required facts using the "NF NSGO UPL Program Notice of Participation Form", prescribed by the Medicaid agency.

(2) The required application must be mailed to the correct address, as follows:

Via United States Postal Service:

Utah Department of Health

DMHF, BCRP

Attn: Reimbursement Unit

P.O. Box 143102

Salt Lake City, UT 84114-3102

Via United Parcel Service, Federal Express, and similar:

Utah Department of Health

DMHF, BCRP

Attn: Reimbursement Unit

288 North 1460 West

Salt Lake City, UT 84116-3231

(3) The "NSGO NF UPL Program Notice of Participation Form" must be complete and accurate or it will be returned. Incomplete forms shall not be considered as providing notice of intent to participate.

R414-505-5. Requirements to Participate in the NF NSGO UPL Program.

(1)(a) The nursing care facility must be owned by an NSGE.

(b) Prior to the Medicaid agency initiating a contract, the nursing care facility owner shall provide appropriate legal evidence, as determined by the Medicaid agency, demonstrating the nursing care facility is owned by an NSGE.

(c) A nursing care facility participating in this supplemental payment program must notify the Reimbursement Unit within the Bureau of Coverage and Reimbursement Policy, at the address noted above, of changes in ownership that may affect the nursing care facility's continued eligibility within 14 calendar days after such change.

(2) The Utah Medicaid provider enrollment process must be complete.

(3)(a) The NSGE must have an NF NSGO UPL contract in effect, signed by the Utah Department of Health's authorized representative.

(b) The following applies to all nursing care facilities that, as of the effective date of this rule, have not had a state licensing determination of approval by state licensing for a change of ownership for Medicaid certification.

The effective date for a NF NSGO UPL contract for a nursing care facility to participate in the NF NSGO UPL supplemental payments shall be the latter of the following dates:

(i) The effective date of the Change of Ownership (CHOW);

(ii) The postmark date of the Notice of Intent to Participate as noted in Section 4;

(iii) The first date of the calendar quarter in which the determination to approve the CHOW was completed; or

(iv) The first date of the calendar quarter in which the Medicaid provider enrollment was completed.

(4) A nursing care facility may not receive monies from the NF NSGO UPL supplemental payment program until a contract is in effect.

(5) Once a contract is in effect, the payments will be made in accordance with Attachment 4.19-D of the Medicaid State Plan and the NF NSGO UPL contract.

(6)(a) State funding for supplemental payments authorized in this rule is limited to and obtained through Intergovernmental Transfer (IGT) Agreements of public funds from the NSGE that holds the license and is party to the Medicaid contract of the nursing care facility.

(b) The NSGE shall ensure that the funds provided to the Department for the non-federal share, via IGT, meet the requirements of 42 CFR 433, Subpart B.

R414-505-6. Intergovernmental Transfer (IGT) Certification.

In order to comply with 42 CFR 433.74, with its IGT, using the "IGT Certification Form" prescribed by the Medicaid

agency, the NSGE shall specify the dollar amount and certify the source of the IGT funds. The information provided as supporting documentation shall furnish a detailed description and legal basis for each IGT being reported.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: April 15, 2016

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

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-513
Intergovernmental Transfers**

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 40319

FILED: 04/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to specify source-of-seed payment requirements for all Intergovernmental Transfers (IGTs) to comply with reporting requirements found in 42 CFR 433.74(c).

SUMMARY OF THE RULE OR CHANGE: This rule specifies source-of-seed payment requirements for all IGTs to comply with reporting requirements found in 42 CFR 433.74(c).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 433.74(c) and Section 26-1-5 and Section 26-18-3

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

JUSTIFICATION: This rule is necessary to comply with reporting requirements found in 42 CFR 433.74(c).

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no impact to the state budget because this rule only complies with reporting requirements found in the Code of Federal Regulations (CFR). It neither affects Medicaid services nor provider reimbursement.

♦ **LOCAL GOVERNMENTS:** There is no impact to local governments because this rule only complies with reporting requirements found in the CFR. It neither affects Medicaid services nor provider reimbursement.

♦ **SMALL BUSINESSES:** There is no impact to small businesses because this rule only complies with reporting requirements found in the CFR. It neither affects Medicaid services nor provider reimbursement.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid recipients because this rule only complies with reporting requirements found in the CFR. It neither affects Medicaid services nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to Medicaid recipient because this rule only complies with reporting requirements found in the CFR. It neither affects Medicaid services nor provider reimbursement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because the rule does not change any existing requirements or add any additional requirements for Medicaid providers or 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

EFFECTIVE: 04/15/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-513. Intergovernmental Transfers.

R414-513-1. Introduction and Authority.

This rule requires documentation accompanying intergovernmental transfer of funds for use as non-federal share of Medicaid payments or administration costs. This rule is authorized by Sections 26-1-5 and 26-18-3.

R414-513-2. Intergovernmental Transfer (IGT) Certification.

In order to comply with 42 CFR 433.74, with its IGT, using the "IGT Certification Form" prescribed by the Medicaid agency, governmental entities shall specify the dollar amount and certify the source of the IGT funds transferred to the Medicaid agency. The information provided as supporting documentation shall furnish a detailed description and legal basis for each IGT being reported.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: April 15, 2016

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

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.

Health, Disease Control and Prevention, Epidemiology **R386-702** Communicable Disease Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40317
FILED: 04/15/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The "Communicable Disease Rule" is enacted under Section 26-1-30 ("Powers and Duties of Department"), Title 26, Chapter 6 et seq. ("Communicable Disease Control Act"), and under Section 26-23-23b ("Detection of Public Health Emergencies Act"). These provisions require the Department of Health to promote and protect the public's health by identifying, investigating, and controlling diseases that would be detrimental to the community, including those that are naturally occurring and those that may indicate an act of bioterrorism. The "Communicable Disease Rule" defines the conditions that are reportable; specifies who is required to report diseases and how; and explains other specific details as to how the Department of Health is authorized to deal with these types of conditions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comments regarding the "Communicable Disease Rule" were solicited during the last

five-year review; no comments opposing the rule were received at that time. The rule has been updated several times since the last review (typically, it is updated annually), and comments are always solicited from partners including local health department staff (e.g., local health officers, nursing directors, epidemiology staff), hospital infection control practitioners, laboratories, and community physicians; all questions regarding changes to the rule have been appropriately addressed, typically prior to the rule's public comment period starting. No comments have been received that indicate opposition to 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 "Communicable Disease Rule" must be continued in order to enable the Department of Health to continue to promote and protect the public's health as described above, and as required by state statute.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
EPIDEMIOLOGY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Emily Sagers by phone at 801-538-6180, by FAX at 801-538-6540, or by Internet E-mail at esagers@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 04/15/2016

Human Services, Child and Family Services
R512-10

Youth and Mentor Program

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40305
FILED: 04/14/2016

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-4a-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the strengthening of family values, including services that preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to continue to offer the Youth Mentor Program to qualifying individuals.

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

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 04/14/2016

Human Services, Child and Family Services
R512-44

Choose Life Adoption Support Restricted Account

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40306
FILED: 04/14/2016

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-4a-102 authorizes the Division of Child and Family Services to establish rules in order to provide programs and services that support the strengthening of family values, including services that preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to continue to administer the Choose Life Adoption Support Restricted Account.

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

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 04/14/2016

Human Services, Substance Abuse
and Mental Health, State Hospital
R525-8
Forensic Mental Health Facility

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

DAR FILE NO.: 40313
FILED: 04/14/2016

**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-15-105 provides rulemaking authority to the Division of Substance Abuse and Mental Health and thereby its subdivision, the Utah State Hospital.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received on 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: This rule is needed to provide clear guidance on how individuals are admitted to the Utah State Hospital. Therefore, this rule should be continued.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH,
STATE HOSPITAL
UTAH STATE HOSPITAL
PROVO, UT 84603-0270
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov
♦ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

AUTHORIZED BY: Doug Thomas, Director

EFFECTIVE: 04/14/2016

Insurance, Title and Escrow
Commission

R592-15

Submission of a Schedule of Minimum
Charges for Escrow Services

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

DAR FILE NO.: 40300
FILED: 04/06/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-404 requires the Title and Escrow Commission to make rules related to title insurance. Subsection 31A-19a-209(2)(a)(i) requires that title insurers, title agencies, and title producers file a schedule of escrow charges with the commissioner. Rule R592-15 sets forth procedures for those filings.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments during the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Title and Escrow Commission requested and approved Rule R592-15 for continuation. The rule establishes a minimum floor for rates which ensures stability in the industry, and codifies procedures for insurers, agencies, and agents to file those rates.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 04/06/2016

Natural Resources; Forestry, Fire and State Lands

R652-122

County Cooperative Agreements with State for Fire Protection

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40304
FILED: 04/14/2016

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 implements Subsection 65A-8-203(3)(a) and 65A-8-203(3)(b), which require the division to establish minimum standards for a wildland fire ordinance and specify minimum standards for wildland fire training, certification, and wildland fire suppression equipment. This rule is promulgated under general rulemaking authority of Subsection 65A-1-4(2).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the division.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to reduce fire

suppression costs and improve the safety and efficiency of responders to wildland and wildland/urban interface fires. Wildland fires in the urban interface are expensive, as much as ten times the cost of a similar fire in a remote area. A considerable force of ground and aerial resources must be deployed to manage these fires because of the values at risk. These fires are often difficult to control because no precautions have been taken to make homes/communities less susceptible to fire. These fires are particularly dangerous because firefighters are often forced to function outside the limits of their training and equipment. Wildland firefighters are not trained or equipped to fight structure fires and structure firefighters are often not equipped or trained to fight wildland fires. This rule implements Subsections 65A-8-203(3)(a) and 65A-8-203(3)(b), which require the division to establish minimum standards for a wildland fire ordinance and specify minimum standards for wildland fire training, certification, and wildland fire suppression equipment. Therefore, this rule should be continued.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE STE 3520
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiiebarnes@utah.gov

AUTHORIZED BY: Brian Cottam, Director

EFFECTIVE: 04/14/2016

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

**NOTICES OF
FIVE-YEAR REVIEW EXTENSIONS**

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Division of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

EXTENSIONS are governed by Subsection 63G-3-305(6).

Environmental Quality, Air Quality
R307-210
Stationary Sources

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 40294

FILED: 04/04/2016

EXTENSION REASON AND NEW DEADLINE: The Division is requesting an extension for this rule because it cancelled its April board meeting. A five-year Notice of Review and Statement of Continuation will be completed within 120 days of this extension. New deadline: 08/04/2016.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 04/04/2016

End of the Notices of Five-Year Review Extensions Section

NOTICES OF FIVE-YEAR EXPIRATIONS

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

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

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

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

Money Management Council,
Administration

R628-10

Rating Requirements to Be a Permitted
Depository

FIVE-YEAR REVIEW EXPIRATION

DAR FILE NO.: 40303

FILED: 04/12/2016

SUMMARY: The five-year notice of review and statement of continuation was not filed by the deadline, 04/11/2016. Therefore, this rule is expired and removed from the Utah Administrative Code as of 04/12/2016.

EFFECTIVE: 04/12/2016

End of the Notices of Notices of Five Year Expirations Section

NOTICES OF RULE EFFECTIVE DATES

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

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

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

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Commerce

Securities

No. 40206 (AMD): R164-15-3. Notice Filings for Offerings Made Under Tier 2 of Federal Regulation A

Published: 03/01/2016

Effective: 06/29/2016

Crime Victim Reparations

Administration

No. 40148 (NEW): R270-5. Electronic Meetings

Published: 02/15/2016

Effective: 04/06/2016

Education

Administration

No. 40212 (AMD): R277-716. Alternative Language Services for Utah Students

Published: 03/01/2016

Effective: 04/07/2016

Environmental Quality

Waste Management and Radiation Control, Waste Management

No. 40117 (REP): R315-1. Utah Hazardous Waste Definitions and References

Published: 02/01/2016

Effective: 04/15/2016

No. 40118 (REP): R315-2. General Requirements - Identification and Listing of Hazardous Waste

Published: 02/01/2016

Effective: 04/15/2016

No. 40119 (REP): R315-3. Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities

Published: 02/01/2016

Effective: 04/15/2016

No. 40120 (REP): R315-4. Procedures for Decisionmaking

Published: 02/01/2016

Effective: 04/15/2016

No. 40121 (REP): R315-5. Hazardous Waste Generator Requirements

Published: 02/01/2016

Effective: 04/15/2016

No. 40122 (REP): R315-6. Hazardous Waste Transporter Requirements

Published: 02/01/2016

Effective: 04/15/2016

No. 40123 (REP): R315-7. Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities

Published: 02/01/2016

Effective: 04/15/2016

No. 40124 (REP): R315-8. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

Published: 02/01/2016

Effective: 04/15/2016

No. 40125 (REP): R315-9. Emergency Controls

Published: 02/01/2016

Effective: 04/15/2016

No. 40126 (REP): R315-12. Administrative Procedures

Published: 02/01/2016

Effective: 04/15/2016

No. 40127 (REP): R315-13. Land Disposal Restrictions
 Published: 02/01/2016
 Effective: 04/15/2016

No. 40128 (REP): R315-14. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
 Published: 02/01/2016
 Effective: 04/15/2016

No. 40129 (REP): R315-16. Standards for Universal Waste Management
 Published: 02/01/2016
 Effective: 04/15/2016

No. 40130 (REP): R315-50. Appendices
 Published: 02/01/2016
 Effective: 04/15/2016

No. 40105 (NEW): R315-103. Commercial Hazardous Waste Facility Siting Criteria
 Published: 02/01/2016
 Effective: 04/15/2016

No. 40106 (NEW): R315-124. Procedures for Decisionmaking
 Published: 02/01/2016
 Effective: 04/15/2016

No. 40107 (NEW): R315-260. Hazardous Waste Management System
 Published: 02/01/2016
 Effective: 04/15/2016

No. 40108 (NEW): R315-261. General Requirements - Identification and Listing of Hazardous Waste
 Published: 02/01/2016
 Effective: 04/15/2016

No. 40109 (NEW): R315-262. Hazardous Waste Generator Requirements
 Published: 02/01/2016
 Effective: 04/15/2016

No. 40110 (NEW): R315-263. Standards Applicable to Transporters of Hazardous Waste and Standards Applicable to Emergency Control of Spills for All Hazardous Waste Handlers
 Published: 02/01/2016
 Effective: 04/15/2016

No. 40115 (NEW): R315-264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
 Published: 02/01/2016
 Effective: 04/15/2016

No. 40111 (NEW): R315-265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
 Published: 02/01/2016
 Effective: 04/15/2016

No. 40112 (NEW): R315-266. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
 Published: 02/01/2016
 Effective: 04/15/2016

No. 40113 (NEW): R315-268. Land Disposal Restrictions
 Published: 02/01/2016
 Effective: 04/15/2016

No. 40114 (NEW): R315-270. Hazardous Waste Permit Program
 Published: 02/01/2016
 Effective: 04/15/2016

No. 40116 (NEW): R315-273. Standards for Universal Waste Management
 Published: 02/01/2016
 Effective: 04/15/2016

Health

Disease Control and Prevention, Health Promotion
 No. 40210 (AMD): R384-415. Electronic-Cigarette Substance Standards
 Published: 03/01/2016
 Effective: 04/15/2016

Human Services

Child and Family Services
 No. 40195 (AMD): R512-42. Adoption by Relatives
 Published: 03/01/2016
 Effective: 04/07/2016

Insurance

Title and Escrow Commission
 No. 40183 (AMD): R592-11. Title Insurance Producer Annual and Controlled Business Reports
 Published: 02/15/2016
 Effective: 04/15/2016

Tax Commission

Auditing
 No. 39987 (AMD): R865-19S-94. Tips, Gratuities, and Cover Charges Pursuant to Utah Code Ann. Section 59-12-103
 Published: 01/01/2016
 Effective: 04/14/2016

Transportation

Program Development

No. 40056 (AMD): R926-3. Class B and Class C Road

Funds

Published: 02/01/2016

Effective: 04/08/2016

No. 40057 (AMD): R926-13-4. Highways Within the State

That Are Designated as State Scenic Byways

Published: 02/01/2016

Effective: 04/08/2016

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, 2016 through April 15, 2016. 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	

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R33-12-502	Technology Modifications	40047	AMD	02/23/2016	2016-2/7
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R156-37f	Controlled Substance Database Act Rule	39923	AMD	01/07/2016	2015-23/7
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R156-47b	Massage Therapy Practice Act Rule	40000	AMD	03/08/2016	2016-2/8
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R655-11	Requirements for the Design, Construction and Abandonment of Dams	40175	AMD	03/24/2016	2016-4/68
R655-12	Requirements for Operational Dams	40168	5YR	01/29/2016	2016-4/81
R655-12	Requirements for Operational Dams	40176	AMD	03/24/2016	2016-4/71
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R657-9	Taking Waterfowl, Wilson's Snipe and Coot	39978	AMD	02/08/2016	2016-1/66
R657-33	Taking Bear	40093	AMD	03/09/2016	2016-3/490
R657-37	Cooperative Wildlife Management Units for Big Game or Turkey	39977	AMD	02/08/2016	2016-1/68
R657-63	Self Defense Against Wild Animals	40231	5YR	02/29/2016	2016-6/37
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R661-2	Utah Navajo Trust Fund Definitions	40020	NEW	02/29/2016	2016-2/104
R661-3	Utah Navajo Trust Fund Residency Policy	40021	NEW	02/29/2016	2016-2/105
R661-4	Utah Navajo Trust Fund Chapter Projects	40022	NEW	02/29/2016	2016-2/107
R661-5	Utah Navajo Trust Fund Blue Mountain Dine' Community	40023	NEW	02/29/2016	2016-2/109
R661-6	Utah Navajo Trust Fund Higher Education Financial Assistance and Scholarship Program	40024	NEW	02/29/2016	2016-2/110
R661-7	Utah Navajo Trust Fund Housing Projects Policy	40025	NEW	02/29/2016	2016-2/113
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ABBREVIATIONS

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

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<u>activities</u> Education, Administration	40098	R277-494	AMD	03/09/2016	2016-3/6
<u>adjudicative procedures</u> Natural Resources, Forestry, Fire and State Lands	40134	R652-8	5YR	01/14/2016	2016-3/529
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	40136	R652-41	5YR	01/14/2016	2016-3/530
	40135	R652-80	5YR	01/14/2016	2016-3/531
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	40185	R850-30-400	AMD	03/23/2016	2016-4/73
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	40306	R512-44	5YR	04/14/2016	Not Printed
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	40294	R307-210	EXT	04/04/2016	Not Printed
	39844	R307-312-5	AMD	02/04/2016	2015-21/46
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	40188	R651-207	NSC	02/25/2016	Not Printed	
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child care facilities

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	40162	R381-70	AMD	03/30/2016	2016-4/20
	39896	R381-100	AMD	01/31/2016	2015-22/45
	40161	R381-100	AMD	03/30/2016	2016-4/24
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	40054	R527-250	5YR	01/05/2016	2016-3/513

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	39905	R512-100	AMD	01/07/2016	2015-22/65
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	39955	R512-305	AMD	01/21/2016	2015-24/44
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<u>incident reporting</u>						
Public Service Commission, Administration	39934	R746-409	AMD	03/30/2016	2015-23/42	
	39934	R746-409	CPR	03/30/2016	2016-3/504	
<u>Indian affairs</u>						
Heritage and Arts, Indian Affairs	40137	R456-1	5YR	01/14/2016	2016-3/511	
<u>inducement gifts</u>						
Commerce, Real Estate	40041	R162-2f	AMD	02/23/2016	2016-2/11	
<u>initiative</u>						
Education, Administration	40249	R277-402-4	NSC	03/29/2016	Not Printed	
<u>inspections</u>						
Agriculture and Food, Plant Industry	40232	R68-7	5YR	02/29/2016	2016-6/28	
Agriculture and Food, Regulatory Services	39950	R70-530	AMD	02/02/2016	2015-24/12	
Environmental Quality, Waste Management and Radiation Control, Radiation	40004	R313-16-230	NSC	01/15/2016	Not Printed	
	40007	R313-18-11	NSC	01/15/2016	Not Printed	
<u>insurance</u>						
Insurance, Administration	40236	R590-144	5YR	02/29/2016	2016-6/33	
	39945	R590-154	AMD	01/15/2016	2015-23/40	
	40237	R590-177	5YR	02/29/2016	2016-6/33	
	40005	R590-212	REP	03/16/2016	2016-2/99	
Insurance, Title and Escrow Commission	40006	R592-17	NEW	03/16/2016	2016-2/101	

<u>insurance law</u>						
Insurance, Administration	39998	R590-164-6	AMD	02/23/2016	2016-2/97	
	40238	R590-200	5YR	02/29/2016	2016-6/34	
<u>intoxilyzer</u>						
Public Safety, Highway Patrol	39850	R714-500	AMD	01/21/2016	2015-22/144	
<u>investigations</u>						
Public Safety, Peace Officer Standards and Training	40165	R728-409-14	NSC	02/17/2016	Not Printed	
<u>IT bid committee</u>						
Technology Services, Administration	40030	R895-5	AMD	02/23/2016	2016-2/118	
<u>IT standards</u>						
Technology Services, Administration	40030	R895-5	AMD	02/23/2016	2016-2/118	
<u>jail reimbursement</u>						
Governor, Criminal and Juvenile Justice (State Commission on)	39964	R356-1	AMD	02/10/2016	2015-24/14	
<u>land exchanges</u>						
Natural Resources, Forestry, Fire and State Lands	40135	R652-80	5YR	01/14/2016	2016-3/531	
<u>leaders</u>						
Education, Administration	39789	R277-920	NEW	02/08/2016	2015-20/70	
<u>leases</u>						
School and Institutional Trust Lands, Administration	40185	R850-30-400	AMD	03/23/2016	2016-4/73	
<u>liability</u>						
Administrative Services, Finance	39943	R25-15	NEW	01/13/2016	2015-23/6	
<u>license</u>						
Environmental Quality, Radiation Control	39990	R313-19-34	AMD	03/15/2016	2016-1/32	
<u>licensed family child care</u>						
Health, Family Health and Preparedness, Child Care Licensing	39895	R430-90	AMD	01/31/2016	2015-22/57	
	40159	R430-90	AMD	03/30/2016	2016-4/53	
<u>licensing</u>						
Commerce, Occupational and Professional Licensing	40058	R156-3a	5YR	01/07/2016	2016-3/507	
	40071	R156-9a	5YR	01/07/2016	2016-3/508	
	39982	R156-26a	AMD	02/11/2016	2016-1/4	
	39923	R156-37f	AMD	01/07/2016	2015-23/7	
	40000	R156-47b	AMD	03/08/2016	2016-2/8	
	40131	R156-55c	NSC	02/02/2016	Not Printed	
	40164	R156-55d	AMD	03/24/2016	2016-4/10	
	39924	R156-60b-102	AMD	01/07/2016	2015-23/12	
	39911	R156-60c	AMD	01/07/2016	2015-23/14	
	40055	R156-60d	5YR	01/05/2016	2016-3/509	
	40196	R156-67	5YR	02/08/2016	2016-5/24	
	40150	R156-69	5YR	01/21/2016	2016-4/77	
	40208	R156-73	5YR	02/11/2016	2016-5/25	
	39912	R156-78-102	AMD	01/07/2016	2015-23/16	
	39980	R156-82-201	AMD	02/08/2016	2016-1/12	
Environmental Quality, Waste Management and Radiation Control, Radiation	40007	R313-18-11	NSC	01/15/2016	Not Printed	
Human Services, Administration, Administrative Services, Licensing	39913	R501-14	R&R	01/13/2016	2015-23/24	
Public Safety, Driver License	40141	R708-18	5YR	01/19/2016	2016-4/82	
<u>life insurance filings</u>						
Insurance, Administration	40156	R590-226	AMD	03/23/2016	2016-4/60	

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<u>line-of-duty death</u>						
Public Safety, Administration	40001	R698-8	NEW	02/24/2016	2016-2/117	
<u>livestock</u>						
Agriculture and Food, Marketing and Development	40233	R65-8	5YR	02/29/2016	2016-6/28	
<u>local health departments</u>						
Health, Administration	40049	R380-40	AMD	03/02/2016	2016-2/79	
<u>MAGI-based</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	40040	R414-303-8	AMD	03/08/2016	2016-2/89	
<u>management</u>						
Natural Resources, Forestry, Fire and State Lands	40136	R652-41	5YR	01/14/2016	2016-3/530	
<u>marriage and family therapist</u>						
Commerce, Occupational and Professional Licensing	39924	R156-60b-102	AMD	01/07/2016	2015-23/12	
<u>massage apprentice</u>						
Commerce, Occupational and Professional Licensing	40000	R156-47b	AMD	03/08/2016	2016-2/8	
<u>massage therapist</u>						
Commerce, Occupational and Professional Licensing	40000	R156-47b	AMD	03/08/2016	2016-2/8	
<u>massage therapy</u>						
Commerce, Occupational and Professional Licensing	40000	R156-47b	AMD	03/08/2016	2016-2/8	
<u>Medicaid</u>						
Health, Health Care Financing	39983	R410-14	R&R	02/10/2016	2016-1/43	
Health, Health Care Financing, Coverage and Reimbursement Policy	40043	R414-1-5	AMD	03/08/2016	2016-2/85	
	39985	R414-1A	AMD	03/08/2016	2016-1/56	
	40180	R414-2B	AMD	04/01/2016	2016-4/30	
	40181	R414-320	5YR	02/01/2016	2016-4/78	
	40301	R414-505	EMR	04/06/2016	Not Printed	
	40318	R414-505	EMR	04/15/2016	Not Printed	
	39914	R414-512	NEW	01/11/2016	2015-23/20	
	40319	R414-513	EMR	04/15/2016	Not Printed	
<u>medical use advisory committee</u>						
Environmental Quality, Waste Management and Radiation Control, Radiation	40230	R313-27	NSC	03/08/2016	Not Printed	
<u>medical use of radiation</u>						
Environmental Quality, Waste Management and Radiation Control, Radiation	40230	R313-27	NSC	03/08/2016	Not Printed	
<u>mental health</u>						
Commerce, Occupational and Professional Licensing	39911	R156-60c	AMD	01/07/2016	2015-23/14	
Human Services, Substance Abuse and Mental Health, State Hospital	40313	R525-8	5YR	04/14/2016	Not Printed	
<u>migratory birds</u>						
Natural Resources, Wildlife Resources	39978	R657-9	AMD	02/08/2016	2016-1/66	
<u>minimum standards</u>						
Natural Resources, Forestry, Fire and State Lands	40304	R652-122	5YR	04/14/2016	Not Printed	
<u>misleading names</u>						
Insurance, Administration	39945	R590-154	AMD	01/15/2016	2015-23/40	
<u>motor vehicle record</u>						
Public Safety, Driver License	40147	R708-44	5YR	01/19/2016	2016-4/85	

<u>motor vehicle safety</u>					
Public Safety, Highway Patrol	40197	R714-160	EXT	02/08/2016	2016-5/29
	40198	R714-161	EXT	02/08/2016	2016-5/29
	40199	R714-162	EXT	02/08/2016	2016-5/29
<u>motor vehicles</u>					
Commerce, Administration	40293	R151-14	5YR	03/31/2016	2016-8/92
Public Safety, Driver License	40143	R708-20	5YR	01/19/2016	2016-4/83
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Natural Resources, Parks and Recreation	40081	R651-222	5YR	01/07/2016	2016-3/524
<u>multiple stage bidding</u>					
Administrative Services, Purchasing and General Services	40048	R33-6-114	AMD	02/23/2016	2016-2/6
<u>national register</u>					
Heritage and Arts, History	40187	R455-6	5YR	02/02/2016	2016-5/26
<u>Native American remains</u>					
Heritage and Arts, Indian Affairs	40137	R456-1	5YR	01/14/2016	2016-3/511
<u>natural gas pipeline safety</u>					
Public Service Commission, Administration	39934	R746-409	AMD	03/30/2016	2015-23/42
	39934	R746-409	CPR	03/30/2016	2016-3/504
<u>natural resources</u>					
Natural Resources, Forestry, Fire and State Lands	40136	R652-41	5YR	01/14/2016	2016-3/530
<u>new source review</u>					
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<u>nicotine</u>					
Health, Disease Control and Prevention, Health Promotion	40210	R384-415	AMD	04/15/2016	2016-5/8
<u>nonattainment</u>					
Environmental Quality, Air Quality	40193	R307-403-2	NSC	02/25/2016	Not Printed
<u>noxious weeds</u>					
Agriculture and Food, Plant Industry	39965	R68-9	AMD	02/02/2016	2015-24/8
<u>nuclear medicine</u>					
Environmental Quality, Waste Management and Radiation Control, Radiation	40010	R313-32-2	NSC	01/15/2016	Not Printed
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Environmental Quality, Water Quality	39981	R317-1-3	AMD	02/25/2016	2016-1/40
<u>occupational licensing</u>					
Commerce, Occupational and Professional Licensing	40052	R156-46b	5YR	01/05/2016	2016-3/509
	40131	R156-55c	NSC	02/02/2016	Not Printed
<u>off-highway vehicles</u>					
Natural Resources, Parks and Recreation	40087	R651-401	5YR	01/07/2016	2016-3/526
	40088	R651-405	5YR	01/07/2016	2016-3/526
	40089	R651-406	5YR	01/07/2016	2016-3/527
<u>offset</u>					
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<u>oil and gas law</u>					
Natural Resources, Oil, Gas and Mining; Oil and Gas	40302	R649-1-1	NSC	04/15/2016	Not Printed
<u>operating permit</u>					
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	40162	R381-70	AMD	03/30/2016	2016-4/20	
<u>out-of-home care</u>						
Human Services, Child and Family Services	39955	R512-305	AMD	01/21/2016	2015-24/44	
<u>ozone</u>						
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	39845	R307-328-4	AMD	02/04/2016	2015-21/47	
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Transportation, Operations, Traffic and Safety	39941	R920-4	AMD	01/07/2016	2015-23/46	
<u>parks</u>						
Natural Resources, Parks and Recreation	40059	R651-201	5YR	01/07/2016	2016-3/513	
	40063	R651-205	5YR	01/07/2016	2016-3/515	
	40064	R651-206	5YR	01/07/2016	2016-3/516	
	40091	R651-206	NSC	02/02/2016	Not Printed	
	40074	R651-215	5YR	01/07/2016	2016-3/520	
	40076	R651-217	5YR	01/07/2016	2016-3/522	
	40078	R651-219	5YR	01/07/2016	2016-3/523	
	40080	R651-221	5YR	01/07/2016	2016-3/524	
	40065	R651-611	5YR	01/07/2016	2016-3/527	
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Health, Center for Health Data, Health Care Statistics	40179	R428-15	AMD	03/25/2016	2016-4/48	
<u>PCN</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	40181	R414-320	5YR	02/01/2016	2016-4/78	
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Commerce, Occupational and Professional Licensing	39982	R156-26a	AMD	02/11/2016	2016-1/4	
<u>per diem allowances</u>						
Administrative Services, Finance	40042	R25-7-10	AMD	02/23/2016	2016-2/4	
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Health, Administration	40049	R380-40	AMD	03/02/2016	2016-2/79	
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Natural Resources, Wildlife Resources	40231	R657-63	5YR	02/29/2016	2016-6/37	
Transportation, Operations, Traffic and Safety	39941	R920-4	AMD	01/07/2016	2015-23/46	
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Agriculture and Food, Plant Industry	40232	R68-7	5YR	02/29/2016	2016-6/28	
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Commerce, Occupational and Professional Licensing	40196	R156-67	5YR	02/08/2016	2016-5/24	
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Public Service Commission, Administration	40292	R746-409	5YR	03/31/2016	2016-8/94	
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Agriculture and Food, Plant Industry	40200	R68-18	5YR	02/08/2016	2016-5/23	
<u>plumbers</u>						
Commerce, Occupational and Professional Licensing	40131	R156-55c	NSC	02/02/2016	Not Printed	
<u>plumbing</u>						
Commerce, Occupational and Professional Licensing	40131	R156-55c	NSC	02/02/2016	Not Printed	

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Environmental Quality, Air Quality	39849	R307-110-28	AMD	02/04/2016	2015-21/45	
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Navajo Trust Fund, Trustees	40026	R661-8	NEW	02/29/2016	2016-2/115	
<u>presumptive eligibility</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	40040	R414-303-8	AMD	03/08/2016	2016-2/89	
<u>principals</u>						
Education, Administration	39997	R277-920-3	AMD	02/08/2016	2016-1/20	
	40286	R277-920-4	NSC	04/05/2016	Not Printed	
<u>printing</u>						
Environmental Quality, Air Quality	40225	R307-351-4	NSC	03/11/2016	Not Printed	
<u>procedures</u>						
Crime Victim Reparations, Administration	40148	R270-5	NEW	04/06/2016	2016-4/14	
<u>procurement</u>						
Capitol Preservation Board (State), Administration	40092	R131-4	5YR	01/11/2016	2016-3/507	
<u>professional competency</u>						
Education, Administration	40285	R277-505	5YR	03/30/2016	2016-8/93	
Money Management Council, Administration	40303	R628-10	EXD	04/12/2016	Not Printed	
<u>professional education</u>						
Education, Administration	40250	R277-507-1	NSC	03/29/2016	Not Printed	
<u>PSD</u>						
Environmental Quality, Air Quality	39846	R307-405-3	AMD	02/04/2016	2015-21/48	
<u>public assistance overpayments</u>						
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Administrative Services, Facilities Construction and Management	40226	R23-19	NSC	03/11/2016	Not Printed	
Capitol Preservation Board (State), Administration	40092	R131-4	5YR	01/11/2016	2016-3/507	
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Environmental Quality, Waste Management and Radiation Control, Radiation	40007	R313-18-11	NSC	01/15/2016	Not Printed
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Environmental Quality, Radiation Control	39989	R313-15	AMD	03/15/2016	2016-1/29
Environmental Quality, Waste Management and Radiation Control, Radiation	40003	R313-15	NSC	01/15/2016	Not Printed
	40007	R313-18-11	NSC	01/15/2016	Not Printed
	40008	R313-21	NSC	01/15/2016	Not Printed
	40009	R313-22	NSC	01/15/2016	Not Printed
	40010	R313-32-2	NSC	01/15/2016	Not Printed
	40011	R313-70	NSC	01/15/2016	Not Printed

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Environmental Quality, Waste Management and Radiation Control, Radiation	40259	R313-26	5YR	03/10/2016	2016-7/63
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Environmental Quality, Waste Management and Radiation Control, Radiation	40010	R313-32-2	NSC	01/15/2016	Not Printed
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	40184	R850-50	NSC	02/17/2016	Not Printed

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Agriculture and Food, Regulatory Services	40268	R70-330	5YR	03/16/2016	2016-8/91
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Commerce, Real Estate	40041	R162-2f	AMD	02/23/2016	2016-2/11
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Environmental Quality, Radiation Control	39990	R313-19-34	AMD	03/15/2016	2016-1/32
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	40167	R655-11	5YR	01/29/2016	2016-4/81
	40175	R655-11	AMD	03/24/2016	2016-4/68
	40168	R655-12	5YR	01/29/2016	2016-4/81
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Navajo Trust Fund, Trustees	40021	R661-3	NEW	02/29/2016	2016-2/105
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Health, Family Health and Preparedness, Child Care Licensing	39897	R430-50	AMD	01/31/2016	2015-22/52
	40160	R430-50	AMD	03/30/2016	2016-4/49
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Administrative Services, Purchasing and General Services	40048	R33-6-114	AMD	02/23/2016	2016-2/6
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<u>right-of-way</u>					
Transportation, Preconstruction	39988	R930-7	AMD	02/23/2016	2016-1/77
<u>risk adjuster plan operation</u>					
Insurance, Administration	40271	R590-260	5YR	03/18/2016	2016-8/94
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Transportation, Operations, Traffic and Safety	39941	R920-4	AMD	01/07/2016	2015-23/46
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Transportation, Program Development	40056	R926-3	AMD	04/08/2016	2016-3/492
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Fair Corporation (Utah State), Administration	40220	R325-1	5YR	02/23/2016	2016-6/29
	40221	R325-2	5YR	02/23/2016	2016-6/30
	40222	R325-3	5YR	02/23/2016	2016-6/30
	40223	R325-4	5YR	02/23/2016	2016-6/31
	40224	R325-5	5YR	02/23/2016	2016-6/32
Health, Disease Control and Prevention, Epidemiology	39952	R386-702	AMD	02/11/2016	2015-24/17
	40317	R386-702	5YR	04/15/2016	Not Printed
Natural Resources, Forestry, Fire and State Lands	40138	R652-2	5YR	01/14/2016	2016-3/529
Public Service Commission, Administration	39934	R746-409	AMD	03/30/2016	2015-23/42
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Environmental Quality, Waste Management and Radiation Control, Radiation	40003	R313-15	NSC	01/15/2016	Not Printed
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Public Safety, Highway Patrol	40197	R714-160	EXT	02/08/2016	2016-5/29
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<u>San Juan County</u>						
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<u>satellite</u>						
Education, Administration	40284	R277-482	5YR	03/30/2016	2016-8/93	
<u>scenic byways</u>						
Transportation, Program Development	40057	R926-13-4	AMD	04/08/2016	2016-3/493	
<u>scholarships</u>						
Navajo Trust Fund, Trustees	40024	R661-6	NEW	02/29/2016	2016-2/110	
Regents (Board Of), Administration	40246	R765-608	NSC	03/29/2016	Not Printed	
<u>school</u>						
Education, Administration	40249	R277-402-4	NSC	03/29/2016	Not Printed	
<u>school grading accountability</u>						
Education, Administration	39984	R277-497	AMD	02/08/2016	2016-1/13	
<u>school improvement</u>						
Education, Administration	39997	R277-920-3	AMD	02/08/2016	2016-1/20	
	40286	R277-920-4	NSC	04/05/2016	Not Printed	
<u>school leader</u>						
Education, Administration	40286	R277-920-4	NSC	04/05/2016	Not Printed	
<u>school leaders</u>						
Education, Administration	39997	R277-920-3	AMD	02/08/2016	2016-1/20	
<u>school personnel</u>						
Education, Administration	40248	R277-107-6	NSC	03/29/2016	Not Printed	
<u>school reports</u>						
Education, Administration	39984	R277-497	AMD	02/08/2016	2016-1/13	
<u>schools</u>						
Education, Administration	39789	R277-920	NEW	02/08/2016	2015-20/70	
<u>sealed bidding</u>						
Administrative Services, Purchasing and General Services	40048	R33-6-114	AMD	02/23/2016	2016-2/6	
<u>securities regulation</u>						
Money Management Council, Administration	40229	R628-16	5YR	02/26/2016	2016-6/36	
<u>self insurance plans</u>						
Public Safety, Driver License	40142	R708-19	5YR	01/19/2016	2016-4/82	
<u>smoke</u>						
Regents (Board Of), University of Utah, Administration	40153	R805-5	5YR	01/25/2016	2016-4/85	
<u>smoking</u>						
Regents (Board Of), University of Utah, Administration	40153	R805-5	5YR	01/25/2016	2016-4/85	
<u>social services</u>						
Human Services, Administration	40050	R495-862	5YR	01/04/2016	2016-3/512	
Human Services, Child and Family Services	39939	R512-301	AMD	01/07/2016	2015-23/35	
	39955	R512-305	AMD	01/21/2016	2015-24/44	
<u>source materials</u>						
Environmental Quality, Waste Management and Radiation Control, Radiation	40008	R313-21	NSC	01/15/2016	Not Printed	

<u>space heaters</u> Administrative Services, Facilities Construction and Management	40226	R23-19	NSC	03/11/2016	Not Printed
<u>special education</u> Education, Administration	40274	R277-752	EMR	03/18/2016	2016-8/87
<u>special events</u> Transportation, Operations, Traffic and Safety	39941	R920-4	AMD	01/07/2016	2015-23/46
<u>specific licenses</u> Environmental Quality, Waste Management and Radiation Control, Radiation	40009	R313-22	NSC	01/15/2016	Not Printed
<u>standards</u> Education, Administration	40252	R277-700-7	NSC	03/29/2016	Not Printed
Health, Center for Health Data, Vital Records and Statistics	39817	R436-13	AMD	02/17/2016	2015-21/88
Health, Disease Control and Prevention, Health Promotion	40210	R384-415	AMD	04/15/2016	2016-5/8
<u>state employees</u> Administrative Services, Finance	40042 39943	R25-7-10 R25-15	AMD NEW	02/23/2016 01/13/2016	2016-2/4 2015-23/6
<u>state lands</u> Heritage and Arts, Indian Affairs	40137	R456-1	5YR	01/14/2016	2016-3/511
<u>state parole inmates</u> Governor, Criminal and Juvenile Justice (State Commission on)	39964	R356-1	AMD	02/10/2016	2015-24/14
<u>state probationary inmates</u> Governor, Criminal and Juvenile Justice (State Commission on)	39964	R356-1	AMD	02/10/2016	2015-24/14
<u>state register</u> Heritage and Arts, History	40187	R455-6	5YR	02/02/2016	2016-5/26
<u>statewide online education program</u> Education, Administration	39996	R277-726	AMD	02/08/2016	2016-1/15
<u>stationary sources</u> Environmental Quality, Air Quality	40294	R307-210	EXT	04/04/2016	Not Printed
<u>stock brokers</u> Money Management Council, Administration	40229	R628-16	5YR	02/26/2016	2016-6/36
<u>student achievement</u> Education, Administration	40097	R277-404	NSC	02/02/2016	Not Printed
<u>student competency</u> Education, Administration	40253	R277-702-4	NSC	03/29/2016	Not Printed
<u>student participation</u> Education, Administration	40098	R277-494	AMD	03/09/2016	2016-3/6
<u>students' rights</u> Education, Administration	40251	R277-616-3	NSC	03/29/2016	Not Printed
<u>substance use disorder counselors</u> Commerce, Occupational and Professional Licensing	40055	R156-60d	5YR	01/05/2016	2016-3/509
<u>surviving spouse trust fund</u> Public Safety, Administration	40001	R698-8	NEW	02/24/2016	2016-2/117

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Governor, Economic Development	40027	R357-13	NEW	03/14/2016	2016-2/76	
<u>tax exemptions</u>						
Tax Commission, Auditing	39987	R865-19S-94	AMD	04/14/2016	2016-1/76	
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Technology Services, Administration	40030	R895-5	AMD	02/23/2016	2016-2/118	
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Technology Services, Administration	40030	R895-5	AMD	02/23/2016	2016-2/118	
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Administrative Services, Purchasing and General Services	40047	R33-12-502	AMD	02/23/2016	2016-2/7	
<u>therapists</u>						
Commerce, Occupational and Professional Licensing	39924	R156-60b-102	AMD	01/07/2016	2015-23/12	
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Education, Administration	40284	R277-482	5YR	03/30/2016	2016-8/93	
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Insurance, Administration	40005	R590-212	REP	03/16/2016	2016-2/99	
Insurance, Title and Escrow Commission	40006	R592-17	NEW	03/16/2016	2016-2/101	
<u>title escrow filings</u>						
Insurance, Title and Escrow Commission	40300	R592-15	5YR	04/06/2016	Not Printed	
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Insurance, Title and Escrow Commission	40183	R592-11	AMD	04/15/2016	2016-4/65	
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Transportation, Motor Carrier	39953	R909-19	AMD	01/21/2016	2015-24/58	
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	40021	R661-3	NEW	02/29/2016	2016-2/105
	40022	R661-4	NEW	02/29/2016	2016-2/107
	40023	R661-5	NEW	02/29/2016	2016-2/109
	40024	R661-6	NEW	02/29/2016	2016-2/110
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	40026	R661-8	NEW	02/29/2016	2016-2/115
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Health, Center for Health Data, Vital Records and Statistics	39817	R436-13	AMD	02/17/2016	2015-21/88
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Environmental Quality, Air Quality	40225	R307-351-4	NSC	03/11/2016	Not Printed
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Commerce, Occupational and Professional Licensing	39912	R156-78-102	AMD	01/07/2016	2015-23/16
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Natural Resources, Forestry, Fire and State Lands	40304	R652-122	5YR	04/14/2016	Not Printed	
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	40093	R657-33	AMD	03/09/2016	2016-3/490	
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<u>x-rays</u>						
Environmental Quality, Waste Management and Radiation Control, Radiation	40004	R313-16-230	NSC	01/15/2016	Not Printed	
	40011	R313-70	NSC	01/15/2016	Not Printed	
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Human Services, Child and Family Services	40305	R512-10	5YR	04/14/2016	Not Printed	
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Natural Resources, Wildlife Resources	40094	R657-3	AMD	03/09/2016	2016-3/486	