UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed June 02, 2016, 12:00 a.m. through June 15, 2016, 11:59 p.m.

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Nancy L. Lancaster, Managing Editor

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

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

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Office 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.

Office of Administrative Rules, Salt Lake City 84114

Utah state bulletin.
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EDITOR'S NOTES

Incorrect Text Published for Filing No. 40448, Rule R651-602, in the June 15, 2016, Bulletin

After publication of the June 15, 2016, issue of the Utah State Bulletin, the Office of Administrative Rules was informed that incorrect rule text was published as part of the Notice of Proposed Rule for Rule R651-602 (Filing No. 40448) on page 46 of the PDF version; the online version of the incorrect filing is here:
http://www.rules.utah.gov/publicat/bulletin/2016/20160615/40448.htm.

The correct text appears below:

R651. Natural Resources, Parks and Recreation.
R651-602. Aircraft and Powerless Flight.
R651-602-1. Landing or Taking Off of Manned Aircraft.
The landing or taking off of aircraft within the park system other than at designated lakes, reservoirs or landing areas is prohibited.

R651-602-2. Air Delivery or Pickup.
Except in emergencies, the air delivery or pickup of any person or thing without advanced permission from the park manager is prohibited.

R651-602-3. Powerless Flight Launching and Landing.
The launching or landing of gliders, hot-air balloons, hang gliders, and other devices designed to carry persons or objects through the air in powerless flight is prohibited except by Special Use Permit (see R651-608).

R651-602-4. Lakes and Reservoirs Designated as Open.
The following lakes and reservoirs are designated as open to the landing of aircraft: (1) Deer Creek; (2) Jordanelle; (3) Rockport, (4) Starvation (5) Willard Bay.

R651-602-5. Aircraft Prohibited from Landing on Lakes or Reservoirs.
Except as outlined in R651-602-2, aircraft are prohibited from landing or taking off on "designated as open" lakes or reservoirs when any one of the following conditions exists. (1) On a Friday, Saturday, Sunday, or during a holiday period between May 1 to September 30; or (2) Anytime the aircraft cannot maintain a distance of at least 500 feet from any person, vessel, vehicle or structure during landing or takeoff.

R651-602-6. Aircraft on the Water Operation Requirements.
A person operating an aircraft on the water: (1) shall not approach within 500 feet of a marina, launch ramp, boat dock, vessel or a beach occupied by person(s), when using the aircraft's primary propulsion system(s); (2) shall comply with Federal Aviation Regulations, Section 91.115, Right-of-way rules: Water operations.

R651-602-7. Parks Designated Open to Gliders.
The following parks are designated as open to launching and landing powerless paragliders and hang gliders: Flight Park State Recreation Area.

R651-602-8. Operation of Unmanned Aircraft.
A person must obtain written permission from the park manager before operating an unmanned aircraft within the park system.

KEY: parks
Date of Enactment or Last Substantive Amendment: 2016
Notice of Continuation: June 25, 2013
Authorizing, and Implemented or Interpreted Law: 79-4-501

Direct questions regarding this rule to: Tammy Wright by phone at 801-538-7359, by FAX at 801-538-7378, or by Internet E-mail at tammywright@utah.gov. Interested persons may present their views on this rule by submitting written comments no later than 5:00 pm on 07/15/2016. This rule may become effective on: 07/22/2016.

The Office regrets any confusion caused by this error. Questions can be directed to Nancy Lancaster, Publications Editor, at 801-538-3218 or by email at nllancaster@utah.gov

SPECIAL NOTICES

Health
Health Care Financing, Coverage and Reimbursement Policy

Access Monitoring Review Plan

On November 2, 2015, the federal Centers for Medicare and Medicaid Services (CMS) published a final rule implementing the equal access provision that requires state Medicaid agencies to develop a medical assistance access monitoring review plan. The review plan must consider:

The extent to which beneficiary needs are fully met:

The availability of care through enrolled providers to beneficiaries in each geographic area, by provider type and site of service;

1. Changes in beneficiary utilization of covered services in each geographic area;

2. The characteristics of the beneficiary population (including considerations for care, service and payment variations for pediatric and adult populations and for individuals with disabilities); and

3. Actual or estimated levels of provider payment available from other payers, including other public and private payers, by provider type and site of service.

Effective January 4, 2016, the new rule requires states to develop review plans and update them periodically. States must make plans available to the public for at least 30 days, finalize them, and submit them to CMS for review. The first plan is due by October 1, 2016.

The final rule excludes access reviews for Medicaid managed care arrangements.

In further efforts to provide comparable access to that which is provided to non-Medicaid enrollees, and in accordance with 42 CFR 447.203, the Division of Medicaid and Health Financing (DMHF) has developed an Access Monitoring Review Plan (AMRP) for the following service categories provided under a fee-for-service (FFS) arrangement:

Public comments on Utah's Access Monitoring Review Plan will be accepted between July 5, 2016, and August 5, 2016. Public comments may be submitted through the Utah Medicaid Website under the link UAMRP at https://medicaid.utah.gov/uamrp-utah-access-monitoring-review-plan.

End of the Special Notices Section

EXECUTIVE DOCUMENTS

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

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

Calling the Sixty-First Legislature Into the Eleventh Extraordinary Session, Utah Proclamation No. 2016-11E

P R O C L A M A T I O N

WHEREAS, since the close of the 2016 General Session of the 61st Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

NOW, THEREFORE, I, Gary R. Herbert**,** Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 61st Legislature of the State of Utah into the Eleventh Extraordinary Session at the Utah State Capitol in Salt Lake City, Utah, on the 15th day of June 2016, at 11:00 a.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2016 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 13th day of June 2016.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2016/11/E

NOTICES OF
PROPOSED RULES

A state agency may file a **Proposed Rule** when it determines the need for a substantive change to an existing rule. With a **Notice of Proposed Rule**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between June 02, 2016, 12:00 a.m., and June 15, 2016, 11:59 p.m. are included in this, the July 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 Office 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 Office of Administrative Rules.

The law requires that an agency accept public comment on **Proposed Rules** published in this issue of the *Utah State Bulletin* until at least August 1, 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 October 29, 2016, the agency may notify the Office 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 Office 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, Securities
R164-31
Administrative Fines

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 40498
FILED: 06/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2016 General Session of the Utah Legislature, H.B. 106 codified this rule into Section 61-1-31 of the Utah Uniform Securities Act. Accordingly, the administrative rule is no longer necessary.

SUMMARY OF THE RULE OR CHANGE: This rule is being repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-20 and Section 61-1-24 and Section 61-1-6

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The repeal of this rule will not result in any anticipated cost or savings to the state budget because the rule merely identified factors to be considered when administrative fines are imposed, and that rule has now been incorporated into statute.
♦ LOCAL GOVERNMENTS: The repeal of this rule will not result in any anticipated cost or savings to local government because the rule merely identified factors to be considered when administrative fines are imposed, and that rule has now been incorporated into statute.
♦ SMALL BUSINESSES: The repeal of this rule will not result in any anticipated cost or savings to the small businesses because the rule merely identified factors to be considered when administrative fines are imposed, and that rule has now been incorporated into statute.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The repeal of this rule will not result in any anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the rule merely identified factors to be considered when administrative fines are imposed, and that rule has now been incorporated into statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because the repeal of this rule, which identified factors to be considered when imposing administrative fines, does not require that any person take any action to ensure compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This repeal deletes a rule that has been incorporated into Section 61-1-31 of the Utah Uniform Securities Act. No fiscal impact to businesses is anticipated by this rule repeal.

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

AUTHORIZED BY: Keith Woodwell, Director

R164. Commerce, Securities.
[R164-31. Administrative Fines.
R164-31-1. Guidelines for the Assessment of Administrative Fines.
~~(A) Authority and purpose.~~
~~(1) The Division enacts this rule under authority granted by Sections 61-1-6, 61-1-12, 61-1-14, 61-1-20 and 61-1-24.~~
~~(2) This rule identifies guidelines for the assessment of administrative fines. The guidelines should not be considered all-inclusive but rather are intended to provide factors to be considered when imposing a fine.~~
~~(B) Guidelines.~~
~~(1) For the purpose of determining the amount of an administrative fine assessed against a person under the Utah Uniform Securities Act, the Commission shall consider the following factors:~~
~~(a) the seriousness, nature, circumstances, extent, and persistence of the conduct constituting the violation;~~
~~(b) the harm to other persons, including the amount of investor losses, resulting either directly or indirectly from the violation;~~
~~(c) any financial benefit, enrichment, commission, fee or other consideration received directly or indirectly by the person in connection with the violation;~~
~~(d) cooperation by the person in any inquiry conducted by the Division concerning the violation, efforts to prevent future occurrences of the violation, and efforts to mitigate the harm caused by the violation, including any restitution paid or disgorgement of ill-gotten gains to persons injured by the acts of the person;~~

~~(e) the history of previous violations by the person;~~
~~(f) the need to deter the person or other persons from committing such violations in the future;~~
~~(g) the costs of the Division incurred in investigating and prosecuting the action; and~~
~~(h) such other matters as justice may require.~~

~~**KEY: administrative fines, securities regulation, securities**~~
~~**Date of Enactment or Last Substantive Amendment: January 8, 2013**~~
~~**Notice of Continuation: May 28, 2013**~~
~~**Authorizing, and Implemented or Interpreted Law: 61-1-6; 61-1-12; 61-1-14; 61-1-20; 61-1-24**~~**]**

Education, Administration
R277-99
(Changed to R277-100)
Definitions for Utah State Board of Education (Board) Rules

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 40501
FILED: 06/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to update statutory language consistent with state law; to make a definition consistent with current terminology; and to renumber the rule.

SUMMARY OF THE RULE OR CHANGE: Subsection 53A-1-401(3) is changed to Section 53A-1-401, and the language is changed to reflect current state law; the definition of SEOP is updated to reflect current terminology; and the rule number R277-99 is changed to R277-100.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendments to this rule provide updated statutory language and a change to a definition, which likely will not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: The amendments to this rule provide updated statutory language and a change to a definition, which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: The amendments to this rule provide updated statutory language and a change to a definition, which likely will not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to this rule provide updated statutory language and a change to a definition, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule provide updated statutory language and a change to a definition, which likely will not result in any compliance costs for affected persons.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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R277. Education, Administration.
R277-[~~99~~]100. Definitions for Utah State Board of Education (Board) Rules.
R277-[~~99~~]100-1. Authority and Purpose.

(1) This rule is authorized by Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board and by S[~~ubs~~]ection 53A-1-401[~~(3)~~] which [~~permits~~]allows the Board to [~~adopt~~]make rules [~~in accordance with its responsibilities~~]to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to provide definitions that are used in the Board rules beginning with R277.

R277-[~~99~~]100-2. Definitions.

(1) "Accreditation" means the formal process for internal and external review and approval under the standards of an accrediting entity adopted by the Board.

(2) "Audit" means an independent appraisal activity established by the Board as a control system to examine and evaluate the adequacy and effectiveness of internal control systems within an agency.

(3) "Board" means the State Board of Education.

(4) "Charter school" means a school established as a charter school by a charter school authorizer under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act, and rule.

(5) "District school" means a public school under the control of a local school board elected under Title 20A, Chapter 14, Nomination and Election of State and Local School Boards.

(6) "Educator" means an individual licensed under Section 53A-6-104 and who meets the requirements of R277-501.

(7) "Individualized education program" or "IEP" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 (2004), and rule.

(8) "Individuals with Disabilities Education Act" or "IDEA," 20 U.S.C. Section 1400 et seq. (2004), is a four part (A-D) piece of federal legislation that ensures a student with a disability is provided with a Free Appropriate Public Education (FAPE) that is tailored to the student's individual needs.

(9)(a) "LEA" or "local education agency" means a school district or charter school.

(b) For purposes of certain rules, "LEA" or "local education agency" may include the Utah Schools for the Deaf and the Blind (USDB) if indicated in the specific rule.

(10)(a) "LEA governing board" means:

(i) for a school district, a local school board; and

(ii) for a charter school, a charter school governing board.

(b) For purposes of certain rules, "LEA governing board" may include the State Board of Education as the governing board for the Utah Schools for the Deaf and the Blind if indicated in the specific rule.

(11) "Parent" means a parent or guardian who has established residency of a child under Sections 53A-2-201, 53A-2-202, or 53A-2-207 or another applicable Utah guardianship provision.

(12) "[~~SEOP/~~]Plan for College and Career Readiness" or "SEOP" means a student education occupation plan for college and career readiness that is a developmentally organized intervention process that includes:

(a) a written plan, updated annually, for a secondary student's (grades 7-12) education and occupational preparation;

(b) all Board, local board and local charter board graduation requirements;

(c) evidence of parent or guardian, student, and school representative involvement annually;

(d) attainment of approved workplace skill competencies, including job placement when appropriate; and

(e) identification of post secondary goals and approved sequence of courses.

(13) "State Charter School Board" or "SCSB" means the State Charter School Board created in Section 53A-1a-501.5.

(14) "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

(15) "USDB" means the Utah Schools for the Deaf and the Blind.

[~~(16) "USOE" means the Utah State Office of Education.~~]

(1[~~7~~]6) "USOR" means the Utah State Office of Rehabilitation.

KEY: Board of Education, rules, definitions
Date of Enactment or Last Substantive Amendment: [~~August 26, 2015~~]2016
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401[~~(3)~~]

Education, Administration
R277-210
Utah Professional Practices Advisory Commission (UPPAC), Definitions

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 40502
FILED: 06/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Board of Education (Board) received a preliminary court ruling, which indicated that the court is likely to conclude that the Board had not followed proper rulemaking procedures in the adoption of Rules R277-200 through 207. As a result, R277-210 has been drafted and revised based on public hearing input via appropriate rulemaking procedures. Rule R277-200 will be repealed simultaneously with the adoption of Rule R277-210. (Editor's Note: The proposed repeal of Rule R277-200 is under Filing No. 40325 published in the May 1, 2016, Bulletin. Also, the proposed new Rule R277-210 under Filing No. 40334 published in the May 1, 2016, Bulletin will be allowed to lapse and this filing takes it place.)

SUMMARY OF THE RULE OR CHANGE: 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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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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

(h) 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 the Executive Secretary 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 Executive Secretary at any stage of the licensing process.

(7) "Boundary violation" means the same as that term is defined in Rule R277-515.

(8) "Chair" means the Chair of UPPAC.

(9) "Complaint" means a written allegation or charge against an educator filed by the Executive Secretary against the educator.

(10) "Complainant" means the Executive Secretary.

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

(12) "Conflict of interest" means the same as that term is defined in Rule R277-101.

(13)(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.
(14) "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.
(15)(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.
(16) "Drug" means controlled substance as defined in Section 58-37-2.
(17) "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.
(18) "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.
(19) "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.
(20) "Executive Secretary" means:
(a) an employee of the Board who:
(i) is appointed by the Superintendent 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.
(21) "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.
(22) "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.
(23) "Final action" means an action by the Board that concludes an investigation of an allegation of misconduct against a licensed educator.
(24) "GRAMA" refers to the Government Records Access and Management Act, Title 63G, Chapter 2, Government Records Access and Management Act.
(25) "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.
(26) "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.
(27) "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.
(28) "Informant" means a person who submits information to UPPAC concerning the alleged misconduct of an educator.
(29) "Investigator" means an employee of the Board, 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.
(30) "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).

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

(32) "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.

(33) "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.

(34) "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.

(35) "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.

(36) "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.

(37) "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.

(38) "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.

(39) "Party" means a complainant or a respondent.

(40) "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.

(41) "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.

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

(43) "Respondent" means an educator against whom:

(a) a complaint is filed; or

(b) an investigation is undertaken.

(44) "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.

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

(46) "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.

(47)(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.

(48) "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.

(49) "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).

(50) "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).

(51) "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.

(52) "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.

(53) "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.: 40503
FILED: 06/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Board of Education (Board) received a preliminary court ruling, which indicated that the court is likely to conclude that the Board had not followed proper rulemaking procedures in the adoption of Rules R277-200 through 207. As a result, R277-211 has been drafted and revised based on public hearing input via appropriate rulemaking procedures. Rule R277-201 will be repealed simultaneously with the adoption of Rule R277-211. (Editor's Note: The proposed repeal of Rule R277-201 is under Filing No. 40326 published in the May 1, 2016, Bulletin. Also, the proposed new Rule R277-211 under Filing No. 40335 published in the May 1, 2016, Bulletin will be allowed to lapse and this filing takes it place.)

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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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) Upon request of an educator, UPPAC will provide an electronic or paper copy of the UPPAC case file and evidence file to the educator.

(b) UPPAC may charge fees in accordance with R277-103-5 if the educator requests a paper copy.

(7)(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.

(8) 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 45 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.

(c) As an alternative to filing an answer, the respondent may file a voluntary surrender pursuant to Rule R277-216.

(5)(a) As soon as reasonably practicable after receiving an answer, or no more than 30 days after receipt of an answer, the Executive Secretary shall schedule a hearing, if requested by the respondent, as provided in Rule R277-212.

(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 Consent to Discipline.

(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 consent to discipline.

(2) By entering into a proposed consent to discipline, 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 proposed consent to discipline:

(a) a summary of the facts, the allegations, the presumption described in Rule R277-215, mitigating or aggravating factors described in Rule R277-215, and the evidence relied upon by UPPAC in its recommendation;

(b) a statement that the respondent admits the facts recited in the proposed consent to discipline 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 consent to discipline 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 consent to discipline;

(f) a statement that the action and the proposed consent to discipline 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 consent to discipline at a subsequent reinstatement hearing, if any;

(h) a statement that all records related to the proposed consent to discipline shall remain permanently in the UPPAC case file;

(i) a statement reflecting the proposed consent to discipline classification under Title 63G, Chapter 2, Government Records Access and Management Act;

(j) a statement that a violation of the terms of an approved consent to discipline 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 consent to discipline.

(4)(a) The Executive Secretary shall forward a proposed consent to discipline to the Board for approval.

(b) If the Board does not approve a proposed consent to discipline, the Board may:

(i)(A) remand the case to UPPAC and may include issues that need to be addressed;

(B) offer respondent the opportunity for a hearing; or

(C) provide alternative terms and disposition to the Executive Secretary, that would be satisfactory to the Board to be submitted to the educator for consideration;

(ii) direct the Executive Secretary to issue a disciplinary letter or dismiss the matter; or

(iii) take other appropriate action consistent with due process and R277-215.

(5) If the respondent accepts a consent to discipline with alternative terms and disposition proposed by the Board, the consent to discipline, 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 remands to UPPAC to provide respondent the opportunity for a hearing under Subsection (4)(b)(i)(B), 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 consent to discipline had not been submitted.

(8) If the Board approves a proposed consent to discipline, the approval is a final Board administrative action 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;

(d) direct the appropriate penalties to begin; and

(e) notify the LEAs throughout the state.

R277-211-7. Default Procedures.

(1) If a respondent does not respond to a complaint within 30 days from the date the complaint 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 shall make a recommendation to the Board for discipline in accordance with Rule R277-215.

(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 with:

(i) direction as to the issues UPPAC should address;

(ii) alternative terms and disposition that should be satisfactory to the Board to be submitted to the educator for consideration; and

(iii) the opportunity for the educator to participate in a hearing;

(b) direct the Executive Secretary to issue a different level of disciplinary letter;

(c) dismiss the matter; or

(d) take other appropriate action consistent with due process and Rule R277-215.

(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.: 40504
FILED: 06/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Board of Education (Board) received a preliminary court ruling, which indicated that the court is likely to conclude that the Board had not followed proper rulemaking procedures in the adoption of Rules R277-200 through 207. As a result, Rule R277-212 has been drafted and revised based on public hearing input via appropriate rulemaking procedures. Rule R277-202 will be repealed simultaneously with the adoption of Rule R277-212. (Editor's Note: The proposed repeal of Rule R277-202 is under Filing No. 40327 published in the May 1, 2016, Bulletin.

Also, the proposed new Rule R277-212 under Filing No. 40336 published in the May 1, 2016, Bulletin will be allowed to lapse and this filing takes it place.)

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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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 to give the respondent an opportunity to have 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 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. Deportment.

(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) 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.

(5)(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. Testimony of a Minor Victim or Witness.

(1) For purposes of this section, a "minor victim or witness" is an individual who is less than 18 years old at the time of hearing.

(2) 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 minor victim or witness be allowed to testify outside of the respondent's presence.

(3) If the hearing officer determines that a minor victim or witness would suffer undue emotional or mental harm, or that the minor victim or witness's testimony in the presence of the respondent would be unreliable, the minor victim or witness's testimony may be admitted as described in this section.

(4) An oral statement of a minor victim or witness 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 victim or witness'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.

(5) The testimony of a minor victim or witness 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 victim or witness may be with the minor victim or witness during the testimony;

(b) the respondent is not present during the minor victim or witness's testimony;

(c) the hearing officer ensures that the minor victim or witness cannot hear or see the respondent;

(d) the respondent is permitted to observe and hear, but not communicate with the minor victim or witness; and

(e) only hearing panel members, the hearing officer, and the attorneys question the minor victim or witness.

(6)(a) If a witness testifies under circumstances described in Subsection (5), 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.

(7) If the hearing officer determines that the testimony of a minor victim or witness may be taken consistent with Subsections (2) through (5), the minor victim or witness may not be required to testify in any proceeding where the recorded testimony is used.

R277-212-13. 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) presumptions applied by UPPAC;

(e) mitigating and aggravating circumstances considered by UPPAC;

(f) 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 recommended minimum probationary time;

(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 consistent with R277-215 after which an educator may request a reinstatement hearing under Rule R277-213; and

(B) any recommended conditions precedent to requesting a reinstatement hearing under Section R277-213-2; or

(viii) revocation; and

(g) 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 R277-210-2(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) direct the Executive Secretary to make other evidence available pursuant to Section R277-212-14 before issuing a final decision with official findings; or

(c) issue findings based on the UPPAC hearing record and report:

(i) specifying the reasons, including presumptions and the mitigating and aggravating circumstances the Board considered, 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

(d) 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.

R277-212-14. Additional Relevant Evidence.

(1) If the Board directs the Executive Secretary to make additional relevant evidence available to the Board for review, before the Board issues a final decision with official findings, the Executive Secretary shall give the educator a notice that includes:

(a) what additional relevant evidence the Board directed UPPAC to make available to review;

(b) file a response described in Subsection (2); and

(c) a statement that the educator's failure to file either a timely written response or request for hearing would be a waiver of the right to either respond, or request a hearing.

(2) An educator who receives a notice described in Subsection (1) may submit one of the following within 30 days of the notice described in Subsection (1) was sent:

(a) a written response to the additional relevant evidence that the Board directed the Executive Secretary to make available for review; or

(b) a written request for a hearing before the Board to respond to the additional relevant evidence.

(3) If the educator fails to timely respond as provided in Subsection (2):

(a) the Executive Secretary shall notify the respondent that the respondent waived the right to respond or request a hearing; and

(b) the Board may proceed to view the additional relevant evidence.

(4) If the educator files a timely written response, the Executive Secretary shall submit the written response to the Board for consideration before the Board issues a final decision.

(5) If the educator files a timely hearing request, before the Board issues a final decision, the Executive Secretary shall:

(a) request a hearing before the Board, as described in Subsection (7);

(b) provide the respondent notice of the hearing meeting the requirements of Section 53A-6-604;

(c) include a copy of the Board rules that apply; and

(d) notify the respondent that if the respondent fails to attend or participate in the hearing:

(i) that the respondent has waived the right to appear and respond to the additional relevant evidence; and

(ii) that the Board may proceed to review the additional relevant evidence.

(6) The Board shall schedule a hearing described in Subseciton (5)(b) within no less than 45 days and no more than 90 days from the date the Executive Secretary receives the respondent's written request for a hearing.

(7) If the Board conducts a hearing described in Subsection (6), Sections R277-212-4, R277-212-5, and R277-212-7 through R277-212-12 apply.

(8) 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.

(9) Subsection R277-212-3(1) governs the appointment of a hearing officer to conduct hearing, but no hearing report is required.

(10) After the hearing or viewing the additional relevant evidence, the Board will prepare findings that support the reasons for the Board's decision, including the presumptions and mitigating and aggravating circumstances described in R277-215 that the Board applied.

(11) Findings issued by the Board as described in Subsection (11) may not be based solely upon hearsay.

R277-212-15. Default.

(1)(a) The Executive Secretary shall prepare an order of default if:

(i) the respondent fails to file an answer as described in Subsection R277-211-5(4);

(ii) the respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice; or

(iii) 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) Except as provided in Subsection (4), the Executive Secretary shall make a recommendation to the Board for discipline in accordance with Rule R277-215.

(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).

R277-212-16. 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.: 40505
FILED: 06/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Board of Education (Board) received a preliminary court ruling, which indicated that the court is likely to conclude that the Board had not followed proper rulemaking procedures in the adoption of Rules R277-200 through 207. As a result, Rule R277-213 has been drafted and revised based on public hearing input via appropriate rulemaking procedures. Rule R277-203 will be repealed simultaneously with the adoption of Rule R277-213. (Editor's Note: The proposed repeal of Rule R277-203 is under Filing No. 40328 published in the May 1, 2016, Bulletin. Also, the proposed new Rule R277-213 under Filing No. 40337 published in the May 1, 2016, Bulletin will be allowed to lapse and this filing takes it place.)

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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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 allowed 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 Executive Secretary, represented by a UPPAC attorney, shall present any evidence or documentation that explains and supports UPPAC'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 reconsideration of the prior Board licensing action 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 reconsideration 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 reconsideration 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 the Executive Secretary in making a determination.

(6) If the Superintendent finds that the criteria in Subsection (2)(a) have been established, the Superintendent shall make a recommendation to the Board 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, reinstatement, 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
R277-215
Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 40506
FILED: 06/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Board of Education (Board) received a preliminary court ruling, which indicated that the court is likely to conclude that the Board had not followed proper rulemaking procedures in the adoption of Rules R277-200 through 207. As a result, Rule R277-215 has been drafted and revised based on public hearing input via appropriate rulemaking procedures. Rule R277-207 will be repealed simultaneously with the adoption of Rule R277-215. (Editor's Note: The proposed repeal of Rule R277-207 is under Filing No. 40333 published in the May 1, 2016, Bulletin. Also, the proposed new Rule R277-215 under Filing No. 40339 published in the May 1, 2016, Bulletin will be allowed to lapse and this filing takes it place.)

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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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) Revocation is presumed appropriate if an educator:

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

(b) 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;

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

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

(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;

(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 boundary violations 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; or

(k) knowingly and deliberately falsifies or misrepresents information on an education-related document.

(6) A suspension of up to one year is presumed appropriate if an educator:

(a) has three or more incidents of inappropriate conduct that would otherwise warrant lesser discipline so long as the educator had notice that such conduct was inappropriate from:

(i) Board rule or LEA policy; or

(ii) verbal or written notice from an LEA or UPPAC;

(b) fails to report to appropriate authorities suspected child or sexual abuse; or

(c) knowingly teaches, counsels, or assists a minor student in a manner that disregards a legal, written directive, such as a court order or an approved college and career ready plan.

(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) except for a class C misdemeanor under Title 41, Motor Vehicles, is convicted of one or two misdemeanor offenses not otherwise listed;

(k) engages in an activity that constitutes a conflict of interest; 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;

(n) any other factor that, in the view of UPPAC or the Board, warrants a more serious consequence for the educator's misconduct; and

(o) the educator is on criminal probation or parole; or

(p) the Executive Secretary has issued an order of default on the educator's case as described in Rules R277-211 or R277-212.

(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) there are substantial grounds to partially excuse or justify the educator's behavior though failing to fully excuse the violation;

(l) the educator self-reported the misconduct; or

(m) 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
R277-404
Requirements for Assessments of Student Achievement

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40507
FILED: 06/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: R277-404 is amended in response to H.B. 200, Student Assessment Modifications, from the 2016 General Session, which allows a school district or charter school to waive the requirement in Section 53A-1-603 to administer the SAGE assessment for a school district or charter school's 11th grade students.

SUMMARY OF THE RULE OR CHANGE: Rule R277-404 is amended to update the rule consistent with the new legislation; to include specific names of assessments, which the Board has designated as required in statute; and to provide technical and conforming changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Sections 53A-1-603 through 53A-1-611 and Subsection 53A-15-1403(9)(b)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendments to Rule R277-404 provide language to allow a school district or charter school to waive the requirement to administer the SAGE assessment

for 11th grade students, which likely will not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: The amendments to Rule R277-404 provide language to allow a school district or charter school to waive the requirement to administer the SAGE assessment for 11th grade students, which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: The amendments to Rule R277-404 provide language to allow a school district or charter school to waive the requirement to administer the SAGE assessment for 11th grade students, which likely will not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to Rule R277-404 provide language to allow a school district or charter school to waive the requirement to administer the SAGE assessment for 11th grade students, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-404 provide language to allow a school district or charter school to waive the requirement to administer the SAGE assessment for 11th grade students, which likely will not result in any compliance costs for affected persons.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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R277. Education, Administration.
R277-404. Requirements for Assessments of Student Achievement.
R277-404-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Sections 53A-1-603 through 53A-1-611, which direct the Board to adopt rules for the maintenance and administration of U-PASS;

(c) Subsection 53A-15-1403(9)(b), which requires the Board to adopt rules to establish a statewide procedure for excusing a student from taking certain assessments; and

(d) S[~~ubs~~]ection 53A-1-401[~~(3)~~], which allows the Board to [~~adopt~~]make rules [~~in accordance with its responsibilities~~]to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) provide consistent definitions; and

(b) assign responsibilities and procedures for a Board developed and directed comprehensive assessment system for all students, as required by state and federal law.

R277-404-2. Definitions.

(1) "Benchmark reading assessment" means [~~an assessment:~~]the Dynamic Indicators of Basic Early Literacy Skills or DIBELS assessment that is [

~~(a) determined by the Board for a student in grade 1 through 3; and~~

~~(b)~~]administered to a student in grade 1, grade 2, and grade 3 at the beginning, [~~midpoint~~]middle, and end of year.

(2)[~~(a)~~] "College readiness assessment" means [~~an assessment adopted by the Board that includes a college admissions test that provides an assessment of language arts, mathematics, and science, that is most commonly used by local universities to assess student preparation for college~~]the American College Testing exam, or ACT.

[~~(b) "College readiness assessment" may include:~~

~~(i) the Armed Services Vocational Aptitude Battery or ASVAB; and~~

~~(ii) a battery of assessments that is predictive of success in higher education.~~

~~(c) "College readiness assessment" includes the American College Testing exam or ACT.~~]

(3) "English Learner" or "EL" student" means a student who is learning in English as a second language.

(4) "English language proficiency assessment" means [~~an assessment:~~

~~(a) designated by the Superintendent; and~~

~~(b)~~]the World-class Instructional Design and Assessment (WIDA) Assessing Comprehension in English State-to-State (ACCESS), which is designed to measure the acquisition of the academic English language for an English Learner student.

(5) "Family Educational Rights and Privacy Act of 1974" or "FERPA," 20 U.S.C. 1232g, means a federal law designed to protect the privacy of students' education records.

(6) "National Assessment of Education Progress" or "NAEP" means the national achievement assessment administered by the United States Department of Education to measure and track student academic progress.

(7) "Online writing assessment" means [~~a Board-designated online assessment to~~]the SAGE writing portion of the SAGE English Language Arts Assessment that measures writing performance for a student in grades 3 through 11.

(8) "Pre-post assessment" means an assessment administered at the beginning of the school year and at the end of the school year to determine individual student growth in academic proficiency that has occurred during the school year.

(9) "State required assessment" means an assessment described in Subsection 53A-15-1403(9)(a).

(10) "Student Assessment of Growth and Excellence" or "SAGE" means a computer adaptive assessment for:

(a) English language arts grades 3 through 11;

(b) mathematics:

(i) grades 3 through 8; and

(ii) Secondary I, II, and III; and

(c) science:

(i) grades 4 through 8;

(ii) earth science;

(iii) biology;

(iv) physics; and

(v) chemistry.

(11) "Section 504 accommodation plan" means a plan:

(a) required by Section 504 of the Rehabilitation Act of 1973; and

(b) designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(12) "Summative adaptive assessment" means [~~an~~]the SAGE assessment, which:

(a) is administered upon completion of instruction to assess a student's achievement;

(b) is administered online under the direct supervision of a licensed educator;

(c) is designed to identify student achievement on the standards for the respective grade and course; and

(d) measures [~~the full~~]a range of student ability, within the grade or course level standards the student was taught, by adapting to each student's responses, selecting more difficult questions when a student answers correctly and less difficult questions when a student answers incorrectly.

(13)(a) "Utah alternate assessment" means an assessment instrument:

([~~a~~]i) [~~an assessment instrument designated by the Superintendent~~] for a student in special education with a disability so severe the student is not able to participate in the components of U-PASS even with an assessment accommodation or modification; and

([~~b~~]ii) that measures progress on the Utah core instructional goals and objectives in the student's IEP.

(b) "Utah alternate assessment" means:

(i) for science, the Utah Alternate Assessment (UAA); and

(ii) for English language arts and mathematics, the Dynamic Learning Maps (DLM).

(14) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows:

(a) an LEA and [~~USOE~~]the Superintendent to electronically exchange an individual detailed student record; and

(b) electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

(15) "Utah Performance Assessment System for Students" or "U-PASS" means:

(a) [~~a~~]the summative adaptive assessment of a student in grades 3 through 12 in basic skills courses;

(b) [~~an~~]the online writing assessment in grades 3 through 11[~~, as part of SAGE~~];

(c) [~~a~~]the college readiness assessment; and

(d) the summative assessment of a student in grade 3 to measure reading grade level using [~~grade 3 SAGE English Language Arts~~]the end of year benchmark reading assessment.

R277-404-3. Incorporation of Standard Test Administration and Testing Ethics Policy by Reference.

(1) This rule incorporates by reference the Standard Test Administration and Testing Ethics Policy, January 7, 2016, which establishes:

(a) the purpose of testing;

(b) the state assessments to which the policy applies;

(c) teaching practices before assessment occurs;

(d) required procedures for after an assessment is complete and for providing assessment results;

(e) unethical practices;

(f) accountability for ethical test administration;

(g) procedures related to ethics violations; and

(h) additional resources.

(2) A copy of the Standard Test Administration and Testing Ethics Policy is located at:

(a) http://www.schools.utah.gov/assessment/Directors/Resources/EthicsPolicy.aspx; and

(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

R277-404-[~~3~~]4. [~~Board~~]Assessment System - Superintendent Responsibilities.

(1) The Board's comprehensive assessment system for all students in grades K-12 includes:

(a) [~~a summative adaptive assessment in:~~]the U-PASS assessments;

[~~(i) English language arts for grades 3 through 11;~~

~~(ii) mathematics for grades 3 through 8;~~

~~(iii) secondary math 1, 2, and 3;;~~

~~(iv) science for grades 4 through 8; and~~

~~(v) earth systems, biology, physics and chemistry;~~

~~(b) an online writing assessment for grades 3 through 11;~~]

([~~e~~]b) pre-post kindergarten assessment for a kindergarten student as determined by the LEA;

([~~d~~]c) [~~one~~]the benchmark reading assessment[~~, approved by the Board for students in grades 1 through 3 and administered to students at the beginning, midpoint and end of year;~~

~~(c) grade 3 end of year summative reading assessment using grade 3 SAGE English Language Arts~~];

([~~f~~]d) the Utah[~~'s~~] alternate assessment, for an eligible student with a disability;

([~~g~~]e) [~~an~~]the English language proficiency assessment;

([~~h~~]f) the National Assessment of Educational Progress (NAEP);

[~~(i) college readiness assessment for:~~

~~(i) grade 11 and optional college; and~~

~~(ii) career readiness assessment in grade 8 or 9 and 10, as determined by the LEA~~]; and

([~~i~~]g) reporting by the Superintendent of U-PASS results.

(2) The report required by Subsection [~~(1)(i)~~](1)(g) shall include:

(a) student performance based on information that is disaggregated with respect to race, ethnicity, gender, English proficiency, eligibility for special education services, and free or reduced price school lunch status;

(b) security features to maintain the integrity of the system, including statewide uniform assessment dates, assessment administration protocols, and training; and

(c) summative adaptive assessment results disseminated by the Superintendent to an LEA, parent, and other, as appropriate, consistent with FERPA.

(3) The [~~Board~~]Superintendent shall provide[~~, specific rules, administrative~~] guidelines, timelines, procedures, and assessment ethics training and requirements for all required assessments.

(4) The Superintendent shall designate a testing schedule for each state-required assessment and publish the testing window dates on the Board's website before the beginning of the school year.

R277-404-[4]5. LEA Responsibilities - Time Periods for Assessment Administration.

(1) Except as provided in Section 53A-1-603, [~~A~~]an LEA shall develop a comprehensive assessment system plan to include the assessments described in Subsection R277-404-[~~3~~]5(1).

(2) The plan shall[~~, at a minimum,~~] include:

(a) the dates that the LEA will administer each required assessment;

(b) if the LEA decided to offer its grade 11 students only the college readiness assessment and not the SAGE assessment;

([~~a~~]c) professional development for an educator to fully implement the assessment system;

([~~b~~]d) training for an educator and an appropriate paraprofessional in the requirements of assessment administration ethics;

([~~c~~]e) training for an educator and an appropriate paraprofessional to utilize assessment results effectively to inform instruction; and

([~~d~~]f) adequate oversight of test administration to ensure compliance with Section 53A-1-603 as follows:

(i) an LEA or online provider shall test all enrolled students unless a student has a written parental excuse under Subsection 53A-15-1403(9);

(ii) a student participating in the Statewide Online Education Program is assessed consistent with Section 53A-15-1210; and

(iii) a third party vendor or contractor may not administer or supervise U-PASS.

[~~(3) An LEA shall make all policies and procedures consistent with the law, Board rules for standardized assessment administration, and the USOE Testing Ethics Policy, approved by the Board August 8, 2014, incorporated by reference, and located at USOE, 250 East 500 South, Salt Lake City, or online at http://www.schools.utah.gov/assessment/Directors/Resources.aspx.~~]

(3) An LEA shall submit the plan to the Superintendent by September 15 annually.

(4) At least once each school year, an LEA shall provide professional development for all educators, administrators, and standardized assessment administrators concerning guidelines and procedures for standardized assessment administration, including educator responsibility for assessment security and proper professional practices.

(5) LEA assessment staff shall use the [~~USOE~~]Standard Test Administration and Testing Ethics Policy in providing training for all assessment administrators and proctors.

(6) An LEA may not release state assessment data publicly until authorized to do so by the Superintendent.

(7) An LEA educator or trained employee shall administer assessments required under R277-404-5 consistent with the testing schedule published on the Board's website.

(8) An LEA educator or trained employee shall complete all required assessment procedures prior to the end of the assessment window defined by the Superintendent.

(9)(a) If an LEA requires an alternative schedule with assessment dates outside of the Superintendent's published schedule, the LEA shall submit the alternative testing plan to the Superintendent by September 15 annually.

(b) The alternative testing plan shall set dates for summative adaptive assessment administration for courses taught face to face or online.

R277-404-[5]6. School Responsibilities.

(1) An LEA, school, or educator may not use a student's score on a state required assessment to determine:

(a) the student's academic grade, or a portion of the student's academic grade, for the appropriate course; or

(b) whether the student may advance to the next grade level.

(2) An LEA and school shall require an educator and assessment administrator and proctor to individually sign the Testing Ethics signature page provided by [~~USOE~~]Superintendent acknowledging or assuring that the educator administers assessments consistent with ethics and protocol requirements.

(3) All educators and assessment administrators shall conduct assessment preparation, supervise assessment administration, [~~provide~~]and certify assessment results[~~, and complete error resolution~~] before providing results to the Superintendent.

(4) All educators and assessment administrators and proctors shall securely handle and return all protected assessment materials, where instructed, in strict accordance with the procedures and directions specified in assessment administration manuals, LEA rules and policies, [~~Board rules, USOE~~]and the Standard Test Administration and Testing Ethics Policy[~~, and state applications of federal requirements for funding~~].

(5) A student's IEP, EL, or Section 504 accommodation plan team shall determine an individual student's participation in statewide assessments consistent with the Utah Participation and Accommodations Policy.

R277-404-[6]7. Student and Parent Participation in Student Assessments in Public Schools; Parental Exclusion from Testing and Safe Harbor Provisions.

(1)(a) Parents are primarily responsible for their children's education and have the constitutional right to determine which aspects of public education, including assessment systems, in which their children participate.

(b) Parents may further exercise their inherent rights to exempt their children from a state required assessment without further consequence by an LEA.

(2) An LEA shall administer state required assessments to all students unless:

(a) the Utah alternate assessment is approved for specific students consistent with federal law and as specified in [~~a~~]the student's IEP; or

(b) students are excused by a parent or guardian under Section 53A-15-1403(9) and as provided in this rule.

(3)(a) A parent may exercise the right to exempt their child from a state required assessment.

(b) Except as provided in Subsection (3)(c), upon exercising the right to exempt a child from a state required assessment under this provision, an LEA may not impose an adverse consequence on a child as a result of the exercise of rights under this provision.

(c) If a parent exempts the parent's child from the basic civics test required in Sections 53A-13-109.5 and R277-700-8, the parent's child is not exempt from the graduation requirement in Subsection 53A-13-109.5(2), and may not graduate without successfully completing the requirements of Sections 53A-13-109.5 and R277-700-8.

(4)(a) In order to exercise the right to exempt a child from a state required assessment under this provision and insure the protections of this provision, a parent shall:

(i) fill out:

(A) the Parental Exclusion from State Assessment Form provided on [~~USOE's~~]Board's website; or

(B) an LEA specific form as described in Subsection (4)(b); and

(ii) submit the form:

(A) to the principal or LEA either by email, mail, or in person; and

(B) on an annual basis and at least one day prior to beginning of the assessment.

(b) An LEA may create an LEA specific form for a parent to fill out as described in Subsection (4)(a)(i)(B) if:

(i) the LEA includes a list of local LEA assessments that a parent may exempt the parent's student from as part of the LEA's specific form; and

(ii) the LEA's specific form includes all of the information described in the Parental Exclusion from State Assessment Form provided on [~~USOE's~~]Board's website as described in Subsection (4)(a)(i)(A).

(5)(a) A teacher, principal, or other LEA administrator may contact a parent to verify that the parent submitted a parental exclusion form described in Subsection (4)(a)(i).

(b) An LEA may request, but may not require, a parent to meet with a teacher, principal, or other LEA administrator regarding the parent's request to exclude the parent's student from taking a state required assessment.

(6) School grading, teacher evaluations, and student progress reports or grades may not be negatively impacted by students excused from taking a state required assessment.

(7) Any assessment that is not a state required assessment, the administration of the assessments, and the consequence of taking or failing to take the assessments is governed by policy adopted by each LEA.

(8) An LEA shall provide a student's individual test results and scores to the student's parent or guardian upon request and consistent with the protection of student privacy.

(9) An LEA may not reward a student for taking a state required assessment.

R277-404-[7]8. Public Education Employee Compliance with Assessment Requirements, Protocols, and Security.

(1) An educator, test administrator or proctor, administrator, or school employee may not:

(a) provide a student directly or indirectly with a specific question, answer, or the content of any specific item in a standardized assessment prior to assessment administration;

(b) download, copy, print, take a picture of, or make any facsimile of protected assessment material prior to, during, or after assessment administration without express permission of the Superintendent and an LEA administrator;

(c) change, alter, or amend any student online or paper response or any other standardized assessment material at any time in a way that alters the student's intended response;

(d) use any prior form of any standardized assessment, including pilot assessment materials, that the Superintendent has not released in assessment preparation without express permission of [~~USOE~~]the Superintendent and an LEA administrator;

(e) violate any specific assessment administrative procedure specified in the assessment administration manual, violate any state or LEA standardized assessment policy or procedure, or violate any procedure specified in [~~USOE~~]the Standard Test Administration and Testing Ethics Policy;

(f) fail to administer a state required assessment;

(g) fail to administer a state required assessment within the designated assessment window;

(h) submit falsified data;

(i) allow a student to copy, reproduce, or photograph an assessment item or component; or

(j) knowingly do anything that would affect the security, validity, or reliability of standardized assessment scores of any individual student, class, or school.

(2) A school employee shall promptly report an assessment violation or irregularity to a building administrator, an LEA superintendent or director, or [~~USOE~~]the Superintendent.

(3) An educator who violates this rule or an assessment protocol is subject to Utah Professional Practices Advisory Commission or Board disciplinary action consistent with R277-515.

(4) All assessment material, questions, and student responses for required assessments is designated protected, consistent with Section 63G-2-305, until released by the Superintendent.

(5)(a) Each LEA shall ensure that all assessment content is secured so that only authorized personnel have access and that assessment materials are returned to [~~USOE~~]Superintendent following testing, as required by the Superintendent.

(b) An individual educator or school employee may not retain or distribute test materials, in either paper or electronic form, for purposes inconsistent with ethical test administration or beyond the time period allowed for test administration.

[**~~R277-404-8. Time Periods for Assessment Administration.~~**

~~(1) An LEA educator or trained employee shall administer assessments required under R277-404-3 consistent with the following schedule:~~

~~(a) all summative adaptive assessments, an online writing assessment, and a Utah alternative assessment for elementary and secondary, English language arts, math, science, within the Superintendent's annually designated assessment windows;~~

~~(b) English language proficiency assessment:~~

~~(i) annually to all English Learner students identified as Level 1 Entering, Level 2 Beginning, Level 3 Developing, Level 4 Expanding, or enrolled for the first time in the LEA at any time during the school year to show student progress; and~~

~~(ii) submit materials to the Superintendent's identified scoring provider for scanning and scoring on a schedule defined by the Superintendent;~~

~~(c) pre-post kindergarten assessment for a kindergarten student as determined by the LEA during assessment windows determined by the LEA;~~

~~(d) one benchmark reading assessment determined by the Board for grade 1, grade 2, and grade 3 students in the beginning, midpoint, and end of the school year;~~

~~(e) grade 3 end of year summative reading assessment using grade 3 SAGE English Language Arts; and~~

~~(f) NAEP assessments determined and required annually by the United States Department of Education and administered to students as directed by United States Department of Education.~~

~~(2) An LEA educator or trained employee shall complete all required assessment procedures prior to the end of the assessment window defined by the Superintendent.~~

~~(3)(a) An LEA that has an alternative schedule shall submit an annual testing plan to the Superintendent by September 1 annually.~~

~~(b) The plan shall:~~

~~(i) set dates for summative adaptive assessment administration for courses taught face to face or online;~~

~~(ii) set dates to assess students at the point in the course where students have had approximately the same amount of instructional time as students on a traditional full year schedule; and~~

~~(iii) provide a course level assessment schedule to the Superintendent before instruction begins for the course.~~]

R277-404-9. Data Exchanges.

(1) The [~~USOE~~]Board's IT Section shall communicate regularly with an LEA regarding the required format for electronic submission of required data.

(2) An LEA shall update UTREx data using the processes and according to schedules determined by the Superintendent.

(3) An LEA shall ensure that any computer software for maintaining or submitting LEA data is compatible with data reporting requirements established in Rule R277-484.

(4) The Superintendent shall provide direction to an LEA detailing the data exchange requirements for each assessment.

(5) An LEA shall ensure that all summative testing data have been collected and certify that the data are ready for accountability purposes no later than July 12.

([~~5~~]6) An LEA shall verify that it has satisfied all the requirements of the Superintendent's directions described in this section.

([~~6~~]7) Consistent with Utah law, the Superintendent shall return assessment results from all required assessments to the school before the end of the school year.

KEY: assessments, student achievements
Date of Enactment or Last Substantive Amendment: [~~December 8, 2015~~]2016
Notice of Continuation: September 13, 2013[~~-611~~]
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-603 through 53A-1-611; 53A-1-401(3)

Education, Administration
R277-490
Beverley Taylor Sorenson Elementary Arts Learning Program (BTSALP)

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 40508
FILED: 06/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended in response to H.B. 40, Agency Reporting Requirements, from the 2016 General Session, which deleted several reporting requirements for the Board.

SUMMARY OF THE RULE OR CHANGE: Amendments to this rule remove Section R277-490-8, Program Reporting, because the reporting requirement is no longer required under state law, and provide technical and conforming changes throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-17a-162

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendments to this rule remove unnecessary language and provide technical and

conforming changes, which likely will not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: The amendments to this rule remove unnecessary language and provide technical and conforming changes, which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: The amendments to this rule remove unnecessary language and provide technical and conforming changes, which likely will not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to this rule remove unnecessary language and provide technical and conforming changes, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule remove unnecessary language and provide technical and conforming changes, which likely will not result in any compliance costs for affected persons.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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R277. Education, Administration.
R277-490. Beverley Taylor Sorenson Elementary Arts Learning Program (BTSALP).
R277-490-[2]1. Authority and Purpose.

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

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

(b) Section 53A-1-401[(3)], which [permits]allows the Board to [adopt rules in accordance with its responsibilities,]make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53A-17a-162, which directs the Board to establish a grant program for LEAs to hire qualified arts professionals to encourage student participation in the arts in Utah public schools and embrace student learning in Core subject areas.

[B.](2) The purpose of this rule is:

([1]a) to implement the BTSALP model in public schools through LEAs and consortia that submit grant applications to hire arts specialists[as defined in R277-490-1F and] who are paid on the licensed teacher salary schedule;

([2]b) to distribute funds to LEAs to purchase supplies and equipment as provided for in Subsections 53A-17a-162(4) and (6);

([3]c) to fund activities at endowed universities[as defined in Section 53A-17a-162] to provide pre-service training, professional development, research, and leadership for arts educators and arts education in Utah public schools; and

([4]d) to appropriately monitor, evaluate, and report programs and program results.

R277-490-[1]2. Definitions.

[A.](1) "Arts equipment and supplies" [means]includes musical instruments, recording and play-back devices, cameras, projectors, computers to be used in the program, CDs, DVDs, teacher reference books, and art-making supplies.[This list is not exhaustive.]

[B.](2) "Arts Program coordinator[s]" or [(]"coordinator[)]" means an individual[s], employed full-time, who [are]is responsible to:

(a) coordinate arts programs for [the]an LEA[(as defined in R277-490-1G)] or consortium[,];

(b) inform arts teachers[,];

(c) organize arts professional development [(]including organizing arts local learning communities[),];

(d) oversee[/], guide[/], and organize the gathering of assessment data[,];

(e) represent the LEA or consortium arts program[,]; and

(f) provide general leadership for arts education throughout the LEA or consortium.

[C.](3) "Beverley Taylor Sorenson Elementary Arts Learning Program model," "BTSALP model," or "Program" means a [P]program in grades K-6 with the following components:

([1]a) a qualified arts specialist to work collaboratively with the regular classroom teacher to deliver quality, sequential, and developmental arts instruction in alignment with the state Fine Arts Core Curriculum;

([2]b) regular collaboration between the classroom teacher and arts specialist in planning arts integrated instruction; and

([3]c) other activities that may be proposed by an LEA on a grant application and approved by the Board.

[D. "Board" means the Utah State Board of Education.]

[E.](4) "Endowed university" means an institution of higher education in the state as defined in Subsection 53A-17a-162(1)(b).

[~~F.~~](5) "Highly qualified school arts program specialist" or [~~(~~]"arts specialist[~~)~~]" means:

([~~1~~]a) an educator with:

(i) a current educator license; and

(ii) a Level 2 or K-12 specialist endorsement in the art form;

([~~2~~]b) an elementary classroom teacher with a current educator license who is currently enrolled in a Level 2 specialist endorsement program in the art form;

([~~3~~]c) a professional artist employed by a public school and accepted into the Board Alternative Routes to License (ARL) program under Rule R277-503 to complete a K-12 endorsement in the art form, which includes the Praxis exam in the case of art, music, or theatre; or

([~~4~~]d) an individual who qualifies for an educator license under Board rule that qualifies the individual for the position provided that:

([~~a~~]i) an LEA provides an affidavit verifying that a reasonable search was conducted for an individual who would qualify for an educator license through other means; and

([~~b~~]ii) the LEA reopens the position and conducts a new search every two years.

([~~5~~]e) In addition to required licensure and endorsements, prospective teachers should provide evidence of facilitating elementary Core learning in at least one art form.

[~~G. "LEA" or "local education agency" means a school district, charter school or, for purposes of this rule, the Utah Schools for the Deaf and the Blind.~~]

[~~H.~~](6) "Matching funds[~~,~~]" [~~for purposes of this rule and the Program,~~] means funds that equal 20[~~percent~~]% of the total costs for salary plus benefits incurred by an LEA[~~/~~] or consortium to fund [~~an~~]the LEA[~~/~~] or consortium's arts specialist[~~in Subsection R277-490-1F~~].

[~~I. "USOE" means the Utah State Office of Education.~~]

R277-490-3. Arts Specialist Grant Program - LEA Consortium.

(1) LEAs may form a consortium to employ arts specialists appropriate for the number of students served.

[~~A.~~](2) An LEA[~~s~~] or a consorti[~~a~~]um of LEAs may submit a grant request[~~s~~] consistent with time lines provided in this rule.

[~~B. LEA consortia:~~

~~(1) LEAs may form consortia to employ arts specialists appropriate for the number of students served.~~]

([~~2~~]3) [~~The~~]An LEA or a consortium shall develop its proposal consistent with the BTSALP model outlined under R277-490-[~~1C~~]2(3).

([~~3~~]4) [~~The LEA~~]A consortium grant request shall explain the necessity or greater efficiency and benefit of an arts specialist serving several elementary schools within a consortium of LEAs.

([~~4~~]5) [~~The LEA~~]A consortium grant shall explain a schedule for [~~the~~]each specialist[~~(s)~~] to serve the group of schools within several of the LEAs similarly to an arts specialist in a single school.

([~~5~~]6) A consortium grant request shall provide information for a consortium arts specialist's schedule that minimizes the arts specialist's travel and allows the arts specialist to be well integrated into several schools.

[~~C. LEA grant requirements:~~

~~(1) An LEA shall develop and submit a grant program to the Board that is consistent with the BTSALP model described in R277-490-1C.~~]

([~~2~~]7) An LEA's grant application shall include the collaborative development of the application with the LEA's partner endowed university and School Community Councils if matching funds come[~~s~~] from School LAND Trust Funds.

R277-490-4. Arts Specialist Grant Program Timelines.

[~~D. Program timelines:~~]

(1) An LEA or a consortium shall complete a [~~P~~]program grant application[~~s shall be completed~~] annually.

(2) The Board shall [~~G~~]grant funding priority to renewal applications[~~s shall receive funding priority~~].

([~~2~~]3) An LEA[~~s~~] or consortium shall submit a completed application[~~s~~] requesting funding to the [~~USOE~~]Superintendent by May 1 annually.

([~~3~~]4) The Board shall designate an LEA[~~s~~/] or a consorti[~~a~~]um for funding no later than June 1 annually.

R277-490-5. Distribution of Funds for Arts Specialist.

[~~E. Distribution of funds for arts specialists~~]

(1) A [~~P~~]program LEA[~~s~~] or consortium shall submit complete information of salaries, [~~(~~]including benefits[~~)~~], of all [~~P~~]program specialists employed by the LEA or consortium no later than September 30 annually.

(2) If a [~~P~~]program LEA or consortium provides[~~the~~] matching funds [~~described in R277-490-3E(3)~~], the [~~USOE~~]Superintendent shall distribute funds to [~~P~~]program [~~LEAs~~]grant recipients annually equal to 80[~~percent~~]% of the salaries plus benefits for approved hires in [~~this~~]the program, consistent with Subsections 53A-17a-162(5) and(6).

(3)(a) An individual program specialist grant amount may not exceed $70,000 in FY 2016.

(b) The upper limit on the grant amount shall adjust each year at the same rate as the increase in the WPU.

([~~3~~]4) A [~~Program LEA~~]grant recipient shall provide matching funds for each specialist funded through the [~~P~~]program.

R277-490-[4]6. Distribution of Funds for Arts Specialist Supplies.

[~~A.~~](1) The Board shall distribute funds for arts specialist supplies to an LEA[~~s~~/] or consorti[~~a~~]um as available.

[~~B.~~](2) A [~~LEAs~~]grant recipient shall distribute funds to participating schools as provided in the approved LEA[~~/~~] or consorti[~~a~~]um grant and consistent with LEA procurement policies.

[~~C.~~](3) A [~~LEAs/consortia~~]grant recipient shall require arts specialists to provide adequate documentation of arts supplies purchased consistent with the [~~school/consortium~~]grant recipient's plan, this rule, and the law.

[~~D.~~](4) Summary information about effective supplies and equipment shall be provided in the school[~~/~~] or consortium evaluation of the [~~P~~]program.

R277-490-[5]7. LEA[~~/~~] or Consorti[~~a~~]um Employment of [~~LEA/Consortia~~] Arts Coordinators.

[~~A.~~](1)(a) An LEA[~~s~~/] or consorti[~~a~~]um may apply for funds to employ arts coordinators in [~~their~~]the LEA[~~s~~/] or consortium.

(b) These are intended as small [~~grants to~~]stipends for educators who are already employed in rural districts to help support arts education and the implementation of BTSALP.

[~~B.~~](2) An [~~A~~]applicant[~~s~~] shall explain:

(a) how an arts coordinator[~~s~~] will be used, consistent with the BTSALP model[~~,~~];

(b) what requirements an arts coordinator[~~s~~] must meet[~~,~~]; and

(c) what training will be provided, and by whom.

[~~C. Applicants shall provide documentation of committed matching funds that equal 20 percent of the grant request.~~]

[~~D.~~](3) The [~~USOE~~]Superintendent shall notify an LEA that receives a grant award no later than June 1 annually.

R277-490-[6]8. Endowed University Participation in the BTSALP.

[~~A.~~](1) The [~~Board~~]Superintendent may consult with endowed chairs and integrated arts advocates regarding program development and guidelines.

[~~B. Endowed university grants:~~]

([~~1~~]2) An [~~E~~]endowed universit[~~ies~~]y may apply for grant funds to fulfill the purposes of this program, which include:

(a) delivery of high quality professional development to participating LEAs;

(b) the design and completion of research related to the program;

(c) providing the public with elementary arts education resources; and

(d) other program related activities as may be included in a grant application and approved by the Board.

([~~2~~]3) An [~~E~~]endowed university grant application[~~s~~] shall include documentation of collaborative development of a plan for delivery of high quality professional development to participating LEAs.

(4) The [~~Board~~]Superintendent shall determine the LEAs assigned to each endowed university.

([~~3~~]5) The Board may award no more than 10[~~percent~~]% of the total legislative appropriation [~~to~~]for grants to endowed universities.

([4]6) The [~~USOE~~]Superintendent shall monitor the activities of the grantees to ensure compliance with grant rules, fulfillment of grant application commitments, and appropriate fiscal procedures.

(7) An [~~E~~]endowed universit[~~ies~~]y shall cooperate with the [~~USOE~~]Superintendent in the monitoring of [~~their~~]its grant[~~s~~].

([~~5~~]8) An [~~E~~]endowed universit[~~ies~~]y that receives grant funds shall consult, as requested by the [~~Board~~]Superintendent, in the development and presentation of an annual written program report as required in statute.

R277-490-[7]9. LEAs Cooperation with [~~USOE~~]the Superintendent for BTSALP.

[~~A. USOE~~](1) A BTSALP staff member may visit a school[~~s~~] receiving a grant[~~s~~] to observe implementation of the grant[~~s~~].

[~~B.~~](2) A BTSALP school[~~s~~] shall cooperate with the [~~USOE~~]Superintendent to allow visits of members of the Board, legislators, and other invested partners to promote elementary arts integration.

[~~C.~~](3) An LEA[~~s~~] shall accurately report the number[~~s~~] of students impacted by the [~~P~~]program grant and report on the delivery systems to those students as requested by the [~~USOE~~]Superintendent.

[~~D.~~](4)(a) An LEA[~~s~~] found to be out of compliance with the terms of the grant will be notified within 30 days of the discovery of[~~such~~] non-compliance.

([~~1~~]b) An LEA[~~s~~] found to be in non-compliance will be given 30 days to correct the issues.

([~~2~~]c) If non-compliance is not resolved within that time frame, an LEA[~~s are~~] is subject to losing the grant funds for the school or schools found to be non-compliant.

[**~~R277-490-8. Program Reporting.~~**

~~The Board shallreport annually to the Education Interim Committee as provided in Section 53A-17a-162(8).~~

]

KEY: arts programs, grants, public schools, endowed universities

Date of Enactment or Last Substantive Amendment: [~~July 8, 2015~~]2016

Notice of Continuation: June 10, 2013

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401[~~(3)~~]; 53A-17a-162

Education, Administration
R277-511
Academic Pathway to Teaching (APT) Level 1 License

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 40509
FILED: 06/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule provides a new Academic Pathway to Teaching for an applicant to obtain a Level 1 and Level 2 educator license.

SUMMARY OF THE RULE OR CHANGE: Rule R277-511 provides definitions, superintendent responsibilities and requirements for an applicant to obtain an educator license, and for a local education agency (LEA) to employ an APT license holder.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-6-104

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This new rule provides an additional process for an individual to obtain an educator license, which likely will not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: This new rule provides an additional process for an individual to obtain an educator license, which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: This new rule provides an additional process for an individual to obtain an educator license, 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 provides an additional process for an individual to obtain an educator license, 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 provides an additional process for an individual to obtain an educator license, 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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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R277. Education, Administration.
R277-511. Academic Pathway to Teaching (APT) Level 1 License.
R277-511-1. 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-6-104, which allows the board by rule, to rank, endorse, or otherwise to:
(i) classify licenses; and
(ii) establish the criteria for an educator to obtain or retain a license; 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 standards and procedures:
(a) for an applicant to obtain an Academic Pathway to Teaching (APT) level 1 license; and
(b) for an APT level 1 license holder to obtain a level 2 license.

R277-511-2. Definitions.
(1)(a) "APT level 1 license" means a license obtained through the academic path to teaching process as described in this rule.
(b) "APT level 1 license" includes:
(i) an APT level 1 license with an Elementary (K-6) Concentration; and
(ii) an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement.
(2) "LEA administrator" means a school building principal or LEA administrator who:
(i) supervises an APT level 1 licensee; and
(ii) may recommend the APT level 1 licensee for Level 2 licensure to the Superintendent as described in Section R277-511-6.
(3) "Master teacher" means a level 2 or level 3 licensed teacher designated as a master teacher by an LEA through the demonstration of consistent leadership, focused collaboration, distinguished teaching, and continued professional growth.

R277-511-3. Superintendent Responsibilities.
(1) The Superintendent shall create an application for an APT level 1 license and publish the application on the Board's website.
(2) The Superintendent shall approve an application for an APT level 1 license if the applicant meets all of the requirements of Section R277-511-4 or Section R277-511-5.

R277-511-4. Requirements for an APT Level 1 License with an Elementary (K-6) Concentration.
(1) To qualify for an APT level 1 license with an Elementary (K-6) Concentration, an applicant shall:
(a) complete the application described in Subsection R277-511-3(1);
(b) have completed a bachelor's degree or higher;
(c) submit postsecondary transcripts to the Superintendent;
(d) receive a passing score on the Elementary Education: Multiple Subjects Praxis Assessment;
(e) complete the educator ethics review on the Board's website;
(f) successfully pass a background check as described in R277-516; and
(g) pay the applicable licensing fee.
(2) An APT level 1 license with an Elementary (K-6) Concentration is:

(a) equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations; and

(b) subject to the same renewal procedures.

R277-511-5. Requirements for an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement.

(1) To qualify for an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement, an applicant shall:

(a) complete the application described in Subsection R277-511-3(1);

(b) have completed a bachelor's degree or higher;

(c) submit postsecondary transcripts to the Superintendent;

(d) receive a passing score on one of the following that is related to the subject, field, or area to which they are seeking an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement:

(i) a Praxis II Subject Assessment; or

(ii) another Board-approved content knowledge assessment;

(e) complete the educator ethics review on the Board's website;

(f) successfully pass a background check as described in R277-516; and

(g) pay the applicable licensing fee.

(2) Except as provided in Subsection (3), an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement is:

(a) equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations; and

(b) subject to the same renewal procedures.

(3) An APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement holder may only seek an additional endorsement after the APT Level 1 License with a Secondary (6-12) Concentration holder obtains a level 2 license.

R277-511-6. Requirements for an LEA that Employs an APT Level 1 License Holder.

If an LEA employs an APT level 1 license holder, the LEA shall:

(1) assign a master teacher to serve as a mentor to the APT level 1 license holder; and

(2) prepare the APT level 1 license holder to meet the Utah Effective Educator Standards described in R277-530-5.

R277-511-7. Requirements for an APT Level 1 License Holder to Gain a Level 2 License.

(1) To receive a Level 2 license, an APT level 1 license holder shall:

(a)(i) complete three years of teaching full-time under supervision of the master teacher mentor and LEA administrator; or

(ii) complete four years of at least 0.4 FTE teaching under the supervision of a master teacher mentor and the LEA administrator;

(b) satisfy all Entry Years Enhancement for Quality Teaching requirements designated in R277-522;

(c) complete any additional requirements of the recommending LEA, including coursework and professional learning that the recommending LEA requires;

(d) complete the educator ethics review on the Board's website;

(e) renew the educator's background check as required in R277-516; and

(f) obtain a recommendation from:

(i) the master teacher mentor; and

(ii) the LEA administrator; and

(g) pay applicable licensing fees.

(2)(a) An APT level 1 license holder seeking a level 2 license may request a one year extension of the APT level 1 license at the recommendation of the master teacher mentor and the LEA Administrator up to a maximum of two one-year extensions.

(b) Unless required by the recommending LEA, the years of teaching in Subsection (1)(a) do not need to be consecutive.

KEY: Academic Pathway to Teaching, educator licensure
Date of Enactment of Last Substantive Amendment: 2016
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-104; 53A-1-401

Education, Administration
R277-515
Utah Educator Standards

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40510
FILED: 06/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide additional standards and procedures recommended by the Utah Professional Advisory Commission Task Force.

SUMMARY OF THE RULE OR CHANGE: The amendments provide clearer standards on issues related to grooming and boundaries, add provisions regarding educator use of technology, provide clarification regarding matters that should be reported, and add a provision to the rule that educators must review the standards and reporting rules and annually sign a form acknowledging that the educator has read and understands the rules.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Subsection 53A-1-402(1)(a) and Title 53A, Chapter 6

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendments to this rule provide updated standards and provisions for educators to comply with, which likely will not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: The amendments to this rule provide updated standards and provisions for educators to comply with, which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: The amendments to this rule provide updated standards and provisions for educators to comply with, which likely will not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to this rule provide updated standards and provisions for educators to comply with, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule provide updated standards and provisions for educators to comply with, which likely will not result in any compliance costs for affected persons.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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R277. Education, Administration.
R277-515. Utah Educator Professional Standards.
R277-515-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests the general control and supervision of the public schools in the Board;

(b) Subsection 53A-1-402(1)(a), which directs the Board to make rules regarding the certification of educators;

(c) Title 53A, Chapter 6, Educator Licensing and Professional Practices Act, which provides all laws related to educator licensing and professional practices; and

(d) S[~~ubs~~]ection 53A-1-401[~~(3)~~], which allows the Board to [~~adopt rules in accordance with its responsibilities~~]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:

(a) establish statewide standards for public school educators that provide notice to educators and prospective educators and notice and protection to public school students and parents;

(b) recognize that licensed public school educators are professionals and, as such, should share common professional standards, expectations, and role model responsibilities; and

(c) distinguish behavior for which educators shall receive license discipline from behavior that all Utah educators should aspire to and for which license discipline shall be initiated only in egregious circumstances or following a pattern of offenses.

R277-515-2. Definitions.

(1)(a) "Boundary violation" means crossing verbal, physical, emotional, and social lines that an educator must maintain in order to ensure structure, security, and predictability in an educational environment.

(b) A "boundary violation" may include the following, depending on the circumstances:

(i) isolated, one-on-one interactions with students out of the line of sight of others;

(ii) meeting with students in rooms with covered or blocked windows;

(iii) telling risqué jokes to, or in the presence of a student;

(iv) employing favoritism to a student;

(v) giving gifts to individual students;

(vi) educator initiated frontal hugging or other uninvited touching;

(vii) photographing individual students for a non-educational purpose or use;

(viii) engaging in inappropriate or unprofessional contact outside of educational program activities;

(ix) exchanging personal email or phone numbers with a student for a non-educational purpose or use;

(x) interacting privately with a student through social media, computer, or handheld devices; and

(xi) discussing an educator's personal life or personal issues with a student.

(c) "Boundary violations" does not include:

(i) offering praise, encouragement, or acknowledgment;

(ii) offering rewards available to all who achieve;

(iii) asking permission to touch for necessary purposes;

(iv) giving pats on the back or a shoulder;

(v) giving side hugs;

(vi) giving handshakes or high fives;

(vii) offering warmth and kindness;

(viii) utilizing public social media alerts to groups of students and parents; or

(ix) contact permitted by an IEP or 504 plan.

([~~1~~]2) "Core Standard" means a statement:

(a) of what a student enrolled in a public school is expected to know and be able to do at a specific grade level or following completion of an identified course; and

(b) established by the Board in Rule R277-700 as required by Section 53A-1-402.

([~~2~~]3) "Diversion agreement" means an agreement between a prosecutor and defendant entered into prior to a conviction delaying prosecution of a criminal charge for a specified period of time and contingent upon the defendant satisfying certain conditions.

([~~3~~]4)(a) "Educator" or "professional educator" means a person who currently holds a Utah educator license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.

(b) "Professional educator" does not include a paraprofessional, a volunteer, or an unlicensed teacher in a classroom.

[~~(4) "Felony offense" means any offense for which an individual is charged with a first, second, or third degree felony under:~~

~~(a) Title 76, Utah Criminal Code;~~

~~(b) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;~~

~~(c) Title 58, Chapter 37d, Clandestine Drug Lab Act;~~

~~(d) Title 63G, Chapter 6a, Utah Procurement Code; or~~

~~(e) any other statute in the Utah Code establishing a felony.~~]

(5) "Illegal drug" means a substance included in:

(a) Schedules I, II, III, IV, or V established in Section 58-37-4;

(b) Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, Pub. L. No. 91-513; or

(c) any controlled substance analog.

(6) Grooming" means befriending and establishing an emotional connection with a child or a child's family to lower the child's inhibitions for emotional, physical, or sexual abuse.

([~~6~~]7) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

([~~7~~]8) "Licensing discipline" means a sanction, including an admonition, a letter of warning, a written reprimand, suspension of license, and revocation of license, or other appropriate disciplinary measure, for violation of a professional educator standard.

([~~8~~]9) "Misdemeanor offense," for purposes of this rule, does not include Class C or lower violations of Title 41, Utah Motor Vehicle Code[~~ means any offense for which an individual is charged with a Class A, B, or C misdemeanor under:~~

~~(a) Title 76, Utah Criminal Code;~~

~~(b) Title 67, Chapter 16, Utah Officers' and Public Employees' Ethics Act;~~

~~(c) Title 58, Chapter 37d, Clandestine Drug Lab Act;~~

~~(d) Title 63G, Chapter 6a, Utah Procurement Code; or~~

~~(e) any other statute in the Utah Code establishing a misdemeanor~~].

([9]10) "Plea in abeyance" means a plea of guilty or no contest that is not entered as a judgment or conviction but is held by a court in abeyance for a specified period of time.

([~~10~~]11) "School-related activity" means any event, activity, or program:

(a) occurring at the school before, during, or after school hours; or

(b) that a student attends at a remote location as a representative of the school or with the school's authorization, or both.

([~~11~~]12) "Stalking" means the act of intentionally or knowingly engaging in a course of conduct directed at a specific person as defined in Section 76-5-106.5.

([~~12~~]13) "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, as established by Section 53A-6-301.

([~~13~~]14) "Weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury.

R277-515-3. Educator as a Role Model of Civic and Societal Responsibility.

(1) The professional educator is responsible for compliance with federal, state, and local laws.

(2) The professional educator shall familiarize himself or herself with professional ethics and is responsible for compliance with applicable professional standards.

(3) Failing to strictly adhere to Subsection (4) shall result in licensing discipline.

(4) The professional educator, upon receiving a Utah educator license:

(a) may not be convicted of any felony or misdemeanor offense that adversely affects the individual's ability to perform an assigned duty and carry out the responsibilities of the profession, including role model responsibility;

(b) may not be convicted of or commit any act of violence or abuse, including physical, sexual, or emotional abuse of any person;

(c) may not commit any act of cruelty to a child or any criminal offense involving a child;

(d) may not be convicted of a stalking crime;

(e) may not possess or distribute an illegal drug or be convicted of any crime related to an illegal drug, including a prescription drug not specifically prescribed for the individual;

(f) may not engage in conduct of a sexual nature described in Section 53A-6-405;

(g) may not be subject to a diversion agreement specific to a sex-related or drug-related offense, plea in abeyance, court-imposed probation, or court supervision related to a criminal charge that could adversely impact the educator's ability to perform the duties and responsibilities of the profession;

(h) may not provide to a student or allow a student under the educator's supervision or control to consume an alcoholic beverage or unauthorized drug;

(i) may not attend school or a school-related activity in an assigned supervisory capacity while possessing, using, or under the influence of alcohol or an illegal drug;

(j) may not intentionally exceed the prescribed dosage of a prescription medication while at school or a school-related activity;

(k) shall cooperate in providing all relevant information and evidence to the proper authority in the course of an investigation by a law enforcement agency or by the Division of Child and Family Services regarding potential criminal activity, except that an educator may decline to give evidence against himself or herself in an investigation if the evidence may tend to incriminate the educator as that term is defined by the Fifth Amendment of the U.S. Constitution;

(l) shall report suspected child abuse or neglect to law enforcement or the Division of Child and Family Services pursuant to Sections 53A-6-502 and 62A-4a-409 and comply with rules and LEA policy regarding the reporting of suspected child abuse;

(m) shall strictly adhere to state laws regarding the possession of a firearm while on school property or at a school-sponsored activity and enforce an LEA policy related to student access to or possession of a weapon;

(n) may not solicit, encourage, or consummate an inappropriate relationship, whether written, verbal, or physical, with a student or minor;

(o) may not engage in grooming of a student or minor;

([~~o~~]p) may not:

(i) participate in sexual, physical, or emotional harassment towards any public school-age student or colleague; or

(ii) knowingly allow harassment toward a student or colleague;

([~~p~~]q) may not make inappropriate contact in any communication, including written, verbal, or electronic, with a minor, student, or colleague, regardless of age or location;

([~~q~~]r) may not interfere or discourage a student's or colleague's legitimate exercise of political and civil rights, acting consistent with law and LEA policy;

([~~r~~]s) shall provide accurate and complete information in a required evaluation of himself or herself, another educator, or student, as directed, consistent with the law;

([~~s~~]t) shall be forthcoming with accurate and complete information to an appropriate authority regarding known educator misconduct that could adversely impact performance of a professional responsibility, including a role model responsibility, by himself or herself, or another;

([~~t~~]u) shall provide accurate and complete information required for licensure, transfer, or employment purposes;

([~~u~~]v) shall provide accurate and complete information regarding qualifications, degrees, academic or professional awards or honors, and related employment history when applying for employment or licensure;

([~~v~~]w) shall notify the [~~USOE~~]Superintendent at the time of application for licensure of past license disciplinary action or license discipline from another jurisdiction;

([~~w~~]x) shall notify the [~~USOE~~]Superintendent honestly and completely of past criminal convictions at the time of the license application and renewal of licenses; and

([~~x~~]y) shall provide complete and accurate information during an official inquiry or investigation by LEA, state, or law enforcement personnel.

(5) An LEA shall report violations described in Subsection (4) to UPPAC.

([~~5~~]6)(a) Failure to adhere to this Subsection ([~~5~~]6) may result in licensing discipline.

(b) A penalty shall be imposed, most readily, if an educator has received a previous documented warning from the educator's employer.

(c) An educator may not:

(i) exclude a student from participating in any program or deny or grant any benefit to any student on the basis of race, color, creed, sex, national origin, marital status, political or religious belief, physical or mental condition, family, social, or cultural background, or sexual orientation; and

(ii) may not engage in conduct that would encourage a student to develop a prejudice on the grounds described in Subsection ([~~5~~]6)(c)(i) or any other, consistent with the law.

(d) An educator shall maintain confidentiality concerning a student unless revealing confidential information to an authorized person serves the best interest of the student and serves a lawful purpose, consistent with:

(i) Title 53A, Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act; and

(ii) the Federal Family Educational Rights and Privacy Acts, 20 U.S.C. Sec. 1232g and 34 CFR Part 99.

(e) Consistent with Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, Section 53A-1-402.5, and rule, a professional educator:

(i) may not accept a bonus or incentive from a vendor or potential vendor or a gift from a parent of a student, or a student where there may be the appearance of a conflict of interest or impropriety;

(ii) may not accept or give a gift to a student that would suggest or further an inappropriate relationship;

(iii) may not accept or give a gift to a colleague that is inappropriate or furthers the appearance of impropriety;

(iv) may accept a donation from a student, parent, or business donating specifically and strictly to benefit a student;

(v) may accept, but not solicit, a nominal appropriate personal gift for a birthday, holiday, or teacher appreciation occasion, consistent with LEA policy and Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(vi) may not use the educator's position or influence to:

(A) solicit a colleague, student, or parent of a student to purchase equipment, supplies, or services from the educator or participate in an activity that financially benefits the educator unless approved in writing by the LEA; or

(B) promote an athletic camp, summer league, travel opportunity, or other outside instructional opportunity from which the educator receives personal remuneration and that involve students in the educator's school system, unless approved in writing consistent with LEA policy and rule; and

(vii) may not use school property, a facility, or equipment for personal enrichment, commercial gain, or for personal uses without express supervisor permission.

R277-515-4. Educator Responsibility for Maintaining a Safe Learning Environment and Educational Standards.

(1) A professional educator maintains a positive and safe learning environment for a student and works toward meeting an educational standard required by law.

(2)(a) Failure to strictly adhere to this Subsection (2) shall result in licensing discipline.

(b) The professional educator, upon receiving a Utah educator license:

(i) shall take prompt and appropriate action to prevent harassment or discriminatory conduct toward a student or school employee that may result in a hostile, intimidating, abusive, offensive, or oppressive learning environment;

(ii) shall resolve a disciplinary problem according to law, LEA policy, and local building procedures and strictly protect student confidentiality and understand laws relating to student information and records;

(iii) shall supervise a student appropriately at school and a school-related activity, home or away, consistent with LEA policy and building procedures and the age of the students;

(iv) shall take action to protect a student from any known condition detrimental to that student's physical health, mental health, safety, or learning;

(v)(A) shall demonstrate honesty and integrity by strictly adhering to all state and LEA instructions and protocols in managing and administering a standardized test to a student consistent with Section 53A-1-608 and Rule R277-404;

(B) shall cooperate in good faith with a required student assessment;

[~~(C) shall encourage a student's best effort in an assessment;~~]

([~~D~~]C) shall submit and include all required student information and assessments, as required by statute and rule; and

([~~E~~]D) shall attend training and cooperate with assessment training and assessment directives at all levels;

(vi) may not use or attempt to use an LEA computer or information system in violation of the LEA's acceptable use policy for an employee or access information that may be detrimental to young people or inconsistent with the educator's role model responsibility; and

(vii) may not knowingly possess, while at school or any school-related activity, any pornographic material in any form.

(3) An LEA shall report violations of Subsection (2) to UPPAC.

([~~3~~]4)(a) Failure to adhere to this Subsection ([~~3~~]4) may result in licensing discipline.

(b) A penalty shall be imposed, most readily, if an educator has received a previous documented warning from the educator's employer.

(c) A professional educator:

(i) shall demonstrate respect for a diverse perspective, idea, and opinion and encourage contributions from a broad spectrum of school and community sources, including a community whose heritage language is not English;

(ii) shall use appropriate language, eschewing profane, foul, offensive, or derogatory comments or language;

(iii) shall maintain a positive and safe learning environment for a student;

(iv) shall make appropriate use of technology by:

(A) involving students in social media responsibly, transparently, and primarily for purposes of teaching and learning per school and district policy;

(B) maintaining separate professional and personal virtual profiles;

(C) respecting student privacy on social media; and

(D) taking appropriate and reasonable measures to maintain confidentiality of student information and education records stored or transmitted through the use of electronic or computer technology;

([~~i~~]v) shall work toward meeting an educational standard required by law;

(vi) shall teach the objectives contained in a Core Standard;

(vii) may not distort or alter subject matter from a Core Standard in a manner inconsistent with the law;[~~ and~~]

(viii) shall use instructional time effectively consistent with LEA policy[~~.~~]; and

(ix) shall encourage a student's best effort in an assessment.

R277-515-5. Professional Educator Responsibility for Compliance with LEA Policy.

(1)(a) Failure to strictly adhere to this Subsection (1) shall result in licensing discipline.

(b) [~~The~~]A professional educator:

[~~(i) understands and follows a rule and LEA policy;~~

~~(ii) understands and follows a school or administrative policy or procedure;~~]

([~~ii~~]i) understands[~~ and~~], respects, and does not violate appropriate boundaries;

(A) established by ethical rules and school policy and directive in teaching, supervising, and interacting with a student or colleague; and

(B) described in Subsection R277-515-2(1); and

([~~iv~~]ii) shall conduct financial business with integrity by honestly accounting for all funds committed to the educator's charge, as school responsibilities require, consistent with LEA policy.

(2) An LEA shall report violations of Subsection (1) to UPPAC.

([~~2~~]3)(a) Failure to adhere to this Subsection ([~~2~~]3) may result in licensing discipline.

(b) A penalty shall be imposed most readily, if an educator has received a previous documented warning from the educator's employer.

(c) The professional educator:

(i) understands and follows a rule and LEA policy;

(ii) understands and follows a school or administrative policy or procedure;

(iii) [~~shall~~]resolves a grievance with a student, colleague, school community member, and parent professionally, with civility, and in accordance with LEA policy; and

([~~ii~~]iv) [~~shall~~]follows LEA policy for collecting money from a student, accounting for all money collected, and not commingling any school funds with personal funds.

R277-515-6. Professional Educator Conduct.

(1) A professional educator exhibits integrity and honesty in relationships with an LEA administrator or personnel.

(2)(a) Failure to adhere to this Subsection (2) may result in licensing discipline.

(b) A penalty shall be imposed most readily, if an educator has received a previous documented warning from the educator's employer.

(c) The professional educator:

(i) shall communicate professionally and with civility with a colleague, school and community specialist, administrator, and other personnel;

(ii) shall maintain a professional and appropriate relationship and demeanor with a student, colleague, school community member, and parent;

(iii) may not promote a personal opinion, personal issue, or political position as part of the instructional process in a manner inconsistent with law;

(iv) shall express a personal opinion professionally and responsibly in the community served by the school;

(v) shall comply with an LEA policy, supervisory directive, and generally-accepted professional standard regarding appropriate dress and grooming at school and at a school-related event;

(vi) shall work diligently to improve the educator's own professional understanding, judgment, and expertise;

(vii) shall honor all contracts for a professional service;

(viii) shall perform all services required or directed by the educator's contract with the LEA with professionalism consistent with LEA policy and rule; and

(ix) shall recruit another educator for employment in another position only within a LEA timeline and guideline.

R277-515-7. Violations of Professional Ethics.

(1) This rule establishes standards of ethical decorum and behavior for licensed educators in the state.

(2)(a) Beginning in the 2017-18 school year, every active licensed educator shall review this rule and annually execute a form approved by the Superintendent verifying that the educator:

(i) has read R277-515 and R277-516; and

(ii) understands that the educator's conduct is governed by R277-515 and R277-516.

(b) Failure to submit the form identified in Subsection (a) by September 30 may result in licensing discipline.

([~~2~~]3) Provisions of this rule do not prevent, circumvent, replace, nor mirror criminal or potential charges that may be issued against a professional educator.

([~~3~~]4) The Board and [~~USOE~~]Superintendent shall adhere to the provisions of this rule in licensing and disciplining a licensed Utah educator.

([~~4~~]5) Reporting and employment provisions related to professional ethics are provided in:

(a) Section 53A-15-1507;

(b) Section 53A-6-501;

(c) Section 53A-11-403; and

(d) Section R277-516-7.

KEY: educators, professional, standards
Date of Enactment or Last Substantive Amendment: [~~October 8, 2015~~]2016
Notice of Continuation: [~~November 15, 2012~~]2016
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a); 53A-6; 53A-1-401[~~(3)~~]

Education, Administration
R277-516
Background Check Policies and Required Reports of Arrests for Licensed Educators, Volunteers, Non-licensed Employees, and Charter School Governing Board Members

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 40511
FILED: 06/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide standards and procedures recommended by the Utah Professional Practices Advisory Commission Task Force.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule provide clarification on when educator reporting is required, as well as add a provision for the State Superintendent of Public Instruction to withhold funds from a local education agency (LEA) if the LEA fails to meet reporting requirements under this rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Sections 53A-1-402(1)(a)(i) and (ii) and Subsection 53A-1-301(3)(a) and Subsection 53A-1-301(3)(d)(x) and Title 53A, Chapter 15, Part 15

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The amendments to this rule provide updated standards and provisions for LEAs and educators to comply with, which likely will not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: The amendments to this rule provide updated standards and provisions for LEAs and educators to comply with, which likely will not result in a cost or savings to local government.

♦ SMALL BUSINESSES: The amendments to this rule provide updated standards and provisions for LEAs and educators to comply with, which likely will not result in a cost or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to this rule provide updated standards and provisions for LEAs and educators to comply with, which likely will not result in a cost or savings to small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule provide updated standards and

provisions for LEAs and educators to comply with, which likely will not result in any compliance costs for affected persons.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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R277. Education, Administration.
R277-516. Background Check Policies and Required Reports of Arrests for Licensed Educators, Volunteers, Non-licensed Employees, and Charter School Governing Board Members.
R277-516-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b)(i) Subsections 53A-1-301(3)(a) and 53A-1-301(3)(d)(x), which instruct the Superintendent to perform duties assigned by the Board that include:

(ii) presenting to the Governor and the Legislature each December a report of the public school system for the preceding year that includes:

(A) investigation of all matters pertaining to the public schools; and

(B) statistical and financial information about the school system which the Superintendent considers pertinent;

(c) Subsections 53A-1-402(1)(a)(i) and (iii), which direct the Board to:

(i) establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services; and

(ii) the evaluation of instructional personnel; and

(d) Title 53A, Chapter 15, Part 15, Background Checks, which directs the Board to require educator license applicants to submit to background checks and provide ongoing monitoring of licensed educators.

(2) The purpose of this rule is ensure that all students who are compelled by law to attend public schools, subject to release from school attendance consistent with Section 53A-11-102, are instructed and served by public school teachers and employees who have not violated laws that would endanger students in any way.

R277-516-2. Definitions.

(1) "Charter school governing board" means a board designated by a charter school to make decisions for the operation of the charter school.

(2) "Charter school board member" means a current member of a charter school governing board.

(3) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the database maintained on all licensed Utah educators, which includes information such as:

(a) personal directory information;
(b) educational background;
(c) endorsements;
(d) employment history;
(e) professional development information;
(f) completion of employee background checks; and
(g) a record of disciplinary action taken against the educator.

(4) "Contract employee" means an employee of a staffing service who works at a public school under a contract between the staffing service and the public school.

(5) "DPS" means the Department of Public Safety.

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

(7)(a) "Licensed educator" means an individual who holds a valid Utah educator license and has satisfied all requirements to be a licensed educator in the Utah public school system (examples are traditional public school teachers, charter school teachers, school administrators, [~~USOE~~]Board employees, and school district specialists).

(b) A licensed educator may or may not be employed in a position that requires an educator license.

(c) A licensed educator includes an individual who:

(i) is student teaching;

(ii) is in an alternative route to licensing program or position; or

(iii) holds an LEA-specific competency-based license.

(8) "Non-licensed public education employee" means an employee of a an LEA who:

(a) does not hold a current Utah educator license issued by the Board under Title 53A, Chapter 6, Educator Licensing and Professional Practices; or

(b) is a contract employee.

(9) "Public education employer" means the education entity that hires and employs an individual, including public school districts, the Utah State Office of Education, Regional Service Centers, and charter schools.

(10) "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.

(11) "Volunteer" means a volunteer who may be given significant unsupervised access to children in connection with the volunteer's assignment.

R277-516-3. Licensed Public Education Employee Personal Reporting of Arrests.

(1) A licensed educator who is arrested, cited or charged with the following alleged offenses shall report the arrest, citation, or charge within 48 hours or as soon as possible to the licensed educator's district superintendent, charter school director or designee:

(a) any matters involving an alleged sex offense;

(b) any matters involving an alleged drug-related offense;

(c) any matters involving an alleged alcohol-related offense;

(d) any matters involving an alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person;

(e) any matters involving an alleged felony offense under Title 76, Chapter 6, Offenses Against Property;

(f) any matters involving an alleged crime of domestic violence under Title 77, Chapter 36, Cohabitant Abuse Procedures Act; and

(g) any matters involving an alleged crime under federal law or the laws of another state comparable to the violations listed in Subsections (a) through (f).

(2) A licensed educator shall report convictions, including pleas in abeyance and diversion agreements within 48 hours or as soon as possible upon receipt of notice of the conviction, plea in abeyance or diversion agreement.

(3) An LEA superintendent, director, or designee shall report conviction, arrest or offense information received from a licensed educator to the Superintendent within 48 hours of receipt of information from a licensed educator.

(4) The Superintendent shall develop an electronic reporting process on the [~~USOE~~]Board's website.

(5) A licensed educator shall report for work following an arrest and provide notice to the licensed educator's employer unless directed not to report for work by the employer, consistent with school district or charter school policy.

R277-516-4. Non-licensed Public Education Employee, Volunteer, and Charter School Board Member Background Check Policies.

(1) An LEA shall adopt a policy for non-licensed public education employee, volunteer, and charter school board member background checks that includes at least the following components:

(a) a requirement that the individual submit to a background check and ongoing monitoring through registration with the systems described in Section 53A-15-1505 as a condition of employment or appointment; and

(b) identification of the appropriate privacy risk mitigation strategy that will be used to ensure that the LEA only receives notifications for individuals with whom the LEA maintains an authorizing relationship.

(2) An LEA policy shall describe the background check process necessary based on the individual's duties.

R277-516-5. Non-licensed Public Education Employee, Volunteer, or Charter School Board Member Arrest Reporting Policy Required from LEAs.

(1) An LEA shall have a policy requiring a non-licensed public employee, a volunteer, a charter school board member, or any other employee who drives a motor vehicle as an employment responsibility, to report offenses specified in Subsection (3).

(2) An LEA shall post the policy described in Subsection (1) on the LEA's website.

(3) An LEA's policy described in Subsection (1) shall include the following minimum components:

(a) reporting of the following:

(i) convictions, including pleas in abeyance and diversion agreements;

(ii) any matters involving arrests for alleged sex offenses;

(iii) any matters involving arrests for alleged drug-related offenses;

(iv) any matters involving arrests for alleged alcohol-related offenses; and

(v) any matters involving arrests for alleged offenses against the person under Title 76, Chapter 5, Offenses Against the Person.

(b) a timeline for receiving reports from non-licensed public education employees;

(c) immediate suspension from student supervision responsibilities for alleged sex offenses and other alleged offenses which may endanger students during the period of investigation;

(d) immediate suspension from transporting students or public education vehicle operation or maintenance for alleged offenses involving alcohol or drugs during the period of investigation;

(e) adequate due process for the accused employee consistent with Section 53A-15-1506;

(f) a process to review arrest information and make employment or appointment decisions that protect both the safety of students and the confidentiality and due process rights of employees and charter school board members; and

(g) timelines and procedures for maintaining records of arrests and convictions of non-licensed public education employees and charter school board members.

(4) An LEA shall ensure that the records described in R277-516-5(3)(g):

(a) include final administrative determinations and actions following investigation; and

(b) are maintained:

(i) only as necessary to protect the safety of students; and

(ii) with strict requirements for the protection of confidential employment information.

R277-516-6. Public Education Employer Responsibilities Upon Receipt of Arrest Information.

(1) A public education employer that receives arrest information about a licensed public education employee shall review the arrest information and assess the employment status

consistent with Section 53A-6-501, Rule R277-515, and the LEA's policy.

(2) A public education employer that receives arrest information about a non-licensed public education employee, volunteer, or charter school board member shall review the arrest information and assess the individual's employment or appointment status:

(a) considering the individual's assignment and duties; and

(b) consistent with a local board-approved policy for ethical behavior of non-licensed employees, volunteers, and charter school board members.

(3) A local board shall provide appropriate training to non-licensed public education employees, volunteers, and charter school board members about the provisions of the local board's policy for self-reporting and ethical behavior of non-licensed public education employees, volunteers, and charter school board members.

(4) A public education employer shall cooperate with the Superintendent in investigations of licensed educators.

R277-516-7. Misconduct Notification Requirements and Procedures.

(1)(a) An educator who has reasonable cause to believe that a student may have been physically or sexually abused by a school's employee shall immediately report that belief to:

(i) law enforcement;

(ii) the school principal[~~, district superintendent, or UPPAC, in addition~~]; and

(iii) to any other entity to which a report[~~s~~] is required by law.

(b) A school administrator who receives a report described in Subsection (1)(a) shall immediately submit the information to UPPAC if the employee is licensed as an educator.

(2) A local superintendent or charter school director shall notify UPPAC if an educator is determined, pursuant to an administrative or judicial action, or internal LEA investigation, to have had disciplinary action taken for, or, to [~~be guilty of~~]have engaged in:

(a) unprofessional conduct or professional incompetence that:

(i) results in suspension for more than one week or termination;[~~ or~~]

(ii) requires mandatory licensing discipline under R277-515; or

(iii) otherwise warrants UPPAC review; or

(b) immoral behavior.

(3) An educator who fails to comply with Subsection (1) may:

(a) be found guilty of unprofessional conduct; and

(b) have disciplinary action taken against the educator.

(4) The Superintendent may withhold, reduce, or terminate funding to an LEA for failure to make a required report under R277-516 through the process described in Rule R277-114.

KEY: school employees, self reporting
Date of Enactment or Last Substantive Amendment: [~~October 8, 2015~~]2016
Notice of Continuation: June 10, 2014
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-301(3)(a); 53A-1-301(3)(d)(x); 53A-1-402(1)(a)(i); 53A-1-402(1)(a)(iii)

Education, Administration
R277-533
District Educator Evaluation Systems

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40512
FILED: 06/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended in response to H.B. 201, Student Testing Amendments, from the 2016 General Session, which prohibits a school district from using student scores on the SAGE end-of-level assessment for the evaluation and compensation of the school district's educators and administrators.

SUMMARY OF THE RULE OR CHANGE: This rule is amended in response to H.B. 201 (2016), which prohibits a school district from using student scores on the SAGE end-of-level assessment for the evaluation and compensation of the school district's educators and administrators.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Title 53A, Chapter 8a, Part 4

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The amendments to this rule remove language that is prohibited in state law and provide technical and conforming changes, which likely will not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: The amendments to this rule remove language that is prohibited in state law and provide technical and conforming changes, which likely will not result in a cost or savings to local government.

♦ SMALL BUSINESSES: The amendments to this rule remove language that is prohibited in state law and provide technical and conforming changes, which likely will not result in a cost or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to this rule remove language that is prohibited in state law and provide technical and conforming changes, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule remove language that is prohibited in state law and provide technical and conforming changes, which likely will not result in any compliance costs for affected persons.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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R277. Education, Administration.
R277-533. District Educator Evaluation Systems.
R277-533-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Title 53A, Chapter 8a, Part 4, Educator Evaluations, which requires the Board to make rules to establish a framework for the evaluation of educators and set policies and procedures related to educator evaluations; and

(c) S[~~ubs~~]ection 53A-1-401[~~(3)~~], which [~~permits~~]allows the Board to [~~adopt rules in accordance with its responsibilities~~]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:

(a) specify the requirements for district Educator Evaluation Systems Policies;

(b) describe the required components of district Educator Evaluation Systems; and

(c) establish requirements for how the Annual Summative Educator Evaluation Rating shall be computed and reported.

R277-533-2. Definitions.

(1) "Attribute" means the process of linking the results of student growth and learning to a specific educator or group of educators using the same SLO[~~ or SGP~~].

(2) "Evaluator" means a person who is responsible for an educator's overall evaluation, including:

(a) professional performance;

(b) student growth;

(c) stakeholder input; and

(d) other indicators of professional improvement.

(3) "PEER Committee" means the Public Educator Evaluation Requirements Committee established by the Superintendent.

(4) "Rater" means a person who conducts an observation of an educator related to an educator's evaluation.

(5) "School district" includes the Utah Schools for the Deaf and the Blind.

(6) "Student learning objective" or "SLO" means a content and grade or course specific measurable learning objective that can be used to document student learning over a defined period of time.

[~~(7) "Student growth percentile" or "SGP" means an analytic approach or statistical method for transforming student assessment results into an accountability metric.~~]

([~~8~~]7) "System" means a school district's educator evaluation system.

[~~(9) "Tested subject" means a subject with an end of course examination in SAGE.~~]

R277-533-3. School District Educator Evaluation Systems.

(1) A local school board shall adopt a district educator evaluation system in consultation with a joint committee established by the local school board as described in Section 53A-8a-403.

(2) A district educator evaluation system shall:

(a) include the components required in Section 53A-8a-405;

(b) include the following four differentiated levels of performance:

(i) highly effective;

(ii) effective;

(iii) emerging/minimally effective; and

(iv) not effective;

(c) use multiple lines of evidence in evaluation, including:

(i) professional performance, as described in Section R277-533-4;

(ii) student growth, as described in Section R277-533-5;

(iii) stakeholder input, as described in Section R277-533-5; and

(iv) other indicators of professional improvement as required by the school district;

(d) require regular conferences between an educator and an evaluator;

(e) provide a process for an educator to contribute additional information to inform the educator's evaluation at several intervals throughout the process;

(f) measure an educator's professional performance when the educator is working in a professional capacity with students, parents, colleagues, or community members;

(g) provide a process for an educator to:

(i) analyze stakeholder input, including input from parents, students, or teachers;

(ii) analyze data related to performance; and

(iii) develop appropriate responses to the information;

(h) provide a procedure to include an educator's response to stakeholder data in the rating calculation;

(i) include a process for an evaluator to give an educator specific, measurable, actionable, and written direction regarding an educator's needed improvement and recommended course of action;

(j) provide a process for an educator to request a review of the implementation of the educator's evaluation, as described in:

(i) Subsection 53A-8a-406(3); and

(ii) Section R277-533-8;

(k) include multiple observations as described in Section R277-533-4; and

(l) provide a description of the methods for gathering, using, and protecting educator data.

(3) To form the school district's system, a local school board may adopt:

(a) the Utah Model Educator Evaluator System established by the Board;

(b) an adapted system; or

(c) a school district-developed system evaluated by the PEER Committee, consistent with Rules R277-530, R277-531, and this rule.

(4) The PEER Committee, as described in Rule R277-531, shall review and evaluate a school district's educator effectiveness system including:

(a) professional performance;

(b) rater-reliability;

(c) student growth; and

(d) stakeholder input.

(5) The PEER Committee shall review and evaluate a school district's system.

(6) An educator is responsible for:

(a) improving the educator's performance, using resources offered by the school district; and

(b) demonstrating acceptable levels of improvement in any designated area of deficiency.

R277-533-4. Evaluators and Standards for Education Observations.

(1) A school district's system shall include observations.

(2) The school district shall use observation tools that:

(a) are aligned with the Utah Effective [~~Teaching~~]Educator Standards[~~ and the Educational Leadership Standards~~] described in Rule R277-530 at the indicator level; and

(b) include multiple observations at appropriate intervals.

(3) A school district's evaluation system shall:

(a) include an orientation for all educators conducted by the principal or designee as required in Section 53A-8a-404;

(b) include multiple observation items;

(c) a final rating for each observation item described in Subsection (3)(b); and

(d) include an opportunity for an educator to contribute additional information to inform their rating at several intervals throughout the process.

(4) To ensure a valid evaluation system, a school district shall provide professional development opportunities to all raters and evaluators of licensed educators to:

(a) improve a rater or evaluator's abilities; and

(b) give the rater or evaluator an opportunity to demonstrate the rater's abilities to rate an educator in accordance with[~~:~~

~~(i)~~] the Utah Effective [~~Teaching~~]Educator Standards described in Rule R277-530[~~; and~~

~~(ii) the Utah Educational Leadership Standards described in Rule R277-530~~].

(5) A school district shall establish a school district rater reliability plan.

(6) A school district rater reliability plan shall:

(a) require school district to compare a rater's decisions to standardized ratings established by a committee of expert raters;

(b) require a school district to measure a rater's skills and reassess the rater's skills at appropriate intervals to maintain system quality;

(c) designate qualified raters as certified;

(d) assure that an educator is rated by a certified rater;

(e) require a school district to offer a rater opportunities to improve the rater's skills through instruction and practice; and

(f) maintain high standards of rater accuracy.

R277-533-5. Student Growth Calculations and Stakeholder Input.

(1) A Utah educator's contribution to a student's growth and learning shall be measured using SLOs.[~~delineated into one of the following sets of measures:~~

~~(a) SGPs;~~

~~(b) SLOs; or~~

~~(c) a combination of SGPs and SLOs.~~]

(2) A school district [~~may~~]shall attribute an SLO to an educator as part of an educator's evaluation in accordance with the school district's system policies.

(3) [~~If a school district attributes an SLO to an educator, the~~]A school district shall:

(a) ensure that [~~the~~]an SLO described in Subsection (1) includes:

(i) three required components:

(A) learning goals;

(B) assessments; and

(C) targets; and

(ii) learning goals for an educator linked to the appropriate specific content knowledge and skills from the Utah Core Standards;

(b) provide professional development to an educator for the educator to gain the knowledge and skills necessary to sustain wide-scale implementation of an SLO process;

(c) establish a local review process to assist the school district in developing comparability and consistency of SLOs at each grade level or span; and

(d) design a structure and process for providing professional development to the school district's educators and administrators.

[~~(4) A school district may attribute an SGP to:~~

~~(a) an educator as part of the educator's evaluation if the educator teaches a tested subject;~~

~~(b) an educator as part of shared attributions; or~~

~~(c) an administrator.~~]

([~~5~~]4)(a) A school district's system shall include a component for stakeholder input for educators, principals, and administrators, which includes annual input from students and parents.

(b) In addition to the stakeholder input described in Subsection ([~~5~~]4)(a), stakeholder input for principals and other administrators shall include input from teachers and support professionals.

(c) A school district may attribute stakeholder input to an educator, principal, or other administrator if the data gathered for the stakeholder input is gathered using:

(i) appropriate methods of gathering data as described in the school district's system plan; and

(ii) quality practices.

([~~6~~]5) A school district's system shall:

(a) allow an educator to have an opportunity to respond to stakeholder input; and

(b) consider an educator's response described in Subsection ([~~6~~]5)(a) as part of the educator's final rating.

R277-533-6. Computing the Annual Summative Rating.

(1) A school district shall base an educator's component ratings on:

(a) actual observations of the educator's performance; and

(b) educator, evaluator, or other stakeholder data gathered, calculated, or observed that is aligned with standards and rubrics.

(2) A school district shall combine an educator's component ratings using the following formula:

(a) 70% for professional performance;

(b) 20% for student growth; and

(c) 10% for stakeholder input.

(3) A school district shall report summative scores annually for all educators using the following approved terminology for reporting:

(d) highly effective 3;

(c) effective 2;

(b) minimal/emerging effective 1; and

(a) not effective 0.

R277-533-7. Minimal or Emerging Effective Category.

If an evaluator rates an educator's performance within the minimal or emerging effective category, the rater shall:

(1) designate an educator as emerging effective if:

(a) the educator:

(i) holds a Level 1 educator license; or

(ii) is being served by the school district's Entry Years Enhancement (EYE) program described in Rule R277-522; or

(b) the educator:

(i) received a new or different teaching or leadership assignment within the last school year; or

(ii) is developing in that area; or

(2) designate an educator as minimally effective if the educator:

(a) holds a Level 2 educator license; and

(b) is teaching or leading in a familiar assignment.

R277-533-8. Evaluation Reviews.

(1) An educator who is not satisfied with a summative evaluation may request a review in writing of the summative evaluation within 15 calendar days after receiving the written summative evaluation.

(2) A school district shall conduct a review of an educator's summative evaluation:

(a) as described in this section; and

(b) the requirements of Section 53A-8a-406.

(3) A review described in Subsection (2) shall be conducted:

(a) by a certified rater:

(i) with experience evaluating educators; and

(ii) not employed by the school district; and

(b) in accordance with the Utah Effective [~~Teacher and Educational Leadership~~]Educator Standards described in Rule R277-53[~~1~~]0.

(4) A certified rater described in Subsection (3) shall:

(a) review:

(i) the school district's educator evaluation policies and procedures;

(ii) the evaluation process conducted for the educator; and

(iii) the evaluation data from the professional performance, student growth, and stakeholder input components; and

(b) report the certified rater's findings, in writing, to the school district's superintendent for action.

(5) The school district shall determine if the initial educator evaluation was issued in accordance with:

(a) the school district's educator evaluation policies;

(b) the requirements of the performance standards;

(c) Title 53A, Chapter 8a, Public Education Human Resource Management Act;

(d) Rule R277-531; and

(e) this rule.

R277-533-9. Educator Evaluation Data.

(1) A school district shall report to the Board annually on or before June 30 the information necessary for the Board to make the report required by Section 53A-8a-410.

(2) A school district shall maintain confidential records of the educator effectiveness component data of individual educators in accordance with:

(a) Rule R277-487; and

(b) state law.

(3) A school district's system may be monitored by the Board.

KEY: educators, evaluations
Date of Enactment or Last Substantive Amendment: [~~November 23, 2015~~]2016
Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1-401[~~(3)~~]

Education, Administration
R277-710
Intergenerational Poverty Interventions in Public Schools

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40513
FILED: 06/15/2016

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended in response to H.B. 40, Agency Reporting Requirements, from the 2016 General Session, which deleted several reporting requirements for the Board.

SUMMARY OF THE RULE OR CHANGE: Consistent with H.B. 40 (2016), the Legislative Education Interim Committee is removed from the rule as a required recipient of an annual report providing information on intergenerational grant money and progress. The amendments also provide technical and conforming changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Subsection 53A-17a-171(4)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Rule R277-710 is updated to remove language no longer required by state law and provide technical and conforming changes, which likely will not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: Rule R277-710 is updated to remove language no longer required by state law and provide technical and conforming changes, which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: Rule R277-710 is updated to remove language no longer required by state law and provide technical and conforming changes, which likely will not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Rule R277-710 is updated to remove language no longer required by state law and provide technical and conforming changes, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Rule R277-710 is updated to remove language no longer required by state law and provide technical and conforming changes, which likely will not result in any compliance costs for affected persons.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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R277. Education, Administration.
R277-710. Intergenerational Poverty Interventions in Public Schools.
R277-710-[~~2~~]1. Authority and Purpose.

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

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

(b) Section 53A-1-401[~~(3)~~], which [~~permits~~]allows the Board to [~~adopt rules in accordance with its responsibilities,~~]make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53A-17a-171(4), which directs the Board to accept proposals and award grants under the [~~P~~]program.

[~~B.~~](2) The purpose of this rule is:

(a) to [~~distribute~~]provide for distribution of funds to LEAs; and

(b) to provide for out-of-school educational services that assist students affected by intergenerational poverty in achieving academic success.

[~~C.~~](3) This rule provides eligibility criteria, provides minimum application criteria, [~~and~~]provides timelines, and provides for [~~USOE~~]Superintendent oversight and reporting.

R277-710-[1]2. Definitions.

[~~A. "Board" means the Utah State Board of Education.~~]

[~~B.~~](1) "Eligible student" means a student in grades k-12 of the public school system who is classified as a child affected by intergenerational poverty[~~ in grades K-12 of the public school system~~].

[~~C.~~](2)(a) "Intergenerational poverty (IGP)" means poverty in which two or more successive generations of a family continue in the cycle of poverty and government dependence.

(b) "Intergenerational poverty" does not include situational poverty as defined in Section 35A-9-102.

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

[~~E.~~](3) "Program" means the Intergenerational Poverty Interventions Grant Program that provides educational services outside of the regular school day (after school program).

[~~F. "USOE" means the Utah State Office of Education.~~]

R277-710-3. Grant Eligibility.

[~~A.~~](1) Only [~~local education agencies (~~]LEAs[~~)~~] are eligible to apply for funds under th[~~is~~]e program.

(2) An LEA[~~s~~], in designing the[~~ir~~] LEAs program services, may collaborate with a community-based organization[~~s~~] that provides quality after school programs.

[~~B.~~](3) The Board shall give priority to applicants that have a significant number or percentage of students affected by intergenerational poverty.

[~~C.~~](4) [~~These~~]Program funds are intended to provide supplemental services beyond what is already available through state and local funding.

([~~1~~]a)(i) For an LEA[~~s~~] with a school[~~s~~] that [~~already have~~]has an existing after school program[~~s~~], the program funds may be used to augment the amount or intensity of services to benefit students affected by IGP.

(ii) [~~Existing after school~~]A program applicant[~~s~~] that has an existing after school program may apply for a grant[~~s~~] in the range of $30,000 to $50,000 per school year.

([~~2~~]b)(i) For an LEA[~~s~~] with a school[~~s~~] that doe~~s~~ not have an existing after school program[~~s~~], the program funds may be used to establish a quality after school program[~~s~~].

(ii) [~~New after school~~]A program applicant[~~s~~] without an existing after school program may apply for grants in the range of $100,000-$150,000 per school year.

[~~D.~~](5) An LEA[~~s~~] that participat[~~ing~~]es in th[~~is~~]e program and serv[~~ing~~]es students in grades [~~K~~]k-6 may be eligible to apply for additional federal after school funding through the Department of Workforce Services.

R277-710-4. Program Requirements.

[~~Successful applicants~~]An applicant for a program grant shall design a program[~~s~~] that include~~s~~ the following minimum components:

[~~A.~~](1) a [~~definition~~]description of the level of administrative support and leadership at the LEA to effectively implement, monitor, and evaluate the program[~~.~~];

[~~B.~~](2) an explanation of how the LEA will provide adequate supervision and support to successfully implement or increase programs at the school level[~~.~~];

[~~C.~~](3) a summary of a needs assessment conducted by the LEA to determine the academic needs and interests of participating students and their families[~~.~~];

[~~D.~~](4) the identification of intended outcomes of the program and how these outcomes will be measured[~~.~~];

[~~E.~~](5) an explanation of how the LEA[~~/~~] or school will provide services to improve the academic achievement of children affected by intergenerational poverty[~~.~~];

[~~F.~~](6) a commitment to assess program quality and effectiveness and make changes as needed[~~.~~];

[~~G.~~](7) an outline of the scope of services, including [~~(~~]days of the week, number of hours, and number of weeks[~~).~~];

[~~H.~~](8) an explanation of the LEA's strategy for coordinating with and engaging the Department of Workforce Services to provide services for the LEA's eligible students[~~.~~];

[~~I~~](9) an explanation of how the LEA will work with the Department of Workforce Services, the Department of Health, the Department of Human Services, and the juvenile courts to provide services to the LEA's eligible students[~~.~~];

[~~J.~~](10) the identification of IGP eligible students [~~(~~]categorized by age[~~)~~], and schools in which the LEA plans to develop programs with the grant money[~~.~~];

[~~K.~~](11) an annual program budget and identification of the estimated cost per student[~~.~~]; and

[~~L.~~](12) [~~E~~]establishment and maintenance of data systems that inform program decisions and annual reporting requirements.

R277-710-5. Application Process.

[~~A.~~](1) The [~~USOE~~]Superintendent shall solicit competitive grant[~~s~~] applications from LEAs, score the [~~grants~~]applications, and make funding recommendations to the Board.

[~~B.~~](2) An LEA[~~s~~] may apply for [~~this~~]a grant through the Utah Consolidated Application (UCA).

[~~C. Timeline:~~]

([~~2~~]3)(a) The [~~USOE~~]Superintendent shall convene a panel of application reviewers [~~that~~]who demonstrate no conflicts of interest.

(b) The panel [~~members~~]reviewers shall score applications and the panel shall make recommendations for funding to the Board.

([~~1~~]4) In a year when there is a grant competition:

(a) the [~~A~~]application deadline [~~for the 2014-15 school year~~]is June 16[~~, 2014.~~];

([~~3~~]b) the [~~A~~]application review[~~ for the 2014-15 school year~~]shall be completed by June 23[~~, 2014.~~];

([~~4~~]c) [~~T~~]the [~~USOE~~]Superintendent shall provide recommendations of [~~successful~~]grant [~~recipients~~]applicants to the Board no later than July 1[~~, 2014.~~]; and

[~~D.~~](d) [~~T~~]the [~~Board~~]Superintendent shall notify [~~successful applicants~~]grant recipients no later than August 5[~~, 2014~~].

[~~E.~~](5) The [~~USOE~~]Superintendent, in future years, subject to continuing appropriations, may adjust the time[~~line~~] periods and create applicable timelines to allow LEAs more time to propose programs and complete applications.

R277-710-6. [~~USOE~~]Superintendent Oversight and Reporting Requirements.

[~~A.~~](1) The [~~USOE~~]Superintendent shall provide adequate oversight in the administration of the IGP program to include:

([~~1~~]a) conducting the annual application process and awarding funds;

([~~2~~]b) monitoring program implementation; and

([~~3~~]c) gathering and reporting required data.

[~~B.~~](2) To effectively administer the IGP program, the [~~USOE~~]Superintendent shall reserve up to [~~five percent~~]5% of the[~~IGP~~] appropriation for the program for administrative and evaluation purposes.

[~~C.~~](3) An LEA[~~s~~] that receives program grant money[~~pursuant to this section~~] shall annually provide to the [~~Board~~]Superintendent the information that is necessary for the Board's report to the [~~Legislative Education Interim Committee and the~~]Utah Intergenerational Welfare Reform Commission as required by Subsection 53A-17a-171(7).

[~~D.~~](4) The annual report required under Subsection 53A-17a-171(7) shall include:

([~~1~~]a) the progress of LEA programs in expending grant money;

([~~2~~]b) the progress of LEA programs in improving the academic achievement of children affected by intergenerational poverty; and

([~~3~~]c) the LEA's coordination efforts with the Department of Workforce Services, the Department of Health, the Department of Human Services, and the juvenile courts.

KEY: public schools, poverty, intervention
Date of Enactment or Last Substantive Amendment: [~~August 7, 2014~~]2016
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401[~~(3)~~]

Education, Administration
R277-713
Concurrent Enrollment of High School Students in College Courses

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 40514
FILED: 06/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-713 is repealed and reenacted in response to H.B. 182, Concurrent Enrollment Education Amendments and S.B. 152, Accelerated Foreign Language Course, from the 2016 General Session. Because the changes to the rule are significant, a repeal and reenactment of Rule R277-713 is the appropriate rulemaking action to update the rule consistent with the new legislation.

SUMMARY OF THE RULE OR CHANGE: Making technical changes, renumbering, and consolidating provisions that were provided multiple times in the rule, and converting language from passive to active voice necessitated a repeal and reenact. The reenacted rule removes language that is outdated, is already in statute, or does not conform to the Utah Administrative Rulemaking Act. It further clarifies central administration of the program, emphasizing its joint nature between partner agencies, and clarifies the process for initiating and approving courses that can be funded by concurrent enrollment funds. New provisions for accelerated foreign language courses, recently required by the statute, are included. The new language also requires a level 4 math endorsement to teach certain concurrent enrollment math courses.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-15-1707

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The reenacted rule provides language required by H.B. 182 (2016) and S.B. 152 (2016), as well as providing technical and conforming changes, which likely will not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: The reenacted rule provides language required by H.B. 182 (2016) and S.B. 152 (2016), as well as providing technical and conforming changes, which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: The reenacted rule provides language required by H.B. 182 (2016) and S.B. 152 (2016), as well as providing technical and conforming changes, which likely will not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The reenacted rule provides language required by H.B. 182 (2016) and S.B. 152 (2016), as well as providing technical and conforming changes, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The reenacted rule provides language required by H.B. 182 (2016) and S.B. 152 (2016), as well as providing technical and conforming changes, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of my knowledge, there should be no fiscal impact on businesses resulting from repeal/reenactment 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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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R277. Education, Administration.
[~~R277-713. Concurrent Enrollment of High School Students in College Courses.~~
~~R277-713-1. Definitions.~~
~~A. "Adjunct/Concurrent faculty" means instructors approved by the cooperating USHE institution and approved by LEAs (as defined in R277-713-1F) receiving concurrent enrollment services from the instructor to teach concurrent enrollment classes on behalf of the USHE institution.~~
~~B. "Annual Concurrent Enrollment Contract" means a written plan, negotiated by an LEA and a USHE institution, to provide college level courses to high school students.~~
~~C. "Board" means the Utah State Board of Education.~~
~~D. "Concurrent enrollment" for state funding and for the purposes of this rule means enrollment by public school students in one or more USHE institution course(s) under a contractual agreement between the USHE institution and an LEA. Students continue to be enrolled in public schools, counted in average daily membership, and receive credit toward graduation. They also receive college credit for courses.~~
~~E. "Fees" for purposes of concurrent enrollment and this rule mean expenses to students directly related to enrollment and tuition. Fees do not include reasonable lab costs, expenses for textbooks and consumable curriculum materials that are required only for USHE credit or grades.~~
~~F. "LEA" means a local education agency which includes school boards/public school districts and charter schools.~~
~~G. "Technology-intensive concurrent enrollment courses (TICE)," means designed hybrid courses, having a blend of different learning activities available both in classrooms and online, or courses delivered exclusively online.~~
~~H. "USHE" means the Utah System of Higher Education.~~
~~I. "USOE" means the Utah State Office of Education.~~

~~R277-713-2. Authority and Purpose.~~
~~A. This rule is authorized by Utah Constitution Article X, Section 3 which provides for the State Board to have general supervision and control over public schools and by Section 53A-17a-120.5 which directs the Board to adopt rules providing that a school participating in the concurrent enrollment programs offered under Section 53A-15-101 shall receive an allocation from the monies as provided in Section 53A-15-101, Section 53A-1-402(1)(c) which directs the Board to adopt minimum standards for curriculum, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.~~
~~B. The purpose of concurrent enrollment is to provide a challenging college-level and productive secondary school experience, particularly in the senior year, and to provide transition courses that can be applied to post-secondary education.~~
~~C. The purpose of this rule is to specify the standards and procedures for concurrent enrollment courses and criteria for funding appropriate concurrent enrollment expenditures.~~

~~R277-713-3. Student Eligibility.~~
~~A. LEAs and USHE institutions shall jointly establish student eligibility requirements which shall be sufficiently selective to predict a successful experience for students.~~
~~B. LEAs have the primary responsibility for identifying students who are eligible to participate in concurrent enrollment classes.~~
~~C. To ensure that a student is prepared for college level work, an appropriate assessment shall be administered to the student prior to participation in all concurrent mathematics and English courses, and to determine that the student meets prerequisites previously established for the same campus-based course by the sponsoring USHE institutions.~~
~~D. Each student participating in the concurrent enrollment program shall have a current student education/occupation plan (SEOP) on file at the participating school, as required under Section 53A-1a-106(2)(b).~~
~~E. LEAs and USHE institutions shall jointly coordinate advice and information provided to a prospective or current high school student who participates in the concurrent enrollment program consistent with Section 53A-15-101. Advising shall include providing information on general education requirements at USHE institutions and assisting students or parents to efficiently choose concurrent enrollment courses to avoid duplication and excess credit hours.~~

~~R277-713-4. Courses and Student Participation.~~
~~A. Concurrent enrollment allows students the option to complete high school graduation requirements and prepares students to meet college admission requirements at the conclusion of the eleventh grade, but does not preclude a student involved in accelerated learning programs from graduating by the eleventh grade.~~
~~B. USHE institutions have the responsibility to determine the USHE institution credit for concurrent enrollment courses, consistent with USHE policies.~~
~~C. College-level courses taught in the high school have the same credit hour value as when taught on a college campus; they apply toward graduation on the same basis as courses taught at a USHE institution to which the credits are submitted.~~
~~D. Concurrent enrollment offerings shall be limited to courses in English, mathematics, fine arts, humanities, science, social science, world languages, and career technical programs to allow a focus of energy and resources on quality instruction in these courses. There may be a variety of courses in the career technical education area. Concurrent Enrollment courses should assist students toward post-secondary degrees.~~

E(1) TICE concurrent enrollment courses are designed as hybrid courses, having a blend of different learning activities available both in classrooms and online, they may be delivered exclusively online.

(2) TICE courses shall facilitate articulation, transfer of credit, and, when possible, use open source materials available to all USHE institutions in order to reduce costs.

F. All concurrent enrollment courses shall be approved or orchestrated by the high school or the USOE and shall provide for waiver of fees to eligible students.

G. The USOE Teaching and Learning Section shall reimburse LEAs only for courses on the USOE master list.

H. The Board of Regents, after consultation with LEAs, shall provide the USOE with proposed new course offerings, including syllabi and curriculum materials by November 30 of the year preceding the school year in which courses shall be offered.

I. Concurrent enrollment funding shall be provided only for 1000 or 2000 level courses unless a student's SEOP identifies a student's readiness and preparation for a higher level course. This exception shall be individually approved by the student's counselor and the LEA's concurrent enrollment administrator. Concurrent enrollment funding shall not fund unilateral parent/student initiated college attendance or course-taking.

J. Concurrent enrollment course offerings shall reflect the strengths and resources of the respective schools and USHE institutions and be based upon student needs. The number of courses selected shall be kept small enough to ensure coordinated statewide development and professional development activities for participating teachers.

K. Appropriate USHE institutions shall take responsibility for course content, procedures, examinations, teaching materials, and program monitoring and all procedures and materials shall be consistent with Utah law, and shall ensure quality and comparability with courses offered on the college or university campus.

L. Participation in concurrent enrollment generates higher education credit that becomes a part of a student's permanent college transcript.

M. LEAs and USHE institutions shall jointly align information technology systems with all individual student academic achievement so that student information will be tracked through both education systems consistent with Section 53A-1-603.5.

R277-713-5. Program Delivery.

A. USHE institutions that grant higher education/college credit may participate in the concurrent enrollment program, provided that such participation shall be consistent with the law and consistent with Board rules specific to the use of public education funds and rules for public education programs.

B. Concurrent enrollment courses, with exception of courses delivered through technology, may be offered to high school students only by USHE institutions in the corresponding geographic service region, as determined by the State Board of Regents.

C(1) An LEA may contact the USHE institution in the corresponding geographical service region to provide concurrent enrollment courses, and the higher education institution shall respond to the request within 60 days after the day on which the LEA contacts the institution on whether the institution will offer the requested courses.

(2) If the USHE institution in the corresponding service region denies the request for concurrent enrollment courses, another USHE institution may offer the concurrent enrollment course(s).

(3) Courses delivered through technology are not subject to the corresponding geographic service region requirement.

D. Concurrent enrollment courses shall be offered at the most appropriate location using the most appropriate methods for the course content, the faculty, and the students involved.

E. Concurrent enrollment curriculum may be provided through live classroom instruction or telecommunications. The concurrent enrollment program shall be designed and implemented to take full advantage of the most current available educational technology.

F. LEAs shall not be reimbursed for concurrent enrollment courses taken by students who have received a diploma, whose class has graduated or who have participated in graduation exercises. Senior students shall complete reimbursable concurrent enrollment courses prior to their graduation or participation in graduation exercises.

G. Concurrent enrollment is intended primarily for students in their last two years of high school.

(1) Concurrent enrollment offerings may not include high school courses that are typically offered in grades 9 or 10.

(2) The Early College High School Program, specifically initiated to encourage students to earn college credit beginning in the ninth grade leading to a college diploma earned concurrently with a high school diploma, may enroll student Program participants in grades 9 and 10 in concurrent enrollment courses.

H. The Board and State Board of Regents shall cooperate closely in developing, implementing and evaluating this program.

I. LEAs shall use USOE designated 11-digit course codes for concurrent enrollment courses.

R277-713-6. Student Tuition, Fees and Credit for Concurrent Enrollment Programs.

A. Secondary students may be assessed a one-time per institution admissions fee required for full-time or part-time students in concurrent enrollment courses. No additional application fee may be charged.

B. A secondary student may be charged partial tuition up to $30 per credit hour for each concurrent enrollment course for which the student receives college credit.

C(1) A USHE institution may charge a concurrent enrollment student who qualifies for free or reduced school lunch partial tuition of no more than $5 per credit hour for each concurrent enrollment course for which the student receives college credit.

(2) If a concurrent enrollment course is taught by a public school educator in a public school facility, a USHE institution may charge a concurrent enrollment student no more than $10 per credit hour for the concurrent enrollment course for which the student receives college credit.

(3) If a concurrent enrollment course is taught through video conferencing, a USHE institution may charge a concurrent enrollment student no more than $15 per credit hour for the concurrent enrollment course for which the student receives USHE credit.

D. Concurrent enrollment program costs attributable only to USHE credit or enrollment are not fees and as such are not subject to fee waiver under R277-407.

E. All non-USHE related student costs or fees related to concurrent enrollment classes, which may include consumables, lab fees, copying, and material costs, as well as textbooks required for the course, are subject to fee waiver consistent with R277-407.

F. LEAs shall be responsible for these waivers. The agreement between the USHE institution and the district may address the responsibility for fee waivers.

G. Credit:

(1) A student shall receive high school credit for a concurrent enrollment course that is consistent with the LEA policies for awarding credit for graduation.

(2) Concurrent enrollment course credit shall count toward high school graduation credit requirements and for college credit; college credit shall be determined by the USHE institution consistent with this rule.

(3) College level courses taught in the high school carry the same credit hour value as when taught on a college or university campus and apply toward college/university graduation on the same basis as courses taught at the USHE institution to which the credits are submitted.

(4) Credit earned through the concurrent enrollment program shall be transferable from one USHE institution to another.

R277-713-7. Faculty Requirements.

A. Public school educators in concurrent enrollment programs shall be approved prior to teaching as adjunct faculty and supervised by a USHE institution. Public school educators shall have secondary endorsements in the subject area(s) in which they teach and meet highly qualified standards for their assignment(s) consistent with R277-510.

B. USHE institution faculty beginning their USHE employment after the 2004-05 school year who are not K-12 teachers and who have significant unsupervised access to K-12 students and instruct in the concurrent enrollment program defined under this rule shall complete a criminal background check consistent with Section 53A-3-410. The adjunct faculty employer shall have responsibility for determining the need for criminal background checks consistent with the law and for satisfying this requirement and shall maintain appropriate documentation.

C. Adjunct faculty status of high school teachers:

(1) High school teachers who hold adjunct or part time faculty status with a USHE institution for the purpose of teaching concurrent enrollment courses shall be included as fully as possible in the academic life of the supervising academic department.

(2) LEAs and USHE institutions shall share expertise and professional development, as necessary, to adequately prepare teachers at all levels to teach concurrent enrollment students and content, including both federal and state laws specific to student privacy and student records.

R277-713-8. Concurrent Enrollment Funding and Use of Concurrent Enrollment Funds.

A. LEAs shall receive a pro-rated amount of the funds appropriated for concurrent enrollment according to the number of semester hours successfully completed by students registered through the LEA in the prior year compared to the state total of completed concurrent enrollment hours. Successfully completed means that a student received USHE credit for the course. Concurrent enrollment funds may not reimburse LEAs for concurrent enrollment courses repeated by students. Appropriate reimbursement may be verified at any reasonable time by USOE audit.

B. The funds shall first be allocated proportionally, based upon student credit hours delivered.

(1) Courses that are taught by public school educators: 60 percent of the funds shall be allocated to LEAs, and 40 percent of the funds shall be allocated to the State Board of Regents.

(2) Courses taught by college or university faculty: 60 percent of the funds shall be allocated to the State Board of Regents, and 40 percent of the funds shall be allocated to LEAs.

C. Each LEA shall receive its proportional share of concurrent enrollment monies allocated to the LEA pursuant to Section 53A-17a-120.5 based upon the hours of concurrent enrollment course work successfully completed by students on the high school campus as compared to the state total of completed concurrent enrollment hours.

D. The state shall not reimburse LEAs for concurrent enrollment in excess of 30 semester hours per student per year.

E. Funds allocated to LEAs for concurrent enrollment shall not be used for any other program.

F. LEA use of state funds for concurrent enrollment is limited to the following:

(1) aid in professional development of adjunct faculty in cooperation with the participating USHE institution;

(2) assistance with delivery costs for distance learning programs;

(3) participation in the costs of LEA personnel who work with the program;

(4) student textbooks and other instructional materials; and

(5) fee waivers for costs or expenses related to concurrent enrollment for fee waiver eligible students under R277-407.

(6) purchases by LEAs of classroom equipment required to conduct concurrent enrollment courses.

(7) other uses approved in writing by the USOE consistent with the law and purposes of this rule.

G. LEAs shall provide the USOE with end-of-year expenditures reports itemized by the categories.

R277-713-9. Annual Contracts and Other Student Instruction Issues.

A. Collaborating LEAs and USHE institutions shall negotiate annual contracts including:

(1) the courses offered;

(2) the location of the instruction;

(3) the teacher;

(4) student eligibility requirements;

(5) course outlines;

(6) texts, and other materials needed; and

(7) the administrative and supervisory services, professional development, and reporting mechanisms to be provided by each party to the contract.

(a) each LEA shall provide an annual report to the USOE regarding supervisory services and professional development provided by a USHE institution.

~~(b) each LEA shall provide an annual report to the USOE indicating that all concurrent enrollment instructors are in compliance with R277-713-7.~~

~~B. An LEA shall provide a copy of the annual contract entered into between an LEA and a USHE institution for the upcoming school year no later than May 30 annually.~~

~~C. The annual concurrent enrollment agreement between a USHE institution and an LEA who has responsibility shall:~~

~~(1) provide for parental permission for students to participate in concurrent enrollment classes, which includes notice to parents that participation in concurrent enrollment courses counts toward a student's college record/transcript;~~

~~(2) provide for the entity responsible for parent notification about concurrent enrollment purpose(s) and student and family privacy protections; and~~

~~(3) provide for discussion and training, as necessary, to all concurrent enrollment instructors about student information, student records laws, and student confidentiality.~~]

R277-713. Concurrent Enrollment of High School Students in College Courses.

R277-713-1. 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) Section 53A-15-1707, which directs the Board to provide for the distribution of concurrent enrollment dollars in rule.

(2) The purpose of the concurrent enrollment program is to provide a challenging college-level and productive experience in high school, and to provide transition courses that can be applied to postsecondary education.

(3) The purpose of this rule is to specify the standards and procedures for concurrent enrollment courses and the criteria for funding appropriate concurrent enrollment expenditures.

R277-713-2. Definitions.

(1) "Concurrent Enrollment" means a public high school student is enrolled in a course that satisfies both high school graduation requirements and qualifies for higher education credit at a USHE institution.

(2) "Concurrent Enrollment Program" or "Program" means the program created in Section 53A-15-1703 that receives funding in accordance with Section 53A-15-1707, which allows students to participate in concurrent enrollment courses.

(3) "Master course list" means a list of approved courses, maintained by the Superintendent and USHE, which may be offered and funded through the concurrent enrollment program.

(4) "USHE" means the Utah System of Higher Education.

R277-713-3. Student Eligibility and Participation.

(1) A student participating in the program shall:

(a) be enrolled in a public high school in the state and counted in average daily membership for that high school, as required in Section 53A-15-1702(4);

(b) have on file at the participating school, a current student SEOP, as defined in Section 53A-1a-106.

(c) have completed a concurrent enrollment participation form, including a parent permission form and acknowledgment of program participation requirements, as required in section 53A-15-1705; and

(d)(i) be enrolled in grade 11 or 12; or

(ii) if allowed by exception, be enrolled in grade 9 or 10, as detailed in Section 53A-15-1703.

(2) Student eligibility requirements for the program shall be:

(a) established by an LEA and a USHE institution; and

(b) sufficiently selective to predict a successful experience for qualified students.

(3) An LEA has the primary responsibility for identifying a student who is eligible to participate in a concurrent enrollment class.

(4) To ensure that a student is prepared for college level work, an LEA shall appropriately evaluate the student's abilities prior to participation in concurrent enrollment courses, and to determine that the student meets prerequisites previously established for the same campus-based course by the sponsoring USHE institution.

R277-713-4. Course Credit and Offerings - Course Approval Process.

(1) Credit earned through a concurrent enrollment course:

(a) has the same credit hour value as when taught on a college campus;

(b) applies toward graduation on the same basis as a course taught at a USHE institution to which the credits are submitted;

(c) generates higher education credit that becomes a part of a student's permanent college transcript;

(d) generates high school credit that is consistent with the LEA policies for awarding credit for graduation; and

(e) is transferable from one USHE institution to another.

(2) A USHE institution is responsible to determine the credit for a concurrent enrollment course, consistent with State Board of Regents policies.

(3) An LEA and a USHE institution shall provide the Superintendent and USHE with proposed new course offerings, including syllabi and curriculum materials, by November 15 of the year preceding the school year in which the courses would be offered.

(4) A concurrent enrollment course shall be approved by the Superintendent and USHE, and designated on the master course list, maintained by the Superintendent and USHE.

(5)(a) Concurrent enrollment course offerings shall reflect the strengths and resources of the respective schools and USHE institutions and be based upon student needs.

(b) The number of courses selected shall be kept small enough to ensure coordinated statewide development and professional development activities for participating teachers.

(6) To provide for the focus of energy and resources on quality instruction in the concurrent enrollment program, program courses shall be limited to courses in:

(a) English;

(b) mathematics;

(c) fine arts;

(d) humanities;
(e) science;
(f) social science;
(g) world languages; and
(h) career and technical education.
(7) A Technology-intensive concurrent enrollment (TICE) course is a hybrid course, having a blend of different learning activities, available both in the classroom and online, or may be delivered exclusively online.
(8) A concurrent enrollment course shall be a course at the 1000 or 2000 level in postsecondary education, except for a 3000-level accelerated foreign language course, which may be approved as a concurrent enrollment course for eligible students.
(9) A concurrent enrollment course may not be approved if it is:
(a) a high school course that is typically offered in grade 9 or 10; or
(b) a postsecondary course below the 1000 level.
(10) The appropriate USHE institution shall take responsibility for course content, procedures, examinations, teaching materials, and program monitoring and all procedures and materials shall be consistent with Utah law, and shall ensure quality and comparability with courses offered on a college or university campus.

R277-713-5. Program Management and Delivery.
(1)(a) Concurrent enrollment courses and curriculum may be provided through live classroom instruction or by other means, including electronic communications.
(b) An LEA and a USHE institution shall design and implement courses to take full advantage of the most currently available educational technology.
(2) An LEA shall use a Superintendent-designated 11-digit course code for a concurrent enrollment course.
(3) An LEA and a USHE institution shall jointly align information technology systems with all individual student academic achievement data so that student information will be tracked through both education systems consistent with Section 53A-1-603.5.

R277-713-6. Faculty and Educator Requirements.
(1) An educator who is not employed by a USHE institution and teaches a concurrent enrollment course shall:
(a) be employed by an LEA;
(b) have secondary endorsements in each subject area in which they teach; and
(c) have a Level 4 mathematics endorsement if the educator teaches a mathematics concurrent enrollment course.
(2) An educator employed by an LEA who teaches a concurrent enrollment course shall be approved as an adjunct faculty member at the contracting USHE institution prior to teaching the concurrent enrollment course.
(3) High school educators who hold adjunct or part time faculty status with a USHE institution for the purpose of teaching concurrent enrollment courses shall be included as fully as possible in the academic life of the supervising academic department at the USHE institution.
(4) An LEA and a USHE institution shall share expertise and professional development, as necessary, to adequately prepare a teacher to teach in the concurrent enrollment program, including federal and state laws specific to student privacy and student records.
(5) A USHE institution that employs a faculty member who teaches in a high school has responsibility for ensuring and maintaining documentation that the faculty member has successfully completed a criminal background check, consistent with Section 53A-15-1503.

R277-713-7. Concurrent Enrollment Funding and Use of Concurrent Enrollment Funds.
(1) Program funds shall be allocated in accordance with Section 53A-15-1707.
(2) Program funds allocated to LEAs may not be used for any other program or purpose, except as provided in Section 53A-17a-105.5.
(3) Concurrent enrollment funding may not be used to fund a parent- or student-initiated college-level course at an institution of higher education.
(4) The Superintendent may not distribute concurrent enrollment funds to an LEA for reimbursement of a concurrent enrollment course:
(a) that is not on the master course list;
(b) for a student that has exceeded 30 semester hours of concurrent enrollment for the school year;
(c) for a concurrent enrollment course repeated by a student; or
(d) taken by a student:
(i) who has received a diploma;
(ii) whose class has graduated; or
(iii) who has participated in graduation exercises.
(5)(a) An LEA shall receive a pro-rated amount of the funds appropriated for concurrent enrollment according to the number of semester hours successfully completed by students registered through the LEA in the prior year compared to the state total of completed concurrent enrollment hours.
(b) Successfully completed means that a student received USHE credit for the course.
(6) An LEA's use of state funds for concurrent enrollment is limited to the following:
(a) aid in professional development of adjunct faculty in cooperation with the participating USHE institution;
(b) assistance with delivery costs for distance learning programs;
(c) participation in the costs of LEA personnel who work with the program;
(d) student textbooks and other instructional materials;
(e) fee waivers for costs or expenses related to concurrent enrollment for fee waiver eligible students under R277-407;
(f) purchases by LEAs of classroom equipment required to conduct concurrent enrollment courses; and
(g) other uses approved in writing by the Superintendent consistent with the law and purposes of this rule.
(7) An LEA that receives program funds shall provide the Superintendent with the following:
(a) end-of-year expenditures reports; and
(b) an annual report regarding supervisory services and professional development provided by a USHE institution.

(8) Appropriate reimbursement may be verified at any time by an audit.

R277-713-8. Student Tuition and Fees.

(1) A concurrent enrollment program student may be charged partial tuition and program-related fees, in accordance with Section 53A-15-1706.

(2) Postsecondary tuition and participation fees charged to a concurrent enrollment student are not fees, as defined in R277-407, and do not qualify for a fee waiver under R277-407.

(3)(a) All costs related to concurrent enrollment classes that are not tuition and participation fees are subject to a fee waiver consistent with R277-407.

(b) Concurrent enrollment costs subject to fee waiver may include consumables, lab fees, copying, material costs, and textbooks required for the course.

(4)(a) Except as provided in Subsection (4)(b), an LEA shall be responsible for fee waivers.

(b) An agreement between a USHE institution and an LEA may address the responsibility for fee waivers.

R277-713-9. Annual Contracts and Other Student Instruction Issues.

(1) An LEA and a USHE institution that plan to collaborate to offer a concurrent enrollment course shall enter into an annual contract for the upcoming school year by no later than May 30.

(2) An LEA shall provide the Superintendent a copy of each annual contract entered into between the LEA and a USHE institution for the upcoming school year by no later than May 30.

(3) An LEA and a USHE institution shall use the standard contract language developed by the Superintendent and USHE.

KEY: students, curricula, higher education
Date of Enactment or Last Substantive Amendment: [~~August 26, 2013~~]2016
Notice of Continuation: August 14, 2012
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401[~~(3)~~]; 53A-1-402(1)(c); 53A-15-101; 53A-15-101.5; 53A-17a-120.5

Education, Administration
R277-726
Statewide Online Education Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40515
FILED: 06/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-726 is amended to provide changes in funding allocations to ensure that all home and private school students have an equal opportunity to participate in the Statewide Online Education Program (SOEP).

SUMMARY OF THE RULE OR CHANGE: A new Section R277-726-9 is provided in the rule that describes the formula for allocation of funds for home and private school students to participate in the SOEP. A technical change is also provided in Section R277-726-1 to make the citation consistent with state law.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-15-1210 and Section 53A-15-1213

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendments to Rule R277-726 provide a change to the funding allocation, allowing more home and private school students to participate in the SOEP, which likely will not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: The amendments to Rule R277-726 provide a change to the funding allocation, allowing more home and private school students to participate in the SOEP, which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: The amendments to Rule R277-726 provide a change to the funding allocation, allowing more home and private school students to participate in the SOEP, which likely will not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to Rule R277-726 provide a change to the funding allocation, allowing more home and private school students to participate in the SOEP, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-726 provide a change to the funding allocation, allowing more home and private school students to participate in the SOEP, which likely will not result in any compliance costs for affected persons.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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R277. Education, Administration.
R277-726. Statewide Online Education Program.
R277-726-1. 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) Section 53A-15-1210, which requires the Board to make rules providing for the administration of statewide assessments to students enrolled in online courses;

(c) Section 53A-15-1213, which requires the Board to make rules that establish a course credit acknowledgment form and procedures for completing and submitting the form to the Board; and

(d) S[~~ubs~~]ection 53A-1-401[~~(3)~~], which [~~permits~~]allows the Board to [~~adopt~~]make rules [~~in accordance with its responsibilities~~]to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) define necessary terms;

(b) provide and describe a program registration agreement; and

(c) provide other requirements for an LEA, [~~USOE~~]the Superintendent, a parent and a student, and a provider for program implementation and accountability.

R277-726-2. Definitions.

(1) "Actively participates" means the student actively participates as defined by the provider.

(2) "Course completion" means that a student has completed a course with a passing grade and the provider has transmitted the grade and credit to the primary LEA of enrollment.

(3)(a) "Course Credit Acknowledgment" or "CCA" means an agreement and registration record using [~~USOE~~]the Superintendent provided Statewide Online Education Program form.

(b) Except as provided in Subsection 53A-15-1208(3)(h), the CCA shall be signed by the designee of the primary school of enrollment, and the qualified provider.

(4) "Eligible student" means a student enrolled in grades 9-12 in a public school, but does not include a student enrolled in an adult education program.

(5) "Enrollment confirmation" means the student initially registered and actively participated, as defined under Subsection(1).

(6)(a) "Executed CCA" means a CCA that has been signed by all parties and received by [~~USOE~~]Superintendent.

(b) Following enrollment confirmation and participation, [~~USOE~~]Superintendent directs funds to the provider, consistent with Sections 53A-15-1206, 53A-15-1206.5, and 53A-15-1207.

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

(8) "Online course" means a course of instruction offered through the Statewide Online Education Program.

(9) "Online course payment" means the amount withheld from a student's primary LEA and disbursed to the designated provider following satisfaction of the requirements of the law, and as directed in Section 53A-15-1207.

(10) "Online course provider" or "provider" means:

(a) a school district school;

(b) a charter school;

(c) an LEA program created for the purpose of serving Utah students in grades 9-12 online; or

(d) a program of an institution of higher education described in Subsection 53A-15-1205(3).

(11) "Primary LEA of enrollment" means the LEA in which an eligible student is enrolled for courses other than online courses offered through the Statewide Online Education Program.

(12) "Primary school of enrollment" means:

(a) a student's school of record; and

(b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.

(13) "Resident school" means the district school within whose attendance boundaries the student's custodial parent or legal guardian resides.

(14) "Statewide assessment" means a test or assessment required under Rule R277-404.

(15) "Statewide Online Education Program" or "program" means courses offered to students under Title 53A, Chapter 15, Part 12, Statewide Online Education Program Act.

(16) "US[~~O~~]BE course code" means a code for a designated subject matter course assigned by the Superintendent.

(17) "Withdrawal from online course" means that a student withdraws or ceases participation in an online course as follows:

(a) within 20 calendar days of the start date of the course, if the student enrolls on or before the start date;

(b) within 20 calendar days of enrolling in a course, if the student enrolls after the start date; or

(c) within 20 calendar days after the start date of the second .5 credit of a 1.0 credit course; or

(d) as the result of a student suspension from an online course following adequate documented due process by the provider.

R277-726-3. Course Credit Acknowledgment (CCA) Process.

(1) A student, a student's parent, or a provider may initiate a CCA.

(2)(a) A counselor designated by a student's primary school of enrollment shall review the student's CCA to ensure consistency with:

(i) graduation requirements;

(ii) the student's SEOP;

(iii) the student's IEP;

(iv) the student's Section 504 plan; or

(v) the student's international baccalaureate program.

(b) The primary school of enrollment shall return the CCA to the Superintendent within 72 business hours.

(3)(a) A provider-initiated CCA may be sent directly to the Superintendent if the course is consistent with the student's SEOP.

(b) The primary school of enrollment is not required to meet with the student or parent.

(c) The Superintendent shall notify a primary school of enrollment of a student's enrollment in the program.

(4) If a student enrolling in the program has an IEP or a Section 504 plan, the primary LEA or school of enrollment shall forward the IEP or description of 504 accommodations to the provider within 72 business hours of receiving notice from the Superintendent that the provider has accepted the enrollment request.

(5) The Superintendent shall develop and administer procedures for facilitation of a CCA that informs all appropriate parties.

R277-726-4. Eligible Student and Parent Rights and Responsibilities.

(1)(a) An eligible student may register for program credits consistent with Section 53A-15-1204.

(b) Notwithstanding Subsection (1)(a), a student's primary LEA of enrollment or the Board may allow an eligible student to enroll in additional online courses consistent with Section 53A-15-1204 with documentation from the LEA.

(2) A student enrolled in a program course may earn no more credits in a year than the number of credits a student may earn by taking a full course load during the regular school day in the student's primary school of enrollment.

(3) An eligible student may register for more than the maximum number of credits described in Subsection 53A-15-1204(2) if:

(a) the student's SEOP indicates that the student intends to complete high school graduation requirements and exit high school before the rest of the student's high school cohort; and

(b) the student's schedule demonstrates progress toward early graduation.

(4)(a) An eligible student is expected to complete courses in which the student enrolls in a timely manner consistent with Section 53A-15-1206.

(b) If a student changes the student's enrollment for any reason, it is the student's or student's parent's responsibility to notify the provider immediately.

(5) A student should enroll in online courses, or declare an intention to enroll, during the high school course registration period designated by the primary LEA of enrollment for regular course registration.

(6) A student may alter a course schedule by dropping a traditional course and adding an online course in accordance with the primary school of enrollment's same established deadline for dropping and adding traditional courses.

(7)(a) Notwithstanding Subsection (6), an underenrolled student may enroll in an online course at any time during a calendar year.

(b) If an underenrolled student enrolls in an online course as described in Subsection (7)(a), the primary school of enrollment may immediately claim the student for the adjusted portion of enrollment.

R277-726-5. LEA Requirements and Responsibilities.

(1) A primary school of enrollment shall facilitate student enrollment with any and all eligible providers selected by an eligible student consistent with course credit limits.

(2) A primary school of enrollment or a provider LEA shall use the CCA form, records, and processes provided by the Superintendent for the program.

(3) A primary school or LEA of enrollment shall provide information about available online courses and programs:

(a) in registration materials;

(b) on the LEA's website; and

(c) on the school's website.

(4) A primary school of enrollment shall include a student's online courses in the student's enrollment records and, upon course completion, include online course grades and credits on the student's transcripts.

R277-726-6. Superintendent Requirements and Responsibilities.

(1) The Superintendent shall develop and provide a website for the program that provides information required under Section 53A-15-1212 and other information as determined by the Board.

(2) The Superintendent shall direct a provider to administer statewide assessments consistent with Rule R277-404 for identified courses using LEA-adopted and state-approved assessments.

(3)(a) The Board may determine space availability standards and appropriate course load standards for online courses consistent with Subsections 53A-15-1006(2) and 53A-15-1208(3)(d).

(b) Course load standards may differ based on subject matter and differing accreditation standards.

(4) The Board shall withhold funds from a primary LEA of enrollment and make payments to a provider consistent with Sections 53A-15-1206, 53A-15-1206.5, and 53A-15-1207.

(5) The Board may refuse to provide funds under a CCA if the Board finds that information has been submitted fraudulently or in violation of the law or Board rule by any of the parties to a CCA.

(6) The Superintendent shall receive and investigate complaints, and impose sanctions, if appropriate, regarding course integrity, financial mismanagement, enrollment fraud or inaccuracy, or violations of the law or this rule specific to the requirements and provisions of the program.

(7) If a Board investigation finds that a provider has violated the IDEA or Section 504 provisions for a student taking online courses, the provider shall compensate the student's primary LEA of enrollment for all costs related to compliance.

(8)(a) The Superintendent may audit, at the Board's sole discretion, an LEA's or program participant's compliance with any requirement of state or federal law or Board rule under the program.

(b) All participants shall provide timely access to all records, student information, financial data or other information requested by the Board, the Board's auditors, or the Superintendent upon request.

(9) The Board may withhold funds from a program participant for the participant's failure to comply with a reasonable request for records or information.

(10) Program records are available to the public subject to the Government Records Access and Management Act, (GRAMA).

(11) The Superintendent shall withhold online course payment from a primary LEA of enrollment and payments to an eligible provider at the nearest monthly transfer of funds, subject to verification of information, in an amount consistent with, and at the time a provider qualifies to receive payment, under Subsection 53A-15-1206(4).

(12) The Superintendent shall pay a provider consistent with Minimum School Program funding transfer schedules.

(13)(a) The Superintendent may make decisions on questions or issues unresolved by Title 53A, Chapter 15, Part 12, Statewide Online Program Act or this rule on a case-by-case basis.

(b) The Superintendent shall report decisions described in Subsection (13)(a) to the Board consistent with the purposes of the law and this rule.

R277-726-7. Provider Requirements and Responsibilities.

(1)(a) A provider shall administer statewide assessments as directed by the Superintendent, including proctoring statewide assessments, consistent with Section 53A-15-1210 and Rule R277-404.

(b) A provider shall pay administrative and proctoring costs for all statewide assessments.

(2) A provider shall provide a parent or a student with email and telephone contacts for the provider during regular business hours in order to facilitate parent information.

(3) A provider and any third party working with a provider shall, for all eligible students, satisfy all Board requirements for:

(a) consistency with course standards;

(b) criminal background checks for provider employees;

(c) documentation of student enrollment and participation; and

(d) compliance with:

(i) the IDEA;

(ii) Section 504; and

(iii) requirements for ELL students.

(4) A provider shall receive payments for a student properly enrolled in the program from the Superintendent consistent with:

(a) Board procedures;

(b) Board timelines; and

(c) Sections 53A-15-1206, 53A-15-1206.5, 53A-15-1207, and 53A-15-1208.

(5)(a) A provider may charge a fee consistent with other secondary schools.

(b) If a provider intends to charge a fee, the provider:

(i) shall notify the primary school of enrollment with whom the provider has the CCA of the purpose for fees and amounts of fees;

(ii) provide timely notice to a parent of required fees and fee waiver opportunities;

(iii) post fees on the provider website; and

(iv) shall be responsible for fee waivers for an eligible student, including all materials for a student designated fee waiver eligible by a student's primary school of enrollment.

(6) A provider shall maintain a student's records and comply with the federal Family Educational Rights and Privacy Act, Title 53A, Chapter 13, Part 3, Utah Family Educational Rights and Privacy Act, and Rule R277-487, including protecting the confidentiality of a student's records and providing a parent and an eligible student access to records.

(7) Except as provided in Subsection R277-726-9, a provider shall submit a student's credit and grade to the Superintendent, primary school of enrollment, and the student's parent no later than:

(a) 30 days after a student satisfactorily completes an online semester or quarter course; or

(b) June 30 of the school year.

(8) A provider may not withhold a student's credits, grades, or transcripts from the student, parent, or the student's school of enrollment for any reason.

(9)(a) If a provider seeks to suspend a student from an online course for disciplinary reasons, the provider is responsible for all student due process procedures, including the IDEA and Section 504 of the Rehabilitation Act of 1973.

(b) A provider shall notify the Superintendent of a student's withdrawal, if the student is suspended for more than 10 days.

(10)(a) A provider shall provide to the Superintendent a list of course options using US[~~O~~]BE-provided course codes.

(b) All program courses shall be coded as semester or quarter courses.

(c) A provider shall update the provider's course offerings in January and August annually.

(11) A provider shall serve a student on a first-come-first-served basis who desires to take courses and who is designated eligible by a primary school of enrollment if desired courses have space available.

(12) A provider shall provide all records maintained as part of a public online school or program, including:

(a) financial and enrollment records; and

(b) information for accountability and audit purposes upon request by the Superintendent and the provider's external auditors.

(13) A provider shall maintain documentation of student work, including dates of submission, for program audit purposes.

(14) A provider is responsible for complete and timely submissions of record changes to executed CCAs and submission of other reports and records as required by the Superintendent.

(15) A provider shall inform a student and the student's parent of expectations for active participation in course work.

(16) An LEA may participate in the program as a provider by offering a school or program to a Utah student in grades 9-12 who is not a resident student of the LEA consistent with Section 53A-15-1205(2).

(17) A program school or program shall:

(a) be accredited by the accrediting entity adopted by the Board consistent with Rule R277-410;

(b) have a designated administrator who meets the requirements of Section 53A-6-110;

(c) ensure that a student who qualifies for a fee waiver shall receive all services offered by and through the public schools consistent with Section 53A-12-103 and Rule R277-407;

(d) maintain student records consistent with:

(i) the federal Family Educational Rights and Privacy Act, 20 U.S.C. Sec 1232g and 34 CFR Part 99; and

(ii) Rule R277-487; and

(e) shall offer course work:

(i) aligned with Utah Core standards;

(ii) in accordance with program requirements; and

(iii) in accordance with the provisions of Rules R277-700 and R277-404.

(18) An LEA that offers an online program or school as a provider under the program:

(a) shall employ only licensed Utah educators as teachers;

(b) may not employ an individual whose educator license has been suspended or revoked;

(c) shall require all employees to meet requirements of Sections 53A-15-1503 and 53A-15-1504 prior to the provider offering services to a student;

(d) may only employ teachers who meet the requirements of Rule R277-510, Educator Licensing - Highly Qualified Assignment;

(e) shall agree to administer and have the capacity to carry out statewide assessments, including proctoring statewide assessments, consistent with Section 53A-15-1210(2) and Rule R277-404;

(f) in accordance with Section R277-726-8, shall provide services to a student consistent with requirements of the IDEA, Section 504, and Title VI of the Civil Rights Act of 1964 for English Language Learners (ELL);

(g) shall maintain copies of all CCAs for audit purposes; and

(h) shall agree that funds shall be withheld by the Superintendent consistent with Sections 53A-15-1206 and 53A-15-1206.5.

(19) A provider shall cooperate with the Superintendent in providing timely documentation of student participation, enrollment, and other additional data consistent with Board directives and procedures and as requested.

(20) A provider shall post all required information online on the provider's individual website including required assessment and accountability information.

R277-726-8. Services to Students with Disabilities Participating in the Program.

(1)(a) If a student requests services related to a Section 504 accommodation under the Americans with Disabilities Act, a provider shall:

(i) except as provided in Subsection (1)(b), prepare a Section 504 plan for the student; and

(ii) provide the services or accommodations to the student in accordance with the student's Section 504 plan.

(b) An LEA of enrollment shall provide a Section 504 plan of a student described in Subsection (1)(a) to a provider within 72 business hours if:

(i) the student is enrolled in a primary LEA of enrollment; and

(ii) the primary LEA of enrollment has a current Section 504 plan for the student.

(2) For a student enrolled in a primary LEA of enrollment, if a student participating in the program qualifies to receive services under the IDEA:

(a) the student's primary LEA of enrollment shall:

(i) prepare an IEP for the student in accordance with the timelines required by the IDEA;

(ii) provide the IEP described in Subsection (2)(a)(i) to the provider within 72 business hours of completion of the student's IEP; and

(iii) continue to claim the student in the primary LEA of enrollment's membership; and

(b) the provider shall provide special education services to the student in accordance with the student's IEP described in Subsection (2)(a)(i).

(3) If a home or private school student participating in the program qualifies to receive special education services under the IDEA, the home or private school student:

(a) may waive the student's right to receive the special education services; or

(b) subject to the requirements of Subsection (4), enroll in the home or private school student's resident school for the purpose of receiving special education services.

(4) If a home or private school student requests to receive special education services as described in Subsection (3)(b):

(a) the home or private school student's resident school shall:

(i) prepare an IEP for the student in accordance with the timelines required by the IDEA;

(ii) provide the IEP described in Subsection (4)(a)(i) to the provider within 72 business hours of completion of the student's IEP; and

(iii) claim the student in the resident school's membership; and

(b) the provider shall provide special education services to the student in accordance with the student's IEP described in Subsection (4)(a)(i).

R277-726-9. Home and Private School Appropriation.

(1) The Superintendent shall allocate the annual appropriation for home and private school tuition, along with any carryover or unobligated funds, as follows:

(a) 50% of the total appropriation for home school students; and

(b) 50% of the total appropriation for private school students.

(2) The Superintendent shall receive and accept enrollment requests on a first come, first served basis until all available funds are obligated.

(3) If home school or private school student funds remain by March 1, the Superintendent may release the funds for any pending enrollment requests.

R277-726-[9]10. Other Information.

(1) A primary school of enrollment shall set reasonable timelines and standards.

(2) A provider shall adhere to timelines and standards described in Subsection (1) for student grades and enrollment in online courses for purposes of:

(a) school awards and honors;
(b) Utah High School Activities Association participation; and
(c) high school graduation.

KEY: statewide online education program
Date of Enactment or Last Substantive Amendment: [~~February 8,~~]2016
Notice of Continuation: December 15, 2015
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-15-1210; 53A-15-1213; 53A-1-401[~~(3)~~]

Education, Administration
R277-911
Secondary Career and Technical Education

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40516
FILED: 06/15/2016

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-911 is amended in response to H.B. 1, Public Education Base Budget Amendments, from the 2016 General Session, which increased the Career and Technical Education (CTE) add-on weighted pupil unit (WPU) value to the same value as the regular WPU.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-911 provide changes to the disbursement and expenditure of funds for CTE programs and clarify federal maintenance of effort (MOE) requirements related to LEA funding of CTE programs. Numerous technical and conforming changes are also provided.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-15-202 and Section 53A-17a-113 and Section 53A-17a-114

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendments provide changes to the disbursement and expenditure of funds for CTE programs, which likely will not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: The amendments provide changes to the disbursement and expenditure of funds for CTE programs, which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: The amendments provide changes to the disbursement and expenditure of funds for CTE programs, which likely will not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments provide changes to the disbursement and expenditure of funds for CTE programs, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments provide changes to the disbursement and expenditure of funds for CTE programs, which likely will not result in any compliance costs for affected persons.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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R277. Education, Administration.
R277-911. Secondary Career and Technical Education.
R277-911-[~~2~~]1. Authority and Purpose.

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

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

(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;

(c) Section 53A-15-202, which allows the Board to establish minimum standards for CTE programs in the public education system[~~,~~]; and

(d) Sections 53A-17a-113 and 53A-17a-114, which direct the Board to distribute specific amounts and percentages for specific CTE programs and facilitate administration of various programs.

[~~B.~~](2) This rule establishes standards and procedures for [~~school districts~~]LEAs seeking to qualify for funds administered by the Board for CTE programs in the public education system.

R277-911-[~~1~~]2. Definitions.

[~~A.~~](1) "Aggregate membership" means the sum of all days in membership during a school year for:

(a) the student[~~,~~];

(b) the program[~~,~~];

(c) the school[~~,~~];

(d) the LEA[~~,~~]; or

(e) the state.

[~~B.~~](2) "Approved program" means a program annually approved by the Board through the consent calendar process that meets or exceeds the state program standards or outcomes for career and technical education programs.

[~~C. "Board" means the Utah State Board of Education.~~]

[~~D.~~](3) "Bureau of Apprenticeship and Training" means a branch office for apprenticeship administered by the United States Department of Labor and located in Salt Lake City.

[~~E.~~](4)(a) "Career and technical education" or [~~(~~]"CTE[~~)~~]" means organized educational programs [~~which directly or indirectly prepare individuals for employment, or for additional preparation leading to employment, in occupations where entry requirements generally do not require a baccalaureate or advanced degree. These programs provide all students an undisrupted education system, driven by a student education occupation plan (SEOP), through competency-based instruction, culminating in essential life skills, certified occupational skills, and meaningful employment.~~]that:

(i) prepare individuals for a wide range of high-skill, high-demand careers;

(ii) provide all students with a seamless education system from public education to post-secondary education, driven by a Plan for College and Career Readiness; and

(iii) provide students competency-based instruction, hands-one experiences, and certified occupational skills, culminating in further education and meaningful employment.

(b)[~~A~~] CTE areas of study include:

(i) agriculture;

(ii) business;

(iii) family and consumer sciences;

(iv) health science [~~and technology~~];

(v) information technology;

(vi) marketing;

(vii) skilled and technical sciences; and

(viii) technology and engineering education.

[~~F.~~](5)(a) "CTE pathway" means a planned [~~CTE/academic continuum of courses within a CTE field beginning in the ninth grade and continuing with post secondary training which culminates in an associate degree, apprenticeship, certificate of completion, or baccalaureate degree.~~]sequence of courses within a program of study to assure strong academic and technical preparation connecting high school course work to work beyond high school.

(b) A CTE pathway ensures that a student will be prepared to take advantage of the full range of post-secondary options, including:

(i) on-the-job training;

(ii) certification programs; and

(iii) two- and four-year college degrees.

[~~G.~~](6) "CIP code" means the Classification of Instructional Programs, a federal curriculum listing.

[~~H. "Comprehensive counseling and guidance program" means the organization of resources to meet the priority needs of students through four delivery system components as outlined in R277-462.~~]

[~~I.~~](7)(a) "Course" means an individual CTE class structured by state-approved standards and CIP code.

(b) An approved course may require one or two periods for up to one year.

(c) Courses may be completed by demonstrated competencies or by course completion.

[~~J.~~](8)(a) "Entry-level" means a set of tasks identified and validated by workers and employers in an occupation as those of a beginner in the field.

(b) Entry-level skills are a limited subset of the total set of tasks performed by an experienced worker in the occupation.

(c) Competent performance of entry-level tasks enhances employability and initial productivity.

[~~K.~~](9) "Extended year program" means CTE programs no longer than 12 weeks in duration, offered during the summer recess, and supported by extended-year or other CTE funds.

(10) "CTE Maintenance of Effort" or "MOE" means the expenditure plan outlined in Subsection R277-911-4(1).

[~~L.~~](11) "Program" means a combination of CTE courses that:

(a) provides the competencies for specific job placement or continued related training; and

(b) is outlined in the [~~SEOP~~]Plan for College and Career Readiness using all available and appropriate high school courses.

[~~M.~~](12) "Program completion" means the student completion of a sequence of approved courses, work-based learning experiences, [~~and/~~]or other prescribed learning experiences as determined by the [~~student education occupation plan (SEOP)~~]Plan for College and Career Readiness.

[~~N.~~](13) "Regional consortium" means the [~~school districts~~]LEAs, applied technology colleges, colleges and universities within the regions that approve CTE programs.

[~~O.~~](14) "Registered apprenticeship" means a training program that:

(a) includes on-the-job training in a specific occupation combined with related classroom training; and

(b) has approval of the Bureau of Apprenticeship and Training.

[~~P.~~](15) "Related training" means a course or program that is:

(a) directly related to an occupation[~~ that is~~];

(b) compatible with apprenticeship training[~~ and is~~];

(c) taught in a classroom; and

(d) approved by the Bureau of Apprenticeship and Training.

[~~Q.~~](16) "Scope and sequence" means the organization of all CTE courses and related academic courses into programs within the high school curriculum that lead to:

(a) specific skill certification[~~,~~];

(b) job placement[~~,~~];
(c) continued education; or
(d) training.
[~~R. "SEOP" means student education occupation plan. An SEOP shall include:~~
~~(1) a student's education occupation plans (grades 7-12) including job placement when appropriate;~~
~~(2) all Board, local board and local charter board graduation requirements;~~
~~(3) evidence of parent, student, and school representative involvement annually;~~
~~(4) attainment of approved workplace skill competencies; and~~
~~(5) identification of post secondary goals and approved sequence of courses.~~]
[~~S.~~](17)(a) "Skill certification" means a verification of competent task performance.
(b) [~~Verification of the skills standard~~]Skills certification is provided by an approved state or national program certification process.
[~~T. "USOE" means the Utah State Office of Education.~~]
[~~U.~~](18) "Weighted pupil unit" or "WPU" means [~~weighted pupil unit. T~~]the basic unit used to calculate the amount of state funds for which an [~~school district~~]LEA is eligible.
[~~V.~~](19)(a) "Work-based learning" means a student instructional program [~~in which~~]that:
(a) provides a student[~~is~~] train[~~ed~~]ing by employment or other activity at a work site[~~, either~~];
(b) may take place at a place of business, a home, or a farm[~~,~~]; and
(c) is supplemented by needed classroom instruction or teacher assistance.

R277-911-3. CTE Program Approval.
[~~A.~~](1)(a) [~~Program Planning: ~~]The Superintendent shall approve CTE programs[~~are~~] based on verified training needs of the area and[~~provide students with~~] the competencies necessary [~~for~~]to provide occupational opportunities for students.
(b) Programs are supported by a data base, including:
([~~1~~]i) local, regional, state, and federal manpower projections;
([~~2~~]ii) student occupational/interest surveys;
([~~3~~]iii) regional job profile;
([~~4~~]iv) advisory committee information; and
([~~5~~]v) follow-up evaluation and reports.
[~~B.~~](2) [~~Program Administration: School district~~]LEA CTE directors shall meet the requirements specified in [~~Subsections 9(A), (B) and (C)~~]R277-911.
[~~C.~~](3) [~~Learning Resources: ~~]Within available resources, instructional materials, including textbooks, reference materials, and media, shall reflect current technology, processes, and information for the CTE programs.
[~~D. Student Services provided by school districts or consortia of school districts:~~]
([~~1~~]4)(a) An LEA shall provide CTE guidance, counseling, and Board approved testing [~~shall be provided ~~]for students enrolled in CTE programs.
([~~2~~]b) An LEA shall develop a written plan for placement services [~~shall be developed ~~]with the assistance of local advisory committees, business and industry, and the Department of Workforce Services.
([~~3~~]c) An LEA shall develop a Plan for College and Career Readiness [~~SEOP shall be developed~~] for all students[~~. The plan~~], which shall include:
([~~a~~]i) a student's education occupation plans (grades 7-12), including job placement when appropriate;
([~~b~~]ii) all Board, local board and local charter board graduation requirements;
([e]iii) evidence of annual parent, student, and school representative involvement[~~annually~~];
([~~d~~]iv) attainment of approved workplace skill competencies; and
([e]v) identification of a CTE post-secondary goal and an approved sequence of academic and CTE courses.
[~~E.~~](5)(a) [~~Instruction:~~] An LEA shall use [~~C~~]curricula and instruction [~~shall be~~]that is directly related to business and industry validated competencies.
(b) An LEA shall use a valid skill certification process to verify [~~S~~]successful completion of competencies[~~shall be verified by a valid skill certification process~~].
(c) An LEA shall provide [~~I~~]instruction in proper and safe use of any equipment required for skill certification [~~shall be provided ~~]within the approved program.
[~~F.~~](6) [~~Equipment and Facilities:~~] An LEA shall provide and safely maintain [~~E~~]equipment and facilities, consistent with the validated competencies identified in the instruction standard[~~, shall be provided and maintained safely, consistent with~~] and applicable state and federal laws.
[~~G.~~](7)(a) [~~Instructional Staff:~~] Counselors and instructional staff shall hold valid Utah teaching licenses with endorsements appropriate for the programs they teach.
(b) Licenses and endorsements required under Subsection (7)(a) [~~These ~~]may be obtained through an institutional recommendation or through occupational and educational experience verified by the [~~USOE ~~]Board's licensure process.
(c) CTE program instructors shall keep technical and professional skills current through business[~~/~~] and industry involvements in order to ensure that students are provided accurate state-of-the-art information.
[~~H.~~](8) [~~Equal Educational Opportunity:~~] An LEA shall conduct CTE programs[~~shall be conducted~~] consistent with[~~the~~] Board policies and state and federal laws and regulations on access that prohibit discrimination on the basis of:
(a) race[~~,~~];
(b) creed[~~,~~];
(c) color[~~,~~];
(d) national origin[~~,~~];
(e) religion[~~,~~];
(f) age[~~,~~];
(g) sex[~~,~~]; and
(h) disability.
[~~I.(1)~~](9)(a) [~~CTE advisory council: ~~] An LEA shall establish an active advisory council [~~shall be established ~~]to review all CTE programs annually.
(b) [~~The~~]An advisory council may serve several [~~school districts~~]LEAs or a region.
(c) [~~The~~]An advisory council reviews[~~the~~]:
(i) program offerings[~~,~~];

(ii) quality of programs[~~,~~]; and

(iii) equipment needs.

([~~2~~]10) [~~Program advisory committee:~~] A program advisory committee made up of individuals who are working in the occupational area shall support [~~E~~]each state-funded approved CTE program[~~ shall be supported~~] at the [~~school district/~~]LEA or regional level [~~by a program advisory committee made up of individuals who are working in the occupational area. Basic exploratory programs shall have an advisory committee~~].

[~~J.~~](11) [~~CTE student leadership organizations: School districts~~]LEAs are encouraged to make[~~ this~~] training available through nationally-chartered CTE student leadership organizations in each area of study.

[~~K.~~](12) [~~Program and instruction evaluation: Each school district~~]An LEA, with oversight by local program advisory committee members, shall make an annual evaluation of its CTE programs.

R277-911-4. Disbursement and Expenditure of CTE Funds -- General Standards.

[~~A.~~](1) To be eligible for state CTE program funds, an [~~school district~~]LEA shall first expend for CTE programs an amount equivalent to the regular WPU for students in approved CTE programs, grades nine through twelve, based on prior year aggregate membership in funded CTE programs, times the current year WPU value, less [~~an~~]the amount for[~~ indirect costs as computed by the USOE~~]:

(a) college and career awareness;

(b) work-based learning; and

(c) comprehensive counseling and guidance.

[~~B.~~](2) An LEA may thereafter expend State CTE program funds[~~ may thereafter be expended~~] only for approved CTE programs, grades nine through twelve.

(3) An LEA that does not meet MOE may be subject to a corrective action plan and potential reduction of funds or penalty in accordance with R277-114.

R277-911-5. Disbursement of Funds -- Added Cost Funds.

[~~A.~~](1)(a) [~~Weighted pupil units~~]WPUs shall be allocated for the added instructional costs of approved CTE programs operated or contracted by [~~school districts~~]an LEA.

(b) Programs and courses provided through applied technology colleges, and higher education institutions do not qualify for added cost funds except for specific contractual arrangements approved by the Board.

[~~B.~~](2)(a) Computerized or manually produced records for CTE programs shall be kept by:

(i) teacher[~~,~~];

(ii) class[~~,~~]; and

(iii) [~~Classification of Instructional Program (~~]CIP[~~)~~] code.

(b) [~~These r~~]Records described in Subsection (2)(a) shall show clearly and accurately the entry and exit date of each student and whether a student has been absent from a CTE class ten consecutive days.

[~~C.~~](3) Added cost funds shall not be generated:

([~~1~~]a) during bus travel;

([~~2~~]b) until [~~the~~]a student starts attending [~~the~~]an approved CTE course;

([~~3~~]c) when [~~the~~]a student has been absent, without excuse, for the previous 10 days.

[~~D.~~](4) [~~All a~~]Approved CTE programs shall receive funds determined by prior year hours of membership for approved programs.

[~~E.~~](5) Allocations under this R277-911-5 are computed using grades nine through twelve aggregate membership in approved programs for the previous year with a growth factor applied to [~~school districts~~]LEAs experiencing growth of one percent or greater in grades nine through twelve except as provided by R277-462 and R277-916.

[~~F.~~](6) Added cost funds shall be used to cover the added CTE program instructional costs of [~~school district~~]LEA programs.

(7) An LEA that does not comply with the requirements of this Subsection may be subject to a corrective action plan and potential reduction of funds or penalty in accordance with R277-114.

[~~**R277-911-6. Disbursement of Funds -- Equipment Set Aside Funds.**~~

~~A. Equipment set aside funds shall pay for CTE program equipment needs.~~

~~B. Each school district is eligible for a minimum amount of equipment set aside funds.~~

~~C. Applicants for funds may submit proposals as individual school districts or as regional groups. All proposals shall show evidence of coordination within a service delivery area. A regional group shall include recommended priorities for funding in its proposal.~~]

R277-911-[~~7~~]6. Disbursement of Funds -- Skill Certification.

[~~A.~~](1) An [~~School districts~~]LEA that demonstrates approved student skill certification may receive additional compensation.

[~~B.~~](2)(a) To be eligible for skill certification compensation, an [~~school district~~]LEA shall show its student completer has demonstrated mastery of standards, as established by the Board.

(b) An authorized test administrator shall verify student mastery of the skill standards.

[~~C.~~](3) The Superintendent may only disburse [~~S~~]skill certification compensation[~~ shall be available only~~] if an approved skill certification assessment is developed for the program.

R277-911-[~~8~~]7. Disbursement of Funds -- CTE Leadership Organization Funds.

[~~A.~~](1) Participating [~~school districts~~]LEAs sponsoring CTE leadership organizations shall be eligible for a portion of[~~ the~~] funds set aside for [~~this purpose~~]these organizations.

[~~B.~~](2) Qualifying CTE leadership organizations shall be nationally chartered and include:

(a) SkillsUSA (an association of Skilled and Technical Sciences Education students)[~~,~~];

(b) DECA (Distributive Education Clubs of America)[~~,~~];

(c) FFA (Future Farmers of America)[~~,~~];

(d) HOSA (Health Occupations Students of America)[~~,~~];

(e) FBLA (Future Business Leaders of America)[~~,~~];

(f) FCCLA (Family, Career and Community Leaders of America)[~~,~~]; and

(g) TSA (Technology Students Association).

[~~C.~~](3) Up to [~~one percent~~]1% of the state CTE appropriation for [~~school districts~~]LEAs shall be allocated to eligible [~~school districts~~]LEAs based on documented prior year student membership in approved CTE leadership organizations.

[~~D.~~](4)(a) A portion of funds allocated to an [~~school district~~]LEA for CTE leadership organizations shall be used to pay the [~~school district's~~]LEA's portion of statewide administrative and national competition costs.

(b) An LEA shall use the [~~The~~]remaining amount [~~shall be~~]available for the [~~school district~~]LEA's CTE leadership organization expenses.

R277-911-[9]8. Disbursement of Funds -- School District[~~/~~] and Charter School WPUs.

[~~A.~~](1) The Superintendent shall allocate WPUs for costs of administration of CTE programs [~~shall be allocated as follows:~~]as described in this section.

([~~1~~]2)(a) The Superintendent shall distribute Twenty (20) WPUs [~~shall be allocated~~]to [~~each~~]a school district for costs associated with the administration of CTE.

(b) To qualify, a school district[~~s~~] shall employ a minimum one-half time CTE director.

([~~2~~]3)(a) To encourage multidistrict CTE administrative services, the Superintendent shall distribute 25 WPUs[~~- shall be allocated~~] to [~~each~~]a school district that consolidates CTE administrative services with one or more other school districts;[~~-~~]

(b) To qualify, [~~the~~]a participating school district[~~s must~~] shall employ a full-time CTE director.

([~~3~~]4)(a) The Superintendent shall distribute Twenty-five (25) WPUs[~~- shall be allocated~~] to a single charter school acting as fiscal agent, to provide CTE administrative services to all charter schools offering CTE pathways, grades 9-12.

(b) If more than [~~ten (~~]10[~~)~~] charter schools offer CTE pathways, the Superintendent shall distribute an additional [~~five (~~]5[~~)~~] WPUs[~~- shall be allocated~~] for each additional charter school over [~~ten (~~]10[~~)~~].

(c) To qualify, the charter school acting as fiscal agent must employ a full-time CTE director.

([~~4~~]5)(a) [~~Ten (~~]The Superintendent shall distribute 10[~~)~~] WPUs[~~- shall be allocated~~] to a small school district consisting of only necessarily existent small high school(s),[~~- and~~] where multi-district CTE administration is not feasible.

(b) To qualify, a small school district shall assign a CTE director to a minimum of part-time CTE administration.

[~~B.~~](6) To qualify for 10, 20 or 25 CTE administrative WPUs as provided [~~under R277-911-9A~~]in this Subsections (1) through (5), a CTE director shall:

([~~1~~]a) hold or be in the process of completing requirements for a [~~current Utah Administrative/Supervisory~~] Education Leadership License Area of Concentration described [~~specified~~]in R277-505;[~~- and~~]

([~~2~~]b)[~~(a)~~] have an endorsement in at least one career and technical area listed in Rule R277-518[~~, Career and Technical Education Licenses,~~]; and

(c)(i) have four years of experience as a full-time career and technical educator; or

([~~b~~]ii) complete a prescribed professional development program provided by the [~~USOE~~]Superintendent within a period of two years following board appointment as an [~~school district/charter school~~]LEA CTE director.

[~~C.~~](7) In addition to WPUs appropriated under [~~R277-911-9A~~]Subsections (1) through (5), the Superintendent shall allocate funds to each approved high school [~~qualifies for funding according to the following criteria~~]as described in Subsections (8) through (15):

([~~1~~]8) [~~Ten (~~]The Superintendent shall distribute 10[~~)~~] WPUs[~~- are allocated~~] to [~~each~~]a high school that:

(a) conducts approved programs in a minimum of two CTE areas [~~e.g. agriculture; business; family and consumer sciences; health science and technology; information technology; marketing; skilled and technical sciences; and technology and engineering education~~]specified in Subsection R277-911-1(4)(b);

(b) conducts a minimum of six different state-approved CIP coded courses including at least one CTE pathway; and

(c) has at least one approved career and technical student leadership organization.

(9) Consolidated courses in small schools may count as more than one course as approved by the [~~appropriate state CTE specialist(s);~~]Superintendent.

[~~(c) has at least one approved career and technical student leadership organization.~~]

([~~2~~]10) [~~Fifteen (~~]The Superintendent shall distribute 15[~~)~~] WPUs[~~- shall be allocated~~] to [~~each~~]a high school that:

(a) conducts approved programs in a minimum of three CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of nine different state-approved CIP coded courses including at least one CTE pathway; and

(c) has at least one approved CTE student leadership organization.

(11) Consolidated courses in small schools may count as more than one course as approved by the [~~appropriate state CTE specialist(s);~~]Superintendent.

[~~(c) has at least one approved CTE student leadership organization.~~]

([~~3~~]12) [~~Twenty (~~]The Superintendent shall distribute 20[~~)~~] WPUs[~~- shall be allocated~~] to [~~each~~]a high school that:

(a) conducts approved programs in a minimum of four CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of twelve different state-approved CIP coded courses including at least two CTE pathways; and

(c) has at least two approved CTE student leadership organization.

(13) Consolidated courses in small schools may count more than one course as approved by the [~~appropriate state CTE specialist(s);~~]Superintendent.

[~~(c) has at least two approved CTE student leadership organizations.~~]

(14) [~~Twenty-five (~~]The Superintendent shall distribute 25[~~)~~] WPUs[~~- shall be allocated~~] to [~~each~~]a high school that:

(a) conducts approved programs in a minimum of five CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of fifteen different state-approved CIP coded courses including at least two CTE pathways; and

(c) has at least three approved CTE student leadership organizations.

(15) Consolidated courses in small schools may count more than one course as approved by the [~~appropriate state CTE specialist(s);~~]Superintendent.

[~~(c) has at least three approved CTE student leadership organizations.~~]

[~~D. Also, a~~](16)(a) A maximum of one approved alternative high school, as outlined in Rule R277-730, per school district may qualify for funds under Subsection (12).

(b) [~~School districts~~]LEAs sharing an alternative school shall receive a prorated share.

[~~E.~~](17) Programs and courses provided through school district technical centers [~~shall~~]may not receive funding under this section.

R277-911-[~~10~~]9. Disbursement of Funds -- School District Technical Centers.

[~~A.~~](1)(a) The Superintendent may award [~~A~~]a maximum of forty WPUs[~~, may be computed~~] for each school district operating an approved school district center.

(b) To qualify under the approved school district technical center provision, the school district shall:

([~~1~~]i) provide at least one facility other than an existing high school as a designated school district technical center;

([~~2~~]ii) employ a full-time CTE administrator for the center;

([~~3~~]iii) enroll a minimum of 400 students in the school district technical center;

([~~4~~]iv) prevent unwarranted duplication by the school district technical center of courses offered in existing high schools, applied technology colleges, and higher education institutions;

([~~5~~]v) centralize high-cost programs in the school district technical center;

([~~6~~]vi) conduct approved programs in a minimum of five CTE areas specified in Subsection R277-911-1(4)(b); and

([~~7~~]vii) conduct a minimum of fifteen different state-approved CIP coded courses.

R277-911-[~~11~~]10. Disbursement of Funds -- Summer CTE Agriculture Programs.

[~~A.~~](1)(a) To receive state summer CTE agriculture program funds, an [~~school district~~]LEA shall submit to the [~~USOE~~]Superintendent, an application for approval of the [~~school district's~~]LEA's program.

(b) [~~Applications shall be received~~]An LEA shall submit its application prior to the annual due date specified by the Superintendent each year.

(c) The Superintendent shall send [~~N~~]notification of approval of [~~the school district's~~]an LEA's program[~~ shall be made~~] within ten calendar days of receiving the application.

[~~B.~~](2) A teacher of a summer CTE agriculture program shall:

([~~1~~]a) hold a valid Utah teaching license, with an endorsement in agriculture, as outlined in Subsection R277-911-3[~~G~~](7);

([~~2~~]b) develop a calendar of activities which shall be approved by [~~school district~~]LEA administration and reviewed by the [~~state specialist for CTE agricultural education~~]Superintendent;

([~~3~~]c)(i) work a minimum of eight hours a day in the summer CTE agriculture program[~~-~~];

(ii) An LEA may approve [~~E~~]exceptions which shall be reflected in the calendar of activities[~~ and be approved by the school district administration~~];

([~~4~~]d) not engage in other employment, including self-employment, which conflicts with the teacher's performance in the summer CTE agriculture program;

([~~5~~]e) develop and file a weekly schedule and a monthly report outlining accomplishments related to the calendar of activities with:

(i) the school principal[~~,~~];

(ii) the [~~school district~~]LEA CTE director[~~,~~]; and

(iii) the [~~state specialist for agricultural education~~]Superintendent; and

([~~6~~]f) visit the participating students a minimum of two times during the summer program with a minimum average of four on-site visits to students.

[~~C.~~](3) College interns may be approved to conduct summer CTE agriculture programs upon approval by the [~~state specialist for CTE agricultural education~~]Superintendent.

[~~D.~~](4) Students enrolled in the summer CTE agriculture program shall:

([~~1~~]a) have on file in the [~~teacher's and school district~~]LEA office [~~a~~]the student's [~~education occupation plan (SEOP)~~]Plan for College and Career Readiness goal related to agriculture;

([~~2~~]b) in conjunction with the student's parent or employer and the teacher, develop an individual plan of activities, including a supervised occupational experience program;

([~~3~~]c) have completed the eighth grade; and

([~~4~~]d) have not have graduated from high school.

[~~E.~~](5)(a) The [~~USOE CTE agricultural education specialist~~]Superintendent shall collect data from the program and staff of each [~~school district~~]LEA to ensure compliance with approved standards.

(b) An LEA shall submit to the Superintendent [~~A~~]a final program report, on forms provided by the [~~USOE, shall be submitted to the USOE~~]Superintendent on the annual due date specified by the Superintendent.

[~~F.~~](6)(a) The Superintendent shall allocate Summer CTE agricultural funding[~~ shall be allocated~~] to each [~~school district~~]LEA conducting an approved program for a minimum of 35 students lasting nine weeks.

(b) An [~~school district~~]LEA may receive funding for no more than nine weeks or 35 students.

[~~G.~~](7) [~~School districts~~]An LEA operating a program[~~s~~] with fewer than 35 students per teacher or for fewer than nine weeks [~~shall~~]may only receive a prorated share of the summer CTE agricultural allocation.

R277-911-[~~12~~]11. Disbursement of Funds - Comprehensive Counseling and Guidance; [~~CTE Introduction~~]College and Career Awareness, and Work-Based Learning Programs.

A. The [~~board~~]Superintendent shall distribute funds to [~~school districts~~]LEAs consistent with Section 53A-17a-113[~~(2)(3)(4) and (6)~~].

[~~B.~~](2) [~~School districts~~]An LEA shall spend funds distributed for comprehensive guidance consistent with Subsection 53A-1a-106(2)(b) and R277-462, which explain the purpose and

criteria for student education plans (SEPs) and [~~student education occupation plans (SEOP)~~]Plan for College and Career Readiness.

[~~C.~~](3) [~~School districts~~]An LEA may spend funds allocated under this section to fund work-based learning programs consistent with [~~Section 53A-17a-113(1)(c), other criteria of the Section,~~]Rules R277-915 and R277-916.

[~~D.~~](4) [~~School districts~~]An LEA may spend funds allocated under this section to fund [~~CTE Introduction~~]College and Career Awareness programs consistent with [~~Section 53A-17a-113 and~~]Rule R277-916.

KEY: career and technical education
Date of Enactment or Last Substantive Amendment: [~~January 7, 2009~~]2016
Notice of Continuation: August 14, 2012
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-15-202; 53A-17a-113[~~through 115~~] and 114

Education, Administration
R277-922
Digital Teaching and Learning Grant Program

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 40517
FILED: 06/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to provide standards and procedures for a local education agency (LEA) to receive funding and participate in the Digital Teaching and Learning Grant Program.

SUMMARY OF THE RULE OR CHANGE: This new rule provides standards and procedures for establishing an application and grant review committee and process, and provides direction to LEAs participating in the Digital Teaching and Learning Grant Program. (Editor's Note: The proposed new Rule R277-922 under Filing No. 40340 published in the May 1, 2016, Bulletin will be allowed to lapse and this filing takes it place.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Title 53A, Chapter 1, Part 15

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Funding is provided for approved LEAs participating in the Digital Teaching and Learning Grant Program, so it is likely that enactment of this new rule will not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: Funding is provided for approved LEAs participating in the Digital Teaching and Learning Grant Program, so it is likely that enactment of this new rule will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: Funding is provided for approved LEAs participating in the Digital Teaching and Learning Grant Program, so it is likely that enactment of this new 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 for approved LEAs participating in the Digital Teaching and Learning Grant Program, so it is likely that enactment of this new 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 for approved LEAs participating in the Digital Teaching and Learning Grant Program, so it is likely that enactment of this new 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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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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 15, 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-1-1506; 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-1-1502.

(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-1-1502.

(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 Board 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) have an LEA representative participate in 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) a representative group of school leadership from schools 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-1-1505.

(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-1-1504;

(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) October 1 headcount in the prior year at charter schools statewide, divided by October 1 headcount 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 in the prior year.

(c) A new LEA or new charter school satellite campus shall be funded based on the new LEA or new charter school satellite campus's projected October 1 headcount.

(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) October 1 headcount in the prior year at the Utah Schools for the Deaf and the Blind, divided by October 1 headcount 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, based on the October 1 headcount in the prior year.

(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;

(3) to fund voice or data plans for mobile telephones; or

(4) to pay indirect costs charged by the LEA.

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-1-1507 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 15.

Education, Administration
R277-923
American Indian and Alaskan Native Education State Plan Pilot Program

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 40518
FILED: 06/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule is in response to S.B. 14, American Indian and Alaskan Native Amendments, from the 2016 General Session.

SUMMARY OF THE RULE OR CHANGE: Rule R277-923 provides procedures and criteria for a local education agency (LEA) to apply to receive grant money and for review of a grant recipient's use 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 15

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The Legislature, through S.B. 14 (2016), appropriated funding for approved LEAs participation in the American Indian and Alaskan Native Education State Plan Pilot Program, so it is likely that enactment of this new rule will not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: The Legislature, through S.B. 14 (2016), appropriated funding for approved LEAs participation in the American Indian and Alaskan Native Education State Plan Pilot Program, so it is likely that enactment of this new rule will not result in a cost or savings to local government.

♦ SMALL BUSINESSES: The Legislature, through S.B. 14 (2016), appropriated funding for approved LEAs participation in the American Indian and Alaskan Native Education State Plan Pilot Program, so it is likely that enactment of this new rule will not result in a cost or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Legislature, through S.B. 14 (2016), appropriated funding for approved LEAs participation in the American Indian and Alaskan Native Education State Plan Pilot Program, so it is likely that enactment of this new 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: The Legislature, through S.B. 14 (2016), appropriated funding for approved LEAs participation in the American Indian and Alaskan Native Education State Plan Pilot Program, so it is likely that enactment of this new 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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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

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R277. Education, Administration.
R277-923. American Indian and Alaskan Native Education State Plan Pilot Program.
R277-923-1. 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; and
(b) Section 53A-31-404, which provides that the Board may make rules related to the pilot program; 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:
(a) criteria for evaluating grant applications; and
(b) procedures for:
(i) a school district to apply to the Board to receive grant money; and
(ii) the review of the use of grant money.

R277-923-2. Definitions.
(1) "American Indian and Alaskan Native concentrated school" has the same meaning as that term is defined in Section 53A-31-402.
(2) "Program site" means the school where an LEA plans to use grant money and implement the LEA's program.

R277-923-3. Grant Application.
(1) An LEA may apply for a grant described in Section 53A-31-404 by submitting an application to the Superintendent on or before the last Friday in May.
(2) The Superintendent shall develop a grant application and make the grant application available to LEAs that meet the eligibility as an American Indian and Alaskan Native concentrated school.

R277-923-4. Procedure and Criteria for Awarding a Grant.
(1) The Superintendent shall award one grant to an LEA to serve one or more program sites.
(2) The Superintendent shall award the grant described in Subsection (1) to the LEA based on the following criteria:
(a) up to 20 points will be awarded based on the percentage of American Indian and Alaskan Native students enrolled in the program sites;
(b) up to 15 points will be awarded based on the educator recruiting and retention needs of the program sites;
(c) up to 15 points will be awarded based on the strength of the LEA's program design plan;
(d) up to 10 points will be awarded based on the LEA's plan to objectively evaluate the success of the LEA's program design plan; and
(e) up to 10 points will be awarded based on the strength of the LEA's proposed budget and how many educators the LEA plans to serve.

KEY: Native Americans, Alaskan Natives, grant programs, teacher retention
Date of Enactment of Last Substantive Amendment: 2016
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-31-404; 53A-1-401

Environmental Quality, Air Quality
R307-124
General Requirements: Conversion to Alternative Fuel Grant Program

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 40471
FILED: 06/07/2016

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2015 General Session, the Legislature passed H.B. 15, which authorized the Department of Environmental Quality to issue grants to a person who does a conversion on a motor vehicle to run on natural gas, propane, or electricity and pass this savings on the conversion to the

owner of the converted vehicle. H.B. 15 gave authority to the Air Quality Board to make rules specifying the requirements and procedures for the Alternative Fuel Grant Program. While H.B. 15 authorized the program funding, was not made available until the Legislature passed H.B. 87 during the 2016 General Session. Over the last year, in anticipation that the program would receive funding, the Division of Air Quality staff worked closely with stakeholders to develop Rule R307-124, which fully implements both H.B. 15 (2015) and H.B. 87 (2016).

SUMMARY OF THE RULE OR CHANGE: This new rule, R307-124, outlines the process for reserving and receiving an Alternative Fuel Grant.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-1-403.3 and Sections 19-2-301 through 19-2-305

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Legislature considered cost when it passed H.B. 87 (2015) and put a limit on the amount of Alternative Fuel Grants that can be awarded at $150,000. This rule does not add any additional costs to what was already included in the bill's fiscal note.
♦ LOCAL GOVERNMENTS: No costs are anticipated for local governments; however, a local government that had a vehicle converted to run on an alternative fuel that qualifies for an Alternative Fuel Grant would see a savings of up to $2,500.
♦ SMALL BUSINESSES: No costs are anticipated for small businesses; however, a small business that had a vehicle converted to run on an alternative fuel that qualifies for an Alternative Fuel Grant would see a savings of up to $2,500.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No costs are expected for affected persons; however, an affected person that has a vehicle converted to run on an alternative fuel that qualifies for an Alternative Fuel Grant would see a savings of up to $2,500.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This is an optional program, and there is no requirement for anyone to apply; therefore, there are no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses who choose to apply for the grant will see some savings; however, because we do not know how many businesses will apply for the grant, the fiscal impact is unknown.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Mat Carlile by phone at 801-536-4116, by FAX at 801-536-4136, or by Internet E-mail at mcarlile@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.
R307-124. General Requirements: Conversion to Alternative Fuel Grant Program.
R307-124-1. Authorization and Purpose.
(1) This rule is authorized by Section 19-2-304, which establishes the requirements, procedures, criteria, and definitions used to determine eligibility for the Conversion to Alternative Fuel Grant Program.
(2) The procedures of this rule constitute the minimum requirements for the application and the awarding of funds that are designated for the Conversion to Alternative Fuel Grant Program.

R307-124-2. Definitions.
The following additional definitions apply to R307-124:
"Alternative fuel" means alternative fuel as defined in Subsection 19-2-302(2).
"Clean fuel grant" means clean fuel grant as defined in Subsection 19-2-302(4).
"Conversion equipment" means conversion equipment as defined in Subsection 19-2-302(5).
"Cost" means cost as defined in 19-2-302(6).
"Division" means the Division of Air Quality.
"Eligible vehicle" means eligible vehicle as defined in Subsection 19-2-302(9).

R307-124-3. Minimum Qualifications for an Applicant to Receive a Clean Fuel Grant.
(1) All applicants must be a registered business within the State of Utah and have a business license from the city or county in which they are located.
(2) Applicants that are applying for a clean fuel grant for a conversion of an eligible vehicle to run on propane must meet the requirements of R710-6 Liquefied Petroleum Gas (LPG) Rules.

R307-124-4. Minimum Qualifications for a Person that Installs Conversion Equipment on an Eligible Vehicle.
The following are the minimum qualifications for a person that installs conversion equipment on an eligible vehicle:
(1) A person that installs conversion equipment on an eligible vehicle to run on natural gas shall be:
(a) a Canadian Standards Association (CSA) America Compressed Natural Gas (CNG) Fuel System Inspector; or

(b) an Automotive Service Excellence (ASE) F1-certified technician.

(2) A person that installs conversion equipment on an eligible vehicle to run on propane shall be certified under R710-6 LPG Rules.

(3) A person that installs conversion equipment on an eligible vehicle to run on electricity shall be an ASE-certified technician.

R307-124-5. Preliminary Approval Application Procedure.

To be considered for a clean fuel grant all applicants shall apply for preliminary approval on forms provided by the Division as required by Subsection 19-2-304(1)(e), and shall provide additional information as requested by the Division.

(1) All applicants shall:

(a) acknowledge that receiving preliminary approval does not guarantee reimbursement by the Division, and preliminarily approved projects shall meet all the eligibility requirements listed in R307-124 before receiving the clean fuel grant for an eligible vehicle;

(b) certify under penalty of perjury and subject to provisions of Utah Code Section 76-8-504 ("written false statement"), that all savings on the cost of conversion equipment in the amount of the clean fuel grant will be passed to the owner of the eligible vehicle, as required in Subsection 19-2-303(2)(b);

(c) certify that the applicant is currently a registered business within the State of Utah and has a current business license; and

(d) agree to the provisions found in Subsection 19-2-303(3).

(2) Applicants applying for a clean fuel grant for a conversion of an eligible vehicle to run on natural gas shall provide the installer's ASE F-1 or CSA America certification number.

(3) Applicants that are applying for a clean fuel grant for a conversion of an eligible vehicle to run on propane shall provide the applicant's dealer license number and the installer's LPG certification number required by R710-6 LPG Rules.

(4) Applicants that are applying for a clean fuel grant for a conversion of an eligible vehicle to run on electricity shall provide the installer's ASE certification number.

(5) Preliminary approval will encumber funds for up to 60 calendar days from the preliminary application's approval.

R307-124-6. Final Approval Procedure and Payment Process.

Once an applicant has encumbered funds for a conversion, the applicant has up to 60 calendar days to obtain final approval from the Division. To obtain final approval, the applicant shall apply for final approval on forms provided by the Division, as required by Subsection 19-2-304(1)(e), and shall provide additional information as requested by the Division.

(1) To demonstrate that a conversion of a vehicle to be fueled by natural gas is eligible, an applicant shall submit the following documentation to the Director:

(a) A copy of the applicant's business registration from the Utah Department of Commerce and current business license from the city or county in which they are located;

(b) a copy of the installer's CSA America or ASE F-1 certification;

(c) an original or copy of the purchase order, customer invoice, or receipt that includes:

(i) the name, address, and phone number of the applicant;

(ii) the name of the installer;

(iii) the vehicle identification number (VIN);

(iv) the date of conversion; and

(v) the cost of the conversion (itemizing the equipment, labor, and the clean fuel grant);

(d)(i) a copy of the vehicle inspection report dated after the conversion, from an approved county I/M station, showing that the converted motor vehicle meets all county emissions requirements for all installed fuel systems if the motor vehicle is registered within a county with an I/M program; or

(ii) in all other areas of the state, a signed statement by the installer that includes the VIN, the installer's ASE or CSA America certification number, and states that the eligible vehicle's conversion is functional;

(e) a copy of the current Utah vehicle registration; and

(f) a signed statement by the installer certifying that the conversion does not tamper with, circumvent, or otherwise affect the vehicle's on-board diagnostic system, in accordance with Utah Code 19-1-406(2).

(2) To demonstrate that a conversion of a vehicle to be fueled by propane is eligible, an applicant shall submit the following documentation to the director:

(a) A copy of the applicant's business registration from the Utah Department of Commerce and current business license from the city or county in which they are located;

(b) a copy of the applicant's current dealer license required under R710-6;

(c) a copy of the installer's current certification under R710-6;

(d)(i) a copy of the vehicle inspection report, dated after the conversion, from an approved county I/M station, showing that the converted motor vehicle meets all county emissions requirements for all installed fuel systems, if the motor vehicle is registered within a county with an I/M program, or

(ii) in all other areas of the state, a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional;

(e) Provide the EPA Certificate of Conformity, or equivalent documentation that is consistent with requirements outlined in 40 CFR Part 85 and 40 CFR Part 86, as published in Federal Register Volume 76 Page 19830 on April 8, 2011, or an executive order from the California Air Resources Board;

(f) an original or copy of the purchase order, customer invoice, or receipt that includes:

(i) the name, address, and phone number of the applicant;

(ii) the name of the installer;

(iii) the VIN;

(iv) the date of conversion; and

(v) the cost of the conversion (itemizing the equipment, labor, and the clean fuel grant); and

(g) a copy of the current Utah vehicle registration.

(3) To demonstrate that a conversion of a motor vehicle to be powered by electricity is eligible, an applicant shall submit the following documentation to the director:

(a) A copy of the applicant's business registration from the Utah Department of Commerce and current business license from the city or county in which they are located;

(b) a copy of the current Utah vehicle registration;
(c) an original or copy of the purchase order, customer invoice, or receipt that includes:
(i) the name, address, and phone number of the applicant;
(ii) the name of the installer;
(iii) the VIN;
(iv) the date of conversion; and
(v) the cost of the conversion (itemizing the equipment, labor, and the clean fuel grant);
(d) If the converted eligible vehicle does not have any auxiliary sources of combustion emissions, then the applicant shall submit a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional and that the converted motor vehicle does not have any auxiliary source of combustion emissions.
(e) If the converted eligible vehicle has an auxiliary source of combustion emissions, the applicant shall submit:
(i) a copy of the vehicle inspection report after the conversion, from an approved county I/M station, showing that the converted motor vehicle meets all county emissions requirements for all installed fuel systems, if the motor vehicle is registered within a county with an I/M program; or
(ii) in all other areas of the state, a signed statement by an ASE-certified technician that includes the VIN, the technician's ASE certification number, and states that the conversion is functional; and
(iii) provide the EPA Certificate of Conformity, or equivalent documentation that is consistent with requirements outlined in 40 CFR Part 85 and 40 CFR Part 86, as published in Federal Register Volume 76 Page 19830 on April 8, 2011, or an executive order from the California Air Resources Board.
(4) All applicants shall complete and submit an IRS form W-9 to the Division.
(5) Approved applications shall continue to comply with the provisions of this rule.

R307-124-7. Grant Program Limitations.
Grant applications shall not be approved if:
(1) Awarding a grant to an applicant would result in the Department's inability to fulfill its obligations under this program or this rule;
(2) The applicant does not meet the approval requirements of Section R307-124-5;
(3) The fund balance is zero; or
(4) Awarding a grant to an applicant would result in the fund balance being less than zero.

R307-124-8. Review.
The Division reserves the right to request supplemental information it may deem necessary from an applicant, in order to effectively administer the program and this rule.

KEY: air pollution, alternative fuels, tax credits, motor vehicles
Date of Enactment or Last Substantive Amendment: 2016
Authorizing, and Implemented or Interpreted Law: 19-2-301 through 305; 19-1-403.3

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.: 40488
FILED: 06/13/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment removes an orphan subsection that should have been removed in an earlier modification but was missed; changes the word "variance" to "exclusion" or "alternative financial liability requirement." EPA uses the term "variance" in several ways. In the rule sections being modified the term "variance" used to mean that an alternative set of requirement may be used in regulating a waste when specific conditions are met. The Utah Solid and Hazardous Act uses "variance" in a very specific and defined way to mean an approval granted by the Waste Management and Radiation Control Board that removed a waste management activity from being subject to the applicable rules. Variances granted by the Board are for one year and are subject to public comment. Variance, as used by EPA, is intended to be an alternative set of conditions that are imposed on a waste management facility and are intended to be part of a permit or operation approval granted by the Director.

SUMMARY OF THE RULE OR CHANGE: The changes remove an orphan subsection in Section R315-261-3 that should have been removed as part of a previous modification; changes the term "variance" to "exclusion" in Sections R315-261-2, R315-261-4, R315-261-400, R315-261-410, R315-261-411, and R315-261-420; and changes the term "variance" to "alternative financial liability requirement" in Section R315-261-147.

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 state will save staff time in preparing and presenting variance requests to the Board. The total savings is not known but would be less than $2,000.
♦ LOCAL GOVERNMENTS: Local governments will save the cost of publication of a variance request as part of a public comment process. The cost savings is not known but can range from $100 to $500 for each notice published.

♦ SMALL BUSINESSES: Small business will save the cost of publication of a variance request as part of a public comment process. The cost savings is not known but can range from $100 to $500 for each notice published.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Other persons will save the cost of publication of a variance request as part of a public comment process. The cost savings is not known but can range from $100 to $500 for each notice published.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will not be any compliance costs related to this change for any affected person. The change will remove the requirements related to getting a variance so there is no cost associated with the change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The impact of the rule change will be a small, less than $500, and will be a cost savings for business whenever a business requests approval for a waste management activity that is covered by the rules that are being modified.

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 Office 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 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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 Subsection[s] 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.[

~~(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.~~]

R315-261-4. Exclusions.

(a) Materials which are not solid wastes. The following materials are not solid wastes for the purpose of Rule R315-261:

(1)(i) Domestic sewage; and

(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors, i.e., black liquor, that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in Subsection R315-261-1(c).

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in Subsection R315-261-1(c).

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion, such as occurs in boilers, industrial furnaces, or incinerators;

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in Subsections R315-261-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in 40 CFR 265.440 through R315-265-445, which are adopted and incorporated by reference, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant shall maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Director for reinstatement. The Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that the violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic specified in Section R315-261-24, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums, if shipped and not land disposed before recovery.

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911-including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under Subsection R315-261-4(12)(i), provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery and still be excluded under this provision. Except as provided in Subsection R315-261-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under Section R315-261-4. Residuals generated from processing or recycling materials excluded under Subsection R315-261-4(a)(12)(i), where such materials as generated would have otherwise met a listing under Sections R315-261-30 through R315-261-35, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in Subsection R315-261-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto, SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172. Recovered oil does not include oil-bearing hazardous wastes listed in Sections R315-261-30 through 35; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in Subsection 19-6-703(19).

(13) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) Reserved.

(17) Spent materials, as defined in Section R315-261-1, other than hazardous wastes listed in Sections R315-261-30 through 35, generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in Subsection R315-261-4(a)(17)(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building shall be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors

provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank shall be free standing, not be a surface impoundment, as defined in Section R315-260-10, and be manufactured of a material suitable for containment of its contents; a container shall be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator shall operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings shall be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Director may make a site-specific determination, after public review and comment, that only solid mineral processing spent material may be placed on pads rather than tanks containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The Director shall affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads shall provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The Director shall also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: The volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads shall meet the following minimum standards: Be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under Subsection R315-261-4(a)(17)(iv), the Director shall provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Director providing the following information: The types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification shall be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of Subsection R315-261-4(b)(7), mineral processing spent materials shall be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in Section R315-261-21, and/or toxicity for benzene, Section R315-261-24, waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in Subsection R315-261-1(c).

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers shall not be accumulated speculatively, as defined in Subsection R315-261-1(c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers shall:

(A) Submit a one-time notice to the Director, which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in Subsection R315-261-4(a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose shall be an engineered structure made of non-earthen materials that provide structural support, and shall have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose shall be structurally sound and, if outdoors, shall have roofs or covers that prevent contact with wind and rain. Containers used for this purpose shall be kept closed except when it is necessary to add or remove material, and shall be in sound condition. Containers that are stored outdoors shall be managed within storage areas that:

(I) Have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and

(II) Provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(III) Prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of Subsection R315-261-4(a)(20).

(D) Maintain at the generator's or intermediate handlers's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records shall at a minimum contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(III) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials shall:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in Subsection R315-261-4(a)(20)(ii)(B).

(B) Submit a one-time notification to the Director that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in Subsection R315-261-4(a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which shall at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Director an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in Section R315-261-4 preempts, overrides or otherwise negates the provision in Section R315-262-11, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in Subsection R315-261-4(a)(20)(ii)(A), and that afterward will be used only to store hazardous secondary materials excluded under Subsection R315-261-4(a)(20), are not subject to the closure requirements of Rules R315-264 and R315-265.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under Subsection R315-261-4(a)(20), provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

TABLE

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer shall contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent.

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing shall also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of Subsection R315-261-4(a)(21)(ii). Such records shall at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this Subsection R315-261-4(a)(21).

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in Section R315-260-10 are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in Subsection R315-261-1(c)(8) by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in Section R315-260-10 are not solid wastes when exported for recycling provided that they meet the requirements of Section R315-261-40.

(iii) Used, broken CRTs as defined in Section R315-260-10 are not solid wastes provided that they meet the requirements of Section R315-261-39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of Section R315-261-39(c).

(23) Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with Subsections R315-261-4(a)(23)(i) and (ii):

(i)(A) The hazardous secondary material is generated and reclaimed at the generating facility, for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator; or

(B) The hazardous secondary material is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are controlled by a person as defined in Section R315-260-10, and if the generator provides one of the following certifications: "on behalf of (insert generator facility name), I certify that this facility will send the indicated hazardous secondary material to (insert reclaimer facility name), which is controlled by (insert generator facility name) and that (insert name of either facility) has acknowledged full responsibility for the safe management of the hazardous secondary material," or "on behalf of (insert generator facility name), I certify that this facility will send the indicated hazardous secondary material to (insert reclaimer facility name), that both facilities are under common control, and that (insert name of either facility) has acknowledged full responsibility for the safe management of the hazardous secondary material." For purposes of this paragraph, "control" means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in Section R315-260-10 shall not be deemed to "control" such facilities. The generating and receiving facilities shall both maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. In both cases, the records shall contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received under the exclusion. These requirements may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations; or

(C) The hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: "On behalf of (insert tolling contractor name), I certify that (insert tolling contractor name) has a written contract with (insert toll manufacturer name) to manufacture (insert name of product or intermediate) which is made from specified unused materials, and that (insert tolling contractor name) will reclaim the hazardous secondary materials generated during this manufacture. On behalf of (insert tolling contractor name), I also certify that (insert tolling contractor name) retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process". The tolling contractor shall maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer shall maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records shall contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations. For purposes of Subsection R315-261-4(a)(23)(i)(C), tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

(ii)(A) The hazardous secondary material is contained as defined in Section R315-260-10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.

(B) The hazardous secondary material is not speculatively accumulated, as defined in Subsection R315-261-1(c)(8).

(C) Notice is provided as required by Section R315-260-42.

(D) The material is not otherwise subject to material-specific management conditions under Subsection R315-261-4(a) when reclaimed, and it is not a spent lead-acid battery, see Sections R315-266-80 and R315-273-2.

(E) Persons performing the recycling of hazardous secondary materials under this exclusion shall maintain documentation of their legitimacy determination on-site. Documentation shall be a written description of how the recycling meets all four factors in Subsection R315-260-43(a). Documentation shall be maintained for three years after the recycling operation has ceased.

(F) The emergency preparedness and response requirements found in Sections R315-261-400, 410, 411 and 420 are met.

(24) Hazardous secondary material that is generated and then transferred to a verified reclamation facility for the purpose of reclamation is not a solid waste, provided that:

(i) The material is not speculatively accumulated, as defined in Subsection R315-261-1(c)(8);

(ii) The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than 10 days at a transfer facility, as defined in Section R315-260-10, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;

(iii) The material is not otherwise subject to material-specific management conditions under Subsection R315-261-4(a) when reclaimed, and it is not a spent lead-acid battery, see Sections R315-266-80 and R315-273-2;

(iv) The reclamation of the material is legitimate, as specified under Section R315-260-43;

(v) The hazardous secondary material generator satisfies all of the following conditions:

(A) The material shall be contained as defined in Section R315-260-10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.

(B) The hazardous secondary material generator shall arrange for transport of hazardous secondary materials to a verified reclamation facility, or facilities, in the United States. A verified reclamation facility is a facility that has been granted [~~a variance~~]an exclusion under Subsection R315-260-31(d), or a reclamation facility where the management of the hazardous secondary materials is addressed under a hazardous waste Part B permit or interim status standards. If the hazardous secondary material will be passing through an intermediate facility, the intermediate facility shall have been granted [~~a variance~~]an exclusion under Subsection R315-260-31(d) or the management of the hazardous secondary materials at that facility shall be addressed under a hazardous waste Part B permit or interim status standards, and the hazardous secondary material generator shall make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator.

(C) The hazardous secondary material generator shall maintain at the generating facility for no less than three years records of all off-site shipments of hazardous secondary materials. For each shipment, these records shall, at a minimum, contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;

(III) The type and quantity of hazardous secondary material in the shipment.

(D) The hazardous secondary material generator shall maintain at the generating facility for no less than three years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt shall include the name and address of the reclaimer, or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt;

(E) The hazardous secondary material generator shall comply with the emergency preparedness and response conditions in Sections R315-261-400, 410, 411, and 420.

(vi) Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in Section R315-260-10 satisfy all of the following conditions:

(A) The reclaimer and intermediate facility shall maintain at its facility for no less than three years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records shall at a minimum contain the following information:

(I) Name of the transporter and date of the shipment;

(II) Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;

(III) The type and quantity of hazardous secondary material in the shipment; and

(IV) For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the, subsequent, reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.

(B) The intermediate facility shall send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.

(C) The reclaimer and intermediate facility shall send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials. Confirmations of receipt shall include the name and address of the reclaimer, or intermediate facility, the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records, e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt.

(D) The reclaimer and intermediate facility shall manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and shall be contained. An "analogous raw material" is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.

(E) Any residuals that are generated from reclamation processes shall be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to Sections R315-261-20 through 24, or if they themselves are specifically listed in Sections R315-261-30 through 35, such residuals are hazardous wastes and shall be managed in accordance with the applicable requirements of Rules R315-260 through 266, 268, and 270.

(F) The reclaimer and intermediate facility have financial assurance as required under Sections R315-261-140 through 151,

(G) The reclaimer and intermediate facility have been granted [~~a variance~~]an exclusion under Subsection R315-260-31(d) or have a hazardous waste Part B permit or interim status standards that address the management of the hazardous secondary materials; and

(vii) All persons claiming the exclusion under Subsection R315-261-4(a)(24) provide notification as required under Section R315-260-42.

(25) Reserved

(26) Solvent-contaminated wipes that are sent for cleaning and reuse are not solid wastes from the point of generation, provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should

free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for cleaning;

(iii) At the point of being sent for cleaning on-site or at the point of being transported off-site for cleaning, the solvent-contaminated wipes shall contain no free liquids as defined in Section R315-260-10.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules R315-260 through 266, 268, 270 and 273;

(v) Generators shall maintain at their site the following documentation:

(A) Name and address of the laundry or dry cleaner that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180-day accumulation time limit in Subsection R315-261-4(a)(26)(ii) is being met;

(C) Description of the process the generator is using to ensure the solvent-contaminated wipes contain no free liquids at the point of being laundered or dry cleaned on-site or at the point of being transported off-site for laundering or dry cleaning;

(vi) The solvent-contaminated wipes are sent to a laundry or dry cleaner whose discharge, if any, is regulated under sections 301 and 402 or section 307 of the Clean Water Act.

(27) Hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste, provided that:

(i) The hazardous secondary material consists of one or more of the following spent solvents: Toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, NN-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and/or methanol;

(ii) The hazardous secondary material originated from using one or more of the solvents listed in Subsection R315-261-4(a)(27)(i) in a commercial grade for reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions; in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510.

(iii) The hazardous secondary material generator sends the hazardous secondary material spent solvents listed in Subsection R315-261-4(a)(27)(i) to a remanufacturer in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510.

(iv) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent shall be limited to reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions, in the pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and the paints and coatings manufacturing sectors, NAICS 325510; or to using them as ingredients in a product. These allowed uses correspond to chemical functional uses enumerated under the Chemical Data Reporting Rule of the Toxic Substances Control Act, 40 CFR parts 704, 710-711, including Industrial Function Codes U015, solvents consumed in a reaction to produce other chemicals, and U030, solvents become part of the mixture;

(v) After remanufacturing one or more of the solvents listed in Subsection R315-261-4(a)(27)(i), the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles. (These disallowed continuing uses correspond to chemical functional uses in Industrial Function Code U029 under the Chemical Data Reporting Rule of the Toxics Substances Control Act.); and

(vi) Both the hazardous secondary material generator and the remanufacturer shall:

(A) Notify the Director and update the notification every two years per Section R315-260-42;

(B) Develop and maintain an up-to-date remanufacturing plan which identifies:

(I) The name, address and EPA ID number of the generator(s) and the remanufacturer(s),

(II) The types and estimated annual volumes of spent solvents to be remanufactured,

(III) The processes and industry sectors that generate the spent solvents,

(IV) The specific uses and industry sectors for the remanufactured solvents, and

(V) A certification from the remanufacturer stating "on behalf of (insert remanufacturer facility name), I certify that this facility is a remanufacturer under pharmaceutical manufacturing, NAICS 325412; basic organic chemical manufacturing, NAICS 325199; plastics and resins manufacturing, NAICS 325211; and/or the paints and coatings manufacturing sectors, NAICS 325510; and will accept the spent solvent(s) for the sole purpose of remanufacturing into commercial-grade solvent(s) that will be used for reacting, extracting, purifying, or blending chemicals, or for rinsing out the process lines associated with these functions, or for use as product ingredient(s). I also certify that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63, or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089";

(C) Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments;

(D) Prior to remanufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards found

in Sections R315-261-17- through 179 and 190 through 200, with the tanks and containers being labeled or otherwise having an immediately available record of the material being stored;

(E) During remanufacturing, and during storage of the hazardous secondary materials prior to remanufacturing, the remanufacturer certifies that the remanufacturing equipment, vents, and tanks are equipped with and are operating air emission controls in compliance with the appropriate Clean Air Act regulations under 40 CFR part 60, part 61 or part 63; or, absent such Clean Air Act standards for the particular operation or piece of equipment covered by the remanufacturing exclusion, are in compliance with the appropriate standards in Sections R315-261-1030 through 1035, 1050 through 1064 and 1080 through 1089; and

(F) Meet the requirements prohibiting speculative accumulation per Subsection R315-261-1(c)(8).

(b) Solid wastes which are not hazardous wastes. The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, e.g., refuse-derived fuel, or reused. "Household waste" means any material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if such facility:

(i) Receives and burns only

(A) Household waste, from single and multiple dwellings, hotels, motels, and other residential sources, and

(B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and

(ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(2) Solid wastes generated by any of the following and which are returned to the soils as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4)(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(ii) The following wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are co-disposed with the wastes in Subsection R315-261-4(b)(4)(i), except as provided by Section R315-266-112 for facilities that burn or process hazardous waste:

(A) Coal pile run-off. For purposes of Subsection R315-261-4(b)(4), coal pile run-off means any precipitation that drains off coal piles.

(B) Boiler cleaning solutions. For purposes of Subsection R315-261-4(b)(4), boiler cleaning solutions means water solutions and chemical solutions used to clean the fire-side and water-side of the boiler.

(C) Boiler blowdown. For purposes of Subsection R315-261-4(b)(4), boiler blowdown means water purged from boilers used to generate steam.

(D) Process water treatment and demineralizer regeneration wastes. For purposes of Subsection R315-261-4(b)(4), process water treatment and demineralizer regeneration wastes means sludges, rinses, and spent resins generated from processes to remove dissolved gases, suspended solids, and dissolved chemical salts from combustion system process water.

(E) Cooling tower blowdown. For purposes of Subsection R315-261-4(b)(4), cooling tower blowdown means water purged from a closed cycle cooling system. Closed cycle cooling systems include cooling towers, cooling ponds, or spray canals.

(F) Air heater and precipitator washes. For purposes of Subsection R315-261-4(b)(4), air heater and precipitator washes means wastes from cleaning air preheaters and electrostatic precipitators.

(G) Effluents from floor and yard drains and sumps. For purposes of Subsection R315-261-4(b)(4), effluents from floor and yard drains and sumps means wastewaters, such as wash water, collected by or from floor drains, equipment drains, and sumps located inside the power plant building; and wastewaters, such as rain runoff, collected by yard drains and sumps located outside the power plant building.

(H) Wastewater treatment sludges. For purposes of Subsection R315-261-4(b)(4), wastewater treatment sludges refers to sludges generated from the treatment of wastewaters specified in Subsections R315-261-4(b)(4)(ii)(A) through (F).

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6)(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in Sections R315-261-30 through R316-261-35 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively, or nearly exclusively, trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in Subsections R315-261-4(b)(6)(i)(A), (B), and (C), so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO2 pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(i) For purposes of Subsection R315-261-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of Subsection R315-261-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

(A) Slag from primary copper processing;

(B) Slag from primary lead processing;

(C) Red and brown muds from bauxite refining;

(D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production;

(F) Gasifier ash from coal gasification;

(G) Process wastewater from coal gasification;

(H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

(I) Slag tailings from primary copper processing;

(J) Fluorogypsum from hydrofluoric acid production;

(K) Process wastewater from hydrofluoric acid production;

(L) Air pollution control dust/sludge from iron blast furnaces;

(M) Iron blast furnace slag;

(N) Treated residue from roasting/leaching of chrome ore;

(O) Process wastewater from primary magnesium processing by the anhydrous process;

(P) Process wastewater from phosphoric acid production;

(Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(S) Chloride process waste solids from titanium tetrachloride production;

(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under Subsection R315-261-4(b) if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by Section R315-266-112 for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of Section R315-261-24, Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action regulations under Section R315-311-202-1 which adopts 40 CFR 280 by reference.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in Section R315-261-24 that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension, until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Waste Identification Branch (5304), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460 and the Division of Waste Management and Radiation Control, PO Box 144880, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Non-terne plated used oil filters that are not mixed with wastes listed in Sections R315-261-30 through R315-261-35 if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(14) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178 and K181 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in Subsection R315-261-4(b)(15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of Subsection R315-261-4(b)(15)(v) after the emergency ends.

(16) Reserved

(17) Reserved

(18) Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal are not hazardous wastes from the point of generation provided that

(i) The solvent-contaminated wipes, when accumulated, stored, and transported, are contained in non-leaking, closed containers that are labeled "Excluded Solvent-Contaminated Wipes." The containers shall be able to contain free liquids, should free liquids occur. During accumulation, a container is considered closed when there is complete contact between the fitted lid and the rim, except when it is necessary to add or remove solvent-contaminated wipes. When the container is full, or when the solvent-contaminated wipes are no longer being accumulated, or when the container is being transported, the container shall be sealed with all lids properly and securely affixed to the container and all openings tightly bound or closed sufficiently to prevent leaks and emissions;

(ii) The solvent-contaminated wipes may be accumulated by the generator for up to 180 days from the start date of accumulation for each container prior to being sent for disposal;

(iii) At the point of being transported for disposal, the solvent-contaminated wipes shall contain no free liquids as defined in Section R315-260-10.

(iv) Free liquids removed from the solvent-contaminated wipes or from the container holding the wipes shall be managed according to the applicable regulations found in Rules R315-260 through 266, 268, 270 and 273;

(v) Generators shall maintain at their site the following documentation:

(A) Name and address of the landfill or combustor that is receiving the solvent-contaminated wipes;

(B) Documentation that the 180 day accumulation time limit in Subsection R315-261-4(b)(18)(ii) is being met;

(C) Description of the process the generator is using to ensure solvent-contaminated wipes contain no free liquids at the point of being transported for disposal;

(vi) The solvent-contaminated wipes are sent for disposal

(A) To a solid waste landfill that:

(1) is regulated under R315-301 through R315-320

(2) is a Class I or V Landfill; and

(3) has a composite liner; or

(B) To a hazardous waste landfill regulated under Rules R315-260 through 266, 268, and 270; or

(C) To a municipal waste combustor or other combustion facility regulated under section 129 of the Clean Air Act or to a hazardous waste combustor, boiler, or industrial furnace regulated under Rule R315-264, Rule R315-265, or Sections R315-266-100 through R315-266-112.

(c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under Rules R315-262 through 265, 268, 270, and 124 or to the notification requirements of section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(d)(1) Samples. Except as provided in Subsection R315-261-4(d)(2), a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its

characteristics or composition, is not subject to any requirements of Rules R315-261 through 266, 268 or 270 or 124 or to the notification requirements of Section 3010 of RCRA, when:

(i) The sample is being transported to a laboratory for the purpose of testing; or

(ii) The sample is being transported back to the sample collector after testing; or

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing; or

(iv) The sample is being stored in a laboratory before testing; or

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(2) In order to qualify for the exemption in Subsections R315-261-4(d)(1) (i) and (ii), a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(I) The sample collector's name, mailing address, and telephone number;

(II) The laboratory's name, mailing address, and telephone number;

(III) The quantity of the sample;

(IV) The date of shipment; and

(V) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in Subsection R315-261-4(d)(1).

(e)(1) Treatability Study Samples. Except as provided in Subsection R315-261-4(e)(2), persons who generate or collect samples for the purpose of conducting treatability studies as defined in Section R315-260-10, are not subject to any requirement of Rules R315-261 through 263 or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of Section R315-261-5 and Subsection R315-262-34(d) when:

(i) The sample is being collected and prepared for transportation by the generator or sample collector; or

(ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in Subsection R315-261-4(e)(1) is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) The sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of Subsections R315-261-4(e)(2)(iii)(A) or (B) are met.

(A) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

(I) The name, mailing address, and telephone number of the originator of the sample;

(II) The name, address, and telephone number of the facility that will perform the treatability study;

(III) The quantity of the sample;

(IV) The date of shipment; and

(V) A description of the sample, including its EPA Hazardous Waste Number.

(iv) The sample is shipped to a laboratory or testing facility which is exempt under Subsection R315-261-4(f) or has an appropriate RCRA permit or interim status.

(v) The generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(A) Copies of the shipping documents;

(B) A copy of the contract with the facility conducting the treatability study;

(C) Documentation showing:

(I) The amount of waste shipped under this exemption;

(II) The name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(III) The date the shipment was made; and

(IV) Whether or not unused samples and residues were returned to the generator.

(vi) The generator reports the information required under Subsection R315-261-4(e)(2)(v)(C) in its biennial report.

(3) The Director may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Director may grant requests on a case-by-case basis for quantity limits in excess of those specified in Subsections R315-261-4(e)(2)(i) and (ii) and Subsection R315-261-4(f)(4), for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology; the type of process, e.g., batch versus continuous; size of the unit undergoing testing, particularly in relation to scale-up considerations; the time/quantity of material required to reach steady state operating conditions; or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and timeframes allowed in Subsections R315-261-4(e)(3)(i) and (ii) are subject to all the provisions in Subsections R315-261-4(e)(1) and (e)(2)(iii) through (vi). The generator or sample collector shall apply to the Director and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant shall include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Director considers necessary.

(f) Samples Undergoing Treatability Studies at Laboratories and Testing Facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies, to the extent such facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of Rules R315-261 through 266, 268 and 270, or to the notification requirements of Section 3010 of RCRA provided that the conditions of Subsection R315-261-4(f)(1) through (11) are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to Subsections R315-261-4(f)(1) through (11). Where a group of MTUs are located at the same site, the limitations specified in Subsections R315-261-4(f)(1) through (11) apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Director, in writing that it intends to conduct treatability studies under Subsection R315-261-4(f).

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials, including nonhazardous solid waste, added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each treatability study conducted:

(i) The name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) The date the shipment was received;

(iii) The quantity of waste accepted;

(iv) The quantity of "as received" waste in storage each day;

(v) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) The date the treatability study was concluded;

(vii) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Director, by March 15 of each year, that includes the following information for the previous calendar year:

(i) The name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) The types (by process) of treatability studies conducted;

(iii) The names and addresses of persons for whom studies have been conducted, including their EPA identification numbers;

(iv) The total quantity of waste in storage each day;

(v) The quantity and types of waste subjected to treatability studies;

(vi) When each treatability study was conducted;

(vii) The final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under Section R315-261-3 and, if so, are subject to Rules R315-261 through 268 and 270, unless the residues and unused samples are returned to the sample originator under the Subsection R3315-261-4(e) exemption.

(11) The facility notifies the Director, by letter when the facility is no longer planning to conduct any treatability studies at the site.

(g) Dredged material that is not a hazardous waste. Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C.1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For Subsection R315-261-4(g), the following definitions apply:

(1) The term dredged material has the same meaning as defined in 40 CFR 232.2;

(2) The term permit means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or an approved State under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in Subsections R315-261-4(g)(2)(i) and (ii), as provided for in Corps regulations.

(h) Carbon dioxide stream injected for geologic sequestration. Carbon dioxide streams that are captured and transported for purposes of injection into an underground injection well subject to the requirements for Class VI Underground Injection Control wells, including the requirements in Rule R317-7, are not a hazardous waste, provided the following conditions are met:

(1) Transportation of the carbon dioxide stream shall be in compliance with U.S. Department of Transportation requirements, including the pipeline safety laws, 49 U.S.C. 60101 et seq. and regulations, 49 CFR Parts 190-199, of the U.S. Department of Transportation, and pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable.

(2) Injection of the carbon dioxide stream shall be in compliance with the applicable requirements for Class VI Underground Injection Control wells, including the applicable requirements in Rule R317-7;

(3) No hazardous wastes shall be mixed with, or otherwise co-injected with, the carbon dioxide stream; and

(4)(i) Any generator of a carbon dioxide stream, who claims that a carbon dioxide stream is excluded under Subsection R315-261-4(h), shall have an authorized representative, as defined in Section R315-260-10, sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under Subsection R315-261.4(h) has not been mixed with hazardous wastes, and I have transported the carbon dioxide stream in compliance with, or have contracted with a pipeline operator or transporter to transport the carbon dioxide stream in compliance with, Department of Transportation requirements, including the pipeline safety laws, 49 U.S.C. 60101 et seq., and regulations, 49 CFR Parts 190-199, of the U.S. Department of Transportation, and the pipeline safety regulations adopted and administered by a state authority pursuant to a certification under 49 U.S.C. 60105, as applicable, for injection into a well subject to the requirements for the Class VI Underground Injection Control Program of Rule R317-7.

(ii) Any Class VI Underground Injection Control well owner or operator, who claims that a carbon dioxide stream is excluded under Subsection R315-261-4(h), shall have an authorized representative, as defined in Section R315-260-10, sign a certification statement worded as follows: I certify under penalty of law that the carbon dioxide stream that I am claiming to be excluded under Subsection R315-261-4(h) has not been mixed with, or otherwise co-injected with, hazardous waste at the Underground Injection Control (UIC) Class VI permitted facility, and that injection of the carbon dioxide stream is in compliance with the applicable requirements for UIC Class VI wells, including the applicable requirements in Rule R317-7.

(iii) The signed certification statement shall be kept on-site for no less than three years, and shall be made available within 72 hours of a written request from the Director. The signed certification statement shall be renewed every year that the exclusion is claimed, by having an authorized representative, as defined in Section R315-260-10, annually prepare and sign a new copy of the certification statement within one year of the date of the previous statement. The signed certification statement shall also be readily accessible on the facility's publicly-available Web site, if such Web site exists, as a public notification with the title of "Carbon Dioxide Stream Certification" at the time the exclusion is claimed.

R315-261-147. Financial Requirements for Management of Excluded Hazardous Secondary Materials - Liability Requirements.

(a) Coverage for sudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or an intermediate facility subject to financial assurance requirements under Subsection R315-261-4(a)(24)(vi)(F), or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs.

This liability coverage may be demonstrated as specified in Subsections R315-261-147(a)(1), (2), (3), (4), (5), or (6):

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in Subsection R315-261-147(a).

(i) Each insurance policy shall be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement, or evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in Subsection R315-261-151(h). The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-261-151(i). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Director. If requested by a Director, the owner or operator shall provide a signed duplicate original of the insurance policy.

(ii) Each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in Utah.

(2) An owner or operator may meet the requirements of Section R315-261-147 by passing a financial test or using the guarantee for liability coverage as specified in Subsections R315-261-147(f) and (g).

(3) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a letter of credit for liability coverage as specified in Subsection R315-261-147(h).

(4) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a surety bond for liability coverage as specified in Subsection R315-261-147(i).

(5) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a trust fund for liability coverage as specified in Subsection R315-261-147(j).

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by Subsection R315-261-147. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Director in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in Subsections R315-261-147(a)(1) through (a)(6); or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is entered between the owner or operator and third-party claimant for liability coverage under Subsections R315-261-147(a)(1) through (a)(6); or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material reclamation facility or intermediate facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under Subsections R315-261-147(a)(1) through (a)(6).

(b) Coverage for nonsudden accidental occurrences. An owner or operator of a hazardous secondary material reclamation facility or intermediate facility with land-based units, as defined in Section R315-260-10, which are used to manage hazardous secondary materials excluded under Subsection R315-261-4(a)(24) or a group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs. An owner or operator who shall meet the requirements of Section R315-261-147 may combine the required per-occurrence coverage levels for sudden and nonsudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate coverage levels for sudden and nonsudden accidental occurrences into a single annual aggregate level. Owners or operators who combine coverage levels for sudden and nonsudden accidental occurrences shall maintain liability coverage in the amount of at least $4 million per occurrence and $8 million annual aggregate. This liability coverage may be demonstrated as specified in Subsections R315-261-147(b)(1), (2), (3), (4), (5), or (6):

(1) An owner or operator may demonstrate the required liability coverage by having liability insurance as specified in Subsection R315-261-147.

(i) Each insurance policy shall be amended by attachment of the Hazardous Secondary Material Facility Liability Endorsement or evidenced by a Certificate of Liability Insurance. The wording of the endorsement shall be identical to the wording specified in Subsection R315-261-151(h). The wording of the certificate of insurance shall be identical to the wording specified in Subsection R315-261-151(i). The owner or operator shall submit a signed duplicate original of the endorsement or the certificate of insurance to the Director.

(ii) Each insurance policy shall be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer in Utah.

(2) An owner or operator may meet the requirements of Section R315-261-147 by passing a financial test or using the guarantee for liability coverage as specified in Subsections R315-261-147(f) and (g).

(3) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a letter of credit for liability coverage as specified in Subsection R315-261-147(h).

(4) An owner or operator may meet the requirements of Section R315-261-147 by obtaining a surety bond for liability coverage as specified in Subsection R315-261-147(i).

(5) An owner or operator may meet the requirements of Subsection R315-261-147 by obtaining a trust fund for liability coverage as specified in Subsection R315-261-147(j).

(6) An owner or operator may demonstrate the required liability coverage through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amounts required by Section R315-261-147. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under Subsection R315-261-147(b), the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess" coverage.

(7) An owner or operator shall notify the Director in writing within 30 days whenever:

(i) A claim results in a reduction in the amount of financial assurance for liability coverage provided by a financial instrument authorized in Subsections R315-261-147(b)(1) through (b)(6); or

(ii) A Certification of Valid Claim for bodily injury or property damages caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is entered between the owner or operator and third-party claimant for liability coverage under Subsection R315-261-147(b)(1) through (b)(6); or

(iii) A final court order establishing a judgment for bodily injury or property damage caused by a sudden or non-sudden accidental occurrence arising from the operation of a hazardous secondary material treatment and/or storage facility is issued against the owner or operator or an instrument that is providing financial assurance for liability coverage under Subsections R315-261-147(b)(1) through (b)(6).

(c) Request for [~~variance~~]alternative. If an owner or operator can demonstrate to the satisfaction of the Director that the levels of financial responsibility required by Subsection R315-261-147(a) or (b) are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the owner or operator may obtain [~~a variance~~]an alternative financial liability requirement from the Director. The request for [~~a variance~~]an alternative financial liability requirement shall be submitted in writing to the Director. If granted, the [~~variance~~]alternative financial liability requirement shall take the form of an adjusted level of required liability coverage, such level to be based on the Director's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. The Director may require an owner or operator who requests [~~a variance~~]an alternative financial liability requirement to provide such technical and engineering information as is deemed necessary by the Director to determine a level of financial responsibility other than that required by Subsection R315-261-147(a) or (b).

(d) Adjustments by the Director. If the Director determines that the levels of financial responsibility required by Subsections R315-261-147(a) or (b) are not consistent with the degree and duration of risk associated with treatment and/or storage at the facility or group of facilities, the Director may adjust the level of financial responsibility required under Subsections R315-261-147(a) or (b) as may be necessary to protect human health and the environment. This adjusted level shall be based on the Director's assessment of the degree and duration of risk associated with the ownership or operation of the facility or group of facilities. In addition, if the Director determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, pile, or land treatment facility, he may require that an owner or operator of the facility comply with Subsection R315-261-147(b). An owner or operator shall furnish to the Director, within a reasonable time, any information which the Director requests to determine whether cause exists for such adjustments of level or type of coverage.

(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and the facility or a unit has been decontaminated in accordance with the approved plan per Subsection R315-261-143(h), the Director shall notify the owner or operator in writing that he is no longer required under Subsection R315-261-4(a)(24)(vi)(F) to maintain liability coverage for that facility or a unit at the facility, unless the Director has reason to believe that that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan.

(f) Financial test for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator shall meet the criteria of Subsections R315-261-147(f)(1)(i) or (ii):

(i) The owner or operator shall have:

(A) Net working capital and tangible net worth each at least six times the amount of liability coverage to be demonstrated by this test; and

(B) Tangible net worth of at least $10 million; and

(C) Assets in the United States amounting to either:

(I) At least 90 percent of his total assets; or

(II) at least six times the amount of liability coverage to be demonstrated by this test.

(ii) The owner or operator shall have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's, or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth of at least $10 million; and

(C) Tangible net worth at least six times the amount of liability coverage to be demonstrated by this test; and

(D) Assets in the United States amounting to either:

(I) At least 90 percent of his total assets; or

(II) at least six times the amount of liability coverage to be demonstrated by this test.

(2) The phrase "amount of liability coverage" as used in Subsection R315-261-147(f)(1) refers to the annual aggregate amounts for which coverage is required under Subsections R315

-261-147(a) and (b) and the annual aggregate amounts for which coverage is required under Subsections R315-264-147(a) and (b) and 40 CFR 265.147(a) and(b), which are adopted by reference,.

(3) To demonstrate that he meets this test, the owner or operator shall submit the following three items to the Director:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in Subsection R315-261-151(f). If an owner or operator is using the financial test to demonstrate both assurance as specified by Subsection R315-261-143(e), and liability coverage, he shall submit the letter specified in Subsection R315-261-151(f) to cover both forms of financial responsibility; a separate letter as specified in Subsection R315-261-151(e) is not required.

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.

(iii) If the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies Subsection R315-261-147(f)(1)(i) that are different from the data in the audited financial statements referred to in Subsection R315-261-147(f)(3)(ii) or any other audited financial statement or data filed with the SEC, then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any difference.

(4) The owner or operator may obtain a one-time extension of the time allowed for submission of the documents specified in Subsection R315-261-147(f)(3) if the fiscal year of the owner or operator ends during the 90 days prior to the effective date of these regulations and if the year-end financial statements for that fiscal year shall be audited by an independent certified public accountant. The extension shall end no later than 90 days after the end of the owner's or operator's fiscal year. To obtain the extension, the owner's or operator's chief financial officer shall send, by the effective date of these regulations, a letter to the Director. This letter from the chief financial officer shall:

(i) Request the extension;

(ii) Certify that he has grounds to believe that the owner or operator meets the criteria of the financial test;

(iii) Specify for each facility to be covered by the test the EPA Identification Number, name, address, the amount of liability coverage and, when applicable, current closure and post-closure cost estimates to be covered by the test;

(iv) Specify the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations;

(v) Specify the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in Subsection R315-261-147(f)(3); and

(vi) Certify that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

(5) After the initial submission of items specified in Subsection R315-261-147(f)(3), the owner or operator shall send updated information to the Director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in Subsection R315-261-147(f)(3).

(6) If the owner or operator no longer meets the requirements of Subsection R315-261-147(f)(1), he shall obtain insurance, a letter of credit, a surety bond, a trust fund, or a guarantee for the entire amount of required liability coverage as specified in Section R315-261-147. Evidence of liability coverage shall be submitted to the Director within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the test requirements.

(7) The Director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements, see Subsection R315-261-147(f)(3)(ii). An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Director shall evaluate other qualifications on an individual basis. The owner or operator shall provide evidence of insurance for the entire amount of required liability coverage as specified in Section R315-261-147 within 30 days after notification of disallowance.

(g) Guarantee for liability coverage.

(1) Subject to Subsection R315-261-147(g)(2), an owner or operator may meet the requirements of Section R315-261-147 by obtaining a written guarantee, hereinafter referred to as "guarantee." The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor shall meet the requirements for owners or operators in Subsection R315-261-147(f)(1) through (f)(6). The wording of the guarantee shall be identical to the wording specified in Subsection R315-261-151(g)(2). A certified copy of the guarantee shall accompany the items sent to the Director as specified in Subsection R315-261-147(f)(3). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of the guarantee.

(i) If the owner or operator fails to satisfy a judgment based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences, or both as the case may be, arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor shall do so up to the limits of coverage.

(2)(i) In the case of corporations incorporated outside the United States, a guarantee may be used to satisfy the requirements of Section R315-261-147 only if the non-U.S. corporation has identified a registered agent for service of process in Utah.

(h) Letter of credit for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by obtaining an irrevocable standby letter of credit that conforms to the requirements of Subsection R315-261-147(h) and submits a copy of the letter of credit to the Director.

(2) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or Utah agency.

(3) The wording of the letter of credit shall be identical to the wording specified in Subsection R315-261-151(j).

(4) An owner or operator who uses a letter of credit to satisfy the requirements of Section R315-261-147 may also establish a standby trust fund. Under the terms of such a letter of credit, all amounts paid pursuant to a draft by the trustee of the standby trust shall be deposited by the issuing institution into the standby trust in accordance with instructions from the trustee. The trustee of the standby trust fund shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or Utah agency.

(5) The wording of the standby trust fund shall be identical to the wording specified in Subsection R315-261-151(m).

(i) Surety bond for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by obtaining a surety bond that conforms to the requirements of Subsection R315-261-147(i) and submitting a copy of the bond to the Director.

(2) The surety company issuing the bond shall be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the U.S. Department of the Treasury.

(3) The wording of the surety bond shall be identical to the wording specified in Subsection R315-261-151(k).

(j) Trust fund for liability coverage.

(1) An owner or operator may satisfy the requirements of Section R315-261-147 by establishing a trust fund that conforms to the requirements of Subsection R315-261-147(j) and submitting an originally signed duplicate of the trust agreement to the Director.

(2) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or Utah agency.

(3) The trust fund for liability coverage shall be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of Section R315-261-147. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the Fund, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in Section R315-261-147 to cover the difference. For purposes of Subsection R315-261-147(j), "the full amount of the liability coverage to be provided" means the amount of coverage for sudden and/or nonsudden occurrences required to be provided by the owner or operator by Section R315-261-147, less the amount of financial assurance for liability coverage that is being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(4) The wording of the trust fund shall be identical to the wording specified in Subsection R315-261-151(l).

R315-261-400. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Applicability.

The requirements of Sections R315-261-400, 410, 411, and 420 apply to those areas of an entity managing hazardous secondary materials excluded under Subsection R315-261-4(a)(23) and/or (24) where hazardous secondary materials are generated or accumulated on site.

(a) A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a verified recycler [~~variance~~]exclusion under Subsection R315-260-31(d), that accumulates 6000 kg or less of hazardous secondary material at any time shall comply with Sections R315-261-410 and 411.

(b) A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a verified recycler [~~variance~~]exclusion under Subsection R315-260-31(d) that accumulates more than 6000 kg of hazardous secondary material at any time shall comply with Sections R315-261-410 and 420.

R315-261-410. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Preparedness and Prevention.

(a) Maintenance and operation of facility. Facilities generating or accumulating hazardous secondary material shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous secondary materials or hazardous secondary material constituents to air, soil, or surface water which could threaten human health or the environment.

(b) Required equipment. All facilities generating or accumulating hazardous secondary material shall be equipped with the following, unless none of the hazards posed by hazardous secondary material handled at the facility could require a particular kind of equipment specified below:

(1) An internal communications or alarm system capable of providing immediate emergency instruction, voice or signal, to facility personnel;

(2) A device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(3) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment; and

(4) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(c) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

(d) Access to communications or alarm system.

(1) Whenever hazardous secondary material is being poured, mixed, spread, or otherwise handled, all personnel involved

in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under Subsection R315-261-410(b).

(2) If there is ever just one employee on the premises while the facility is operating, he shall have immediate access to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required under Subsection R315-261-410(b).

(e) Required aisle space. The hazardous secondary material generator or intermediate or reclamation facility operating under a verified recycler [~~variance~~]exclusion under Subsection R315-260-31(d) shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(f) Arrangements with local authorities.

(1) The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler [~~variance~~]exclusion under Subsection R315-260-31(d) shall attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

(i) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous secondary material handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(ii) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(iii) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

(iv) Arrangements to familiarize local hospitals with the properties of hazardous [~~waste~~]secondary material handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(2) Where state or local authorities decline to enter into such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler [~~variance~~]exclusion under Subsection R315-260-31(d) shall document the refusal in the operating record.

R315-261-411. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Emergency Procedures for Facilities Generating or Accumulating 6000 Kg or Less of Hazardous Secondary Material.

A generator or an intermediate or reclamation facility operating under a verified recycler [~~variance~~]exclusion under Subsection R315-260-31(d) that generates or accumulates 6000 kg or less of hazardous secondary material shall comply with the following requirements:

(a) At all times there shall be at least one employee either on the premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures specified in Subsection R315-261-411(d). This employee is the emergency coordinator.

(b) The generator or intermediate or reclamation facility operating under a verified recycler [~~variance~~]exclusion under Subsection R315-260-31(d) shall post the following information next to the telephone:

(1) The name and telephone number of the emergency coordinator;

(2) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(3) The telephone number of the fire department, unless the facility has a direct alarm.

(c) The generator or an intermediate or reclamation facility operating under a verified recycler [~~variance~~]exclusion under Subsection R315-260-31(d) shall ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(d) The emergency coordinator or his designee shall respond to any emergencies that arise. The applicable responses are as follows:

(1) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(2) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(3) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator or an intermediate or reclamation facility operating under a verified recycler [~~variance~~]exclusion under Subsection R315-260-31(d) has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility operating under a verified recycler [~~variance~~]exclusion under Subsection R315-260-31(d) shall immediately notify the National Response Center, using their 24-hour toll free number 800/424-8802 and follow the requirements Section R316-263-33. The report shall include the following information:

(i) The name, address, and U.S. EPA Identification Number of the facility;

(ii) Date, time, and type of incident, e.g., spill or fire;

(iii) Quantity and type of hazardous waste involved in the incident;

(iv) Extent of injuries, if any; and

(v) Estimated quantity and disposition of recovered materials, if any.

R315-261-420. Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials - Contingency Planning and Emergency Procedures for Facilities Generating or Accumulating More Than 6000 Kg of Hazardous Secondary Material.

A generator or an intermediate or reclamation facility operating under a verified recycler [~~variance~~]exclusion under Subsection R315-260-31(d) that generates or accumulates more

than 6000 kg of hazardous secondary material shall comply with the following requirements:

(a) Purpose and implementation of contingency plan.

(1) Each generator or an intermediate or reclamation facility operating under a verified recycler [~~variance~~]exclusion under Subsection R315-260-31(d) that accumulates more than 6000 kg of hazardous secondary material shall have a contingency plan for his facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.

(2) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of hazardous secondary material or hazardous secondary material constituents which could threaten human health or the environment.

(b) Content of contingency plan.

(1) The contingency plan shall describe the actions facility personnel shall take to comply with Subsection R315-261-420(a) and (f) in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.

(2) If the generator or an intermediate or reclamation facility operating under a verified recycler [~~variance~~]exclusion under Subsection R315-260-31(d) accumulating more than 6000 kg of hazardous secondary material has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of Rule R315-261. The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler [~~variance~~]exclusion under Subsection R315-260-31(d) may develop one contingency plan which meets all regulatory requirements. The Director recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-hazardous waste provisions in an integrated contingency plan, the changes do not trigger the need for a hazardous waste permit modification.

(3) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to Subsection R315-262-410(f).

(4) The plan shall list names, addresses, and phone numbers, office and home, of all persons qualified to act as emergency coordinator, see Subsection R315-261-420(e), and this list shall be kept up-to-date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they shall assume responsibility as alternates.

(5) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(6) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of hazardous waste or fires.

(c) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan shall be:

(1) Maintained at the facility; and

(2) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(d) Amendment of contingency plan. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(1) Applicable regulations are revised;

(2) The plan fails in an emergency;

(3) The facility changes-in its design, construction, operation, maintenance, or other circumstances-in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;

(4) The list of emergency coordinators changes; or

(5) The list of emergency equipment changes.

(e) Emergency coordinator. At all times, there shall be at least one employee either on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating 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~~]hazardous secondary material 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. The emergency coordinator's responsibilities are more fully spelled out in Subsection R315-261-420(f). Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of hazardous secondary material(s) handled by the facility, and type and complexity of the facility.

(f) Emergency procedures.

(1) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or his designee when the emergency coordinator is on call, shall immediately:

(i) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(ii) Notify appropriate State or local agencies with designated response roles if their help is needed.

(2) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.

(3) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs

from water or chemical agents used to control fire and heat-induced explosions.

(4) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he shall report his findings as follows:

(i) If his assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(ii) The emergency coordinator shall immediately notify the Utah Department of Environmental Quality 24 hour answering service at 801/536-4123, and the National Response Center, using their 24-hour toll free number 800/424-8802. The report shall include:

(A) Name and telephone number of reporter;

(B) Name and address of facility;

(C) Time and type of incident, e.g., release, fire;

(D) Name and quantity of material(s) involved, to the extent known;

(E) The extent of injuries, if any; and

(F) The possible hazards to human health, or the environment, outside the facility.

(5) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous secondary material at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.

(6) If the facility stops operations in response to a fire, explosion or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(7) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the hazardous secondary material generator can demonstrate, in accordance with Subsections R315-261-3(c) or (d), that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and shall manage it in accordance with all applicable requirements of Rules R315-262, 263, and 265.

(8) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(i) No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(ii) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(9) The hazardous secondary material generator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he shall submit a written report on the incident to the Director. The report shall include:

(i) Name, address, and telephone number of the hazardous secondary material generator;

(ii) Name, address, and telephone number of the facility;

(iii) Date, time, and type of incident, e.g., fire, explosion;

(iv) Name and quantity of material(s) involved;

(v) The extent of injuries, if any;

(vi) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(vii) Estimated quantity and disposition of recovered material that resulted from the incident.

KEY: hazardous waste
Date of Enactment or Last Substantive Amendment: 2016
Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-106

Governor, Criminal and Juvenile Justice (State Commission on)

R356-101-10

Evaluation Criteria

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 40497
FILED: 06/15/2016

RULE ANALYS IS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment clarifies the evaluation criteria to be considered by judicial nominating commissions when evaluating applicants for judicial office.

SUMMARY OF THE RULE OR CHANGE: This amendment provides that judicial nominating commissions shall consider: 1) applicants' experience with issues facing children and families when evaluating applicants for juvenile court; and 2) applicants' ability to give and receive criticism of opinions without taking offense when evaluating applicants for appellate courts. This amendment further provides that judicial nominating commissions may consider the background and experience of applicants in relation to the current composition of the bench for which the appointment is being made when all other qualifications appear to be comparable.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 78A-10-103(1)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This amendment clarifies existing practices of judicial nominating commissions. It will not require the expenditure of any additional state resources.
♦ LOCAL GOVERNMENTS: This amendment governs only the operations of state judicial nominating commissions and will have no impact on local government.

♦ SMALL BUSINESSES: The current rule and amendments govern the operations of state judicial nominating commissions and have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment clarifies existing practices of judicial nominating commissions. The amendment will not result in any cost or savings to any other person.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment clarifies current practice by judicial nominating commissions. It will not result in additional costs to any person.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
GOVERNOR
CRIMINAL AND JUVENILE JUSTICE (STATE COMMISSION ON)
ROOM SUITE 330 SENATE BUILDING
STATE CAPITOL COMPLEX
420 N STATE STREET
SALT LAKE CITY, UT 84114
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ronald Gordon by phone at 801-538-1432, by FAX at 801-538-1024, or by Internet E-mail at rbgordon@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

AUTHORIZED BY: Ronald Gordon, Executive Director

R356. Governor, Criminal and Juvenile Justice (State Commission on).
R356-101. Judicial Nominating Commissions.
R356-101-10. Evaluation Criteria.

(1) In addition to criteria established by the Utah Constitution and the Utah Code Annotated, commission members shall during the nomination process consider the applicants':
[~~(1)~~](a) integrity;
[~~(2)~~](b) legal knowledge and ability;
[~~(3)~~](c) professional experience;
[~~(4)~~](d) judicial temperament;
[~~(5)~~](e) work ethic;
[~~(6)~~](f) financial responsibility;
[~~(7)~~](g) public service;
[~~(8)~~](h) ability to perform the work of a judge; and
[~~(9)~~](i) impartiality.

(2) When evaluating applicants for a juvenile court judge position, commission members shall consider the applicants' interest in, understanding of, and experience with the issues and problems facing children and families.

(3) When evaluating applicants for an appellate court position, commission members shall consider the applicants' ability to give and receive criticism of opinions and arguments without taking offense.

(4) When deciding among applicants for any judicial position whose qualifications, taken as a whole, appear in all other respects to be comparable, it is relevant to consider the background and experience of the applicants in relation to the current composition of the bench for which the appointment is being made.

KEY: judicial nominating commissions, judges
Date of Enactment or Last Substantive Amendment: [~~July 1, 2010~~]2016
Notice of Continuation: June 26, 2015
Authorizing, and Implemented or Interpreted Law: 78A-10-103(1)

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-10A
Transplant Services Standards

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 40490
FILED: 06/13/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to update and clarify transplantation services for Medicaid recipients.

SUMMARY OF THE RULE OR CHANGE: All requirements of the repealed rule are reenacted in the proposed rule to reflect current practices. For example, the proposed rule includes certain references to the "Social Security Act" and Utah Code that better authorize transplantation services and adds and updates certain definitions for better clarification. The proposed rule also updates and clarifies terminology and requirements for prior authorization, updates and clarifies service coverage, and uses the term "Medicare-approved" to appropriately classify centers for transplant services and to describe their responsibilities. Additionally, the proposed rule includes new sections that clarify covered and non-covered services for both solid organ transplants and hematopoietic stem cell transplants and includes a section that clarifies requirements for requests of non-covered transplantation services. The proposed rule also makes other technical changes and clarifications.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 482.68 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 the services provided to Medicaid recipients remain unaffected by this change.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide Medicaid services to Medicaid recipients.
♦ SMALL BUSINESSES: There is no impact to small businesses because the services provided to Medicaid recipients remain unaffected by this change.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid recipients because the services provided to Medicaid recipients remain unaffected by this change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because the services provided remain unaffected by this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to business because the changes do not affect the services provided in accordance with this rule.

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 Office 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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
[~~R414-10A. Transplant Services Standards.~~
~~R414-10A-1. Introduction and Authority.~~
~~(1) This rule establishes standards and criteria for tissue and organ transplantation services.~~
~~(2) Section 9507 of the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), codified as section 1903(i)(1) of the Social Security Act, requires states, as part of the Medicaid program, to establish standards for coverage of transplantation services.~~
~~(3) Under the ruling issued by the Federal District Court for the District of Utah, Central Division, Civil No. 96405, the Department of Health has absolute discretion to fund transplantation services under Title XIX of the Social Security Act and if transplantation services are covered, there must be no discrimination on the basis of age.~~

~~R414-10A-2. Definitions.~~
~~For purposes of Rule R414-10A:~~
~~(1) "Abstinence" means the documented non-use of any abusable psychoactive substance by the client with random monthly drug screen tests.~~
~~(2) "Active infection" means current presumptive evidence of invasion of tissue or body fluids by bacteria, viruses, fungi, rickettsiae, or parasites which is not demonstrated to be effectively controlled by the host, antibiotic or antimicrobial agents.~~
~~(3) "Age group" means patients documented in the medical literature with an age at the time of transplantation related to the current age of the client as listed below:~~
~~(a) Birth through 12 months;~~
~~(b) One through 12 years;~~
~~(c) 13 through 20 years;~~
~~(d) 21 through 30 years;~~
~~(e) 31 through 40 years; or~~
~~(f) 41 through 54 years.~~
~~(g) Department medical consultants may consider other age groups, documented by the medical literature and the transplant center to have conclusive relevance to the client's survival.~~
~~(4) "Active substance abuse" means the current use of any abusable psychoactive substance which is not appropriately prescribed and taken under the direction of a physician or is not medically indicated.~~
~~(5) "Allogenic" means having a different genetic constitution but belonging to the same species.~~
~~(6) "Autologous" means the products or components of the same individual person.~~
~~(7) "Bone marrow transplantation" means transplantation of cells from the bone marrow stem cells, peripheral blood stem cells, or cord blood stem cells to supplant the client bone marrow.~~
~~(8) "Client" means an individual eligible to receive covered Medicaid services from an enrolled Medicaid provider.~~
~~(9) "Department" means the Utah Department of Health.~~
~~(10) "Donor lymphocyte infusion" means infusion of allogenic lymphocytes into the client.~~
~~(11) "Drug screen" means random testing for tobacco, marijuana, alcohol, benzodiazepines, narcotics, methadone, cocaine, amphetamines, and barbiturates.~~

(12) "Emergency transplantation" means any transplantation which for reasons of medical necessity requires that a transplant be performed less than five days after determination of the need for the procedure.

(13) "Intestine transplantation" means transplantation of both the small bowel and colon.

(14) "Medical literature" means articles and medical information which have been peer reviewed and accepted for publication or published.

(15) "Medically necessary" means a client's medical condition which meets all the criteria and none of the contraindications for the type of transplantation requested.

(16) "Multiple transplantations" means, except for corneas, the transplantation of more than one tissue or organ during the same or different operative procedure.

(17) "Multivisceral transplantation" means the transplantation of liver, pancreas, omentum, stomach, small intestine and colon.

(18) "Patient" means a person who is receiving covered professional services provided or directed by a licensed practitioner of the healing arts enrolled as a Medicaid provider.

(19) "Remission" means the lack of any evidence of the leukemia on physical examination and hematological evaluation, including normocellular bone marrow with less than five percent blast cells, and peripheral blood counts within normal values, except for clients who are receiving maintenance chemotherapy.

(20) "Services" means the type of medical assistance specified in sections 1905(a)(1) through (24) of the Social Security Act and interpreted in the 42 CFR Section 440, Subpart A, October 1992 edition, which is adopted and incorporated by reference.

(21) "Substance abuse rehabilitation program" means a rehabilitation program developed and conducted by an inpatient facility that, at a minimum, meets the standards of organization and staff of a chemical dependency/substance abuse specialty hospital specified in Sections R432-102-4 and 5.

(22) "Syngeneic" means possessing identical genotypes, as monozygotic or identical twins.

(23) "Transplantation" means the transfer of a human organ or tissue from one person to another or from one site to another in the same individual, except for skin, tendon, and bone.

(24) "Vital end-organs" means organs of the body essential to life, e.g., the heart, the liver, the lungs, and the brain.

R414-10A-3. Client Eligibility Requirements for Coverage for Transplantation Services.

Transplantation services are available to categorically eligible and medically needy individuals who are Title XIX eligible and meet criteria listed in Sections R414-10A-6 through 22 at the time the transplantation service is provided.

R414-10A-4. Program Access Requirements.

(1) Transplantation services may be provided only for those eligible clients who meet the criteria listed in Sections R414-10A-6 through 22 for services covered under the Utah Medicaid program.

(2) Transplantation services for the organ needed by the client may be provided only in a transplant center approved by the United States Department of Health and Human Services as a Medicare designated center or by the Department in accordance with criteria in Section R414-10A-7.

(3) Transplantation services may be provided out-of-state only when the authorized service is not available in an approved facility in the state of Utah.

(4) Criteria listed in Rule R414-10A applicable to transplantation services and transplant centers in the state of Utah also apply to out-of-state transplant services and facilities.

(5) Post transplant authorization for transplantation services provided under emergency circumstances may be given only when:

(a) all Utah Medicaid criteria listed in Sections R414-10A-6 through 22 are met; and

(b) both the transplant center and the board-certified or board-eligible specialist evaluation required by Subsection R414-10A-6(3) are submitted with the recommendation that the tissue or organ transplantation be authorized.

R414-10A-5. Service Coverage.

(1) Transplantation services are covered by the Utah Medicaid program only when criteria listed in Sections R414-10A-6 through 22 are met.

(2) Transplantations which are experimental or investigational or which are performed on an experimental or investigational basis are not covered.

(3) Multiple transplantation services may be provided only when the criteria for the specific multiple transplantations are met.

(4) Staff shall not consider criteria for single tissue or organ transplantation in reviewing requests for multiple transplantations.

(5) Transplantation of additional tissues or organs, different from prior transplantations, may be provided only when the criteria for multiple transplantations of all provided or scheduled multiple tissue or organ transplantations are met.

(6) The Utah Medicaid program covers repeat transplantations of the same tissues or organs only when the Department approves a new prior authorization under criteria found in Sections R414-10A-6 through 22.

(7) Payment for emergency transplantations may be provided only when the service is provided for a transplantation with criteria approved in Sections R414-10A-6 through 22. Payment will not be made until Department staff has reviewed all of the information required by Sections R414-10A-6 through 22 and determined that the patient and the transplant center met criteria for approval and provision of the service at the time of the transplantation.

(8) The Utah Medicaid program does not cover the following transplantation services:

(a) Beta cells or other pancreas cells not part of a pancreatic organ transplantation.

(b) Cells or tissues transplanted into the coronary arteries, myocardium, central nervous system, or spinal cord.

(c) Stem cells other than hematological stem cells.

(d) Donor lymphocyte infusions for clients who have not had a prior bone marrow transplantation.

(9) The Utah Medicaid program does not cover the following procedures:

(a) Temporary or implanted ventricular assist devices with the exception of intra-aortic balloon assist devices.

(b) Temporary or implanted biventricular assist devices.

(c) Temporary or implanted mechanical heart.

R414-10A-6. Prior Authorization.

(1) Prior authorization is required for all transplantation services except for the following transplants:

(a) cornea transplantation.

(b) kidney, heart, liver, and pancreas transplantation performed in a Utah transplant center, which has been Medicare-approved for the last five or more years.

(2) The prior authorization request for transplantation services must be initiated by the client's referring physician. Failure to submit all required information with the prior authorization request will delay processing of the request for transplantation.

(3) The initial request for prior authorization of any transplantation, except heart, liver, cornea, or kidney, must contain all of the following:

(a) A description of the medical condition which necessitates a transplantation.

(b) Transplantation treatment alternatives utilized previous to the transplantation request.

(c) Transplantation treatment alternatives considered and discarded, including discussion of why the alternatives have been discarded.

(d) Comprehensive examination, evaluation and recommendations completed by a board-certified or board-eligible specialist in a field directly related to the client's condition which necessitates the transplantation, such as a nephrologist, gastroenterologist, cardiologist, or hematologist.

(e) Comprehensive psycho-social evaluation of the client must include a comprehensive history regarding substance abuse and compliance with medical treatment.

(f) Psycho-social evaluation of parent(s) or guardian(s) of the client, if the client is less than 18 years of age. The psycho-social evaluation must include a comprehensive history regarding substance abuse, and past and present compliance with medical treatment.

(g) Comprehensive psychiatric evaluation of the client, if the client has a history of mental illness.

(h) Comprehensive psychological or developmental testing, as requested by the Department.

(i) Comprehensive infectious disease evaluation for a client with a recent or current suspected infectious episode.

(j) Documentation by the client's referring physician that a client with a history of substance abuse has successfully completed a substance abuse program or has documented abstinence for a period of at least six months before any transplantation service can be authorized.

(k) At least two negative drug screens within three months of the request date for prior authorization. The Utah Medicaid program requires monthly drug screens until the transplant date or until the transplant is denied if either of the two random drug screens are positive for drug use, past drug screens have been positive for drug use, or the Department requests the monthly screens. If the client has a history of substance abuse that does not include the drugs listed in Subsection R414-10A-2(11), then the drug screens must include the other substance(s) upon drug testing availability.

(l) Hospital and outpatient records for at least the last two years, unless the patient is less than two years of age, in which case all records.

(m) Pretransplant evaluation for a client diagnosed with cancer that includes staging of the cancer, laboratory tests, and imaging studies. A letter documenting that the transplant evaluation has been completed and that all medical records documentation from the evaluation have been transmitted to the Department.

(n) Any other medical evidence needed to evaluate possible contraindications for the type of transplantation being considered. Contraindications are listed in this rule under each organ or transplant type.

(o) The transplant center must document, by a current medical literature review, a one-year survival rate from patients having received transplantation for the age group, specific diagnosis(es), condition and type of transplantation proposed for the client. Survival rate must be calculated by the Kaplan-Meier product-limit method or the actuarial life table method: "Kaplan, G., Meier, P. Non-Parametric estimation from incomplete observations. Journal of American Statistical Association 53:457-481, 1958. Cox, D.R., Oakes, D. Analysis of survival data. Chapman and Hill, 1984." adopted and incorporated by reference. At least ten patients in the appropriate age group must be alive at the end of the one or three year period to document adequate confidence intervals. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(p) The transplant center must document by a current medical literature review, a one year graft function rate for patients having received pancreas, kidney or small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. Graft function rate must be calculated by the Kaplan-Meier product-limit method or the actuarial life table method: "Kaplan, G., Meier, P. Non-Parametric estimation from incomplete observations. Journal of American Statistical Association 53:457-481, 1958. Cox, D.R., Oakes, D. Analysis of survival data. Chapman and Hill, 1984." adopted and incorporated by reference. The time to graft failure will be determined by the use of insulin post-pancreas transplantation, by the use of dialysis post-renal transplantation, and the use of total parenteral nutrition post-small bowel transplantation. At least ten patients in the appropriate age group must have documented graft function at the end of the one year period to document adequate confidence intervals. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(q) Bone marrow transplantation centers must document, by a current medical literature review, a one-year and a three-year survival rate from patients having received transplantation for the age group, specific diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(r) The transplant center must provide written recommendations for each client which support the need for the transplant. The recommendations must reflect use of both the transplant center's own patient selection criteria and the Utah Medicaid program criteria as noted in Sections R414-10A-8 through 22. Agreement of the transplant center to provide the required service must also be established.

(s) The physician must provide, for review by the Department, any additional medical information which could affect the outcome of the specific transplant being requested.

(t) The completed request for authorization, along with all required information and documentation, must be delivered to:

Utah Department of Health

Bureau of Coverage and Reimbursement Policy

Utilization Management Unit
Transplant Coordinator
288 North 1460 West
P.O. Box 143103
Salt Lake City, Utah 84114-3103

(u) If incomplete documentation is received by the Department, the client's case is pended until the requested documentation has been received.

(4) Prior authorization for each donor lymphocyte infusion must contain all of the following:

(a) A description of the medical condition that necessitates a donor lymphocyte infusion.

(b) Comprehensive examination, evaluation and recommendations completed by a board-certified or board-eligible specialist in a field directly related to the client's condition that necessitates the transplantation, such as a nephrologist, gastroenterologist, cardiologist, or hematologist. The evaluation must document that the proposed donor lymphocyte infusion for the client is a medically necessary service as defined in Subsections R414-1-2(18)(a) and (b).

(c) Hospital and outpatient records for at least the last six months. If the patient is less than six months of age, the Department requires all case records.

(d) The transplant center must document by a current medical literature review that the donor lymphocyte infusion is a medically necessary service as defined in Subsections R414-1-2(18)(a) and (b) for the age group, specific diagnosis(es), condition, and type of transplantation the client has previously received.

R414-10A-7. Criteria for Transplantation Centers or Facilities.

Transplantation services are covered only in a transplant center or facility which demonstrates the following qualifications to the Department:

(1) Compliance with criteria listed in Sections R414-10A-6 through 22.

(2) The transplant center must document cost effectiveness and quality of service. The transplant center must complete, and submit to the Department for evaluation, documentation specific to the surgical experience of the requesting transplant center, showing applicable one and three year survival rates for all patients receiving transplantation in the last three years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Out-of-state transplant centers must meet all of the criteria and requirements listed by the Department in Sections R414-10A-6 through 22.

(4) Transplantation services are covered in out-of-state transplant centers only when the service is not available in an approved facility in Utah, and agreement is reached between the Department and the requesting physician that service out-of-state is essential to the individual case.

(5) Reimbursement to out-of-state transplant centers is provided only when the transplant center and the Department can agree upon arrangements which conform to the Department payment methodology.

(6) Corneal transplant facilities must document:

(a) certification or licensure by the Department as an ambulatory surgical center or an acute care general hospital; and

(b) that the surgeon is board-certified or board-eligible in ophthalmology.

(7) Heart, heart lung, intestine, lung, pancreas, kidney, and liver transplant centers must document all of the following:

(a) Current approval by the U.S. Department of Health and Human Services as a Medicare-approved center for transplantation of the organ(s) requested for the client.

(b) Current full membership in the United Network for Organ Sharing for the specific organ transplantation requested for the client.

(8) Bone marrow transplant centers must document approval by the National Marrow Donor Program as a bone marrow transplantation center.

R414-10A-8. Criteria and Contraindications for Cornea Transplantation.

(1) Cornea transplantation services may be provided to a client of any age.

(2) The following are contraindications for cornea transplantation or penetrating keratoplasty:

(a) Active infection.

(b) The presence of an associated disease, such as macular degeneration or diabetic retinopathy severe enough to prevent visual improvement with a successful corneal transplantation.

R414-10A-9. Criteria and Contraindications for Bone Marrow Transplantation.

(1) Bone marrow transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for bone marrow transplantation must meet requirements of Subsections R414-10A-9(2)(a) or (b).

(a) Allogenic and syngeneic bone marrow transplantations may be approved for payment only when the client has an HLA-matched donor. The donor must be compatible for all or a five-out-of-six match of World Health Organization recognized HLA-A, -B, and -DR antigens as determined by appropriate serologic typing methodology.

(i) The Department authorizes payment for a search of related family members, unrelated persons or both to find a suitable donor.

(ii) The transplant center staff must complete, and submit to the Department for evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate, or by having a greater than or equal to 55 percent three-year survival rate or by meeting the one-year and three-year survival rates for patients receiving bone marrow transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Autologous bone marrow transplantation performed in conjunction with total body radiation or high dose chemotherapy, may be approved for payment only if a current medical literature review, completed by the transplant center staff and sent to the Department for staff review and evaluation, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-

year survival rate, or by having a greater than or equal to 55 percent three-year survival rate or by meeting the one-year and three-year survival rates for patients receiving bone marrow transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) Clients for autologous bone marrow transplantations must have adequate marrow function and no evidence of marrow involvement by the primary malignancy at the time the marrow is harvested.

(3) The client for bone marrow transplantation must meet all of the following requirements:

(a) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(b) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(c) Psycho-social assessment that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(d) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(e) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(f) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original bone marrow disease will not recur and limit survival to less than 75% one-year survival rate, or to less than 55% three-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(4) Any single contraindication listed below precludes approval for Medicaid payment for bone marrow transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome or interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(f) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(g) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate, or a greater than or equal to 55 percent three-year survival rate, or by meeting the one-year and three-year survival rates after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(h) Cardiovascular diseases:

(i) Intractable cardiac arrhythmias.

(ii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iii) Severe generalized arteriosclerosis.

(i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(5) Prior to the approval of transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s) of a client who is under 18 years of age, to assure compliance to medication and follow-up care, if an indication of non-compliance documented by any of the behaviors listed in Subsections R414-10A-9(4)(j)(i) through (iv) is demonstrated by the parent(s) or guardian(s) of the client.

(6) The client for donor lymphocyte infusion must produce documentation by current medical literature review and the client's referring physician that the donor lymphocyte infusion is a medically necessary service as defined in Subsections R414-1-2(18)(a) and (b).

R414-10A-10. Criteria and Contraindications for Heart Transplantation.

(1) Heart transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for heart transplantation must meet all of the following requirements:

(a) The client must have irreversible, progressive heart disease with a life expectancy of one year or less without transplantation, or documented evidence of progressive pulmonary hypertension and no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical

~~outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving heart transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(c) Severe cardiac dysfunction.~~

~~(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.~~

~~(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.~~

~~(f) Psycho-social assessment that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.~~

~~(g) The client must have strong motivation to undergo the procedure, as documented by the medical and psycho-social assessment.~~

~~(h) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.~~

~~(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original heart disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(3) Any single contraindication listed below precludes approval for Medicaid payment for heart transplantation:~~

~~(a) Active infection.~~

~~(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more non-cardiac vital end-organs.~~

~~(c) Active substance abuse.~~

~~(d) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.~~

~~(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.~~

~~(f) Pulmonary diseases:~~

~~(i) Cystic fibrosis.~~

~~(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).~~

~~(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).~~

~~(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.~~

~~(v) Recent or unresolved pulmonary infarction.~~

~~(g) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(h) Cardiovascular diseases:~~

~~(i) Severe pulmonary hypertension documented in patients 18 years of age and older by a pulmonary vascular resistance greater than eight Wood units, or pulmonary vascular resistance of six or seven Wood units in which a nitroprusside infusion is unable to reduce the pulmonary vascular resistance to less than three Wood units or is unable to reduce the pulmonary artery systolic pressure to below 50 mmHg.~~

~~(ii) Severe pulmonary hypertension documented in patients less than 18 years of age and more than six months of age by a pulmonary vascular resistance greater than six pulmonary vascular resistance index units (PVRI), or in which a nitroprusside infusion is unable to reduce the pulmonary vascular resistance to less than six PVRI.~~

~~(iii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.~~

~~(iv) Severe generalized arteriosclerosis.~~

~~(i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.~~

~~(j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:~~

~~(i) Non-compliance with medications or therapy.~~

~~(ii) Failure to keep scheduled appointments.~~

~~(iii) Leaving the hospital against medical advice.~~

~~(iv) Active substance abuse.~~

~~(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. Non-compliance is demonstrated by documentation of any of the behaviors listed in Subsections R414-10A-10(3)(j)(i) through (iv).~~

~~R414-10A-11. Criteria and Contraindications for Intestine Transplantation.~~

~~(1) Intestine transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.~~

~~(2) The client for intestine transplantation must meet all of the following requirements:~~

~~(a) The client must have short bowel syndrome or irreversible, progressive small bowel disease that requires daily hyperalimentation with no other reasonable medical or surgical alternative to transplantation available.~~

~~(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel graft function rate for patients receiving intestine transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use~~

~~independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(c) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 85 percent one-year survival rate for patients receiving intestine transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.~~

~~(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.~~

~~(f) Psycho-social assessment that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.~~

~~(g) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.~~

~~(h) If the client has a history of substance abuse, then he must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.~~

~~(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original intestinal disease will not recur and limit graft function survival to less than 75% one-year survival rate.~~

~~(j) The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(3) Any single contraindication listed below precludes approval for Medicaid payment for small bowel transplantation:~~

~~(a) Active infection.~~

~~(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more vital end-organs.~~

~~(c) Active substance abuse.~~

~~(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.~~

~~(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.~~

~~(f) Pulmonary diseases:~~

~~(i) Cystic fibrosis.~~

~~(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).~~

~~(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).~~

~~(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.~~

~~(v) Recent or unresolved pulmonary infarction.~~

~~(g) Cancer, unless treated and eradicated for two or more years, or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 85% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(h) Cardiovascular diseases:~~

~~(i) Myocardial infarction within six months.~~

~~(ii) Intractable cardiac arrhythmias.~~

~~(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.~~

~~(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.~~

~~(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.~~

~~(vi) Severe generalized arteriosclerosis.~~

~~(i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.~~

~~(j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:~~

~~(i) Non-compliance with medications or therapy.~~

~~(ii) Failure to keep scheduled appointments.~~

~~(iii) Leaving the hospital against medical advice.~~

~~(iv) Active substance abuse.~~

~~(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-11(3)(j)(i) through (iv).~~

~~R414-10A-12. Criteria and Contraindications for Kidney Transplantation.~~

~~(1) Kidney transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.~~

~~(2) All indications for kidney transplantation listed below must be met by each client.~~

~~(a) The client must have irreversible, progressive end-stage renal disease.~~

~~(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year successful renal graft function rate for patients receiving renal transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(c) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 90 percent one-year~~

survival rate for patients receiving renal transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(f) Psycho-social assessment that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(g) The client must have strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(h) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original renal disease will not recur and limit graft function to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below shall preclude approval for Medicaid payment for kidney transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more non-renal end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(f) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent pulmonary infarction.

(g) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 90% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(h) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iv) Severe generalized arteriosclerosis.

(i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-12(3)(j)(i) through (iv).

R414-10A-13. Criteria and Contraindications for Liver Transplantation.

(1) Liver transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) A client for liver transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver transplantation for the age group, specific diagnosis(es), condition, and type of liver transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(c) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(d) Psycho-social assessment that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(e) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(f) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(g) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original liver disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below precludes approval for Medicaid payment for liver transplantation:

(a) Active infection outside the hepatobiliary system.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more non-hepatic vital end-organs.

(c) Hepatitis B surface antigen positive, except for cases of fulminant hepatitis B.

(d) Stage IV hepatic coma.

(e) Active substance abuse.

(f) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(g) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(h) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(i) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(j) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria: "Goldman, L. et al. Comparative reproducibility and validity of systems assessing cardiovascular functional class: Advantages of a new specific activity scale. American Heart Association Circulation 64: 1227, 1981.", adopted and incorporated by reference.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(vi) Severe generalized arteriosclerosis.

(k) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(l) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s) of a client who is under 18 years of age, to assure compliance with medications and follow-up care, if an indication of non-compliance documented by any of the behaviors listed in Subsections R414-10A-13(3)(l)(i) through (iv) is demonstrated by the parent(s) or guardian(s) of the client.

R414-10A-14. Criteria and Contraindications for Lung Transplantation.

(1) Lung transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for lung transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving lung transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(c) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(d) Psycho-social assessment that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(e) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(f) The client with a history of substance abuse must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(g) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original lung disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical

consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below shall preclude approval for payment for lung transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more non-pulmonary vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation for the patient.

(f) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(g) Cardiovascular diseases:

(i) Myocardial infarction within six months;

(ii) Intractable cardiac arrhythmias;

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease;

(vi) Severe generalized arteriosclerosis.

(h) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(i) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-14(3)(i)(i) through (iv).

R414-10A-15. Criteria and Contraindications for Pancreas Transplantation.

(1) Pancreas transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) All indications for pancreas transplantation listed below must be met by each client.

(a) The client must have type I diabetes mellitus.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a pancreas graft function rate greater than or equal to 75 percent at one-year for patients receiving pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 90 percent one-year survival rate for patients receiving pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that he and his parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required

(f) Psycho-social assessment that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(g) The client must have strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(h) If the client has a history of substance abuse, then he must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original pancreas disease will not recur and limit graft function rate to less than 75% at one-year. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below precludes approval for Medicaid payment for pancreas transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more end-organs.

(c) Active peptic ulcer.

(d) Active substance abuse.

(e) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(f) Irreversible musculoskeletal disease resulting in progressive weakness or in confinement to bed.

(g) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(h) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predictable).

(iii) Restrictive pulmonary disease (FVC less than 50% of predictable).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent pulmonary infarction.

(i) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 90% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(j) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iv) Severe general arteriosclerosis.

(k) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(l) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-15(3)(l)(i) through (iv).

R414-10A-16. Criteria and Contraindications for Small Bowel Transplantation.

(1) Small bowel transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for small bowel transplantation must meet all of the following requirements:

(a) The client must have short bowel syndrome or irreversible, progressive small bowel disease that requires daily hyperalimentation with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability for successful clinical outcome by having a greater than or equal to 85 percent one-year survival rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(f) Psycho-social assessment that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(g) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(h) If the client has a history of substance abuse, then he must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original small bowel disease will not recur and limit small bowel function survival to less than 85% one-year survival rate.

(j) The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below shall preclude approval for Medicaid payment for small bowel transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(f) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(g) Cancer, unless treated and eradicated for two or more years, or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(h) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(vi) Severe generalized arteriosclerosis.

(i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-16(3)(j)(i) through (iv).

R414-10A-17. Criteria and Contraindications for Heart and Lung Transplantation.

(1) Heart-lung transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for heart-lung transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving heart-lung transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The requirements listed in:

(i) Subsections R414-10A-10(2)(c) through (i).

(ii) Subsections R414-10A-10(3)(a) through (g), and (i) through (j).

(iii) Subsection R414-10A-10().

R414-10A-18. Criteria and Contraindications for Intestine and Liver Transplantation.

(1) Intestine-liver transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for intestine-liver transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving intestine-liver transplantation for the age group, specific diagnosis(es), and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

(i) Subsections R414-10A-13(2)(b) through (g).

(ii) Subsections R414-10A-13(3)(a) through (l).

(iii) Subsection R414-10A-13(4).

R414-10A-19. Criteria and Contraindications for Kidney-Pancreas Transplantation.

(1) Kidney-pancreas transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for kidney-pancreas transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year kidney and pancreas function rates for patients receiving kidney-pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 90 percent one-year survival rate for patients receiving kidney-pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 90% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

(i) Subsections R414-10A-12(2)(d) through (i).

(ii) Subsections R414-10A-12(3)(a) through (j).

(iii) Subsection R414-10A-12(4).

R414-10A-20. Criteria and Contraindications for Combined Liver-Kidney Transplantation.

(1) Liver-kidney transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for liver-kidney transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver-kidney transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting a renal graft function rate greater than or equal to 75 percent at one year for patients receiving liver-kidney transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

(i) Subsections R414-10A-13(2)(b) through (g).

(ii) Subsections R414-10A-13(3)(a) through (l).

(iii) Subsection R414-10A-13(4).

R414-10A-21. Criteria and Contraindications for Multivisceral Transplantation.

(1) Multivisceral transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for multivisceral transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year pancreas and small bowel function rates for patients receiving multivisceral transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving multivisceral transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

(i) Subsections R414-10A-13(2)(b) through (g).

(ii) Subsections R414-10A-13(3)(a) through (l).

(iii) Subsection R414-10A-13(4).

R414-10A-22. Criteria and Contraindications for Liver and Small Bowel Transplantation.

(1) Liver-small bowel transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for liver-small bowel transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of

~~transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver-small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.~~

~~(d) The requirements listed in:~~

~~(i) Subsections R414-10A-13(2)(b) through (g).~~

~~(ii) Subsections R414-10A-13(3)(a) through (l).~~

~~(iii) Subsection R414-10A-13(4).~~]

R414-10A. Transplant Services Standards.

R414-10A-1. Introduction and Authority.

(1) This rule establishes standards and requirements for tissue and organ transplantation services for the State of Utah Medicaid Program.

(2) Title XIX of the Social Security Act allows coverage of transplantation services when there is no discrimination in the availability of services and high quality care is available to all eligible individuals.

(3) Section 26-18-2.3 grants the Department of Health discretion to fund transplantation services.

R414-10A-2. Definitions.

For purposes of Rule R414-10A:

(1) "Abstinence" means the documented non-use of any abusable psychoactive substance by the patient.

(2) "Abusable substance" means any substance which is not appropriately prescribed and taken under the direction of a physician or is not medically indicated. This includes, but is not limited to, over-the-counter medicines, prescription medicines, alcohol, tobacco (including nicotine-bearing vapor products), and street drugs.

(3) "Active infection" means current presumptive evidence of invasion of tissue or body fluids by bacteria, viruses, fungi, rickettsiae, or parasites which is not demonstrated to be effectively controlled by the host, antibiotic or antimicrobial agents.

(4) "Active substance use" means the current use (within the most recent six months) of any abusable substance or substances that can adversely impact treatment outcomes or treatment plan adherence. This may include the personal admission of substance use with a positive drug screen.

(5) "Allogenic" means having a different genetic constitution but belonging to the same species.

(6) "Autologous" means the products or components of the same individual person.

(7) "Department" means the Utah Department of Health.

(8) "Drug screen" means testing to identify the presence of one or more drugs or substances that can adversely impact treatment outcomes or treatment plan adherence and which include, but are not limited to, tobacco (or any nicotine-delivery system, e.g. vapor products), cannabis, alcohol, benzodiazepines, narcotics, methadone, cocaine, amphetamines, opiates, tricyclic antidepressants, and barbiturates.

(9) "Emergency transplantation" means any transplantation which for reasons of medical necessity requires that a transplant be performed less than five days after determination of the need for the procedure.

(10) "Hematopoietic stem cell transplantation and bone marrow transplantation" means transplantation of cells from the bone marrow stem cells, peripheral blood stem cells, or cord blood stem cells to supplant the patient's bone marrow.

(11) "Intestine transplantation" means transplantation of the small bowel or both the small bowel and colon.

(12) "Medical necessity", for purposes of this rule, means a patient's medical condition that meets all the requirements and none of the contraindications for the type of transplantation requested.

(13) "Multi-organ transplantations" means, except for corneas, the transplantation of more than one tissue or organ during the same operative procedure.

(14) "Medicare-approved transplant center" means a center that meets Medicare's conditions of participation for transplant hospitals or, for purposes of this rule, is an approved National Marrow Donor Program (NMDP) bone marrow transplant center.

(15) "Patient" means an individual eligible to receive covered Medicaid services from an enrolled Medicaid provider and is receiving covered professional services provided or directed by a licensed practitioner of the healing arts enrolled as a Medicaid provider.

(16) "Remission" means the lack of any evidence of the cancer on physical examination and hematological evaluation, including normocellular bone marrow with less than five percent blast cells, and peripheral blood counts within normal values, except for patients who are receiving maintenance chemotherapy.

(17) "Services" means the type of medical assistance specified in Subsections 1905(a)(1) through (24) of the Social Security Act and interpreted in 42 CFR 440, Subpart A.

(18) "Substance use disorder rehabilitation program" means a rehabilitation program developed and conducted by an inpatient or outpatient facility that, at a minimum, meets the standards of organization and staff of a chemical dependency and substance use disorder specialty facility specified in Section R432-102-4 and Rule R501-21.

(19) "Transplantation" means the transfer of a human organ or tissue from one person to another or from one site to another in the same individual, excluding skin, tendon, and bone.

R414-10A-3. Patient Eligibility Requirements for Coverage of Transplantation Services.

Transplantation services are available to categorically eligible and medically needy individuals who are Title XIX eligible and meet the requirements in this rule at the time the transplantation service is provided.

R414-10A-4. Program Access Requirements.

(1) Transplantation services may be provided only for eligible patients who meet the requirements in this rule and only for services covered under the Utah Medicaid program.

(2) Transplantation services may be provided only in a Medicare-approved transplant center.

(3) Transplantation services may be provided out-of-state in a Medicare-approved facility only when the service is not available in an approved facility in the state of Utah.

(4) All Utah transplant requirements and policies are applicable to in-state and out-of-state transplant services and facilities.

R414-10A-5. Service Coverage.

(1) Transplantation services are covered by the Utah Medicaid program only when requirements in this rule are met.

(2) Multi-organ transplantation services may be provided only when the requirements for each individual transplant are met.

(3) Repeat transplantations of the same tissues or organs may be covered only under Departmental review and approval based on requirements in this rule.

(4) The following transplants are covered when requirements in this rule are met:

(a) Cornea, heart, lung, kidney, liver, pancreas, intestine, bone marrow, hematopoietic stem cell.

(b) Some combinations of the above may also qualify.

(5) Emergency transplantations may be covered if all requirements are met.

R414-10A-6. Prior Authorization.

(1) Prior authorization (PA) may be required for any transplantation service.

(a) To determine if PA is required, refer to the Utah Medicaid Coverage and Reimbursement Code Lookup tool.

(2) The Department's evidence-based criteria may be used, when available, as part of the PA process.

(3) If PA is required, the request must include documentation that the patient meets the organ specific requirements in this rule.

(4) The PA request for transplantation services must include:

(a) Description of condition needing transplantation.

(b) Transplantation treatment alternatives utilized previous to the transplant request.

(c) Transplantation treatment alternatives considered and discarded, including rationale for discarding.

(d) A comprehensive examination, evaluation and recommendations completed by a Board-Certified or Board-Eligible (BC/BE) specialist and medical and surgical specialists in the field directly related to the patient's condition needing the transplant. This must include the patient's need for and ability to tolerate the proposed transplant and subsequent treatment regimen.

(e) A comprehensive psycho-social evaluation of the patient which must include the patient's motivation for transplant and ability to follow long-term treatment and follow-up regimen.

(f) A comprehensive psycho-social evaluation of the patient's parent or guardian, if the patient is less than 18 years of age. This evaluation must include the parents and patient's motivation (age appropriate) for transplant, substance use history, compliance, and ability to follow long-term treatment and follow-up regimen.

(g) A comprehensive psychiatric evaluation, if the patient has a history of mental illness.

(h) Documentation of a successfully completed treatment program or abstinence, if the patient has a history of substance use.

(i) Treatment program success and abstinence are supported by negative drug screens for a minimum of six months, with two negative drug screens in the most recent three months. The timing of the drug screens is in relation to the PA request date.

(j) If the history of substance use involves drugs other than those listed in this rule under Section R414-10A-2, then the drug screens must include the other substance upon drug testing availability.

(k) The patient may not be an active substance user as defined under Section R414-10A-2.

(l) Comprehensive infectious disease evaluation for a patient with a recent or current suspected infectious episode.

(m) All applicable hospital and clinic records.

(n) Completed cancer screening tests.

(o) All relevant laboratory and imaging studies.

(p) Documentation that the patient meets the eligibility and selection criteria for the transplant facility where the transplant will be performed.

(q) Any other documentation requested by PA or the Department's physician consultants.

(5) Submit this documentation, with a completed request for authorization form, to the Division of Medicaid and Health Financing

Medicaid Prior Authorization Unit

P. O. Box 143111

Salt Lake City, UT 84114-3111

(6) If incomplete documentation is received by the Department, the patient's case is pended until the requested documentation has been received.

(7) If a transplant requiring PA is performed without PA, reimbursement may be denied for all services related to the transplant up to the outlier threshold days for the specific type of transplant.

(8) Refer to the Section I: General Information Provider Manual for retroactive authorization for emergency transplant services.

R414-10A-7. Solid Organ Transplantation, Covered Services and Requirements.

(1) The following solid organ transplant services are covered. Minimum requirements for specific transplant services are shown. As required by 42 CFR 482, Subpart E, each transplant center must also have written selection criteria.

(2) All patients must be free of active infection. Liver transplants are excepted as noted.

(3) Liver.

(a) The patient must:

(i) have progressive, irreversible liver disease requiring transplant;

(ii) be free from active infection outside the hepatobiliary system;

(iii) not have acute, severe hemodynamic compromise at the time of transplantation if this compromises non-hepatic end-organs;

(iv) be free from significant pulmonary disease;

(v) be free from any significant cardiovascular disease; and

(vi) not have stage IV hepatic coma.

(4) Cornea

(a) The patient must be free of other associated disease that may preclude visual improvement with transplant.

(5) Cardiac
(a) The patient must:
(i) have irreversible and progressive cardiac disease with a life expectancy of one year or less without transplant or progressive pulmonary hypertension without other treatment options; and
(ii) be free from significant pulmonary disease, except pulmonary hypertension.
(6) Intestine
(a) The patient must:
(i) have short bowel syndrome or irreversible and progressive small bowel disease requiring daily hyperalimentation without reasonable alternatives;
(ii) be free from significant pulmonary disease; and
(iii) be free from significant cardiovascular disease.
(7) Kidney
(a) The patient must:
(i) have irreversible, progressive end-stage renal disease;
(ii) not have acute, severe hemodynamic compromise at the time of transplantation if this compromises non-renal end-organs;
(iii) be free from significant pulmonary disease; and
(iv) be free from any significant cardiovascular disease.
(8) Lung
(a) The patient must:
(i) not have acute, severe hemodynamic compromise at the time of the transplantation if this compromises non-pulmonary end-organs;
(ii) be free from significant cardiovascular disease; and
(iii) demonstrate abstinence from tobacco use within the last 6 months.
(9) Pancreas
(a) The patient must:
(i) have type I diabetes mellitus;
(ii) not have acute, severe hemodynamic compromise at the time of the transplantation if this compromises end-organs;
(iii) not have active peptic ulcer disease;
(iv) be free from significant cardiovascular disease; and
(v) be free from significant pulmonary disease.
(10) Multi-organ transplants.
(a) Kidney/pancreas, liver/kidney, cardiac/lung, intestine/liver, and other multi-organ transplants may be considered;
(i) each case is reviewed individually as to medical necessity and appropriateness; and
(ii) complete documentation, including justification and outcomes, must be provided.

R414-10A-8. Solid Organ Transplantation, Non-Covered Services.
(1) Transplants requiring prior authorization performed without prior authorization. (Refer to the Section I: General Information Provider Manual for request for retroactive authorization for emergency transplant services.)
(2) Transplant for patients who did not qualify for Medicaid benefits at the time of transplantation. (Retroactive Medicaid qualification may be an exception.)
(3) Transplants which are experimental or investigational in nature.
(4) Transplant of beta cells or other pancreas cells not part of a pancreatic organ transplantation.
(5) Transplant of cells or tissues into the coronary arteries, myocardium, central nervous system, or spinal cord.
(6) "Bridge-to-transplant" devices for heart transplant:
(a) Temporary or implanted ventricular assist devices with the exception of intra-aortic balloon assist devices;
(b) Temporary or implanted biventricular assist devices; or
(c) Temporary or implanted mechanical heart.
(7) Transplants to patients with:
(a) Malignant neoplasm with a high risk for reoccurrence and non-curable malignancy (excluding localized skin cancer).
(b) Chronic illness with one year or less life expectancy.
(c) Limited, irreversible rehabilitation potential.
(8) Payment for organ preparation or procurement.
(9) All other conditions not specifically listed as covered in the rule.

R414-10A-9. Hematopoietic Stem Cell Transplantation (HSCT), Covered Services.
(1) HSCT may be approved only when the patient has a suitable HLA-matched donor and one of the covered conditions is present.
(2) Patient must have adequate marrow and lack of marrow involvement of primary malignancy if autologous transplant.
(3) Patient must be free from any active infection.
(4) Allogeneic Hematopoietic Stem Cell Transplantation (ASCT) is covered for:
(a) Leukemia, leukemia in remission, or aplastic anemia; or
(b) Severe Combined Immunodeficiency Disease (SCID) and for the treatment of Wiskott-Aldrich syndrome.
(5) Autologous Hematopoietic Stem Cell Transplantation (AuSCT) is covered for:
(a) Acute leukemia in remission with a high probability of relapse and has no Human Leucocyte Antigens (HLA)-matched;
(b) Resistant non-Hodgkin's lymphomas or those presenting with poor prognostic features following an initial response;
(c) Recurrent or refractory neuroblastoma; and
(d) Advanced Hodgkin's disease with failed conventional therapy and has no HLA-matched donor.
(e) Single AuSCT is only covered for Durie-Salmon Stage II or III that fit the following requirements:
(i) Newly diagnosed or responsive multiple myeloma. This includes those patients with previously untreated disease, those with at least a partial response to prior chemotherapy (defined as a 50 percent decrease either in measurable paraprotein (serum, urine or both) or in bone marrow infiltration, sustained for at least one month), and those in responsive relapse; and
(ii) adequate cardiac, renal, pulmonary, and hepatic function.
(f) When recognized clinical risk factors are employed to select patients for transplantation, High Dose Melphalan (HDM) together with AuSCT is medically reasonable and necessary for any age group with primary Amyloid Light (AL) chain amyloidosis who meet the following criteria:
(i) Amyloid deposition in two or fewer organs; and
(ii) Cardiac left ventricular Ejection Fraction (EF) greater than 45 percent.

R414-10A-10. HSCT Transplantation, Non-Covered Services.

(1) HSCT is not covered as treatment for multiple myeloma.

(2) AuSCT is not covered for:

(a) Acute leukemia not in remission;

(b) Chronic granulocytic leukemia;

(c) Solid tumors (other than neuroblastoma);

(d) Tandem transplantation (multiple rounds of AuSCT) for patients with multiple myeloma;

(e) Non-primary AL amyloidosis; or

(f) Primary AL amyloidosis for patients who are at least 64 years of age.

(3) All other conditions not specifically listed as covered in this rule.

R414-10A-11. Requests for Non-Covered Transplantation Services.

Requests for non-covered services are considered based on evidence submitted as to the efficacy of the requested services. These requests are reviewed on a case by case basis and require Medicaid Director or designee approval. Evidence types may include, but are not limited to:

(1) Evidence published in peer-reviewed medical journals listed on the Centers for Medicare and Medicaid Services (CMS) website.

(2) Evidence of acceptable survival rates with the proposed protocol in groups with similar clinical characteristics to the patient:

(a) The current survival rate threshold is at least 75 percent one-year survival and at least 55 percent three-year survival; or

(b) Similar characteristics include age, tumor type, tumor size, resection status, presence of metastases, etc.

(3) Study size with sufficient number of individuals for statistical analysis; or

(4) Evidence that the proposed protocol is a less costly alternative to other potential treatment protocols.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~June 11, 2014~~]2016
Notice of Continuation: January 24, 2012
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-[~~1~~]3

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-19A
Coverage for Dialysis Services by a Free-Standing State-Licensed Dialysis Facility

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40491
FILED: 06/13/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify definitions, eligibility, requirements, service coverage, and reimbursement for dialysis services performed in an end stage renal disease facility.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies definitions, eligibility, requirements, service coverage, and reimbursement for dialysis services performed in an end stage renal disease facility.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 440.20 and Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no impact to the state budget because services provided to Medicaid recipients remain unaffected by this change.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because services provided to Medicaid recipients remain unaffected by this change.
♦ SMALL BUSINESSES: There is no impact to small businesses because services provided to Medicaid recipients remain unaffected by this change.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers and to Medicaid recipients because services provided remain unaffected by this change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid recipient because services provided remain unaffected by this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to business because the proposed amendment does not change any services addressed in this rule.

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 Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

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

R414-19A. Coverage for Dialysis Services by an End Stage Renal Disease Facility[~~Free-Standing State-Licensed Dialysis Facility~~].

R414-19A-0. Policy Statement.

Dialysis services are provided under the Medicaid State Plan to cover Medicaid recipients principally for the 90-day period between the first dialysis service and commencement of Medicare End-Stage Renal Disease (ESRD) benefits. The State Plan also covers dialysis services for Medicaid recipients who do not qualify for Medicare coverage.

R414-19A-1. Authority.

The provision of clinic services for outpatient dialysis is authorized under the authority of 42 CFR 440.20, 440.90, and the Medicaid State Plan under Clinic Services.

R414-19A-2. Definition.

(1) [~~"Approved dialysis facility"~~]"Composite Payment" means [~~any free-standing state-licensed facility that is Medicare-certified to provide dialysis services.~~]a per treatment unit of payment that applies to all claims for dialysis services. The composite payment rate includes payment for all training, services, evaluations, laboratory tests, items, supplies, medications, and equipment necessary to treat ESRD or perform dialysis.

(2) "Dialysis" means the type of care or service furnished to an ESRD patient and includes all training, services, evaluations, laboratory tests, items, supplies, medications, and equipment necessary to perform dialysis in a facility, outpatient, or home setting.

(3) "End Stage Renal Disease (ESRD)" means that stage of renal impairment that appears irreversible and permanent, and requires a regular course of dialysis or kidney transplantation to maintain life.

(4) "ESRD facility" means a facility which is enrolled with Utah Medicaid and Medicare to furnish at least one specific dialysis service. Such facilities include:

(a) Renal transplantation center: A hospital unit which is approved to furnish directly transplantation and other medical and surgical specialty services required for the care of the ESRD transplant patients, including inpatient dialysis furnished directly or under arrangement. A renal transplantation center may also be a renal dialysis center.

(b) Renal dialysis center: A hospital unit which is approved to furnish the full spectrum of diagnostic, therapeutic, and rehabilitative services required for the care of ESRD dialysis patients (including inpatient dialysis furnished directly or under arrangement). A hospital need not provide renal transplantation to qualify as a renal dialysis center.

(c) Renal dialysis facility: A unit which is approved to furnish dialysis services directly to ESRD patients.

(d) Self -dialysis unit: A unit that is part of an approved renal transplantation center, renal dialysis center, or renal dialysis facility and furnishes self-dialysis services.

(e) Special purpose renal dialysis facility: A renal dialysis facility which is approved to furnish dialysis at special locations on a short term basis to a group of dialysis patients otherwise unable to obtain treatment in the geographical area. The special locations must be either special rehabilitative (including vacation) locations serving ESRD patients temporarily residing there, or locations in need of ESRD facilities under emergency circumstances.

R414-19A-3. Eligibility Requirements.

Dialysis services are available to both categorically and medically needy Medicaid recipients who are not enrolled in a managed care organization.

R414-19A-4. Program Access Requirements.

Dialysis services are available to Medicaid recipients when performed through a state-licensed Medicare-approved dialysis facility that is enrolled with Utah Medicaid.

R414-19A-5. Service Coverage.

(1) Dialysis services, [~~which include hemodialysis and peritoneal dialysis treatments, may be provided. Providers may bill the Division of Medicaid and Health Financing for these services only on a fee-for-service basis~~]including hemodialysis and peritoneal dialysis treatments provided by an ESRD facility, are a covered service for categorically or medically needy Medicaid recipients for three months pending the establishment of Medicare eligibility.

(a) [~~Hemodialysis and peritoneal dialysis services and supplies are covered if they are furnished in approved dialysis facilities. The composite rate for hemodialysis and peritoneal dialysis includes all services, items, supplies, and equipment necessary to perform dialysis. The rate includes physician evaluation as part of the dialysis service and routine laboratory tests~~]Medicaid may cover dialysis services for longer than three months if a recipient is not eligible for Medicare.

(b) [~~Self-dialysis is covered when performed by an ESRD patient who has completed an appropriate course of training~~]Medicaid reimburses dialysis services through a composite payment.

[~~(c) Hemodialysis treatments performed at home are covered when they are supervised by an approved dialysis facility, and performed by an appropriately trained patient. Treatments performed at home are covered only if the facility provides the supplies, equipment, and supervisory services necessary for home dialysis. Medicaid pays the same amount for each home dialysis treatment as it does for an in-facility treatment.~~

~~(d) Monthly supervision of hemodialysis and peritoneal dialysis, including home hemodialysis, is a covered benefit.~~

~~(e) Routine diagnostic and dialysis monitoring tests, e.g. hematocrit and clotting time, used by the facility to monitor the patient's fluid incident to each dialysis treatment, are covered when performed by qualified staff of the facility under the direction of a physician, as provided in the plan of care.~~

~~(f) Erythropoietins are covered for the treatment of anemia for ESRD patients when:~~
~~(i) administered by the renal dialysis facility, or~~
~~(ii) administered "incident to" a physician's service outside the dialysis facility; and~~
~~(iii) hematocrit is less than 30 percent.~~
~~(g) Erythropoietins are not covered when self-administered.~~]

(2) [~~Medically necessary renal dialysis services are covered for the first three months of dialysis pending the establishment of Medicare eligibility. If a Medicaid client is denied Medicare eligibility, the client may continue to receive medically necessary dialysis services under Medicaid~~]Medicaid covers dialysis services, including hemodialysis and peritoneal dialysis treatments performed at home, when they are supervised by an enrolled ESRD facility and performed by an appropriately trained Medicaid recipient for three months pending the establishment of Medicare eligibility.

(3) Medicare becomes the primary reimbursement source for individuals who meet Medicare eligibility criteria. [~~Dialysis providers~~]ESRD facilities must assist patients in applying for and pursuing final Medicare eligibility.

R414-19A-6. Standards of Care.

[~~Dialysis~~]ESRD facilities must comply with the Medicare conditions of participation set forth in 42 CFR 405 and all other applicable federal, state and local laws and regulations for the licensure, certification and registration of the ESRD facility.

R414-19A-7. Limitations.

[~~Dialysis for ESRD is limited to medically accepted dialysis procedures for outpatients receiving services through free-standing state-licensed facilities, which are Medicare-certified~~](1) Payments for dialysis services are eligible only to ESRD facilities that have enrolled with Utah Medicaid and are also enrolled with Medicare as an ESRD provider.

(2) Medicaid reimburses dialysis services through a composite rate. Payment for services which are part of the composite rate may not be reimbursed separately.

(3) Regardless of the dialysis method used, composite payments are limited to one unit per session and no more than one unit per day. Continuous cycling peritoneal dialysis, or any other dialysis services that occur overnight, are eligible for one composite payment.

R414-19A-8. Prior Authorization.

Prior authorization is not required.

R414-19A-9. Reimbursement for Services.

Payment for renal dialysis is based on the established fee schedule unless a lower amount is billed. The amount billed cannot exceed usual and customary charges.[~~Fees are based on the Medicare payment for dialysis in Salt Lake County.~~]

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~February 18, 2015~~]2016
Notice of Continuation: April 7, 2015
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 PROPOSED RULE
(New Rule)
DAR FILE NO.: 40492
FILED: 06/13/2016

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. 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 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 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 a 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 Office 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

♦ John Curless by phone at 801-538-6149, or by Internet E-mail at jcurless@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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 provider 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.

(5) "Effective date of the change of ownership" means the issue date of the license for the new owner by the Utah Department of Health.

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.

(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 complete 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 effective date for an 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 R414-505-4; or

(iii) The effective date of the Medicaid provider enrollment.

(4) 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.

(5)(a) State funding for supplemental payments authorized in this rule is limited to and obtained through Intergovernmental Transfer (IGT) Agreements of public funds or other permissible source-of-seed funding 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.

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 NSGE shall specify, on the form, a detailed description of the IGT monies and the legal basis for the monies ability to be used to match federal funds.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: 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 PROPOSED RULE
(New Rule)
DAR FILE NO.: 40493
FILED: 06/13/2016

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.

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.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 433.74 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 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 a 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 Office 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
♦ John Curless by phone at 801-538-6149, or by Internet E-mail at jcurless@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

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.
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 governmental entity shall specify, on the form, a detailed description of the IGT monies and the legal basis for the monies ability to be used to match federal funds.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: 2016
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

Public Safety, Fire Marshal
R710-1
Concerns Servicing Portable Fire Extinguishers

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40479
FILED: 06/09/2016

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update the rule to include specifications included in the 2015 International Fire Code, and make formatting changes.

SUMMARY OF THE RULE OR CHANGE: The rule has been renumbered to meet the requirements of the Rulewriting Manual. The purpose of the rule has been restated to meet the requirements of the Rulewriting Manual. The authority of the rule has been restated to meet the requirements of the Rulewriting Manual. Redundant definitions have been removed. License renewal dates have been clarified. Other redundant and unnecessary information has been removed. This rule filing clarifies that required reports shall be in writing, adds online testing, clarifies that all electronic data devices are prohibited in testing centers, clarifies license renewal dates, removes the requirement of 25 questions for renewal exams, removes reference to fee amounts that are found in the State Fee Schedule, and outlines when addition fees will be charged. Exams will no longer be mailed to the certificate holder.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will not be an anticipated cost or savings to the state budget because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.
♦ LOCAL GOVERNMENTS: There will not be an anticipated cost or savings to the local government because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.
♦ SMALL BUSINESSES: There will not be an anticipated cost or savings to the small businesses because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will not be an anticipated cost or savings to the persons other than small businesses, businesses or local government entities because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will not be an anticipated compliance cost to persons because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the amendment and found that this rule change will not have a fiscal impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
FIRE MARSHAL
ROOM 302
5272 S COLLEGE DR
MURRAY, UT 84123-2611
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Ted Black by phone at 801-284-6352, or by Internet E-mail at tblack@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

AUTHORIZED BY: Coy Porter, State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-1. Concerns Servicing Portable Fire Extinguishers.
R710-1-1. [~~Adoption, Title,~~]Purpose,[~~, and Prohibitions.~~

~~Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules to provide regulation to those concerns that service Portable Fire Extinguishers.~~

~~There is adopted as part of these rules the following code which is incorporated by reference:~~

~~1.1 National Fire Protection Association (NFPA), Standard 10, Standard for Portable Fire Extinguishers, 2007 edition, except as amended by provisions listed in R710-1-8, et seq.~~

~~1.2 A copy of the above mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.~~]

The purpose of this rule is to establish licensing requirements for business concerns servicing portable fire extinguishers and to establish the requirements for certificates of registration of persons servicing portable fire extinguishers, to establish service tag requirements, to outline adjudicative proceedings and to establish a fee schedule.

[~~1.3 Validity.~~

~~If any section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.~~

~~1.4 Order of Precedence.~~

~~In the event of any difference between these rules and any adopted reference material, the text of these rules shall govern. When a specific provision varies from a general provision, the specific provision shall apply.~~]

R710-1-2. Authority.

This rule is authorized by Section 53-7-204.

R710-1-[~~2~~]3. Definitions.

[~~2.1~~](1) "Annual" means a period of one year or 365 calendar days.

[~~2.2~~](2) "Board" means Utah Fire Prevention Board.

[~~2.3~~](3) "Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.

[~~2.4~~](4) "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

[~~2.5~~](5) "Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.

[~~2.6~~](6) "Employee" means those persons who work for a licensed concern, and may include, but shall not be limited to, those persons who work on a contractual basis.

[~~2.7~~](7) "License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing portable fire extinguishers.

[~~2.8~~](8) "NFPA" means National Fire Protection Association.

[~~2.9~~](9) "Repair" means any work performed on, or to, any portable fire extinguisher, and not defined as charging, recharging, or hydrostatic testing.

[~~2.10 "SFM" means State Fire Marshal or authorized deputy.~~

~~2.11 "UCA" means Utah State Code Annotated 1953 as amended.~~]

[~~2.12~~](10) "USDOT" means the United States Department of Transportation.

R710-1-[~~3~~]4. Licensing.

[~~3.1~~](1) License Required.

No person or concern shall engage in the servicing of portable fire extinguishers without a license issued by the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

[~~3.2~~](2) Application.

[~~3.2.1~~](a) Application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be made in writing to the SFM on forms provided by the SFM. A separate application for license shall be made for each separate place or business location of the applicant (branch office).

[~~3.2.2~~](b) The application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

[~~3.3~~](3) Signature of Application.

The application shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

[~~3.4~~](4) Equipment Inspection.

The applicant or licensee shall allow the SFM, and any of his properly authorized deputies to enter, examine, and inspect any premise, building, room, establishment, or vehicle, used by the applicant in servicing portable fire extinguishers to determine compliance with the provisions of these rules. The inspection will be conducted during normal business hours, and the owner or manager will be given a minimum of 24 hour[~~s~~] notice before the appointed inspection. The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained. The applicant, license holder or certified employee of the license holder, may be asked during the inspection by the SFM or any of his deputies, to demonstrate skills or knowledge used in servicing of portable fire extinguishers.

[~~3.5~~](5) Issuance.

Following receipt of the properly completed application, and compliance with the provision of the statute and these rules, the SFM shall issue a license.

[~~3.6~~](6) Original License and Inspection.

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals shall be valid for one year from issuance. No original license shall be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.

[~~3.7~~](7) Renewal License and Inspection.

Application for renewal shall be made as directed by the SFM. The failure to renew the license will cause the license to become invalid. No renewal license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.[~~Beginning March 4, 2003, through February 29, 2004,~~] R[~~r~~]enewal dates for licensed concerns will be based upon the[~~inspection~~] expiration date.[~~and~~] Licenses are valid for a one year period of time.[~~Renewal license fees shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal license fee.~~

~~3.8 Refusal to Renew.~~

~~The SFM may refuse to renew any license in the same manner, and for any reason, that he is authorized, pursuant to Section 9 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Section 9 of these rules to an applicant for an original license which has been denied by the SFM.~~]

[~~3.9~~](8) Change of Address.

Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

[~~3.10~~](9) Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

[~~3.11 List of Licensed Concerns.~~

~~The SFM shall make available, upon request and without cost, to the chief fire official of each local fire authority, the name, address, and license number of each concern that is licensed pursuant to these rules. Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.~~]

[~~3.12~~](10) Inspection.

The holder of any license shall submit such license for inspection upon request of the SFM, or any of his properly authorized deputies, or any local fire official.

[~~3.13~~](11) SFM Notification and Certification of Registration.

Every licensed concern shall, within thirty (30) days of employment, and within thirty (30) days of termination of any employee, report to the SFM in writing, the name, address, and certificate of registration number, of every person performing any act of servicing portable fire extinguishers for such licensed concern[~~in writing~~].

[~~3.14~~](12) Type.

[~~3.14.1~~](a) Every license shall be identified by type. The type of license issued shall be determined on the basis of the act or acts performed by the licensee or by any of the employees. Every licensed concern shall be staffed by qualified personnel, and shall be properly equipped to perform the act or acts for the type of license issued.

[~~3.14.2~~](b) Licenses shall authorize any one, or any combination of the following types of activities:

[~~3.14.2.1~~](i) Type 1 - Conducting of all activities, as per (2), (3), and (4) below, or

[~~3.14.2.2~~](ii) Type 2 - Conducting hydrostatic tests of fire extinguisher cylinders using the water jacket or ultrasonic test methods after receiving a Retesters Identification Number (RIN) issued by the United States Department of Transportation (USDOT), or

[~~3.14.2.3~~](iii) Type 3 - Conducting hydrostatic tests of fire extinguisher cylinders using the proof pressure test method after receiving a Retesters Identification Number (RIN) issued by the United States Department of Transportation (USDOT), or

[~~3.14.2.4~~](iv) Type 4 - Servicing, inspecting, and maintaining all types of extinguishers, excluding hydrostatic testing.

[~~3.14.3~~](c) No licensed concern shall be prohibited from taking orders for the performance of any act or acts for which the concern has not been licensed to perform. Such orders shall be consigned to another licensed concern that is authorized to perform such act or acts.

[~~3.15~~](13) Examination.

Every person who performs any act or acts within the scope of the license shall pass an examination in accordance with the provisions of section 4 of these rules.

[~~3.16~~](14) Duplicate License.

A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the SFM. Such statement shall attest to the fact that the license has been lost or destroyed.

[~~3.17~~](15) Employer Responsibility.

Every concern shall be responsible for the acts of its employees insofar as such acts apply to the marketing, sale, distribution, and servicing of any portable fire extinguisher.

[~~3.18~~](16) Minimum Age.

No license shall be issued to any person as licensee who is under eighteen (18) years of age.

[~~3.19~~](17) Restrictive Use.

[~~3.19.1~~](a) No license shall constitute authorization for any licensee, or any of [~~his~~]their employees, to enter upon, or into, any property or building other than by consent of the owner or manager.

[~~3.19.2~~](b) No license shall constitute authorization for any licensee, or any of [~~his~~]their employees, to enforce any provision, or provisions, of this rule, or the International Fire Code.

[~~3.20~~](18) Non-Transferable.

No license issued pursuant to this section shall be transferred from one concern to another.

[~~3.21~~](19) Registration Number.

[~~3.21.1~~](a) Every license shall be identified by a number, delineated as E-(number). Such number may be transferred from one concern to another only when approved by the SFM.

[~~3.22~~](20) Minimum Materials and Equipment Required.

At each business location or vehicle of the applicant where servicing work is performed the following minimum material and equipment requirements shall be maintained:

[~~3.22.1~~](a) Type 4 license:

[~~3.22.1.1~~](i) Nitrogen tank.

[~~3.22.1.2~~](ii) Nitrogen regulator and hose assembly.

[~~3.22.1.3~~](iii) Minimum of twelve (12) recharge adapters.

[~~3.22.1.4~~](iv) Valve cleaning brush.

[~~3.22.1.5~~](v) Scoop.

[~~3.22.1.6~~](vi) Funnel for A:B:C.

[~~3.22.1.7~~](vii) Funnel for B:C.

[~~3.22.1.8~~](viii) A closed receptacle for dry chemical.

[~~3.22.1.9~~](ix) Fifty pound scale.

[~~3.22.1.10~~](x) A scale for cartridges.

[~~3.22.1.11~~](xi) 'O' Ring lubricant.

[~~3.22.1.12~~](xii) Tag hole Punch.

[~~3.22.1.13~~](xiii) Approved seals maximum [~~fourteen (~~]14[~~)~~] pound break strength.

[~~3.22.1.14~~](xiv) A copy of NFPA Standard 10[~~ (1998~~] 2010 Edition[~~)~~], statute, and these rules.

[~~3.22.1.15~~](xv) Minimum parts:

[~~3.22.1.15.1~~](A) A supply of O rings needed for standard service.

[~~3.22.1.15.2~~](B) A supply of valve stems for standard service.

[~~3.22.1.15.3~~](C) A supply of nozzles and hoses for standard extinguishers.

[~~3.22.1.15.4~~](D) Pressure gauges for extinguisher types: 100, 150, 175, 195, 240 lbs.

[~~3.22.1.15.5~~](E) Carry handles and replacement handles for extinguishers.

[~~3.22.1.15.6~~](F) Rivets or steel roll pins for handles and levers.

[~~3.22.1.15.7~~](G) Dry chemical cartridges as required by manufacture specifications, to include 4 lb., 10 lb., 20 lb. and 30 lb.

[~~3.22.1.15.8~~](H) Inspection light for cylinders.

[~~3.22.1.15.9~~](J) A variety of pull pins to secure handle.

[~~3.22.1.15.10~~](K) Carbon Dioxide continuity tester for hoses.

[~~3.22.1.16.11~~](L) Halon closed recovery system.

[~~3.22.2~~](b) Type 3 License:

[~~3.22.2.1~~](i) Approved testing pump with a current calibration certificate for the attached gauges.

[~~3.22.2.2~~](ii) Test cage or suitable safety barrier.

[~~3.22.2.3~~](iii) Approved hydro test labels.

[~~3.22.2.4~~](iv) Hydrostatic test adapters or approved equal.

[~~3.22.2.5~~](v) Heater which produces a heated air or dry air for drying cylinders, or other approved dryer not to exceed 150 degrees Far. (66 degrees C).

[~~3.22.3~~](c) Type 2 License:

Current registration number from the United States Department of Transportation (USDOT), verifying the concern as a qualified cylinder requalification facility under the provisions of the Code of Federal Regulations, 49 CFR, Section 173.34, shall be maintained for all concerns holding a type 1 or 2 license. A copy of the certification letter must be submitted to the SFM. All equipment required to perform the functions allowed as a qualified cylinder requalification facility, shall be maintained in good working order and available for inspection by the SFM.

[~~3.22.4~~](d) Type 1 License:

All of the equipment, provisions, and numbers as required in License types 2, 3, and 4 shall be required for a Type 1 License.

[~~3.23~~](21) Records.

Accurate records shall be maintained for five (5) years [~~back~~]by the licensee of all service work performed. These records shall include the name and address of all servicing locations, and the date and name of the person performing the work. These records shall be made available to the SFM, or authorized deputies, upon request.

R710-1-[4]5. Certificates of Registration.

[~~4.1~~](1) Required Certificates of Registration.

No person shall service any portable fire extinguisher without a certificate of registration issued by the SFM pursuant to these rules expressly authorizing such person to perform such acts. The provisions of this section apply to the state, universities, a county, city, district, public authority, and any other political subdivision or public corporation in this State.

[~~4.2~~](2) Exemptions.

The provisions of this section shall not apply to any person servicing any portable fire extinguisher owned by such person, when the portable fire extinguisher is not required by any statute, rule, or ordinance, to be provided or installed.

[~~4.3~~](3) Application.

Application for a certificate of registration to service portable fire extinguishers shall be made in writing to the SFM on forms provided by him. The application shall be signed by the applicant.

[~~4.4~~](4) Examination.

The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests, when deemed necessary, to determine the applicant's knowledge of servicing portable fire extinguishers. Picture identification of the applicant for a certificate of registration may be requested by the SFM or his deputies. Examinations will be given according to the following schedule and requirements:

[~~4.4.1~~](a) On the first and third Tuesdays of each month. When holidays conflict with these days, the day immediately following will be used. An appointment shall be made to take an examination at least 24 hours in advance of the examination date.

[~~4.4.2~~](b) Examinations may be given at various field locations, or on line, as deemed necessary by the SFM. Appointments for field examinations are required.

[~~4.4.3~~](c) All certification examinations given are open book examinations. The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination. Any other materials to include cellular telephones, I-Pads, tablets, etc. are prohibited in the examination room unless specifically approved by the SFM.

[~~4.4.4~~](d) Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

[~~4.4.5~~](e) Each certification examination taken has a time limit of two hours to completion. To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%). Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

[~~4.4.6~~](f) If there are different levels of proficiency in the subject matter, the lower proficiency level will be fully completed before the next higher proficiency will be administered.

[~~4.5~~](5) Issuance.

Following receipt of the properly completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

[~~4.6~~](6) Original and Renewal Valid Date.

Original certificates of registration shall be valid for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals shall be valid for one year from issuance. The holder of an invalid certificate of registration shall not perform any work on portable fire extinguishers.

[~~4.7~~](7) Renewal Date.

Application for renewal shall be made as directed by the SFM. The failure to renew will cause the certificate of registration to become invalid. [~~Beginning March 4, 2003 through February 29, 2004, renewal dates for certification of registrations will be based upon the license inspection date and valid for a one-year period of time.~~]Renewal dates for certification of registration will be based upon the concern license renewal date and be valid for one year. Renewal certificate of registrations shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal fee.

[~~4.8~~](8) Re-examination.

Every holder of a valid certificate of registration shall take a re-examination every five years, from date of original certificate, to comply with the provisions of Section 4.4 of these rules as follows:

[~~4.8.1~~](a) The re-examination to comply with the provisions of Section 4.4 of these rules shall consist of one[~~-25 question~~] open book examination,[~~-to be mailed to the certificate holder~~] to be administered by the SFM at least 60 days before the renewal date.

[~~4.8.2~~](b) The[~~-25 question~~] re-examination will consist of questions that focus on changes in the last five years to NFPA 10, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or the SFM.

[~~4.8.3~~](c) The certificate holder is responsible to complete the re-examination[~~-and return it to the SFM~~] in sufficient time to renew.

[~~4.8.4~~](d) The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

[~~4.9~~](9) Refusal to Renew.

The SFM may refuse to renew any certificate of registration in the same manner and for any reason that he is authorized, pursuant to Section 10, to deny an original certificate of registration. The applicant shall, upon such refusal, have the same rights as are granted by Section 10 of these rules to an applicant for an original certificate of registration which has been denied by the SFM.

[~~4.10~~](10) Inspection.

The holder of a certificate of registration shall submit such certificate for inspection, upon request of the SFM, any of his properly authorized deputies, or any local fire official.

[~~4.11~~](11) Type.

[~~4.11.1~~](a) Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified.

[~~4.11.2~~](b) No person holding a valid certificate of registration shall be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

[~~4.12~~](12) Change of Address.

Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within thirty (30) days of such change. Such change shall also be made on the reverse side of the certificate of registration by the holder.

[~~4.13~~](13) Duplicate.

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the SFM from the certified person. Such statement shall attest to the certificate having been lost or destroyed.

[~~4.14~~](14) Minimum Age.

No certificate of registration shall be issued to any person who is under 18 years of age.

[~~4.15~~](15) Restrictive Use.

[~~4.15.1~~](a) A certificate of registration may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

[~~4.15.2~~](b) Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

[~~4.16~~](16) Right to Contest.

[~~4.16.1~~](a) Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

[~~4.16.2~~](b) Every contention as to the validity of individual questions of an examination shall be made in writing within 48 hours after taking said examination. Contentions shall state the reason for the objection.

[~~4.16.3~~](c) The decision as to the action to be taken on the submitted contention shall be by the SFM, and such decision shall be final.

[~~4.16.4~~](d) The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

[~~4.17~~](17) Non-Transferable.

Certificates of Registration shall not be transferable. Individual certificates of registration shall be carried by the person to whom issued.

[~~4.18~~](18) New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid certificate of registration for a period not to exceed forty-five (45) days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination.

[~~4.19~~](19) Certificate Identification.

Every certificate shall be identified by a number, delineated as EE-(number). Such number shall not be transferred from one person to another.

R710-1-[~~5~~]6. Seal of Registration.

[~~5.1~~](1) Description.

The official seal of registration of the SFM shall consist of the following:

[~~5.1.1~~](a) The image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal".

[~~5.1.1.1~~](i) The top portion of the outer ring shall have the wording "Utah State".

[~~5.1.1.2~~](ii) The Bottom portion of the outer ring shall have the wording "Fire Marshal".

[~~5.1.2~~](b) Appending above the top portion and in a centered position, shall be a box provided for displaying the type of license.

[~~5.1.3~~](c) Appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the license number assigned to the concern.

[~~5.2~~](2) Use of Seal.

No person or concern shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

[~~5.3~~](3) Permissive Use.

Licensed concerns shall use the Seal of Registration on every service tag conforming to section 10.

[~~5.4~~](4) Cease Use Order.

No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the concern's license.

[~~5.5~~](5) Legibility.

Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-1-[6]7. Service Tags.

[~~6.1~~](1) Size and Color.

Tags shall be not more than five and one-half inches[~~(5-1/2")~~] in height, nor less than four and one-half inches[~~(4-1/2")~~] in height, and not more than three inches[~~(3")~~] in width, nor less than two and one-half inches[~~(2-1/2")~~] in width.

[~~6.2~~](2) Attaching Tag.

One service tag shall be attached to each portable fire extinguisher in such a position as to be conveniently inspected.

[~~6.3~~](3) Tag Information.

[~~6.3.1~~](a) Service tags shall bear the following information:

[~~6.3.1.1~~](i) Provisions of Section 6.7.

[~~6.3.1.2~~](ii) Type of license.

[~~6.3.1.3~~](iii) Approved Seal of Registration of the SFM.

[~~6.3.1.4~~](iv) License registration "E" number.

[~~6.3.1.5~~](v) Certificate of registration "EE" number of individual who performed or supervised the service or services performed.

[~~6.3.1.6~~](vi) Signature of individual whose certificate of registration number appears on the tag.

[~~6.3.1.7~~](vii) Concern's name.

[~~6.3.1.8~~](viii) Concern's address.

[~~6.3.1.9~~](ix) Type of service performed.

[~~6.3.1.10~~](x) Type of extinguisher serviced.

[~~6.3.1.11~~](xi) Date service is performed.

[~~6.3.2~~](b) The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

[~~6.4~~](4) Legibility.

[~~6.4.1~~](a) The certificate of registration number required in Section [~~6~~]7.3(5), and the signature required in Section [~~6~~]7.3(6), shall be printed or written distinctly.

[~~6.4.2~~](b) All information pertaining to date, type of servicing, and type of extinguisher serviced shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

[~~6.5~~](5) Format.

Subject to the use requirements of Section 6.4, the following format shall be used for all service tags:

EXAMPLE OF SERVICE TAG

Exception: Service tags may be printed or otherwise established for any number of years not in excess of five [~~(5)~~]years.

ILLUSTRATION ON FILE IN STATE FIRE MARSHAL'S OFFICE

[~~6.6~~](6) New Tag.

A new service tag shall be attached to the extinguisher each time a service is performed.

[~~6.7~~](7) Tag Wording.

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

[~~6.8~~](8) Removal.

No person or persons shall remove a service tag, hydrostatic test tag or label, 6 year maintenance service tag or label, or verification of service collar, except when further service is performed. At that time the expired tag, label or collar shall be removed and a new tag, label or collar shall replace the expired one. No person or persons shall deface, modify, or alter any service tag, hydrostatic test tag or label, 6 year maintenance service tag or label, or verification of service collar that is required to be attached to any portable fire extinguisher.

[~~6.9~~](9) Restrictive Use.

[~~6.9.1~~](a) Portable fire extinguishers which do not conform with the minimum rules, shall be permanently removed from service, and shall not be tagged.

[~~6.9.2~~](b) Any extinguisher which fails a hydrostatic test shall be condemned, and so stamped or etched into the cylinder or shell.

[~~6.9.3~~](c) Extinguishers, other than one which has failed a hydrostatic test, may be provided with a tag stating the extinguisher is "Condemned" or "Rejected". Such tags shall be red in color, and shall be not less, in size, than that of an approved service tag.

[~~6.9.4~~](d) Service tags shall only be placed on portable fire extinguishers and wheeled units as allowed in these rules.

R710-1-[~~7~~]8. Portable Fire Extinguisher Rated Classification Labels.

[~~7.1~~](1) Use of Label.

Any label bearing the rated classification and listing shall not be placed upon any extinguisher unless specifically authorized by the manufacturer. Any extinguisher, other than carbon dioxide, without this manufacturer's label shall not be serviced.

[~~7.2~~](2) Labels Prohibited.

Company labels or advertisement stickers other than those required herein shall not be affixed to fire extinguishers.

R710-1-[8]9. Amendments and Additions.

[~~8.1~~](1) Restricted Service.

Any extinguisher requiring a hydrostatic test as required, shall not be serviced until such extinguisher has been subjected to, and passed the required hydrostatic test.

[~~8.2~~](2) Service.

At the time of installation, and at each annual inspection, all servicing shall be done in accordance with the manufacturer's instructions, adopted statutes, and these rules. Extinguishers shall be placed in an operable condition, free from defects which may cause malfunctions. Nozzles and hoses shall be free of obstructions or substances which may cause an obstruction.

[~~8.3~~](3) Seals or Tamper Indicator.

Seals or tamper indicators shall be constructed of approved plastic or non-ferrous wire which can be easily broken, and so arranged that removal cannot be accomplished without breakage. Such seals or tamper indicators shall be used to retain the locking pin in a locked position. Seals or tamper indicators shall be removed annually to ensure that the pull pin is free.

[~~8.4~~](4) New Extinguishers

A new extinguisher that has the date of manufacture printed on the label by the manufacturer, or date of manufacture stamped on the extinguisher by the manufacturer, does not require a service tag attached to the extinguisher until one year after the date of manufacture.

[~~8.5~~](5) Those existing sodium or potassium bicarbonate dry-chemical portable fire extinguishers, having a minimum rating of 40-B, and specifically placed for protection of commercial food heat-processing equipment, may remain in the kitchen to be used for other applications, except the protection of commercial food heat-processing equipment using vegetable or animal oils or fat cooking media.

R710-1-[9]10. Adjudicative Proceedings.

[~~9.1~~](1) All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

[~~9.2~~](2) The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing portable fire extinguishers commits any of the following violations:

[~~9.2.1~~](a) The person or applicant is not the real person in interest.

[~~9.2.2~~](b) The person or applicant provides material misrepresentation or false statement on the application.

[~~9.2.3~~](c) The person or applicant refuses to allow inspection by the SFM, or his duly authorized deputies.

[~~9.2.4~~](d) The person or applicant for a license or certificate of registration does not have the proper facilities and equipment to conduct the operations for which application is made.

[~~9.2.5~~](e) The person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application is made, as evidenced by failure to pass the examination and/or practical tests pursuant to Section 4.15 of these rules.

[~~9.2.6~~](f) The person or applicant fails to place a verification of service collar when required on the valve assembly of any fire extinguisher when the following occurs:

[~~9.2.6.1~~](i) re-charge;

[~~9.2.6.2~~](ii) required maintenance.

[~~9.2.7~~](g) The person or applicant refuses to take the examination required by Section [~~4~~]5.3 and Section [~~3~~]4.14 of these rules.

[~~9.2.8~~](h) The person or applicant has been convicted of one or more federal, state or local laws.

[~~9.2.9~~](j) The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

[~~9.2.10~~](k) Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration.

[~~9.2.11~~](l) There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing portable fire extinguishers.

[~~9.3~~](3) A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

[~~9.4~~](4) All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

[~~9.5~~](5) The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

[~~9.6~~](6) The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

[~~9.7~~](7) Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

[~~9.8~~](8) After a period of three years from the date of revocation, the Board shall review the submitted written application

of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

[~~9.9~~](9) Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63G-4-402.

R710-1-[~~10~~]11. Fees.

[~~10.1 Fee Schedule.~~

~~10.1.1 Licenses and Certificates of Registration (new and renewals):~~

~~10.1.1.1 License (any type) . . . . . $300.00~~
~~10.1.1.2 Branch office license . . . . . 150.00~~
~~10.1.1.3 Certificate of registration . . . . . 40.00~~
~~10.1.1.4 Duplicate . . . . . 40.00~~
~~10.1.1.5 License Transfer . . . . . 50.00~~
~~10.1.1.6 Application for exemption . . . . . 150.00~~
~~10.1.2 Examinations:~~
~~10.1.2.1 Initial examination. . . . . 30.00~~
~~10.1.2.2 Re-examination . . . . . 30.00~~
~~10.1.2.3 Five year examination. . . . . 30.00~~]

[~~10.2~~](1) Payment of Fees.

The required fee shall accompany the application for license or certificate of registration. License or certificate of registration fees will be refunded if the application is denied.

[~~10.3~~](2) Late Renewal Fees.

[~~10.3.1~~](a) Any license or certificate of registration not renewed before[~~January 1st~~] the license or certificate of registration expiration date will be subject to an additional fee equal to 10% of the[~~required inspection~~] fee.

[~~10.3.2~~](b) When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time. Examinations will be re-taken with initial examination fees.

KEY: fire prevention, extinguishers
Date of Enactment or Last Substantive Amendment: [~~May 23, 2008~~]2016
Notice of Continuation: May 15, 2012
Authorizing, and Implemented or Interpreted Law: 53-7-204

Public Safety, Fire Marshal
R710-3
Assisted Living Facilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40484
FILED: 06/09/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to comply with the adoption of the 2015 International Fire Code by the Utah State Legislature and make formatting changes.

SUMMARY OF THE RULE OR CHANGE: The rule has been renumbered to meet the requirements of the Rulewriting Manual. The purpose of the rule has been restated to meet the requirements of the Rulewriting Manual. The authority of the rule has been restated to meet the requirements of the Rulewriting Manual. Redundant definitions have been removed. Code references that are included in the IFC have been removed. Windows are now referred to as openings. Requirements of maintenance and fire sprinkler requirements found elsewhere in the code have been removed. Requirements for egress doors that are found in the code have been removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will not be an anticipated cost or savings to the state budget because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.
♦ LOCAL GOVERNMENTS: There will not be an anticipated cost or savings to the local budget because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.
♦ SMALL BUSINESSES: There will not be an anticipated cost or savings to the small business budget because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will not be an anticipated cost or savings to persons budget because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will not be an anticipated cost or savings because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the amendment, and found that this rule change will not have a fiscal impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
FIRE MARSHAL
ROOM 302
5272 S COLLEGE DR
MURRAY, UT 84123-2611
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Ted Black by phone at 801-284-6352, or by Internet E-mail at tblack@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

AUTHORIZED BY: Coy Porter, State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-3. Assisted Living Facilities.
R710-3-1. [~~Introduction.~~]Purpose.

[~~Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts for the purpose of establishing~~]The purpose of this rule is to establish the minimum standards for prevention of fire and for the protection of life and property against fire and panic in assisted living facilities.[~~The requirements listed in this rule text are in addition to the requirements listed in R710-9, Rules Pursuant to the Utah Fire Prevention Law.~~

~~There is adopted as part of these rules the following codes which are incorporated by reference:~~

~~1.1 International Fire Code (IFC), 2009 edition, excluding appendices, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.~~

~~1. 2 Copies of the above code are on file in the Office of Administrative Rules and the State Fire Marshal.~~]

R710-3-2. Authority.

This rule is authorized by Section 53- 7- 204.

R710-3-[~~2~~]3. Definitions.

[~~2.1~~](1) Ambulatory means a person who is capable of achieving mobility sufficient to exit without the physical assistance of another person. An equivalency to Ambulatory may be approved under the conditions stated in [~~Sections 3.2.9, 3.3.8 or 3.4.9~~]Subsections R710-3-4(2)(h), R710-3-4(3)(f), or R710-3-4(4)(j).

[~~2.2~~](2) Assisted Living Facility means:

[~~2.2.1~~](a) a Type 1 Assisted Living Facility, which is a residential facility subject to licensure by the Utah Department of Health, that provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person[-];

[~~2.2.2~~](b) a Type 2 Assisted Living Facility, which is a residential facility subject to licensure by the Utah Department of Health, that provides an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent[-]; or

[~~2.2.3~~](c) a Residential Treatment/Support Assisted Living Facility, which creates a group living environment for four or more residents contracted by the Division of Services to People with Disabilities and subject to licensure by the Utah Department of Human Services, and provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person.

[~~2.2.4~~](d) Assisted Living Facilities shall be classified by size as follows:

[~~2.2.4.1~~](i) Type 1, 2, and Residential Treatment/Support Limited Capacity Facility means an assisted living facility accommodating five or less residents, excluding staff.

[~~2.2.4.2~~](ii) Type 1, 2, and Residential Treatment/Support Small Facility means an assisted living facility accommodating at least six and not more than 16 residents, excluding staff.

[~~2.2.4.3~~](iii) Type 1, 2, and Residential Treatment/Support Large Facility means an assisted living facility accommodating more than sixteen residents, excluding staff.

[~~2.3~~](3) Authority Having Jurisdiction (AHJ) means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

[~~2.4~~](4) Board means Utah Fire Prevention Board.

[~~2.5~~](5) Compromised Ambulatory Capacity means physical or mental incapacitations that inhibit a persons ability to exit a facility unassisted.

[~~2.6~~](6) IBC means International Building Code.

[~~2.7~~](7) ICC means International Code Council, Inc.

[~~2.8~~](8) IFC means International Fire Code.

[~~2.9~~](9) Licensing Authority means the Utah Department of Health or the Utah Department of Human Services.

[~~2.10~~](10) Semi-independent means a person who is:

[~~2.10.1~~](a) physically disabled but able to direct his or her own care; or

[~~2.10.2~~](b) cognitively impaired or physically disabled but able to evacuate from the facility with the physical assistance of one person.

[~~2.11~~](11) SFM means State Fire Marshal.

[~~2.12 UAC means Utah Administrative Code.~~]

R710-3-[~~3~~]4. Amendments and Additions.

[~~3.1~~](1) General Requirements

[~~3.1.1~~](a) All facilities shall be inspected annually and obtain a certificate of fire clearance signed by the AHJ.

[~~3.1.2~~](b) All facility administrators shall develop emergency plans and preparedness as required in IFC, Chapter 4.

[~~3.1.3~~](c) [~~IFC, Chapter 9, Section 907.3 Where required in existing buildings and structures, is deleted and rewritten as follows: ~~]An approved automatic fire detection system shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances, and equipment

shall be approved. The automatic fire detectors shall be smoke detectors, except an approved alternative type of detector shall be installed in spaces such as boiler rooms where, during normal operation, products of combustion are present in sufficient quantity to actuate a smoke detector.

[~~3.1.4. IFC, Chapter 46, Section 4603.6.2 and 4603.6.7 are deleted and rewritten as follows: An approved automatic fire detection system shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances, and equipment shall be approved. The automatic fire detectors shall be smoke detectors, except an approved alternative type of detector shall be installed in spaces such as boiler rooms where, during normal operation, products of combustion are present in sufficient quantity to actuate a smoke detector.~~]

[~~3.2~~](2) Type I Assisted Living Facilities

[~~3.2.1~~](a) Type I Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-3, and maintained in accordance with the IBC and IFC.

[~~3.2.2~~](b) Type I Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

[~~3.2.3~~](c) Residents in Type I Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

[~~3.2.4~~](d) In Type I Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have emergency escape or rescue [~~windows~~]opening as required in IFC, Chapter 10, Section [~~1029~~]1030.

[~~3.2.5~~](e) In Type I Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed and maintained by location as required in IFC, Chapter 9, Section 907.2.11.2.

[~~3.2.6~~](f) Type I Small Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

[~~3.2.7~~](g) Type I Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

[~~3.2.8 Type I Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.~~

~~3.2.8.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.~~]

[~~3.2.9~~](h) In a Type I Assisted Living Facility, non-ambulatory persons are permitted after receiving approval for a variance from the Utah Department of Health as allowed in Utah Administrative Code, R432-2-18.

[~~3.3~~](3) Type II Assisted Living Facilities

[~~3.3.1~~](a) Type II Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

[~~3.3.2~~](b) Type II Limited Capacity Assisted Living Facilities shall have an approved automatic fire extinguishing system installed in compliance with the IBC and IFC, or provide a staff to a resident ratio of one to one on a 24 hour basis.

[~~3.3.3~~](c) Type II Small Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

[~~3.3.3.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.~~]

[~~3.3.4~~](d) Type II Small Assisted Living Facilities shall have a minimum corridor width of six feet.

[~~3.3.4.1~~](i) Type II Small Assisted Living Facilities licensed before November 16, 2004, shall have a minimum corridor width of six feet or a path of egress that is acceptable to the AHJ.

[~~3.3.5~~](e) Type II Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-2, and maintained in accordance with the IBC and IFC.

[~~3.3.5.1~~](i) An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

[~~3.3.6 In Type II Assisted Living Facilities, where the clinical needs of the patients require specialized security, approved access controlled egress doors may be installed when all of the following are met:~~

~~3.3.6.1 The controlled egress doors shall unlock upon activation of the automatic fire sprinkler system or the automatic fire detection system.~~

~~3.3.6.2 The facility staff can unlock the controlled egress doors by either sensor or keypad.~~

~~3.3.6.3 The controlled egress doors shall unlock upon loss of power.~~

~~3.3.6.4 The secure area or unit with controlled egress doors shall be located at the level of exit discharge in Type V construction.~~

~~3.3.7 In Type II Assisted Living Facilities, where the clinical needs of the patients require approved, listed delayed egress locks, they shall be installed on doors as allowed in IBC, Section 1008.1.9.7. Section 1008.1.9.7(3) is deleted. The secure area or unit with delayed egress locks shall be located at the level of exit discharge in Type V construction.~~]

[~~3.3.8~~](f) In a Type II Assisted Living Facility, non-ambulatory persons are permitted after receiving approval for a variance from the Utah Department of Health as allowed in Utah Administrative Code, R432-2-18.

[~~3.4~~](4) Residential Treatment/Support Assisted Living Facilities

[~~3.4.1~~](a) Residential Treatment/Support Limited Capacity Assisted Living Facility shall be constructed in accordance with IBC, Residential Group R-3, and maintained in accordance with the IBC and IFC.

[~~3.4.2~~](b) Residential Treatment/Support Limited Capacity Assisted Living Facility required exits shall not be secured

with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

[~~3.4.3~~](c) Residents in Residential Treatment/Support Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

[~~3.4.4~~](d) In Residential Treatment/Support Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have emergency escape or rescue windows as required in IFC, Chapter 10, Section 1029.

[~~3.4.5~~](e) In Residential Treatment/Support Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed and maintained by location as required in IFC, Chapter 9, Section 907.2.11.2.

[~~3.4.6~~](f) Residential Treatment/Support Small Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

[~~3.4.6.1~~](i) IFC, Chapter 9, Section 903.2.8 is amended to add the following: Exception: Residential Treatment/Support Assisted Living Facility classified as Group R-4, not more than 4500 gross square feet, and not containing more than 16 ambulatory, non-restrained residents, is allowed provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring.

[~~3.4.7~~](g) Residential Treatment/Support Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

[~~3.4.8~~](h) Residential Treatment/Support Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

[~~3.4.8.1~~](i) An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

[~~3.4.9~~](j) In a Residential Treatment/Support Assisted Living Facility, residents with compromised ambulatory capacity that can demonstrate the ability to exit the facility unassisted in two minutes or less, and meet the requirements listed in Utah Administrative Code, R501-2-11, Emergency Plans, may receive approval from the Office of Licensing, Utah Department of Human Services, to remain in the facility as a resident.

[~~3.4.9.1~~](i) In those facilities where the Office of Licensing, Department of Human Services, determines that the resident cannot exit the facility unassisted in two minutes or less, the facility management shall complete one of the following:

[~~3.4.9.1.1~~](A) [~~M~~]make accommodations, changes or enact an emergency plan that guarantees the exiting of the resident in two minutes or less[~~-~~];

[~~3.4.9.1.2~~](B) [~~P~~]provide a staff to resident ratio of one to one on a 24 hour basis[~~-~~];

[~~3.4.9.1.3~~](C) [~~I~~]install an approved automatic fire sprinkler system[~~-~~]; or

[~~3.4.9.1.4~~](D) [~~M~~]move the resident from the facility.

R710-3-[4]5. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-3-[5]6. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or the codes adopted, be declared invalid, it is the intent of the Board that it would have passed all other portions of this action, independent of the elimination of any portions as may be declared invalid.

R710-3-[6]7. Conflicts.

In the event where separate requirements pertain to the same situation in the adopted codes, the more restrictive requirement shall govern, as determined by the AHJ.

R710-3-[7]8. Adjudicative Proceedings.

[~~7.1~~](1) All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

[~~7.2~~](2) A person may request a hearing on a decision made by the AHJ by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

[~~7.3~~](3) All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

[~~7.4~~](4) The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

[~~7.5~~](5) The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

[~~7.6~~](6) Reconsideration of the Boards decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

[~~7.7~~](7) Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

KEY: assisted living facilities
Date of Enactment or Last Substantive Amendment: [~~October 18, 2010~~]2016
Notice of Continuation: May 23, 2012
Authorizing, and Implemented or Interpreted Law: 53-7-204

Public Safety, Fire Marshal
R710-4
Buildings Under the Jurisdiction of the State Fire Prevention Board

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 40485
FILED: 06/09/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to comply with the adoption of the 2015 International Fire Code by the Utah State Legislature and make formatting changes.

SUMMARY OF THE RULE OR CHANGE: The rule has been renumbered to meet the requirements of the Rulewriting Manual. The purpose of the rule has been restated to meet the requirements of the Rulewriting Manual. The authority of the rule has been restated to meet the requirements of the Rulewriting Manual. Redundant definitions have been removed. Clarifies the adoption, of the applicable chapters of NFPA 101. Removes information concerning fire drills that is covered in the code. Removes information covered in chapters 7 and 9 of the IFC. Corrects NFPA 13 section numbers. Removes information that is covered in chapter 9 of the IFC.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will not be an anticipated cost or savings to the state budget because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.
♦ LOCAL GOVERNMENTS: There will not be an anticipated cost or savings to the local budget because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.
♦ SMALL BUSINESSES: There will not be an anticipated cost or savings to the small business budget because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will not be an anticipated cost or savings to the persons budget because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will not be an anticipated cost or savings because the changes made to the rule are specific to incorporation of the 2015 International Fire Code specifications and other formatting changes and do not involve changes to fees or equipment requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed the amendment and found that this rule change will not have a fiscal impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
FIRE MARSHAL
ROOM 302
5272 S COLLEGE DR
MURRAY, UT 84123-2611
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Ted Black by phone at 801-284-6352, or by Internet E-mail at tblack@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

AUTHORIZED BY: Coy Porter, State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.
R710-4-1. [~~Adoption of Fire Codes.~~]Purpose.

[~~Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts~~]The Purpose of this rule is to establish minimum rules for the prevention of fire and for the protection of life and property against fire and panic in any publicly owned building, including all public and private schools, colleges, and university buildings, and in any building or structure used or intended for use, as an asylum, hospital, mental hospital, sanitarium, home for the aged, assisted living facility, children's home or day care center, or any similar institutional type occupancy of any capacity; and in any place of assemblage where [~~fifty (~~]50[~~)~~] or more persons may gather together in a building, structure, tent, or room, for the purpose of amusement, entertainment, instruction, or education.[~~—The requirements listed in this rule text are in addition to the requirements listed in R710-9, Rules Pursuant to the Utah Fire Prevention Law.~~]

R710-4-2. Authority.

This rule is authorized by Section 53-7- 204.

R710-4-3. Adoption.

[~~There is further adopted as part of these rules the following codes which are incorporated by reference:~~

~~1.1 National Fire Protection Association (NFPA), Standard 101, Life Safety Code (LSC), 2009 edition, except as amended by provisions listed in R710-4-3, et seq. ~~]The following

chapters from NFPA, Standard 101 are the only chapters adopted: Chapter 18 - New Health Care Occupancies; Chapter 19 - Existing Health Care Occupancies; Chapter 20 - New Ambulatory Health Care Occupancies; Chapter 21 - Existing Ambulatory Health Care Occupancies; Chapter 22 - New Detention and Correctional Occupancies; Chapter 23 - Existing Detention and Correctional Occupancies; and other sections referenced within and pertaining to these chapters only. Wherever there is a section, figure or table in NFPA 101 that references "NFPA 5000 - Building Construction and Safety Code", that reference shall be replaced with the similar reference in the state adopted[~~"International Building Code"~~] building code.

[~~1.2 International Fire Code (IFC), 2009 edition, excluding appendices, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.~~

~~1.3 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal.~~]

R710-4-[~~2~~]4. Definitions.

[~~2.1~~](1) "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

[~~2.2~~](2) "Board" means Utah Fire Prevention Board.

[~~2.3~~](3) "Bureau of Fire Prevention or Fire Prevention Bureau" means the AHJ.

[~~2.4~~](4) "Fire Chief or Chief of the Department" means the AHJ.

[~~2.5~~](5) "Fire Department" means the AHJ.

[~~2.6~~](6) "Fire Marshal" means the AHJ.

[~~2.7~~](7) "Fire Officer" means the State Fire Marshal, the state fire marshal's deputies, the fire chief or fire marshal of any county, city, or town fire department, the fire officer of any fire district or special service district organized for fire protection purposes is the AHJ.

[~~2.8~~](8) "IBC" means International Building Code.

[~~2.9~~](9) "ICC" means International Code Council, Inc.

[~~2.10~~](10) "IFC" means International Fire Code.

[~~2.11~~](11) "IFGC" means International Fuel Gas Code.

[~~2.12~~](12) "IMC" means International Mechanical Code.

[~~2.13~~](13) "IPC" means International Plumbing Code.

[~~2.14~~](14) "LSC" means Life Safety Code.

[~~2.15~~](15) "NEC" means National Electric Code.

[~~2.16~~](16) "NFPA" means National Fire Protection Association.

[~~2.17~~](17) "SFM" means State Fire Marshal.

[~~2.18 "UCA" means Utah State Code Annotated 1953 as amended.~~]

R710-4-[~~3~~]5. Amendments and Additions.

[~~3.1 Fire Drills~~

~~3.1.1 IFC, Chapter 4, Section 405.2, Table 405.2, is amended to add the following footnotes:~~

~~e. Secondary schools in Group E occupancies shall have an emergency evacuation drill for fire conducted at least every two months, to a total of four emergency evacuation drills during the nine-month school year. The first emergency evacuation drill for fire shall be conducted within 10 school days of the beginning of classes, and the third emergency evacuation drill for fire shall be conducted within 10 school days after the beginning of the next calendar year. The second and fourth emergency evacuation drills may be substituted by a security or safety drill to include shelter in place, earthquake drill or lock down for violence.~~

~~f. In Group E occupancies, excluding secondary schools, the monthly required emergency evacuation drill may be substituted by a security or safety drill to include shelter in place, earthquake drill or lock down for violence. The routine emergency evacuation drill for fire must by conducted at least every other evacuation drill.~~

~~g. A-3 occupancies in academic buildings of institutions of higher learning are required to have one emergency evacuation drill per year, provided the following conditions are met:~~

~~1. The building has a fire alarm system in accordance with Section 907.2.~~

~~2. The rooms classified as assembly, shall have fire safety floor plans as required in Section 404.3.2(4) posted.~~

~~3. The building is not classified a high-rise building.~~

~~4. The building does not contain hazardous materials over the allowable quantities by code.~~

~~3.2 Door Closures~~

~~3.2.1 IFC, Chapter 7, Section 703.2. Add the following: Exception: In Group E Occupancies, where the corridor serves an occupant load greater than 30 and the building does not have an automatic fire sprinkler system installed, the door closures may be of the friction hold-open type on classrooms doors with a rating of 20 minutes or less only.~~

~~3.3 Fire Protection Systems~~

~~3.3.1 IFC, Chapter 9, Section 903.2.8 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.~~]

[~~3.3.2~~](1) Water Supply Analysis

[~~3.3.2.1~~](a) For proposed construction in both sprinklered and [~~unsprinklered~~]nonsprinklered occupancies, the [~~owner or~~] architect or engineer shall provide [~~an engineer's~~]a water supply analysis [~~evaluating the available water supply~~]as required in NFPA, Standard 13, Chapter 22.

[~~3.3.2.2~~](b) The [~~owner or~~]architect or engineer shall provide the water supply analysis during the preliminary design phase of the proposed construction. The AHJ shall not approve the plan review without the water supply analysis being provided or previously submitted water supply information within the last 12 months that is approved by the AHJ.

[~~3.3.2.3~~](c) The water analysis shall be representative of the supply that may be available at the time of a fire as required in NFPA, Standard 13, [~~Annex A. 15.2.1~~]23.2.1.1 and A23.2.1.1.

[~~3.3.3~~](2) Fire Alarm Systems

[~~3.3.3.1~~](a) Required Installations

[~~3.3.3.1.1~~](i) All state-owned buildings, college and university buildings, other than institutional, with an occupant load of 300 or more, all schools with an occupant load of 50 or more, shall have an approved fire alarm system with the following features:

[~~3.3.3.1.1.1~~](A) Automatic detection devices that detect smoke shall be installed throughout all corridors and spaces open to the corridor at the maximum prescribed spacing of thirty feet on

center and no more than fifteen feet from the walls or smoke detectors shall be installed as required in NFPA, Standard 72, Section [~~5.3~~]17.7.

[~~3.3.3.1.1.2~~](B) Where structures are not protected or partially protected with an automatic fire sprinkler system, approved automatic detectors shall be installed in accordance with the complete coverage requirements of NFPA, Standard 72.

[~~3.3.3.1.1.3~~](C) Manual fire alarm boxes shall be provided as required. In public and private elementary and secondary schools, manual fire alarm boxes shall be provided in the boiler room, kitchen, and main administrative office of each building, and any other areas as determined by the AHJ.

[~~3.3.3.2~~](b) Main Panel

[~~3.3.3.2.1~~](i) An approved key plan drawing and operating instructions shall be posted at the main fire alarm panel which displays the location of all alarm zones and if applicable, device addresses.

[~~3.3.3.2.2~~](ii) The main panel shall be located in a normally attended area such as the main office or lobby. Location of the Main Panel other than as stated above, shall require the review and authorization of the SFM. Where location as required above is not possible, an electronically supervised remote annunciator from the main panel shall be located in a supervised area of the building. The remote annunciator shall visually indicate system power status, alarms for each zone, and give both a visual and audible indication of trouble conditions in the system. All indicators on both the main panel and remote annunciator shall be adequately labeled.

[~~3.3.3.3~~](c) System Wiring[~~,~~] Class[~~ and Style~~]

[~~3.3.3.3.1~~](i) Fire alarm system wiring shall be designated and installed as follows:

[~~3.3.3.3.1.1~~](A) The initiating device circuits shall be designated and installed Class A as defined in NFPA, Standard 72.

[~~3.3.3.3.1.2~~](B) The notification appliance circuits shall be designated and installed Class A as defined in NFPA, Standard 72.

[~~3.3.3.3.1.3~~](C) Signaling line circuits shall be designated and installed [~~Style 6 or 7~~]Class A loop as defined in NFPA, Standard 72.

[~~3.3.3.4~~](d) Fan Shut Down

[~~3.3.3.4.1~~](A) Fan shut down shall be as required in IMC, Chapter 6, Section 606.

[~~3.3.3.4.2~~](B) Duct detectors required by the IMC, shall be interconnected, and compatible with the fire alarm system.

~~[3.3.3.5 Nuisance Alarms~~

~~3.3.3.5.1 IFC, Chapter 9, Section 907.9.5 is amended to add the following sentences: Increases in nuisance alarms shall require the fire alarm system to be tested for sensitivity. Fire alarm systems that continue after sensitivity testing with unwarranted nuisance alarms shall be replaced as directed by the AHJ.~~]

[~~3.4~~](3) Time Out and Seclusion Rooms

[~~3.4.1~~](a) Time Out and Seclusion Rooms are allowed in occupancies protected by an automatic fire alarm system.

[~~3.4.2~~](b) A vision panel shall be provided in the room door for observation purposes.

[~~3.4.3~~](c) Time Out and Seclusion Room doors may not be fitted with a lock unless it is a self-releasing latch that releases automatically if not physically held in the locked position by an individual on the outside of the door.

[~~3.4.4~~](d) Time Out and Seclusion Rooms shall be located where a responsible adult can maintain visual monitoring of the person and room.

R710-4-[4]6. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-4-[5]7. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared, for any reason, to be invalid, it is the intent of the Board that it would have passed all other portions of this Board action, independent of the elimination here from of any such portion as may be declared invalid.

R710-4-[6]8. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ, or his authorized representative.

R710-4-[~~7~~]9. Adjudicative Proceedings.

[~~7.1~~](1) All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

[~~7.2~~](2) A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

[~~7.3~~](3) All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

[~~7.4~~](4) The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

[~~7.5~~](5) The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

[~~7.6~~](6) Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

[~~7.7~~](7) Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

KEY: fire prevention, public buildings
Date of Enactment or Last Substantive Amendment: [~~May 22, 2012~~]2016
Notice of Continuation: May 24, 2012
Authorizing, and Implemented or Interpreted Law: 53-7-204

Public Service Commission, Administration
R746-200-7
Termination of Service

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40472
FILED: 06/08/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify the requirements that must be met before a public utility may terminate service to a customer.

SUMMARY OF THE RULE OR CHANGE: The amendment states that a public utility must provide the Division of Public Utilities (Division) with an electronic copy of a customer termination notice at or before the time the public utility issues the termination notice to the customer. The amendment further requires the Division to provide the customer with specific information and contact information relative to the proposed service termination.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-4-1 and Section 54-4-7 and Section 54-7-25 and Section 54-7-9

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: To date, the Division has been using both certified and regular mail to contact a customer who risks losing utility service for non-payment. The rule allows the Division to use regular mail only. As a result, the Division will save approximately $6 per contact.
♦ LOCAL GOVERNMENTS: Because this rule clarifies the process for terminating a customer's utility service, there are no anticipated costs or savings to local government.
♦ SMALL BUSINESSES: The rule allows an affected business to communicate with the Division electronically. Therefore, it is anticipated that an affected business will be able to comply without incurring costs.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The rule allows an affected person to communicate with the Division electronically. Therefore, it is anticipated that an affected person will be able to comply without incurring costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule allows an affected person to communicate with the Division electronically. Therefore, it is anticipated that an affected person will be able to comply without incurring costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule results from a year-long test period in which the Division worked with customers and public utilities to develop an efficient and cost-effective method for communicating with customers who risk losing utility service for non-payment. Allowing the public utilities to communicate with the Division electronically will minimize compliance costs for businesses.

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 Office 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
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

AUTHORIZED BY: Jennie Jonsson, Administrative Law Judge

R746. Public Service Commission, Administration.
R746-200. Residential Utility Service Rules for Electric, Gas, Water, and Sewer Utilities.
R746-200-7. Termination of Service.

A. Definitions. As used in this section (R746-200-7):

1. "Licensed medical provider" means a medical provider:

a. who holds a current and active medical license under Utah Code Title 58; and

b. whose scope of practice authorizes the medical provider to diagnose the condition described by the medical provider under this rule.

2. "Life-supporting equipment" means life-supporting medical equipment:

a. with normal operation that requires continuation of public utility service; and

b. used by an individual who would require immediate assistance from medical personnel to sustain life if the life supporting equipment ceased normal operations.

3. "Life-supporting equipment statement" means a written statement:

a. signed by the licensed medical provider for the account holder or resident who utilizes life-supporting equipment; and

b. including:

i. a description of the medical need of the account holder or resident who utilizes life-supporting equipment;

ii. the account holder's name and address;

iii. name of resident using life-supporting equipment and relationship to account holder, if different than account holder;

iv. the health infirmity and expected duration;

v. identification of the life-support equipment that requires the utility's service;

vi. a determination by the licensed medical provider that immediate assistance from medical personnel to sustain life would be required if the life supporting equipment ceased normal operations; and

vii. the name and contact information of the licensed medical provider for the resident who utilizes life-supporting equipment,

4. "Serious illness or infirmity statement" means a written statement:

a. signed by a licensed medical provider;

b. written on:

i. a form obtained from the public utility; or

ii. the licensed medical provider's letterhead stationary;

c. legibly describing:

i. a diagnosed medical condition under which termination of utility service will injure the person's health or aggravate the person's illness; and

ii. the anticipated duration of the diagnosed medical condition.

B. Delinquent Account --

1. A residential utility service bill that has remained unpaid beyond the statement due date is a delinquent account.

2. When an account is a delinquent account, a public utility, before termination of service, shall issue a written late notice to inform the account holder of the delinquent status. A late notice or reminder notice must include the following information:

a. A statement that the account is a delinquent account and should be paid promptly;

b. A statement that the account holder should communicate with the public utility's collection department, by calling the company, if the account holder has a question concerning the account;

c. A statement of the delinquent account balance, using a term such as "delinquent account balance."

3. When the account holder responds to a late notice or reminder notice the public utility's collections personnel shall investigate disputed issues and shall try to resolve the issues by negotiation. During this investigation and negotiation no other action shall be taken to disconnect the residential utility service if the account holder pays the undisputed portion of the account subject to the utility's right to terminate utility service pursuant to R746-200-7(F), Termination of Service Without Notice.

4. A copy of the "Statement of Customer Rights and Responsibilities" referred to in Subsection R746-200-1(G) of these rules shall be issued to the account holder with the first notice of impending service disconnection.

C. Reasons for Termination of Service --

1. Residential utility service may be terminated for the following reasons:

a. Nonpayment of a delinquent account;

b. Nonpayment of a deposit when required;

c. Failure to comply with the terms of a deferred payment agreement or Commission order;

d. Unauthorized use of, or diversion of, residential utility service or tampering with wires, pipes, meters, or other equipment;

e. Subterfuge or deliberately furnishing false information; or

f. Failure to provide access to meter during the regular route visit to the premises following proper notification and opportunity to make arrangements in accordance with R746-200-4(B), Estimated Billing, Subsection (2).

2. The following shall be insufficient grounds for termination of service:

a. A delinquent account, accrued before a divorce or separate maintenance action in the courts, in the name of a former spouse, cannot be the basis for termination of the current account holder's service;

b. Cohabitation of a current account holder with a delinquent account holder whose utility service was previously terminated for non-payment, unless the current and delinquent account holders also cohabited while the delinquent account holder received the utility's service, whether the service was received at the current account holder's present address or another address;

c. When the delinquent account balance is less than $25.00, unless no payment has been made for two months;

d. Failure to pay an amount in bona fide dispute before the Commission;

e. Payment delinquency for third party services billed by the regulated utility company, unless prior approval is obtained from the Commission.

D. Restrictions upon Termination of Service -- Medical Reasons --

1. Serious Illness or Infirmity. If a public utility receives a serious illness or infirmity statement:

a. the public utility shall continue or restore residential utility service for the period set forth in the statement or one month, whichever is less;

b. the public utility is not required to provide the continuation or restoration described in R746-200-7.D.1.a. more than two times to an individual customer or residence during the same calendar year; and

c. the account holder is liable for the cost of residential utility service during the period of continued or restored service.

2. Life-Supporting Equipment.

a. After receiving a life-supporting equipment statement, the public utility:

i. shall mark and identify applicable meter boxes where the life-supporting equipment is used;

ii. may not terminate service to the residence unless the public utility has complied with this Subsection (R746-200-7.D.2); and

iii. may request annual verification from the licensed medical provider of the life-supporting equipment.

b. A public utility may terminate service on an account where the public utility has received a life-supporting equipment statement and the related medical provider verification, if:

i. the account is in default;

ii. the public utility has:

AA. followed R746-200-5 on offering a deferred payment agreement; or

BB. if R746-200-5 does not apply, allowed the customer one month to enter into a deferred payment agreement that may last up to 12 months;

iii. after complying with R746-200-7.D.2.b.ii, the public utility has provided to the customer a written notice of proposed termination of service that:

AA. clearly and plainly informs the customer of the customer's rights under R746-200-7.D.2 and of the customer's right to an expedited complaint hearing under R746-200-8.E.; and

BB. complies with R746-200-7.G.1;

iv. the public utility has provided to the customer a 48 hour notice of termination of utility service that complies with R746-200-7.G.2; and

v. the public utility has complied with all other applicable provisions of R746-200-7.

c. The account holder is liable for the cost of residential utility service during the period of service, including throughout all proceedings related to life-supporting equipment.

E. Payments from the Home Energy Assistance Target (HEAT) Program -- Suppliers may not discontinue utility service to a low-income household for at least 30 days after receiving utility payment or verification of utility payment from the HEAT Program on behalf of the low-income household.

F. Termination of Service Without Notice -- Any provision contained in these rules notwithstanding, a public utility may terminate residential utility service without notice when, in its judgment, a clear emergency or serious health or safety hazard exists for so long as the conditions exist, or when there is unauthorized use or diversion of residential utility service or tampering with wires, pipes, meters, or other equipment owned by the utility. The utility shall immediately try to notify the customer of the termination of service and the reasons therefor.

G. Notice of Proposed Termination of Service --

1. At least 10 calendar days before a proposed termination of residential utility service, or at least 30 calendar days before a proposed termination if the residential utility service customer has provided to the public utility a life-supporting equipment statement, a public utility shall give written notice of disconnection for nonpayment to the account holder. The 10-day or 30-day time period is computed from the date the notice is postmarked. The notice shall be given by first class mail or delivery to the premises and shall contain a summary of the following information:

a. a Statement of Customer Rights and Responsibilities under existing state law and Commission rules;

b. the Commission-approved policy on termination of service for that utility;

c. the availability of deferred payment agreements and sources of possible financial assistance including but not limited to state and federal energy assistance programs;

d. informal and formal procedures to dispute bills and to appeal adverse decisions, including the Commission's address, website, and telephone number;

e. specific steps, printed in a conspicuous fashion, that may be taken by the consumer to avoid termination of service;

f. the date on which payment arrangements must be made to avoid termination of service; and

g. subject to the provision of Subsection R746-200-1(E), Customer Information, a conspicuous statement, in Spanish, that the notice is a termination of service notice and that the utility has a Spanish edition of its customer information pamphlet and whether it has personnel available during regular business hours to communicate with Spanish-speaking customers.

2. At least 48 hours before termination of service is scheduled, the utility shall make good faith efforts to notify the account holder or an adult member of the household, by mail, by telephone or by a personal visit to the residence. If personal notification has not been made either directly by the utility or by the customer in response to a mailed notice, the utility shall leave a written termination of service notice at the residence. Personal notification, such as a visit to the residence or telephone conversation with the customer, is required only during the winter months, October 1 through March 31. Other months of the year, the mailed 48-hour notice can be the final notice before the termination of service.

If termination of service is not accomplished within 15 business days following the 48-hour notice, the utility company will follow the same procedures for another 48-hour notice.

3.a.i. A public utility that issues a 30-day notice of termination of service to a customer who has provided the public utility with a life-supporting equipment statement shall provide to the Division an electronic copy of the notice at or before the time the public utility issues the notice to the customer.

ii. Within two business days after receiving the electronic notice described in this Subsection (G)(3)(a)(i), the Division shall provide a letter to the account holder by regular mail:

AA. informing the account holder that the public utility has issued a notice of termination;

BB. noting the method and deadline by which the account holder may request an expedited hearing from the Commission; and

CC. directing the account holder to contact the public utility for additional information.

b. A public utility shall send duplicate copies of 10-day or 30-day termination of service notices to a third party designated by the account holder and shall make reasonable efforts to personally contact the third party designated by the account holder before termination of service occurs, if the third party resides within its service area. A utility shall inform its account holders of the third-party notification procedure at the time of application for service and at least once each year.

4. In rental property situations where the tenant is not the account holder and that fact is known to the utility, the utility shall post a notice of proposed termination of service on the premises in a conspicuous place and shall make reasonable efforts to give actual notice to the occupants by personal visits or other appropriate means at least five calendar days before the proposed termination of service. The posted notice shall contain the information listed in Subsection R746-200-7(G)(1). This notice provision applies to residential premises when the account holder has requested termination of service or the account holder has a delinquent bill. If nonpayment is the basis for the termination of service, the utility shall also advise the tenants that they may continue to receive utility service for an additional 30 days by paying the charges due for the 30-day period just past.

H. Termination of Service -- Upon expiration of the notice of proposed termination of service, the public utility may terminate residential utility service. Except for service diversion or for safety considerations, utility service shall not be disconnected between Thursday at 4:00 p.m. and Monday at 9:00 a.m. or on legal holidays recognized by Utah, or other times the utility's business offices are not open for business. Service may be disconnected only between the hours of 9:00 a.m. and 4:00 p.m.

I. Customer-Requested Termination of Service --

1. A customer shall advise a public utility at least three days in advance of the day on which the customer wants service

disconnected to the customer's residence. The public utility shall disconnect the service within four working days of the requested disconnect date. The customer shall not be liable for the services rendered to or at the address or location after the four days, unless access to the meter has been delayed by the customer.

2. A customer who is not an occupant at the residence for which termination of service is requested shall advise the public utility at least 10 days in advance of the day on which the customer wants service disconnected and sign an affidavit that the customer is not requesting termination of service as a means of evicting the customer's tenants. Alternatively, the customer may sign an affidavit that there are no occupants at the residence for which termination of service is requested and thereupon the disconnection may occur within four days of the requested disconnection date.

J. Restrictions Upon Termination of Service Practices -- A public utility shall not use termination of service practices other than those set forth in these rules. A utility shall have the right to use or pursue legal methods to ensure collections of obligations due it.

K. Policy Statement Regarding Elderly and Disabled -- The state recognizes that the elderly and disabled may be seriously affected by termination of utility service. In addition, the risk of inappropriate termination of service may be greater for the elderly and disabled due to communication barriers that may exist by reason of age or infirmity. Therefore, this section is specifically intended to prevent inappropriate terminations of service which may be hazardous to these individuals. In particular, Subsection R746-200-7(G), requiring adequate notice of impending terminations of service, including notification to third parties upon the request of the account holder, Subsection R746-200-7(D)(1), restricting termination of service when the termination of service will cause or aggravate a serious illness or infirmity of a person living in the residence, and Subsection R746-200-7(D)(2), restricting terminations of service to residences when life-supporting equipment is in use, are intended to meet the special needs of elderly and disabled persons, as well as those of the public in general.

L. Load Limiter as a Substitute for Termination of Service, Electric Utilities --

1. An electric utility may, but only with the customer's consent, install a load limiter as an alternative to terminating electric service for non-payment of a delinquent account or for failure to comply with the terms of a deferred payment agreement or Commission order. Conditions precedent to the termination of electric service must be met before the installation of a load limiter.

2. Disputes about the level of load limitation are subject to the informal review procedure of Subsection R746-200-8.

3. Electric utilities shall submit load limiter policies and procedures to the Commission for their review before the implementation and use of those policies.

KEY: public utilities, rules, utility service shutoff
Date of Enactment or Last Substantive Amendment: [~~May 27, 2015~~]2016
Notice of Continuation: November 28, 2012
Authorizing, and Implemented or Interpreted Law: 54-4-1; 54-4-7; 54-7-9; 54-7-25

Transportation, Operations, Traffic and Safety
R920-50
Ropeway Operation Safety

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40494
FILED: 06/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This is a corrective amendment. It makes technical changes to correct minor, nonsubstantive errors. This amendment also eliminates one subsection that is not needed.

SUMMARY OF THE RULE OR CHANGE: The Department recently performed a thorough review of Rule R920-50. The review uncovered minor, nonsubstantive errors and a subsection in the rule that is not necessary. This amendment makes these corrections.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-11-210 and Title 72, Chapter 11

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Department does not anticipate that this amendment will have any affect on the state's budget because it does not change anything that might affect a revenue stream.
♦ LOCAL GOVERNMENTS: The Department does not anticipate that this amendment will have any affect on the budgets of local governments because it does not change anything that might affect a revenue stream.
♦ SMALL BUSINESSES: The Department does not anticipate that this amendment will have any affect on the budgets of small business because it does not change anything that might affect a revenue stream.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not anticipate that this amendment will have any affect on the budgets persons other than small businesses, businesses, or local government entities because it does not change anything that might affect a revenue stream.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment makes technical changes and corrections, and eliminates a requirement for a written certification of manufacture for passenger ropeways. Since this amendment eliminates a requirement that formerly burdened affected persons, it is possible they could experience reduced costs due to the amendment. The Department does not anticipate the amendment will lead to any increased compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This is a corrective amendment. It makes technical changes to correct minor, nonsubstantive errors in Rule R920-50 and will have no fiscal impact on business.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

AUTHORIZED BY: Carlos Braceras, Executive Director

R920. Transportation, Operations, Traffic and Safety.
R920-50. Ropeway Operation Safety.
R920-50-3. Definitions.

In addition to terms defined at Section 72-11-102, the following terms are defined:

(1) "Aerial lift specialist" as used in American National Standards Institute (ANSI) B77.1 sections 3.3.4.1 and 4.3.4.1, means a Ropeway Inspector.

(2) "Aerial tramway specialist" as used in ANSI B77.1 section 2.3.4.1 means a Ropeway Inspector.

(3) "Air Space" means the area bounded by vertical planes commencing at a point thirty-five (35) feet from the intersection of the vertical planes of the ropes[~~ or cables~~] and ground surface.

(4) "Annual general inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to verify preservation of original design integrity and to determine that components and systems of the passenger ropeway are in proper working order and in accordance with this rule.

(5) "Audible warning devices" means an audible warning device that signals an impending start of the aerial lift.

(6) "Conveyor specialist" as used in ANSI B77.1 section 7.3.4.1 means a Ropeway Inspector.

(7) "Dynamic Testing Logs" means a record of the data collected during the dynamic test.

(8) "Experienced personnel" means an individual who has acquired knowledge and skills through study, training, or experience in ropeway maintenance, operation, or testing.

(9) "Existing ropeway" means any passenger ropeway that shall have been operated for passengers in excess of one calendar year.

(10) "Incident inspection" means an inspection of a passenger ropeway incident made by an approved Ropeway Inspector or a qualified engineer at the request of the Committee.

(11) "Land surveyor" means an individual licensed under Section 58-22-102 as a professional land surveyor.

(12) "Modification" means any change as defined in ANSI B77.1 Section 1.2.4.4, ANSI B77.2 Section 1.2.4.4, and the replacement of a ropeway component by one that alters the certified design or construction provided by the passenger ropeway manufacturer or designer.

(13) "New ropeway" means any passenger ropeway that is registered for the first time for passenger operation during its first calendar year of operation.

(14) "Operational inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to determine compliance with the operation and maintenance requirements of the Governing Standard and with this rule.

(15) "Operating personnel" means persons employed by the operator for the purpose of supervising the operation, or engaged in servicing, checking, inspecting or maintaining the machinery or structures of a ropeway and when specifically on duty for such purpose on that ropeway.

(16) "Passenger" means any person riding a ropeway, other than "operating personnel."

(17) "Passenger Ropeway Incident" means:

(a) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in bodily injury to any person on, or inside the load or unload zone of, a passenger ropeway;

(b) Any deropement regardless of whether or not the passenger ropeway is evacuated;

(c) Any evacuation of the passenger ropeway other than by prime mover or auxiliary power unit, regardless of cause;

(d) Any fire involving a passenger ropeway component or adjacent structure;

(e) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in a loss of control of the passenger ropeway as defined in ANSI B77.1 Section X.2.3.1 or ANSI B77.2 Section 2.2.1.7.2;

(f) Any wire rope damage which exceeds the requirement in ANSI B77.1 Section A.4.1.3 or ANSI B77.2 Section 3.4.1.1; and

(g) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component or its primary connection that has the apparent potential for causing bodily injury to any person, including but not limited to, the following:

(i) Terminal Structure;
(ii) Bullwheel;
(iii) Brake System;
(iv) Tower Structure;
(v) Sheave, Axle, or Sheave Assembly;
(vi) Carrier; and
(vii) Grip.

(18) "Portable Ropeway" means a ropeway expressly designed to be portable, operated without a permanent foundation, and that has a design range of maximum grade.

(19) "Pre-operational inspection" means an inspection made by a Ropeway Inspector prior to the operation of any new or modified passenger ropeway requiring an Acceptance Inspection and Test.

(20) "Qualified engineer" means any engineer who is licensed to practice engineering in the state of Utah and who has been approved by the Committee.

(21) "Qualified personnel" as used in ANSI B77.1 sections 2.1.1.11, 3.1.1.11, 4.1.1.11, 5.1.1.11, 6.1.1.11, and 7.1.1.11 means a qualified engineer.

(22) "Relocated ropeway" means any passenger ropeway moved to a new location.

(23) "Responsible charge" means effective control and direction of the installation or modification of a passenger ropeway.

(24) "Ropeway Inspector" means an engineer licensed to practice engineering in the state of Utah, independent of the ropeway owner, and approved by the Committee to inspect passenger ropeways.

(25) "Structure" means any edifice, including residential and public buildings, or any other structure or equipment that could reasonably be expected to interfere with the safe operation of a ropeway. Ropeway components required for the operation of the ropeway are not structures.

(26) "Surface lift specialist" as used in ANSI B77.1 section 5.3.4.1, means a Ropeway Inspector.

(27) "Tow specialist" as used in ANSI B77.1 section 6.3.4.1 means a Ropeway Inspector.

R920-50-6. Certifications Required for Ropeways.

(1) The Certifications listed below must include the following information:

(a) Name, address and telephone number of operator of the ropeway, name of ropeway supervisor, operator's designation of the ropeway;

(b) Designated certifying statement;

(c) A certification of design,[~~manufacture~~] and construction must also include the name, address, seal, and Utah license of the qualified engineer making the certification; and

(d) A certification of "as-built" profile must also include the name, address, seal, and Utah license of the qualified engineer or land surveyor making the certification.

(2) A Certification of Compliance for Passenger Ropeway shall be made on the Application for Certificate of Registration for the Ropeway.

(a) The certification shall be signed and dated by the ropeway owner or area operator.

(b) The certification shall include the following statement: "I certify that the reports, requests and certificates attached hereto were provided and signed by the persons required by law to provide them, and the deficiencies noted in the inspection report have been corrected with the exception of those listed in the Request for Exception from Standards for Passenger Ropeway."

(3) A Certification of Ropeway Design for New or Modified Passenger Ropeways, must be submitted.

(a) The Qualified Engineer in responsible charge of the design shall certify to the Committee that the design, plans and specifications conform to the Utah Passenger Ropeway Safety Act, the Governing Standard and the Utah Ropeway Operation Safety Rule.

(b) The Certification must be submitted prior to the performance of the Acceptance Inspection and Test.

(c) The certification must state the following:

"I hereby certify that the design for this ropeway or ropeway modification is in complete compliance with the Utah Passenger Ropeway Safety Act, Governing Standard and the Utah Ropeway Operation Safety Rule."

(d) This statement shall be placed on the top of the drawing packet and signed and sealed by the qualified engineer. Each additional sheet of this drawing packet shall be sealed by the qualified engineer.

(e) The drawings and specifications shall include the quality assurance methods used for the evaluation of the re-used components and shall be submitted for review a minimum of 30 days prior to installation. Any component on the Utah Passenger Ropeway Safety Committee Lift Data Form must be addressed.

[~~(4) A Certification of Manufacture for a passenger ropeway must be submitted by a Qualified Engineer of the manufacturing concern or concerns directly responsible for the supply of equipment for this ropeway.~~

~~(a) The Certification must be submitted prior to the performance of the Acceptance Inspection and Test.~~

~~(b) The certification must state the following:~~

~~"I hereby certify that the newly manufactured parts used in this ropeway, or ropeway modification, conform with the Utah Passenger Ropeway Safety Act, Governing Standard, the Utah Ropeway Operation Safety Rule and the drawings and specifications issued for this ropeway or ropeway modification by the Qualified Design Engineer.~~"]

([~~5~~]4) A Certification of Construction for Passenger Ropeways must be submitted by a Qualified Engineer directly responsible for the construction for the ropeway.

(a) The Certification must be submitted prior to the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the construction and installation has been completed in accordance with the drawings and specifications issued for this ropeway or ropeway modification by the Qualified Design Engineer."

([~~6~~]5) A Certification of "as-built" profile for the Passenger Ropeway must be submitted by a Qualified Engineer or Land Surveyor licensed in the State of Utah.

(a) The "as-built" profile must be submitted prior to the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the attached "as-built" profile of the herein-identified ropeway is as represented on the attached profile drawing and that the completed ropeway conforms to the profile as identified in the plans and specifications prepared by the Qualified Design Engineer."

R920-50-9. Governing Standards.

(1) The governing standards in Utah include "ANSI B-77.1, 2011" and "ANSI B77.2, [~~2004~~]2014" as modified by rule of the Committee. Use of these standards is authorized by Section 72-11-201.

(2) The Utah Passenger Ropeway Safety Committee reserves the right to modify, add, or delete provisions included in the Governing Standard.

(3) Existing installations need not comply with the new or revised requirements of the Governing Standard and this rule except as set forth in R920-50-11 "Applicable Provisions."

R920-50-12. Exceptions to Standards.

(1) In the event that the ropeway does not conform with the governing standards and the Ropeway Operation Safety Rule, the Committee may issue a certificate of registration with an exception. Two types of exceptions may be granted after a Request for Exception from Standards is submitted.

(a) Annual Exception - This type of exception must be reviewed annually by the Committee. This type of exception is subject to cancellation at any time pursuant to a determination by the Committee that a change is necessary.

(b) Limited Exception - This type of exception is granted only for a fixed time period to be determined by the Committee.

(2) The nature of the exception shall be stated in the Request for Exception from Standards.

(3) The Committee shall, as expeditiously as possible, and within thirty (30) days of receipt of a Request for Exception from Standards, notify the operator in writing of its action on the Request.

(4) The Request for Exception from Standards shall include the following information:

(a) Reasons for requesting an exception;

(b) Identification of the manner in which the ropeway does not conform to the governing standards or this rule; and

(c) Procedures, with estimated time and cost, which would be required to bring the ropeway into conformance.

(5) Except as required in R920-50-12(7), the Committee shall issue a Certification of Registration with an exception if the operator satisfies the requirements stated in R920-50-12(4) and also supplies the following for new or existing ropeways:

(a) New Ropeways.

(i) A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in the Governing Standard and this rule.

(ii) Any known items that require a Request for Exception from Standards for Passenger Ropeways must be submitted to the Committee before work begins.

(b) Existing Ropeways.

(i) A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that it's devices or methods provide features that are comparable in performance and safety to the requirements of the Governing Standard and this rule.

(ii) A statement by the operator certifying that the ropeway feature for which the exception is requested has been operated safely and without any passenger ropeway incident, as defined in R920-50-3([~~15~~]17) item (a) or (g), for at least 2 years prior to the date of the Request for Exception from Standards.

(6) In exceptional circumstances, the Committee may issue a certificate of registration with an exception even if the operator does not satisfy the requirements defined in the Governing Standard or this rule if the Committee determines that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety.

(7) Where doubt exists as to the safety of a ropeway, the Committee may require an inspection to ascertain that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those of the governing standards and this rule.

(8) The issuance of a certificate of registration with an annual exception shall not bind the Committee to issue such a certificate for the ropeway involved in subsequent years, nor to issue such a certificate for another ropeway of same or similar design.

R920-50-15. Modification of a Ropeway.

(1) The Committee, or its appointed representative shall determine the certifications that will be required.

(2) Depending on the nature and extent of the modification the Committee, or its appointed representative may require an Acceptance Inspection and Test.

(3) The following certifications may be required: design; [~~manufacture;~~] construction, and As-Built profile.

(4) The certifications must be submitted by a qualified engineer and attached to the cover of the modification documents. The modification documents shall include the drawings, descriptions, or specifications pertaining to the affected systems and their connections with existing systems.

(5) A revised lift data form shall be submitted.

(6) The ropeway shall not resume operating until authorized by the Committee, or its appointed representative.

R920-50-16. Inspections and Testing.

(1) Inspections shall verify that the intent of the design and operational requirements imposed by the Governing Standard and this rule are met. The Committee may order other inspections in accordance with Section 72-11-211. Ropeway inspectors may inspect ropeways at any time during the operation of the ropeway (spot check). All reports, logs, etc. shall be made available to them upon request.

(2) Acceptance Inspection and Test.

(a) The Committee, or its appointed representative, will schedule acceptance inspection and test as the procedures are received.

(3) Annual General Inspection.

All existing ropeway shall have an annual general inspection.

(a) A ropeway inspector shall make the inspection.

(b) The inspection shall occur prior to approval of any registration application.

(c) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(d) The report shall include the name and address of the inspector and the date of the inspection.

(e) The area operator shall notify the Committee, or its appointed representative of the annual general inspection. The area operator should give 7 days notice of the inspection.

(f) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

(4) Incident Inspection.

Incident inspections shall occur as required in R920-50-14.

(5) Operational Inspection.

An Operational inspections may be made periodically during each season of use.

(a) A ropeway inspector shall make the inspection.

(b) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(c) The report shall include the name and address of the inspector and the date of the inspection.

(d) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

(6) Pre-operational Inspection.

A pre-operational inspection is required for new and modified lifts.

(a) A ropeway inspector shall make the inspection.

(b) The inspection shall occur prior to approval of any registration application.

(c) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(d) The report shall include the name and address of the inspector and the date of the inspection.

(e) If the inspection does not take place at the acceptance inspection and testing the area operator shall notify the Committee, or its appointed representative of the inspection. The area operator should give 7[-]-days notice of the inspection.

(f) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

KEY: transportation safety, tramways, ropeways, tramway permits
Date of Enactment or Last Substantive Amendment: [~~June 7, 2012~~]2016
Notice of Continuation: April 16, 2012
Authorizing, and Implemented or Interpreted Law: 72-11-201 through 72-11-216

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 August 1, 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 Office 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 Office of Administrative Rules.

From the end of the 30-day waiting period through October 29, 2016, an agency may notify the Office 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 Office 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

Public Service Commission, Administration
R746-360-6
Eligibility for Fund Distributions

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 40299
FILED: 06/08/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Upon consideration of comments filed with the Public Service Commission of Utah (Commission) and provided at the 05/31/2016 public hearing, the Commission has determined to modify the amendments proposed to Section R746-360-6 in Filing No. 40299 published in the May 1, 2016, Bulletin.

SUMMARY OF THE RULE OR CHANGE: The affordable base rate for a business line is established at $26. The rule is clarified to state that it is permissible to impute income in calculating the Utah Universal Service Fund subsidy of a telecommunications provider that does not wish to charge one or both of the Commission's affordable base rates. (EDITOR'S NOTE: The original proposed amendment upon which this change in proposed rule (CPR) was based was published in the May 1, 2016, issue of the Utah State Bulletin, on page 121. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 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 adjust their rates, the subsidy for which they qualify might change, resulting in a change to the balance of the fund. Any adjustment to the fund cannot be estimated at this time as the Commission will be required to conduct a formal adjudication before changing a company's subsidy.
♦ 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 change as they adjust their rates to comply with the Commission's affordable base rates. Consequently, the monthly subsidies currently being disbursed might have to be adjusted. 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 adjustment. If the Division recommends a change, 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. Until each affected company's subsidy is adjusted through a formal adjudication, the total amount of required funding cannot be determined. Until the total amount of required funding is determined, the subsidy cannot be adjusted. Therefore, it is not possible at this time to estimate any cost or savings to Utah's telecommunications customers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To comply, affected telecommunication utilities must update the rates that they have on file with the Commission. As long as those rates align with the Commission's affordable base rates, the costs associated with the filing will be minimal and are anticipated to be within with each utility's budgeted overhead for regulatory compliance. Such costs will vary depending, for example, on whether a utility opts to involve legal counsel in the process. As those decisions lie with the utilities, the Commission is unable to estimate the compliance costs, either generally or specifically.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule analysis, businesses that provide subsidized telecommunication services might see an adjustment in their monthly subsidies as their monthly revenues change. The Commission will rely on the Division of Public Utilities to recommend any such adjustment, 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 Office 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
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/01/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/08/2016

AUTHORIZED BY: Jennie Jonsson, Administrative Law Judge

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 Floor.

1. Unless a petition brought pursuant to Subsection (B)(2) is granted after adjudication, to be eligible for USF subsidization, a telecommunications corporation shall charge, at a minimum, the following Affordable Base Rate[**s**] for basic telecommunications service:

a. As of July 1, 2016:

i. $18 per residential line; and

ii. $[~~27.50~~]26.00 per business line.

b. As of July 1, 2017:

i. $20 per residential line; and

ii. $[~~29.50~~]26.00 per business line.

2.a. A telecommunications corporation may petition the Commission to deviate from the Affordable Base Rate[**s**] 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~~]shall:

i. demonstrate that the Affordable Base Rate is not reasonable in the particular geographic area served; or

ii. impute income up to the Affordable Base Rate in calculating the telecommunications corporation's state USF subsidization.

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: 2016
Notice of Continuation: November 13, 2013
Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-8b-15(8)

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 Office 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.

Labor Commission, Adjudication
R602-2-4
Attorney Fees

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 40469
FILED: 06/06/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this emergency rule is to remove the section regarding attorney fees.

SUMMARY OF THE RULE OR CHANGE: This rule change strikes the provisions regulating the payment of attorney fees in workers' compensation cases.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-301 et seq. and Section 63G-4-102 et seq.

EMERGENCY RULE REASON AND JUSTIFICATION:
REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
JUSTIFICATION: The Utah Supreme Court issued its decision in Injured Workers Assoc. of Utah v. State of Utah, 2016 UT 21, on May 18, 2016. The Court found Utah Code Section 34A-1- 309, the statutory provision that required the Utah Labor Commission to regulate attorney fees in workers' compensation cases, to be unconstitutional. The Court also found Subsection R602-2-4(C)(3), the administrative rule section that governs and regulates the payment of attorney fees, to be unconstitutional. The section places the Commission in violation of the Court's decision and will likely confuse practitioners, injured workers, employers, and insurance carriers. Moreover, all of Section R602-2-4 should be removed on an emergency basis, not merely Subsection R602-2-4(C)(3). The rule governs the payment of attorney fees and costs. The Commission's sole authority to regulate attorney fees was contained in Utah Code Section 34A-1-309. Inasmuch as the statute has been found to be unconstitutional, the Commission lacks the authority to enforce the remaining provisions of the section. Also, the Commission lacks the authority to regulate or enforce the payment of costs.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be no cost or savings to the state budget because of this rule change. Attorney fees are paid from the injured worker's benefits.
♦ LOCAL GOVERNMENTS: There will be no cost or savings to local government because of this rule change. Attorney fees are paid from the injured worker's benefits.

♦ SMALL BUSINESSES: There will be no cost or savings to small businesses because of this rule change. Attorney fees are paid from the injured worker's benefits.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Commission is unable to anticipate whether there will be a cost for injured workers related to this rule change. Attorney fees are paid from an injured worker's benefits and, though possible, it is unclear whether the Supreme Court's decision will immediately result in attorneys seeking a higher percentage of the injured worker's benefits for attorney fees. Any impact, however, would be related to the Court's decision rather then deletion of this rule as the current rule is in direct conflict with the Court's decision.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Commission is unable to anticipate whether there will be a cost for injured workers related to this rule change. Attorney fees are paid from an injured worker's benefits, and though possible, it is unclear whether the Supreme Court's decision will immediately result in attorneys seeking a higher percentage of the injured worker's benefits for attorney fees. Any impact, however, would be related to the Court's decision rather then deletion of this rule as the current rule is in direct conflict with the Court's decision.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact because of this rule change. Attorney fees are paid from the injured worker's benefits.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LABOR COMMISSION
ADJUDICATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Heather Gunnarson by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at hgunnarson@utah.gov
♦ Jaceson Maughan by phone at 801-530-6036, by FAX at 801-530-6390, or by Internet E-mail at jacesonmaughan@utah.gov

EFFECTIVE: 06/06/2016

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R602. Labor Commission, Adjudication.
R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.
[~~R602-2-4. Attorney Fees.~~

~~A. Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants in workers' compensation or occupational illness claims.~~

~~1. This rule applies to all fees awarded after July 1, 2015.~~

~~2. Fees awarded prior to the effective date of this rule are determined according to the prior version of this rule in effect on the date of the award.~~

~~B. Upon written agreement, when an attorney's services are limited to consultation, document preparation, document review, or review of settlement proposals, the attorney may charge the applicant an hourly fee of not more than $125 for time actually spent in providing such services, up to a maximum of four hours.~~

~~1. Commission approval is not required for attorneys fees charged under this subsection B. It is the applicant's responsibility to pay attorneys fees permitted by this subsection B.~~

~~2. In all other cases involving payment of applicants' attorneys fees which are not covered by this subsection B., the entire amount of such attorneys fees are subject to subsection C. or D. of this rule.~~

~~C. Except for legal services compensated under subsection B. of this rule, all legal services provided to applicants shall be compensated on a contingent fee basis.~~

~~1. For purposes of this subsection C., the following definitions and limitations apply:~~

~~a. The term "benefits" includes only death or disability compensation and interest accrued thereon.~~

~~b. Benefits are "generated" when paid as a result of legal services rendered after Adjudication Form 152 Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the applicant's attorney.~~

~~c. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.~~

~~2. Fees and costs authorized by this subsection shall be deducted from the applicant's benefits and paid directly to the attorney on order of the Commission. A retainer in advance of a Commission approved fee is not allowed.~~

~~3. Attorney fees for benefits generated by the attorney's services shall be computed as follows:~~

~~a. For all legal services rendered through final Commission action, the fee shall be 25% of weekly benefits generated for the first $25,000, plus 20% of the weekly benefits generated in excess of $25,000 but not exceeding $50,000, plus 10% of the weekly benefits generated in excess of $50,000, to a maximum of $18,590.~~

~~b. For legal services rendered in prosecuting or defending an appeal before the Utah Court of Appeals, an attorney's fee shall be awarded amounting to 30% of the benefits in dispute before the Court of Appeals. This amount shall be added to any attorney's fee awarded under subsection C.3.a. for benefits not in dispute before the Court of Appeals. The total amount of fees awarded under subsection C.3.a. and this subsection C.3.b. shall not exceed $26,819;~~

~~c. For legal services rendered in prosecuting or defending an appeal before the Utah Supreme Court, an attorney's fee shall be awarded amounting to 35% of the benefits in dispute before the Supreme Court. This amount shall be added to any attorney's fee awarded under subsection C.3.a. and subsection C.3.b. for benefits not in dispute before the Supreme Court. The total amount of fees awarded under subsection C.3.a, subsection C.3.b. and this subsection C.3.c shall not exceed $32,913.~~

~~D. The following expenses, fees and costs shall be presumed to be reasonable and necessary and therefore reimbursable in a workers' compensation claim:~~
~~1. Medical records and opinion costs;~~
~~2. Deposition transcription costs;~~
~~3. Vocational and Medical Expert Witness fees;~~
~~4. Hearing transcription costs;~~
~~5. Appellate filing fees; and~~
~~6. Appellate briefing expenses.~~
~~F. Other reasonable expenses, fees and costs may be awarded as reimbursable as the Commission may in its discretion decide in a particular workers compensation claim.~~
~~E. In "medical only" cases in which awards of attorneys' fees are authorized by Subsection 34A-1-309(4), the amount of such fees and costs shall be computed according to the provisions of subsection C and D.~~]

KEY: workers' compensation, administrative procedures, hearings, settlements
Date of Enactment or Last Substantive Amendment: June 6, 2016
Notice of Continuation: June 19, 2012
Authorizing, and Implemented or Interpreted Law: 34A-1-301 et seq.; 63G-4-102 et seq.

Labor Commission, Industrial Accidents
R612-200-2
Payment of Benefits, Interest and Attorney Fees

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 40470
FILED: 06/06/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this emergency rule is to remove a section regarding the payment of attorney fees.

SUMMARY OF THE RULE OR CHANGE: This rule change strikes the provisions regulating the payment of attorney fees in workers' compensation cases.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-104 and Section 34A-2-101 et seq. and Section 34A-3-101 et seq.

EMERGENCY RULE REASON AND JUSTIFICATION:
REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
JUSTIFICATION: The Utah Supreme Court issued its decision in Injured Workers Assoc. of Utah v. State of Utah, 2016 UT 21, on May 18, 2016. The Court found Utah Code Section 34A-1- 309, the statutory provision that required the Utah Labor Commission to regulate attorney fees in workers' compensation cases, to be unconstitutional. The Court also found Subsection R602-2-4(C)(3), the administrative rule section that governs and regulates the payment of attorney fees, to be unconstitutional. The Commission's sole authority to regulate attorney fees comes from Section 34A-1- 309. As such, the provisions of the Utah Administrative Code that allow the Commission to regulate attorney fees, including the payment of attorney fees, need to be removed as they conflict with the Court's decision. Subsection R612-200-2(B) specifically references the statue and administrative rule the Court found to be unconstitutional. Subsection R612-200-2(B) requires the issuance of a separate check for attorney fees to an injured worker's attorney in an amount approved or ordered by the Commission. The rule also prohibits two-party checks issued jointly to an attorney and the injured worker. The Commission lacks the authority to require a separate check for an injured worker's attorney and to approve or order the amount of the check. The Commission also lacks the authority to prohibit checks issued jointly to an attorney and the injured worker. Relevant portions of Subsection R612-200-2(A)(3) also place the Commission in violation of the decision in that the rule requires payments to be made directly and solely to injured workers. This rule would likely interfere with agreements between injured workers and their attorneys regarding the payment of attorney fees.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be no cost or savings to the state budget because of this rule change. Attorney fees are paid from the injured worker's benefits.
♦ LOCAL GOVERNMENTS: There will be no cost or savings to local government because of this rule change. Attorney fees are paid from the injured worker's benefits.
♦ SMALL BUSINESSES: There will be no cost or savings to small businesses because of this rule change. Attorney fees are paid from the injured worker's benefits.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Commission is unable to anticipate whether there will be a cost for injured workers related to this rule change. Attorney fees are paid from an injured worker's benefits, and though possible, it is unclear whether the Supreme Court's decision will immediately result in attorneys seeking a higher percentage of the injured worker's benefits for attorney fees. Any impact, however, would be related to the Court's decision rather then deletion of this rule as the current rule is in direct conflict with the Court's decision.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Commission is unable to anticipate whether there will be a cost for injured workers related to this rule change. Attorney fees are paid from an injured worker's benefits, and though possible, it is unclear whether the Supreme Court's decision will immediately result in attorneys seeking a higher percentage of the injured worker's benefits for attorney fees. Any impact, however, would be related to the Court's decision rather then deletion of this rule as the current rule is in direct conflict with the Court's decision.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There should be no fiscal impact of businesses because of this rule change, as attorney fees are paid from the injured worker benefits.

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

LABOR COMMISSION
INDUSTRIAL ACCIDENTS
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jaceson Maughan by phone at 801-530-6036, by FAX at 801-530-6390, or by Internet E-mail at jacesonmaughan@utah.gov

♦ Ron Dressler by phone at 801-530-6841, by FAX at 801-530-6804, or by Internet E-mail at rdressler@utah.gov

EFFECTIVE: 06/06/2016

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R612. Labor Commission, Industrial Accidents.
R612-200. Workers' Compensation Rules - Filing and Paying Claims.
R612-200-2. Payment of Benefits, Interest and Attorney Fees.

A. Timing and payment of benefits. A workers' compensation benefit is due and payable when the claimant has satisfied all legal requirements applicable to that benefit.

1. Payment intervals for compensation. After entitlement to disability compensation or dependent's benefits has been established, such compensation shall be paid in regular intervals of at least once a month, except that TTD and TPD benefits shall be paid twice monthly.

2. Form of payment. A payor may choose to pay benefits by check, debit card or electronic fund transfer, provided that the form of payment allows a claimant to access the full amount of the benefit on the date the payment is due. No fee or charge of any kind may be assessed against the claimant.

3. [~~Payment to be made directly to claimant. Workers' compensation disability benefits and dependents' benefits shall be paid solely and directly to the claimant.~~]Employer coordination of employee benefits. Benefits may be paid "in care of" the employer if the employer coordinates employee benefits.[~~ If payment of such benefits is made by check, the check shall be personally delivered to the claimant or mailed to the claimant's home address.~~

~~B. Deduction and payment of attorney fee. The computation and payment of fees for claimants' attorneys is governed by 34A-1-309 and Section R602-2-4, "Attorney Fees." A separate check should be issued to the worker's attorney in the amount approved or ordered by the Commission, unless otherwise directed by the Commission. Payment of the worker's attorney by issuing a check payable to the worker and his attorney jointly constitutes a violation of this rule.~~]

[~~C~~]B. Interest. As required by Subsection 34A-2-420(3) of the Utah Workers' Compensation Act, any final order of the Commission awarding benefits will include interest on the principal amount of the benefits at the rate of 8% per annum from the date the benefit or any part thereof was due and payable.

[~~D~~]C. Discounting of lump sum payments. Any proposal to pay all or part of a claimant's future workers' compensation benefits in a present lump sum must be submitted to the Adjudication Division for review and approval. A discount rate of eight percent per annum shall be used to determine the present value of such benefits. The following table may be used to determine a benefit's present value by interpolating, when necessary, the weeks to be discounted between the weeks listed on the table.

TABLE

Unaccrued Weeks	X	Weekly Benefit $	X	Cumulative Discount	=	Discount $
1				.001475		
10				.008076		
20				.015343		
30				.022538		
40				.029663		
50				.036719		
60				.043706		
70				.050626		
80				.057478		
90				.064264		
100				.070984		
110				.077639		
120				.084229		
130				.090756		
140				.097221		
150				.103623		
160				.109963		
170				.116243		
180				.122463		
190				.128623		
200				.134724		
210				.140767		
220				.146752		
230				.152680		
240				.158552		
250				.164368		
260				.170129		
270				.175835		
280				.181488		
290				.187087		
300				.192633		
312				.199219		

KEY: workers' compensation, filing deadlines, time, administrative proceedings
Date of Enactment or Last Substantive Amendment: June 6, 2016
Authorizing, and Implemented or Interpreted Law: 34A-2-101 et seq.; 34A-3-101 et seq.; 34A-1-104

Transportation, Operations, Maintenance
R918-5
Construction or Improvement of Highway

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 40473
FILED: 06/08/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R918-5 expired but is required by Utah Code Section 72-6-107. This Notice of 120-day (Emergency) Rule is being filed to avoid violation of state law.

SUMMARY OF THE RULE OR CHANGE: This emergency filing on Rule R918-5 is the same as the current Rule R918-5 that expired. Nothing is changed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-6-107

EMERGENCY RULE REASON AND JUSTIFICATION:
REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
JUSTIFICATION: Utah Code Section 72-6-107 requires the Department to have a rule that does what emergency Rule R918-5 does. Without this emergency rule, the Department will be operating in violation of the statute.

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This emergency rule will not cause a change to the state budget because it is identical to the rule that expired.
♦ LOCAL GOVERNMENTS: This emergency rule will not cause a change to the budget of local governments because it is identical to the rule that expired.
♦ SMALL BUSINESSES: Small businesses will not experience any change in costs attributable to this emergency rule because it is identical to the rule that expired.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities will not experience any change in costs attributable to this emergency rule because it is identical to the rule that expired.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons will not incur any change in costs because this emergency rule is identical to the rule that expired.

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

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

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

EFFECTIVE: 06/08/2016

AUTHORIZED BY: Carlos Braceras, Executive Director

R918. Transportation, Operations, Maintenance.
R918-5. Construction or Improvement of Highway.
R918-5-1. Authority.

This rule is required by Section 72-6-107 and is enacted under the authority of Title 63G, Chapter 3, Utah Administrative Rulemaking Act and Section 72-1-201.

R918-5-2. Purpose and Background.

Section 72-6-107 requires that any construction or improvement project whose estimated cost for labor and materials exceeds the Bid Limit defined in Section 72-6-109 shall be performed under contract awarded to the lowest responsible bidder. Construction or improvement projects with estimated costs for labor and materials lower than that Bid Limit may be performed by force account. That same section also directs the Department to establish a procedure whereby evidence that a region violated that law may be heard, and also directs the Department to establish sanctions for a region found to be in violation. This rule establishes those procedures and sanctions.

R918-5-3. Definitions.

(1) "Bid Limit" is the dollar amount set forth in Section 72-6-109.

(2) "Department" means the Utah Department of Transportation.

(3) "Region" means one of the four regions of the Utah Department of Transportation.

(4) "Project" means the performance of a clearly identifiable group of associated road construction activities or the same type of maintenance process, where the construction or maintenance is performed on any one road, within a half-mile proximity and occurs within the same calendar year.

R918-5-4. Process to Hear Evidence of Violations.

(1) There is established within the Department a "Bid Limit Hearing Board" (the Board), consisting of persons in the following positions:

(a) Director of Operations (Chair);

(b) Engineer for Construction;

(c) Engineer for Maintenance;

(d) Director of Project Development;

(e) UDOT Internal Auditor;

(f) One UDOT Region Director (appointed by the Deputy Director on a case-by-case basis); and

(g) Deputy Engineer for Maintenance (Secretary/Recorder, non-voting).

(2) Any person, corporation, government agency, or UDOT group, having reasonable evidence that a region violated any provision of Section 72-6-107, may request that the Board be convened to hear that evidence, by making a written request/complaint to the Department's Deputy Director.

(3) Upon receiving a complaint of an alleged violation, the Deputy Director shall direct the Board to convene, by notifying the Chair that a complaint has been received.

(4) The Board shall convene no later than 30 days after the Deputy Director receives the complaint.

(5) During the hearing, the complainant shall present objective evidence that the estimated cost of the project for labor and materials exceeded the Bid Limit. The evidence shall include credible cost data to support the allegation. The accused region shall be afforded the opportunity to defend itself against any and all allegations, by presenting credible evidence of its own.

(6) Having heard evidence from both parties, the Board shall privately deliberate on the evidence heard, and return a verdict either supporting the complainant's claim of a violation, or finding the claim unsubstantiated. The verdict shall be based on a simple majority vote. The Board shall then notify the Deputy Director of its verdict and recommendation for sanction.

(7) The Deputy Director, upon receiving the Board's verdict of a violation and recommendation for sanction, shall administer a sanction against the region in violation. The Deputy Director has discretion to administer either the standard sanction outlined in Section R918-5-5, or whatever other corrective action he or she deems appropriate.

R918-5-5. Standard Sanction for Violation.

The standard sanction for a region found in violation of the provisions of Section 72-6-107 by exceeding the Bid Limit for labor and materials, is a penalty to be taken from that region's Operations budget (commonly known as the "Code 1" budget), and distributed equally among the other three regions. The standard amount of the penalty is the larger of:

(1) the total cost of the project for labor and materials, less the Bid Limit in effect at the time the project began, or

(2) $100,000.

KEY: maintenance, construction, improvement projects, bid limits
Date of Enactment or Last Substantive Amendment: June 8, 2016
Authorizing, and Implemented or Interpreted Law: 72-1-201; 72-6-107; 72-6-109

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 Office of Administrative Rules. **Reviews** are effective upon filing.

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

Administrative Services, Facilities Construction and Management
R23-25
Administrative Rules Adjudicative Proceedings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40480
FILED: 06/09/2016

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: Under the authority of Subsection 63A-5-103(1)(e), this rule establishes procedures for adjudicative proceedings in accordance with the Utah Administrative Procedures Act, Section 63G-4-101 et seq., except as provided in Subsections (2) through (4). This rule does not apply to an agency action that is not governed by the Administrative Procedures Act and the laws of the State of Utah, including: 1) Subsection 63G-4-102, Administrative Procedures Act; 2) Title 63G, Chapter 6, Utah Procurement Code; 3) Title 63A, Chapter 5, Part 1, State Building Board; and 4) Title 63A, Chapter 5, Part 2, Division of Facilities Construction and Management. The provisions of this rule do not govern actions or proceedings that a federal statute or regulation requires be conducted solely in accordance with federal procedures. If a federal statute or regulation requires a modification to these procedures, the federal procedures prevail. To the extent that this rule conflicts with a similar rule governing the agency, the conflicting provisions of the other rule shall govern.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The legislative direction for the rule still exists. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov

AUTHORIZED BY: Ned Carnahan, Building Board Chair

EFFECTIVE: 06/09/2016

Administrative Services, Facilities Construction and Management
R23-31
Executive Residence Commission

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40481
FILED: 06/09/2016

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 is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management. This is a new rule to implement S.B. 203 of the 2011 General Session of the Utah Legislature, which amends Section 67-1-8.1.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The legislative direction for the rule still exists. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov

AUTHORIZED BY: Ned Carnahan, Building Board Chair

EFFECTIVE: 06/09/2016

Agriculture and Food, Animal Industry
R58-2
Diseases, Inspections and Quarantines

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40476
FILED: 06/09/2016

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: Rule R58-2 is promulgated under the authority of Sections 4-31-115 and 4-31-118, and Subsections 4-2-2(1)(c)(ii) and 4-2-2(1)(i), which authorizes the department.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any comments supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is essential to provide direction for regulating diseases, inspections, and quarantines by the Animal Health Program under the Animal Industry Division for livestock and poultry. This rule should be continued to maintain the quality and health of livestock and poultry in Utah and prevent the spread of disease.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Barry Pittman by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bpittman@utah.gov
♦ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at codyjames@utah.gov
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 06/09/2016

Agriculture and Food, Animal Industry
R58-4
Use of Animal Drugs and Biologicals in the State of Utah

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40478
FILED: 06/09/2016

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: Rule R58-4 is promulgated under authority of Section 4-5-17 and 9 CFR 101, 102, and 103, January 1, 2006, edition. Section 4-5-17 allows the department to promulgate rules that conform to the regulations adopted under the Federal Food, Drug, and Cosmetic Act regarding the safety of the food supply.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any comments supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is essential to provide direction for regulating animal drugs and biologicals by the Animal Health Program of the Animal Industry Division to protect animals and livestock in Utah. This rule should be continued to maintain the quality and health of animals and livestock in Utah and prevent the spread of iatrogenic or other introduced diseases.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Barry Pittman by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bpittman@utah.gov
♦ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at codyjames@utah.gov
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 06/09/2016

Agriculture and Food, Animal Industry
R58-14
Holding Live Raccoons or Coyotes in Captivity

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40477
FILED: 06/09/2016

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: Rule R58-14 is promulgated under authority of Subsection 4-2-2(1)(i) and Section 4-23-11.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any comments supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is essential to provide direction for regulating the holding of raccoons and coyotes by the Animal Health Program of the Animal Industry Division to protect animals and livestock in Utah. This rule should be continued to maintain the quality and health of animals and livestock in Utah and prevent the unlawful possession of raccoons and coyotes.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Barry Pittman by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at bpittman@utah.gov
♦ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at codyjames@utah.gov
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 06/09/2016

Commerce, Occupational and Professional Licensing
R156-54
Radiologic Technologist, Radiologist Assistant, and Radiology Practical Technician Licensing Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40486
FILED: 06/09/2016

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: Title 58, Chapter 54, provides for the licensure of radiologic technologists, radiologist assistants, and radiology practical technicians. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-54-201(3) provides that the Radiologic Technologist Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 54, with respect to radiologic technologists, radiologist assistants, and radiology practical technicians.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in November 2011, no written comments have been received with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 54, with respect to radiologic technologists, radiologist assistants, and radiology practical technicians. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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 Office of Administrative Rules.

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

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 06/09/2016

Crime Victim Reparations, Administration
R270-1
Award and Reparation Standards

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40495
FILED: 06/15/2016

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: This rule is authorized under Section 63M-7-506, which directs the Crime Victim Reparations and Assistance Board to adopt rules to implement and administer Section 63M-7-501 et seq., pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which includes the award and reparation standards.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The legislative direction for the rule still exists. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CRIME VICTIM REPARATIONS
ADMINISTRATION
ROOM 200
350 E 500 S
SALT LAKE CITY, UT 84111-3347
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Gary Scheller by phone at 801-238-2362, by FAX at 801-533-4127, or by Internet E-mail at garys@utah.gov

AUTHORIZED BY: Gary Scheller, Director

EFFECTIVE: 06/15/2016

Crime Victim Reparations, Administration
R270-2
Crime Victim Reparations Adjudicative Proceedings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40496
FILED: 06/15/2016

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: Pursuant to Subsection 63M-7-515(1), the director shall review contested determinations by a reparation officer or designate the Crime Victim Reparations Adjudicative (CVRA) Board to review the contested determination.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The legislative direction for the rule still exists. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CRIME VICTIM REPARATIONS
ADMINISTRATION
ROOM 200
350 E 500 S
SALT LAKE CITY, UT 84111-3347
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Gary Scheller by phone at 801-238-2362, by FAX at 801-533-4127, or by Internet E-mail at garys@utah.gov

AUTHORIZED BY: Gary Scheller, Director

EFFECTIVE: 06/15/2016

Environmental Quality, Environmental Response and Remediation
R311-600
Hazardous Substances Mitigation Act: Enforceable Written Assurances

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40487
FILED: 06/10/2016

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: Rule R311-600 is enacted in accordance with Section 19-6-326. This section states "(1) Based upon risk to human health or the environment from potential exposure to hazardous substances or materials, the executive director may issue enforceable written assurances to a bona fide prospective purchaser, contiguous property owner, or innocent landowner of real property that no enforcement action under this part may be initiated regarding that real property against the person to whom the assurances are issued. (2) An assurance granted under Subsection (1) grants the person to whom the assurance is issued protection from imposition of any state law cost recovery and contribution actions under this part. (3) The executive director may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary for the administration of this section."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department of Environmental Quality has received no written comments from persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Amendments to the Hazardous Substances Mitigation Act to authorize the issuance of an enforceable written assurance were initiated and subsequently supported by the private sector and the legal community to help quantify a prospective purchaser's pre-purchase liability. This can help foster economic development of Brownfields and other potentially impacted properties. In addition, the Department views that compliance with the conditions of the requirements for a bona fide prospective purchaser (e.g., all appropriate inquiries, notice, care/reasonable steps, cooperation, and compliance with institutional controls), which must be met to issue an enforceable written assurance, will generally ensure there is no unacceptable risk to human health or the environment. Based on this and the fact that the Department of Environmental Quality has received no written comments from persons opposing the rule, the Department recommends continuation of Rule R311-600.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
ENVIRONMENTAL RESPONSE AND REMEDIATION
FIRST FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Bill Rees by phone at 801-536-4167, by FAX at 801-536-4242, or by Internet E-mail at brees@utah.gov

AUTHORIZED BY: Alan Matheson, Executive Director

EFFECTIVE: 06/10/2016

Environmental Quality, Water Quality
R317-11
Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Soil Evaluations or Percolation Tests for Underground Wastewater Disposal Systems

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40489
FILED: 06/13/2016

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: Subsection 19-5-104(1)(a)(v) authorizes the Utah Water Quality Board to make rules that protect the public health for the design, construction, operation, and maintenance of underground wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies. Section 19-5-121 directs the board to adopt and enforce rules; sets forth certification requirements in order to design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems; establishes exemptions; and authorizes the department to establish fees for testing and certification.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This rule was last amended on 09/01/2013. No comments were received during the rulemaking process. This has not been a controversial rule. There have been discussions about expanding the regulation to include septic installers. However, in 2016, the CLEHA Onsite Wastewater Partnership voted against pursuing expanded coverage of the rule to include installers of onsite systems at this time. No official changes in rule text have been proposed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required for the Water Quality Board to implement the state's certification program associated with the design, inspection, and maintenance of underground wastewater disposal systems as outlined in the Water Quality Act. The certification program is established in order to assist in protecting the quality of waters in the state of Utah by helping ensure that personnel have adequate experience and training to design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

AUTHORIZED BY: Walter Baker, Director

EFFECTIVE: 06/13/2016

Governor, Economic Development
R357-5
Motion Picture Incentive Fund

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40483
FILED: 06/09/2016

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 63N-8-104 requires the office to make rules establishing the standards that a motion picture company and digital media company must meet to qualify for a motion picture incentive and the criteria for determining the amount of the motion picture incentive under Title 63N, Chapter 8, of the Utah Code Annotated.

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 rule has received several comments regarding the need for more detail for the criteria for selecting film projects and how the amount of the tax credit is determined. Otherwise, the rule has not received any additional comments.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued at this time because it does contain several basic criteria for how to qualify for the tax credit. The agency has filed a repeal and reenactment of this rule to address the comments. The new rule contains more criteria and the specific criteria that will be used to assess projects and potential award amounts. However, the agency does want to continue the current rule to be in effect until the new version becomes effective.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jeffrey Van Hulten by phone at 801-538-8694, by FAX at 801-538-8888, or by Internet E-mail at jeffreyvan@utah.gov

AUTHORIZED BY: Val Hale, Executive Director

EFFECTIVE: 06/09/2016

Insurance, Administration
R590-206
Privacy of Consumer Financial and Health Information Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40500
FILED: 06/15/2016

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: Sections 31A-2-201 and 31A-2-202 give the commissioner the authority to administer and enforce the Insurance Code, Title 31A, and perform the duties imposed by it. Title V, Section 505 (15 United States Code 6805) empowers the commissioner to enforce Subtitle A of Title V of the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. 6801 through 6820). Title V, Section 505 (15 U.S.C. 6805 (b)(2)) authorizes the commissioner to issue rules to implement the requirements of Title V, Section 501(b) of the federal act. Subsection 31A-23a-417(3) authorizes the commissioner to adopt rules implementing the requirements of Title V, Section 501(b) of the federal act.

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 comments supporting or opposing this rule 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: Federal law requires states to comply with the privacy laws and to implement them by rule. The rule governs the treatment of nonpublic personal health and financial information about individuals by all licensees of the department. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office 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: 06/15/2016

Insurance, Title and Escrow Commission
R592-11
Title Insurance Producer Annual and Controlled Business Reports

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40499
FILED: 06/15/2016

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: Subsection 31A-2-404(2)(a) requires the Title and Escrow Commission to make rules related to title insurance. Section 31A-23a-413 requires the annual filing of a report by each title insurance producer, as defined in Section R592-11-3, containing a verified statement of the producer's financial condition, transactions, and affairs. Subsection 31A-23a-503(8) requires the annual filing of a controlled business report. The rule specifies what is to be filed with the producer annual report and controlled business report, specifies when they are to be filed, and requires them to be filed electronically.

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 supporting or opposing the rule within 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: This rule is needed to establish the form and filing deadline for the Title Insurance Producer Annual Report and Controlled Business Report required by Section 31A-23a-413 and Subsection 31A-23a-503(8)(a). Therefore, this rule should be continued.

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 Office 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: 06/15/2016

Natural Resources; Forestry, Fire and State Lands
R652-150
Utah Bioprospecting Act

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40482
FILED: 06/09/2016

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 is adopted pursuant to the authority of Subsection 65A-1-4(2), which requires the Division to promulgate rules, and Section 65A-14-101 et seq. which requires the Division to clarify the procedure through which operators must register with the Division and notify the Division of the intent to conduct bioprospecting activities.

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 Division has received no comments in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The State of Utah recognizes that, due to the microenvironments present on State lands, there is a

potential for unique organisms to have evolved that represent a valuable resource for the residents of the state. This bioprospecting rule has been enacted to foster the discovery and evaluation of these resources in a way that benefits the citizens of Utah. By registration of bioprospecting, the state reserves the right for the citizens to share in any future economic value of these resources. 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 Office 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 jamiebarnes@utah.gov

AUTHORIZED BY: Brian Cottam, Director

EFFECTIVE: 06/09/2016

Public Safety, Highway Patrol
R714-160
Equipment Standards for Passenger Vehicle and Light Truck Safety Inspections

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40463
FILED: 06/02/2016

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 is authorized by Subsection 53-8-204(5). In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules: (a) setting minimum standards covering the design, construction, condition, and operation of motor vehicle equipment for safely operating a motor vehicle on the highway; (b) establishing motor vehicle safety inspection procedures to ensure a motor vehicle can be operated safely; (c) establishing safety inspection station building, equipment, and personnel requirements necessary to qualify to perform safety inspections; (d) establishing age, training, examination, and renewal requirements to qualify for a safety inspector certificate; (e) establishing program guidelines for a school district that elects to implement a safety inspection apprenticeship program for high school students; (f) establishing requirements: (i) designed to protect consumers from unwanted or unneeded repairs or adjustments, (ii) for maintaining safety inspection records, (iii) for providing reports to the division, and (iv) for maintaining and protecting safety inspection certificates; (g) establishing procedures for a motor vehicle that fails a safety inspection; (h) setting bonding amounts for safety inspection stations if bonds are required under Subsection 53-8-204(3)(a); and (i) establishing procedures for a safety inspection station to follow if the station is going out of business. The rules of the division: (a) shall conform as nearly as practical to federal motor vehicle safety standards including 49 CFR Parts 393, 396, 396 Appendix G, and Federal Motor Vehicle Safety Standards 205, and (b) may incorporate by reference, in whole or in part, the federal standards under Subsection 53-8-204(6)(a) and nationally recognized and readily available standards and codes on motor vehicle safety.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Opposition to parts of Rule R714-160 have included issues with High Intensity Discharge (HID) headlights, window tinting, mud flaps and fender flares, mobile safety inspection stations, windshields etc. When comments, complaints, or requests regarding these issues are received, the Safety Inspection Office responds by investigating the issue or addressing the request. The Safety Inspection Office receives complaints and investigates issues related to concerns from inspectors and consumers. The agency also received a comment that expressed concern that "CNG Safety Inspections for retrofit CNG vehicles" were not being done and another comment that CNG vehicles were passing safety inspection with expired tanks. The agency received another comment regarding a vehicle that had been significantly modified. Because of the modifications, it would not pass safety inspection. The owner indicated the vehicle was safe. A comment was received indicating that replacing the airbags in order to pass safety inspection would be financially burdensome. Comments have been received regarding allowing different colored lights on vehicles (including emergency lights) that are not approved colors such as red, white, yellow, or amber. A comment regarding allowing studded snow tires during warmer months was received. A comment about a vehicle being rejected for windshield wipers leaving streaks was received. Comments were received that plate brake testing machines were letting unsafe vehicles on the road. The agency has received at least one comment about what a low-speed vehicle (LSV) is.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: When complaints are received related to inspection issues they are investigated. Therefore, this rule should be continued. Specific concerns with High Intensity Discharge (HID) headlights have been addressed by the federal government and the Safety Inspection Office follows

their interpretation. Window tinting, mud flaps, and fender flares are covered by state statute and the safety inspection administrative rules align with those statutes. Mobile safety inspection stations would be difficult to monitor. Currently, the agency requires new safety inspection stations to have a lift. This would be difficult for a mobile station to meet this requirement. Insuring a mobile station would also be difficult. The agency is in the process of repealing and reenacting this rule, and mud flaps and fender flares will be addressed and the standard for them will be loosened. Damaged windshields will also be addressed. In regards to the comment about inspecting retrofit CNG vehicles, state statute (Section 19-1-406) requires that a safety inspection verify that a CNG vehicle has an up-to-date CSA America fuel system inspection. Standards for inspecting CNG vehicles are also listed in the rule. There is an issue with safety inspectors recognizing and doing proper inspections on CNG vehicles. In regards to vehicles that have been significantly modified, the agency does not have the expertise to determine if the vehicle is safe once it has been significantly altered from its original design. The agency indicated that if the owner could get an engineer to verify that the frame on the vehicle was safe, the agency would accept that. In regards to the comment about replacing airbags, state statute requires they be replaced. In regards to different colored lights on vehicles, there is a process established in state statute and administrative rule where a person can apply for approval. They would not likely be approved. State statute also requires some lights be a certain color (i.e. white, red, or yellow). In regards to allowing studded snow tires during warmer months, state statute lists the time period when they are allowed. The repeal and reenactment of this rule will make it an "advise" instead of a "reject" to have studded snow tires on a vehicle during prohibited times. In regard to windshield wipers leaving streaks, the rule requires that wipers must function properly and contact the windshield firmly. This may be subjective and the agency is addressing this in the repeal and reenactment of this rule. In regards to plate brake testing machines, after attending training about these machines, it appears they are effective if maintained and used properly. In regard to low-speed vehicles, state statute requires that a low-speed vehicle not be altered from the manufacturer. The agency interprets this to mean that a vehicle must be manufactured as a low-speed vehicle, and therefore cannot be converted to one.

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

PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5994
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Willmore by phone at 801-965-4889, or by Internet E-mail at gwillmor@utah.gov

AUTHORIZED BY: Keith Squires, Commissioner

EFFECTIVE: 06/02/2016

Public Safety, Highway Patrol
R714-161
Equipment Standards for Motorcycle and ATV Safety Inspections

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40464
FILED: 06/02/2016

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 is authorized by Subsection 53-8-204(5). In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules: (a) setting minimum standards covering the design, construction, condition, and operation of motor vehicle equipment for safely operating a motor vehicle on the highway; (b) establishing motor vehicle safety inspection procedures to ensure a motor vehicle can be operated safely; (c) establishing safety inspection station building, equipment, and personnel requirements necessary to qualify to perform safety inspections; (d) establishing age, training, examination, and renewal requirements to qualify for a safety inspector certificate; (e) establishing program guidelines for a school district that elects to implement a safety inspection apprenticeship program for high school students; (f) establishing requirements: (i) designed to protect consumers from unwanted or unneeded repairs or adjustments, (ii) for maintaining safety inspection records, (iii) for providing reports to the division, and (iv) for maintaining and protecting safety inspection certificates; (g) establishing procedures for a motor vehicle that fails a safety inspection; (h) setting bonding amounts for safety inspection stations if bonds are required under Subsection 53-8-204(3)(a); and (i) establishing procedures for a safety inspection station to follow if the station is going out of business. The rules of the division: (a) shall conform as nearly as practical to federal motor vehicle safety standards including 49 CFR Parts 393, 396, 396 Appendix G, and Federal Motor Vehicle Safety Standards 205; and (b) may incorporate by reference, in whole or in part, the federal standards under Subsection 53-8-204(6)(a) and nationally recognized and readily available standards and codes on motor vehicle safety.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: One comment received is related to the inspection of exhaust systems on motorcycles. The rule requires an inspector to check the exhaust system for excessive noise. But, there is no definition or standard for "excessive" noise. If the muffler is missing, then the vehicle is rejected. Although full-sized street legal vehicles are not included in this rule, concerns about a stations not passing them because of modifications to frames have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: The state statute requires that a vehicle be equipped, maintained, and operated to prevent excessive or unusual noise, but it doesn't define "excessive" or "unusual." Therefore, it would be difficult for the Safety Inspection program to define these terms and direct an inspector to fail a motorcycle because of noise. Excessive noise is not listed as a reject item in the current rule, although, if an exhaust system has been changed or modified and is not as effective as original specifications, it may be rejected. This could possibly apply to suppressing noise. As far as frames are concerned related to full-sized street legal ATV's, the agency does not have the expertise to determine if a modified frame will be as safe as the original structure. The justification for continuation of this rule is that this is the current standard used for inspecting motorcycles and ATV's. The agency is working on a repeal and reenactment of this rule. With that reenactment, safety inspections for street legal and full-sized street legal ATV's will be part of a separate rule. Therefore, this rule should be continued.

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

PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5994
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Willmore by phone at 801-965-4889, or by Internet E-mail at gwillmor@utah.gov

AUTHORIZED BY: Keith Squires, Commissioner

EFFECTIVE: 06/02/2016

Public Safety, Highway Patrol
R714-162
Equipment Standards for Heavy Truck, Trailer and Bus Safety Inspections

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40465
FILED: 06/02/2016

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 is authorized by Subsection 53-8-204(5). In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules: (a) setting minimum standards covering the design, construction, condition, and operation of motor vehicle equipment for safely operating a motor vehicle on the highway; (b) establishing motor vehicle safety inspection procedures to ensure a motor vehicle can be operated safely; (c) establishing safety inspection station building, equipment, and personnel requirements necessary to qualify to perform safety inspections; (d) establishing age, training, examination, and renewal requirements to qualify for a safety inspector certificate; (e) establishing program guidelines for a school district that elects to implement a safety inspection apprenticeship program for high school students; (f) establishing requirements: (i) designed to protect consumers from unwanted or unneeded repairs or adjustments, (ii) for maintaining safety inspection records, (iii) for providing reports to the division, and (iv) for maintaining and protecting safety inspection certificates; (g) establishing procedures for a motor vehicle that fails a safety inspection; (h) setting bonding amounts for safety inspection stations if bonds are required under Subsection 53-8-204(3)(a); and (i) establishing procedures for a safety inspection station to follow if the station is going out of business. The rules of the division: (a) shall conform as nearly as practical to federal motor vehicle safety standards including 49 CFR Parts 393, 396, 396 Appendix G, and Federal Motor Vehicle Safety Standards 205; and (b) may incorporate by reference, in whole or in part, the federal standards under Subsection 53-8-204(6)(a) and nationally recognized and readily available standards and codes on motor vehicle safety.

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 agency is not aware of any written comments received related to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This is the standard currently used by the state to inspect heavy trucks, trailers, and buses. This includes commercial motor vehicles. Therefore, this rule should be continued. A repeal and reenactment of this rule is currently underway to bring it more up to date with current Federal Motor Carrier Administration periodic inspection criteria.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5994
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Greg Willmore by phone at 801-965-4889, or by Internet E-mail at gwillmor@utah.gov
AUTHORIZED BY: Keith Squires, Commissioner

EFFECTIVE: 06/02/2016

Transportation, Motor Carrier
R909-19
Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40468
FILED: 06/02/2016

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: Sections 72-9-601, 72-9-602, and 72-9-604 require the Department to perform acts that it can only accomplish through the promulgation of administrative rules. Subsection 72-9-603(7) requires the Department to promulgate rules that regulate tow truck motor carriers operating in Utah. Sections 53-1-106 and 41-6a-1405 authorize Utah law enforcement authorities to perform acts related to the the requirements of Section 72-9-603.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any written comment during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah statutes that require the Department to regulate tow truck motor carriers operating in Utah which are accomplished through the existence of Rule R909-19 are still in effect. Therefore, this rule should be continued.

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

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

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 06/02/2016

Transportation, Program Development
R926-9
Establishment, Designation and Operation of Tollways

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40466
FILED: 06/02/2016

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 provides the procedure the Department of Transportation follows to establish, designate, and operate tollways. This rule is authorized by Subsections 72-6-118(4) and 72-6-118(5), which detail the required purpose, content, and function of this rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any written comments during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department has established and

operates tollways. This rule needs to continue because it specifies how new tollways are established and how existing tollways are operated. The rule also sets the rates for tolls, specifies where toll revenue is to go, sets conditions under which tolls may be changed, and establishes other requirements needed to operate tollways.

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

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

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 06/02/2016

Transportation Commission, Administration
R940-1
Establishment of Toll Rates

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40467
FILED: 06/02/2016

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 72-6-118 authorizes the Department of Transportation to establish, expand, and operate tollways and related facilities. Subsection 72-6-118(5)(a) requires the Department to make rules necessary to establish and operate tollways on state highways that establish standards and specifications for automatic tolling systems. This rule satisfies the rulemaking requirements of Section 72-6-118.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any written comments related to this rule since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department has established and operates tollways. This rule needs to continue because it sets specifications for establishing new tollways and operating existing tollways. The rule also sets the rates for tolls, specifies where toll revenue is to go, sets conditions under which tolls may be changed, and establishes other requirements the Transportation Commission must consider when regulating Utah's tollways.

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

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

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 06/02/2016

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

NOTICES OF
FIVE-YEAR EXPIRATIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). The Office of Administrative Rules (Office) 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 Office. However, if the agency fails to file either the **Five-Year Notice of Review and Statement of Continuation** or the **Extension** by the date provided by the Office, the rule expires.

Upon expiration of the rule, the Office files a **Notice of Five-Year Expiration** (**Expiration**) to document the action. The Office 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 Office 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).

Transportation, Operations, Maintenance
R918-5
Construction or Improvement of Highway

FIVE-YEAR REVIEW EXPIRATION
DAR FILE NO.: 40474
FILED: 06/08/2016

SUMMARY: The five-year review and notice of continuation was not filed by the 06/07/2016 deadline so the rule is expired as of 06/08/2016 and is removed from the Administrative Code. (Editor's Note: The agency has filed an 120-day (emergency) rule effective as of 06/08/2016 under Filing No. 40473 in this issue, July 1, 2016, of the Bulletin to put the rule back in place.)

EFFECTIVE: 06/08/2016

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 Office of Administrative Rules that the rules listed below have been made effective.

Notices of Effective Date are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Commerce
Occupational and Professional Licensing
No. 40298 (AMD): R156-15A. State Construction Code Administration and Adoption of Approved State Construction Code Rule
Published: 05/01/2016
Effective: 06/07/2016

Education
Administration
No. 40332 (REP): R277-100. Rulemaking Policy
Published: 05/01/2016
Effective: 06/10/2016

No. 40287 (AMD): R277-419. Pupil Accounting
Published: 04/15/2016
Effective: 06/03/2016

Environmental Quality
Waste Management and Radiation Control, Radiation
No. 40322 (AMD): R313-19-13. Exemptions
Published: 05/01/2016
Effective: 06/10/2016

No. 40323 (AMD): R313-22. Specific Licenses
Published: 05/01/2016
Effective: 06/10/2016

Waste Management and Radiation Control, Waste Management
No. 40312 (AMD): R315-124-34. Public Participation
Published: 05/01/2016
Effective: 06/10/2016

No. 40307 (AMD): R315-260. Hazardous Waste Management System
Published: 05/01/2016
Effective: 06/10/2016

No. 40308 (AMD): R315-261. General Requirements - Identification and Listing of Hazardous Waste
Published: 05/01/2016
Effective: 06/10/2016

No. 40309 (AMD): R315-262-10. Purpose, Scope, and Applicability
Published: 05/01/2016
Effective: 06/10/2016

No. 40310 (AMD): R315-264-1. Purpose, Scope and Applicability
Published: 05/01/2016
Effective: 06/10/2016

No. 40311 (AMD): R315-273. Standards For Universal Waste Management
Published: 05/01/2016
Effective: 06/10/2016

Insurance
Administration
No. 40321 (AMD): R590-247. Universal Health Insurance Application Rule
Published: 05/01/2016
Effective: 06/15/2016

No. 39755 (NEW): R590-272.Commission Compensation Reporting
Published: 10/01/2015
Effective: 06/15/2016

No. 39755 (First CPR): R590-272. Commission Compensation Reporting
Published: 01/15/2016
Effective: 06/15/2016

No. 39755 (Second CPR): R590-272. Commission Compensation Reporting
Published: 05/01/2016
Effective: 06/15/2016

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 June 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 Office of Administrative Rules (801-538-3003).

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

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

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

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
Facilities Construction and Management					
R23-19	Facility Use Rules	40226	NSC	03/11/2016	Not Printed
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	40044	NSC	01/15/2016	Not Printed
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	40440	EMR	05/23/2016	2016-12/51
R23-25	Administrative Rules Adjudicative Proceedings	40480	5YR	06/09/2016	Not Printed
R23-31	Executive Residence Commission	40481	5YR	06/09/2016	Not Printed
Finance					
R25-7-10	Reimbursement for Transportation	40042	AMD	02/23/2016	2016-2/4
R25-15	Change Date and Set Aside Provisions for Annual Leave II	39943	NEW	01/13/2016	2015-23/6
Purchasing and General Services					
R33-6-114	Technology Acquisitions for Executive Branch Procurement Units	40048	AMD	02/23/2016	2016-2/6
R33-7	Request for Proposals	40438	NSC	06/13/2016	Not Printed
R33-12-502	Technology Modifications	40047	AMD	02/23/2016	2016-2/7
Risk Management					
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	40282	AMD	06/01/2016	2016-8/6
AGRICULTURE AND FOOD					
Administration					
R51-3	Government Records Access and Management Act	40234	5YR	02/29/2016	2016-6/27
R51-4	ADA Complaint Procedure	40235	5YR	02/29/2016	2016-6/27
Animal Industry					
R58-2	Diseases, Inspections and Quarantines	40476	5YR	06/09/2016	Not Printed
R58-4	Use of Animal Drugs and Biologicals in the State of Utah	40478	5YR	06/09/2016	Not Printed
R58-14	Holding Live Raccoons or Coyotes in Captivity	40477	5YR	06/09/2016	Not Printed
Horse Racing Commission (Utah)					
R52-7	Horse Racing	39951	AMD	02/02/2016	2015-24/4
Marketing and Development					
R65-8	Management of the Junior Livestock Show Appropriation	40233	5YR	02/29/2016	2016-6/28

Plant Industry					
R68-4	Standardization, Marketing, and Phystosanitary Inspection of Fresh Fruits, Vegetables, and Other Plant and Plant Products	40201	5YR	02/08/2016	2016-5/23
R68-7	Utah Pesticide Control Rule	40232	5YR	02/29/2016	2016-6/28
R68-9	Utah Noxious Weed Act	39965	AMD	02/02/2016	2015-24/8
R68-18	Quarantine Pertaining to Karnal Bunt	40200	5YR	02/08/2016	2016-5/23
Regulatory Services					
R70-330	Raw Milk for Retail	40268	5YR	03/16/2016	2016-8/91
R70-370	Butter	40270	5YR	03/16/2016	2016-8/91
R70-380	Grade A Condensed and Dry Milk Products and Condensed and Dry Whey	40269	5YR	03/16/2016	2016-8/92
R70-410	Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes	40149	5YR	01/20/2016	2016-4/77
R70-530	Food Protection	39950	AMD	02/02/2016	2015-24/12
ALCOHOLIC BEVERAGE CONTROL					
Administration					
R81-1	Scope, Definitions, and General Provisions	40376	5YR	05/02/2016	2016-10/73
R81-2	State Stores	40378	5YR	05/02/2016	2016-10/74
R81-3	Package Agencies	40379	5YR	05/02/2016	2016-10/74
R81-4A	Restaurant Liquor Licenses	40381	5YR	05/02/2016	2016-10/75
R81-5	Club Licenses	40382	5YR	05/02/2016	2016-10/76
R81-6	Special Use Permits	40383	5YR	05/02/2016	2016-10/76
R81-7	Event Permits	40384	5YR	05/02/2016	2016-10/77
R81-8	Manufacturer Licenses (Distillery, Winery, Brewery)	40385	5YR	05/02/2016	2016-10/77
R81-9	Liquor Warehousing Licenses	40386	5YR	05/02/2016	2016-10/78
R81-11	Beer Wholesaler Licenses	40387	5YR	05/02/2016	2016-10/79
R81-12	Local Industry Representative Licenses (Distillery, Winery, Brewery)	40388	5YR	05/02/2016	2016-10/79
CAPITOL PRESERVATION BOARD (STATE)					
Administration					
R131-2	Capitol Hill Complex Facility Use	40437	EMR	05/19/2016	2016-12/54
R131-4	Capitol Preservation Board General Procurement Rule	40092	5YR	01/11/2016	2016-3/507
COMMERCE					
Administration					
R151-4	Department of Commerce Administrative Procedures Act Rule	40265	5YR	03/15/2016	2016-7/63
R151-14	New Automobile Franchise Act Rule	40293	5YR	03/31/2016	2016-8/92
Consumer Protection					
R152-11	Utah Consumer Sales Practices Act	40342	5YR	04/19/2016	2016-10/80
R152-26	Telephone Fraud Prevention Act	40341	5YR	04/19/2016	2016-10/80
Corporations and Commercial Code					
R154-2	Utah Uniform Commercial Code, Revised Article 9 Rules	40371	5YR	05/02/2016	2016-10/81
Occupational and Professional Licensing					
R156-3a	Architect Licensing Act Rule	40058	5YR	01/07/2016	2016-3/507
R156-9	Funeral Service Licensing Act Rule	40354	5YR	04/26/2016	2016-10/81
R156-9a	Uniform Athlete Agents Act Rule	40071	5YR	01/07/2016	2016-3/508
R156-15A	State Construction Code Administration and Adoption of Approved State Construction Code Rule	40298	AMD	06/07/2016	2016-9/4
R156-17b	Pharmacy Practice Act Rule	40217	AMD	04/21/2016	2016-6/4
R156-17b-614a	Operating Standards - General Operating Standards, Class A and B Pharmacy	40218	AMD	04/21/2016	2016-6/11
R156-26a	Certified Public Accountant Licensing Act Rule	39982	AMD	02/11/2016	2016-1/4

R156-37	Utah Controlled Substances Act Rule	40216	AMD	04/21/2016	2016-6/14
R156-37f	Controlled Substance Database Act Rule	39923	AMD	01/07/2016	2015-23/7
R156-40	Recreational Therapy Practice Act Rule	40352	5YR	04/26/2016	2016-10/82
R156-46b	Division Utah Administrative Procedures Act Rule	40052	5YR	01/05/2016	2016-3/509
R156-47b	Massage Therapy Practice Act Rule	40000	AMD	03/08/2016	2016-2/8
R156-54	Radiologic Technologist, Radiologist Assistant, and Radiology Practical Technician Licensing Act Rule	40486	5YR	06/09/2016	Not Printed
R156-55a	Utah Construction Trades Licensing Act Rule	40219	AMD	04/21/2016	2016-6/16
R156-55a-303b	Continuing Education - Standards	40344	NSC	05/11/2016	Not Printed
R156-55c	Plumber Licensing Act Rule	40131	NSC	02/02/2016	Not Printed
R156-55d	Burglar Alarm Licensing Rule	40164	AMD	03/24/2016	2016-4/10
R156-57	Respiratory Care Practices Act Rule	40355	5YR	04/26/2016	2016-10/83
R156-60b-102	Definitions	39924	AMD	01/07/2016	2015-23/12
R156-60c	Clinical Mental Health Counselor Licensing Act Rule	39911	AMD	01/07/2016	2015-23/14
R156-60d	Substance Use Disorder Counselor Act Rule	40055	5YR	01/05/2016	2016-3/509
R156-67	Utah Medical Practice Act Rule	40196	5YR	02/08/2016	2016-5/24
R156-69	Dentist and Dental Hygienist Practice Act Rule	40150	5YR	01/21/2016	2016-4/77
R156-73	Chiropractic Physician Practice Act Rule	40208	5YR	02/11/2016	2016-5/25
R156-77	Direct-Entry Midwife Act Rule	40353	5YR	04/26/2016	2016-10/83
R156-78-102	Definitions	39912	AMD	01/07/2016	2015-23/16
R156-82-201	Security	39980	AMD	02/08/2016	2016-1/12
Real Estate					
R162-2f	Real Estate Licensing and Practices Rules	40041	AMD	02/23/2016	2016-2/11
R162-2f	Real Estate Licensing and Practices Rules	40276	AMD	05/31/2016	2016-8/7
R162-2f-202b	Principal Broker Licensing Fees and Procedures	40364	NSC	05/11/2016	Not Printed
COMMUNICATIONS AUTHORITY BOARD (UTAH)					
Administration					
R174-1	Utah 911 Advisory Committee	40397	5YR	05/02/2016	2016-10/84
CORRECTIONS					
Administration					
R251-109	Sex Offender Treatment Providers	40039	AMD	05/04/2016	2016-2/16
CRIME VICTIM REPARATIONS					
Administration					
R270-1	Award and Reparation Standards	40495	5YR	06/15/2016	Not Printed
R270-1-17	Prescription or Over-the-Counter Medications	40177	AMD	05/13/2016	2016-4/13
R270-2	Crime Victim Reparations Adjudicative Proceedings	40496	5YR	06/15/2016	Not Printed
R270-5	Electronic Meetings	40148	NEW	04/06/2016	2016-4/14
EDUCATION					
Administration					
R277-99-2	Definitions	40247	NSC	03/29/2016	Not Printed
R277-100	Rulemaking Policy	40332	REP	06/10/2016	2016-9/5
R277-107-6	Public Education Employees	40248	NSC	03/29/2016	Not Printed
R277-207	Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions	39837	NEW	01/11/2016	2015-21/17
R277-402-4	LEA Responsibilities	40249	NSC	03/29/2016	Not Printed
R277-404	Requirements for Assessments of Student Achievement	40097	NSC	02/02/2016	Not Printed
R277-419	Pupil Accounting	40287	AMD	06/03/2016	2016-8/12
R277-478	Block Grant Funding	40288	REP	05/23/2016	2016-8/19
R277-482	Charter School Timelines and Approval Processes	40284	5YR	03/30/2016	2016-8/93

R277-482	Charter School Timelines and Approval Processes	40289	AMD	05/23/2016	2016-8/21
R277-494	Charter, Online, Home, and Private School Student Participation in Extracurricular or Co-curricular School Activities	40098	AMD	03/09/2016	2016-3/6
R277-497	School Grading System	39984	AMD	02/08/2016	2016-1/13
R277-505	Administrative License Areas of Concentration and Programs	40285	5YR	03/30/2016	2016-8/93
R277-505	Administrative License Areas of Concentration and Programs	40290	AMD	05/23/2016	2016-8/25
R277-507-1	Definitions	40250	NSC	03/29/2016	Not Printed
R277-510	Educator Licensing - Highly Qualified Assignment	40099	5YR	01/14/2016	2016-3/510
R277-510	Educator Licensing - Highly Qualified Assignment	40100	AMD	03/09/2016	2016-3/8
R277-510-5	NCLB Highly Qualified Assignments - Secondary Teachers 6-12	40362	NSC	05/11/2016	Not Printed
R277-616-3	Criteria for Determining Where a Homeless or Emancipated Student Shall Attend School	40251	NSC	03/29/2016	Not Printed
R277-700-7	Student Mastery and Assessment of Core Standards	40252	NSC	03/29/2016	Not Printed
R277-702-4	Eligibility for GED Testing	40253	NSC	03/29/2016	Not Printed
R277-705	Secondary School Completion and Diplomas	39936	AMD	01/07/2016	2015-23/17
R277-707	Enhancement for Accelerated Students Program	40428	5YR	05/16/2016	2016-11/63
R277-716	Alternative Language Services for Utah Students	40211	5YR	02/16/2016	2016-5/25
R277-716	Alternative Language Services for Utah Students	40212	AMD	04/07/2016	2016-5/3
R277-726	Statewide Online Education Program	39996	AMD	02/08/2016	2016-1/15
R277-752	Adult Students with Disabilities and Informed Consent	40274	EMR	03/18/2016	2016-8/87
R277-920	Implementation of the School Turnaround and Leadership Development Act	39789	NEW	02/08/2016	2015-20/70
R277-920-3	Superintendent's Designation of Low Performing Schools and Waiver Authority	39997	AMD	02/08/2016	2016-1/20
R277-920-4	Implementation of the School Turnaround and Leadership Development Act	40286	NSC	04/05/2016	Not Printed
Rehabilitation					
R280-204	Utah State Office of Rehabilitation Employee Background Check Requirement	40101	5YR	01/14/2016	2016-3/510
R280-204	Utah State Office of Rehabilitation Employee Background Check Requirement	40102	AMD	03/09/2016	2016-3/11
ENVIRONMENTAL QUALITY					
Waste Management and Radiation Control, Radiation					
R313-22	Specific Licenses	39991	AMD	05/09/2016	2016-1/33
Air Quality					
R307-101-2	Definitions	39994	AMD	03/03/2016	2016-1/21
R307-104	Conflict of Interest	39995	NEW	03/03/2016	2016-1/28
R307-110-28	Regional Haze	39849	AMD	02/04/2016	2015-21/45
R307-210	Stationary Sources	40294	EXT	04/04/2016	2016-9/141
R307-210	Stationary Sources	40422	5YR	05/12/2016	2016-11/63
R307-230	NOx Emission Limits for Natural Gas-Fired Water Heaters	40408	LNR	05/10/2016	2016-11/67
R307-312-5	Hot Mix Asphalt Plants	39844	AMD	02/04/2016	2015-21/46
R307-328-4	Loading of Tank Trucks, Trailers, Railroad Tank Cars, and Other Transport Vehicles	39845	AMD	02/04/2016	2015-21/47
R307-351-4	Standards for Rotogravure, Flexographic, and Specialty Printing Operations	40225	NSC	03/11/2016	Not Printed
R307-403-2	Applicability	40193	NSC	02/25/2016	Not Printed
R307-405-3	Definitions	39846	AMD	02/04/2016	2015-21/48
R307-415-3	Definitions	39847	AMD	02/04/2016	2015-21/50
R307-801	Utah Asbestos Rule	39848	AMD	05/05/2016	2015-21/53

R307-801	Utah Asbestos Rule	39848	CPR	05/05/2016	2016-5/18
R307-841-8	Renovator Certification and Dust Sampling Technician Certification	40207	AMD	05/05/2016	2016-5/7
Drinking Water					
R309-105-4	General	40031	AMD	05/01/2016	2016-2/19
R309-110-4	Definitions	40032	AMD	05/01/2016	2016-2/20
R309-200-5	Primary Drinking Water Standards	40033	AMD	05/01/2016	2016-2/23
R309-210	Monitoring and Water Quality: Distribution System Monitoring Requirements	40034	AMD	05/01/2016	2016-2/26
R309-211	Monitoring and Water Quality: Distribution System – Total Coliform Requirements	40035	NEW	05/01/2016	2016-2/33
R309-215	Monitoring and Water Quality: Treatment Plant Monitoring Requirements	40036	AMD	05/01/2016	2016-2/40
R309-220	Monitoring and Water Quality: Public Notification Requirements	40037	AMD	05/01/2016	2016-2/46
R309-225	Monitoring and Water Quality: Consumer Confidence Reports	40038	AMD	05/01/2016	2016-2/53
Environmental Response and Remediation					
R311-600	Hazardous Substances Mitigation Act: Enforceable Written Assurances	40487	5YR	06/10/2016	Not Printed
Radiation Control					
R313-15	Standards for Protection Against Radiation	39989	AMD	03/15/2016	2016-1/29
R313-19-34	Terms and Conditions of Licenses	39990	AMD	03/15/2016	2016-1/32
R313-24	Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements	39992	AMD	03/15/2016	2016-1/38
Waste Management and Radiation Control, Radiation					
R313-15	Standards for Protection Against Radiation	40003	NSC	01/15/2016	Not Printed
R313-16-230	Registration of Radiation Machines	40004	NSC	01/15/2016	Not Printed
R313-18-11	Posting of Notices to Workers	40007	NSC	01/15/2016	Not Printed
R313-19-13	Exemptions	40322	AMD	06/10/2016	2016-9/59
R313-21	General Licenses	40008	NSC	01/15/2016	Not Printed
R313-22	Specific Licenses	40009	NSC	01/15/2016	Not Printed
R313-22	Specific Licenses	39991	CPR	05/09/2016	2016-7/44
R313-22	Specific Licenses	40323	AMD	06/10/2016	2016-9/63
R313-25-26	Near Surface Land Disposal Facility Operation and Disposal Site Closure	40451	NSC	06/13/2016	Not Printed
R313-26	Generator Site Access Permit Requirements for Accessing Utah Radioactive Waste Disposal Facilities	40259	5YR	03/10/2016	2016-7/63
R313-27	Medical Use Advisory Committee	40230	NSC	03/08/2016	Not Printed
R313-32-2	Clarifications or Exceptions	40010	NSC	01/15/2016	Not Printed
R313-70	Payments, Categories and Types of Fees	40011	NSC	01/15/2016	Not Printed
Waste Management and Radiation Control, Waste Management					
R315-1	Utah Hazardous Waste Definitions and References	40117	REP	04/15/2016	2016-3/14
R315-2	General Requirements - Identification and Listing of Hazardous Waste	40118	REP	04/15/2016	2016-3/14
R315-3	Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities	40119	REP	04/15/2016	2016-3/15
R315-4	Procedures for Decisionmaking	40120	REP	04/15/2016	2016-3/16
R315-5	Hazardous Waste Generator Requirements	40121	REP	04/15/2016	2016-3/17
R315-6	Hazardous Waste Transporter Requirements	40122	REP	04/15/2016	2016-3/18
R315-7	Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities	40123	REP	04/15/2016	2016-3/18
R315-8	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	40124	REP	04/15/2016	2016-3/19
R315-9	Emergency Controls	40125	REP	04/15/2016	2016-3/20
R315-12	Administrative Procedures	40126	REP	04/15/2016	2016-3/21
R315-13	Land Disposal Restrictions	40127	REP	04/15/2016	2016-3/21

R315-14	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities	40128	REP	04/15/2016	2016-3/22
R315-15	Standards for the Management of Used Oil	40260	5YR	03/10/2016	2016-7/64
R315-15	Standards for the Management of Used Oil	40446	NSC	06/13/2016	Not Printed
R315-16	Standards for Universal Waste Management	40129	REP	04/15/2016	2016-3/23
R315-17	End of Life Automotive Mercury Switch Removal Standards	40261	5YR	03/10/2016	2016-7/65
R315-50	Appendices	40130	REP	04/15/2016	2016-3/24
R315-101	Cleanup Action and Risk-Based Closure Standards	40262	5YR	03/10/2016	2016-7/65
R315-102	Penalty Policy	40263	5YR	03/10/2016	2016-7/66
R315-103	Commercial Hazardous Waste Facility Siting Criteria	40105	NEW	04/15/2016	2016-3/25
R315-124	Procedures for Decisionmaking	40106	NEW	04/15/2016	2016-3/26
R315-124-34	Public Participation	40312	AMD	06/10/2016	2016-9/72
R315-260	Hazardous Waste Management System	40107	NEW	04/15/2016	2016-3/32
R315-260	Hazardous Waste Management System	40277	NSC	04/15/2016	Not Printed
R315-260	Hazardous Waste Management System	40307	AMD	06/10/2016	2016-9/73
R315-261	General Requirements - Identification and Listing of Hazardous Waste	40108	NEW	04/15/2016	2016-3/49
R315-261	General Requirements - Identification and Listing of Hazardous Waste	40278	NSC	04/15/2016	Not Printed
R315-261	General Requirements - Identification and Listing of Hazardous Waste	40308	AMD	06/10/2016	2016-9/84
R315-262	Hazardous Waste Generator Requirements	40109	NEW	04/15/2016	2016-3/170
R315-262	Hazardous Waste Generator Requirements	40279	NSC	04/15/2016	Not Printed
R315-262-10	Purpose, Scope, and Applicability	40309	AMD	06/10/2016	2016-9/95
R315-263	Standards Applicable to Transporters of Hazardous Waste and Standards Applicable to Emergency Control of Spills for All Hazardous Waste Handlers	40110	NEW	04/15/2016	2016-3/196
R315-263	Standards Applicable to Transporters of Hazardous Waste and Standards Applicable to Emergency Control of Spills for All Hazardous Waste Handlers	40280	NSC	04/15/2016	Not Printed
R315-264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	40115	NEW	04/15/2016	2016-3/201
R315-264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	40281	NSC	04/15/2016	Not Printed
R315-264-1	Purpose, Scope and Applicability	40310	AMD	06/10/2016	2016-9/96
R315-265	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	40111	NEW	04/15/2016	2016-3/346
R315-266	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities	40112	NEW	04/15/2016	2016-3/347
R315-268	Land Disposal Restrictions	40113	NEW	04/15/2016	2016-3/380
R315-270	Hazardous Waste Permit Program	40114	NEW	04/15/2016	2016-3/418
R315-273	Standards for Universal Waste Management	40116	NEW	04/15/2016	2016-3/468
R315-273	Standards For Universal Waste Management	40311	AMD	06/10/2016	2016-9/99
Water Quality					
R317-1-3	Requirements for Waste Discharges	39981	AMD	02/25/2016	2016-1/40
R317-7	Underground Injection Control (UIC) Program	40456	5YR	05/31/2016	2016-12/63
R317-11	Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Soil Evaluations or Percolation Tests for Underground Wastewater Disposal Systems	40489	5YR	06/13/2016	Not Printed
FAIR CORPORATION (UTAH STATE)					
Administration					
R325-1	Utah State Fair Competitive Exhibitor Rules	40220	5YR	02/23/2016	2016-6/29

R325-2	Utah State Fair Commercial Exhibitor Rules	40221	5YR	02/23/2016	2016-6/30
R325-3	Utah State Fair Patron Rules	40222	5YR	02/23/2016	2016-6/30
R325-4	Interim Patrons Rules (Other Than Utah State Fair)	40223	5YR	02/23/2016	2016-6/31
R325-5	Interim Renters Rules (Other Than Utah State Fair)	40224	5YR	02/23/2016	2016-6/32
FINANCIAL INSTITUTIONS					
Administration					
R331-26	Ownership of Real Estate Other Than Property Used for Institution Business or Held as an Investment by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions	40139	5YR	01/15/2016	2016-3/511
GOVERNOR					
Criminal and Juvenile Justice (State Commission on)					
R356-1	Procedures for the Calculation and Distribution of Funds to Reimburse County Correctional Facilities Housing State Probationary Inmates or State Parole Inmates	39964	AMD	02/10/2016	2015-24/14
Economic Development					
R357-5	Motion Picture Incentive Fund	40483	5YR	06/09/2016	Not Printed
R357-7	Utah Capital Investment Board	40028	R&R	05/16/2016	2016-2/60
R357-7	Utah Capital Investment Board	40028	CPR	05/16/2016	2016-7/49
R357-13	Hotel Convention Center Incentive	40027	NEW	03/14/2016	2016-2/76
HEALTH					
Administration					
R380-40	Local Health Department Minimum Performance Standards	40049	AMD	03/02/2016	2016-2/79
R380-60	Local Health Department Emergency Protocols	39879	AMD	01/20/2016	2015-22/32
Center for Health Data, Health Care Statistics					
R428-1	Health Data Plan and Incorporated Documents	40170	AMD	03/25/2016	2016-4/37
R428-2	Health Data Authority Standards for Health Data	40171	AMD	03/25/2016	2016-4/38
R428-10	Health Data Authority Hospital Inpatient Reporting Rule	40172	R&R	03/25/2016	2016-4/43
R428-11	Health Data Authority Ambulatory Surgical Data Reporting Rule	40173	REP	03/25/2016	2016-4/45
R428-13	Health Data Authority. Audit and Reporting of Health Plan Performance Measures	40174	AMD	03/25/2016	2016-4/47
R428-15	Health Data Authority Health Insurance Claims Reporting	40179	AMD	03/25/2016	2016-4/48
Center for Health Data, Vital Records and Statistics					
R436-13	Disclosure of Records	39817	AMD	02/17/2016	2015-21/88
Child Care Center Licensing Committee					
R381-60	Hourly Child Care Centers	39902	AMD	01/31/2016	2015-22/34
R381-60	Hourly Child Care Centers	40163	AMD	03/30/2016	2016-4/15
R381-70	Out of School Time Child Care Programs	39898	AMD	01/31/2016	2015-22/40
R381-70	Out of School Time Child Care Programs	40162	AMD	03/30/2016	2016-4/20
R381-100	Child Care Centers	39896	AMD	01/31/2016	2015-22/45
R381-100	Child Care Centers	40161	AMD	03/30/2016	2016-4/24
Disease Control and Prevention, Environmental Services					
R392-100	Food Service Sanitation	40254	AMD	05/23/2016	2016-7/4
R392-110	Home-based Child Care Food Service	40356	5YR	04/26/2016	2016-10/84
R392-110	Home-based Child Care Food Service	40443	NSC	06/13/2016	Not Printed

Disease Control and Prevention, Epidemiology					
R386-702	Communicable Disease Rule	39952	AMD	02/11/2016	2015-24/17
R386-702	Communicable Disease Rule	40317	5YR	04/15/2016	2016-9/135
Disease Control and Prevention, Health Promotion					
R384-415	Electronic-Cigarette Substance Standards	40210	AMD	04/15/2016	2016-5/8
Family Health and Preparedness, Child Care Licensing					
R430-50	Residential Certificate Child Care	39897	AMD	01/31/2016	2015-22/52
R430-50	Residential Certificate Child Care	40160	AMD	03/30/2016	2016-4/49
R430-90	Licensed Family Child Care	39895	AMD	01/31/2016	2015-22/57
R430-90	Family Licensed Child Care	40159	AMD	03/30/2016	2016-4/53
Family Health and Preparedness, Emergency Medical Services					
R426-5	Emergency Medical Services Training and Certification Standards	40283	AMD	05/31/2016	2016-8/70
R426-7	Emergency Medical Services Prehospital Data System Rules	40178	AMD	03/25/2016	2016-4/33
Family Health and Preparedness, Licensing					
R432-100	General Hospital Standards	39963	AMD	02/10/2016	2015-24/29
R432-270	Assisted Living Facilities	39966	AMD	01/28/2016	2015-24/41
R432-550	Birthing Centers	40243	AMD	05/16/2016	2016-7/9
Family Health and Preparedness, Primary Care and Rural Health					
R434-40-11	Loan Repayment Grant Eligibility and Selection	40245	AMD	06/01/2016	2016-7/16
R434-50	Assistance for People with Bleeding Disorders	40240	5YR	03/01/2016	2016-6/32
Health Care Financing					
R410-14	Administrative Hearing Procedures	39983	R&R	02/10/2016	2016-1/43
Health Care Financing, Coverage and Reimbursement Policy					
R414-1-5	Incorporations by Reference	40043	AMD	03/08/2016	2016-2/85
R414-1A	Medicaid Policy for Experimental, Investigational or Unproven Medical Practices	39985	AMD	03/08/2016	2016-1/56
R414-2B	Inpatient Hospital Intensive Physical Rehabilitation Services	40180	AMD	04/01/2016	2016-4/30
R414-303-8	Foster Care, Former Foster Care Youth and Independent Foster Care Adolescents	40040	AMD	03/08/2016	2016-2/89
R414-307-3	General Requirements for Home and Community-Based Services Waivers	40244	AMD	05/20/2016	2016-7/8
R414-320	Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver	40181	5YR	02/01/2016	2016-4/78
R414-505	Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program	40301	EMR	04/06/2016	2016-9/129
R414-505	Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program	40318	EMR	04/15/2016	2016-9/131
R414-512	Use of Extrapolation in Provider Audits	39914	NEW	01/11/2016	2015-23/20
R414-513	Intergovernmental Transfers	40319	EMR	04/15/2016	2016-9/133
HERITAGE AND ARTS					
Arts and Museums					
R451-3	Arts and Culture Business Alliance General Program Rules	40103	NEW	05/26/2016	2016-3/484
History					
R455-3	Memberships, Sales, Gifts, Bequests, Endowments	40406	5YR	05/05/2016	2016-11/64
R455-4	Ancient Human Remains	40405	5YR	05/05/2016	2016-11/64
R455-6	State Register for Historic Resources and Archaeological Sites	40187	5YR	02/02/2016	2016-5/26
R455-8	Preservation Easements	40410	5YR	05/10/2016	2016-11/65
R455-9	Board of State History as the Cultural Sites Review Committee Review Board	40186	5YR	02/02/2016	2016-5/27

Indian Affairs					
R456-1	Native American Grave Protection and Repatriation	40137	5YR	01/14/2016	2016-3/511
HOUSING CORPORATION (UTAH)					
Administration					
R460-1	Authority and Purpose	40013	NSC	01/15/2016	Not Printed
R460-2	Definition of Terms Used Throughout R460	40012	AMD	03/09/2016	2016-2/90
R460-3	Programs of UHC	40018	AMD	03/09/2016	2016-2/92
R460-4	Additional Servicing Rules (Reserved)	40014	NSC	01/15/2016	Not Printed
R460-5	Termination of Eligibility to Participate in Programs	40015	NSC	01/15/2016	Not Printed
R460-6	Adjudicative Proceedings	40016	NSC	01/15/2016	Not Printed
R460-8	Americans with Disabilities Act (ADA) Complaint Procedures	40017	NSC	01/15/2016	Not Printed
HUMAN SERVICES					
Administration					
R495-862	Communicable Disease Control Act	40050	5YR	01/04/2016	2016-3/512
R495-876	Provider Code of Conduct	40455	5YR	05/31/2016	2016-12/63
R495-880	Adoption Assistance	40454	5YR	05/31/2016	2016-12/64
R495-885	Employee Background Screenings	40264	NEW	05/11/2016	2016-7/18
Administration, Administrative Services, Licensing					
R501-14	Background Screening	39913	R&R	01/13/2016	2015-23/24
Child and Family Services					
R512-10	Youth and Mentor Program	40305	5YR	04/14/2016	2016-9/136
R512-31	Foster Parent Due Process	39938	AMD	01/07/2016	2015-23/33
R512-40	Adoptive Home Studies, Recruitment, Approval	40255	R&R	05/09/2016	2016-7/21
R512-41	Qualifying Adoptive Families and Adoption Placement	40256	AMD	05/09/2016	2016-7/24
R512-42	Adoption by Relatives	40195	AMD	04/07/2016	2016-5/13
R512-43	Adoption Assistance	40151	5YR	01/25/2016	2016-4/79
R512-43	Adoption Assistance	40257	AMD	05/09/2016	2016-7/29
R512-44	Choose Life Adoption Support Restricted Account	40306	5YR	04/14/2016	2016-9/136
R512-44	Choose Life Adoption Support Restricted Account	40258	AMD	05/09/2016	2016-7/34
R512-60	Children's Account	40194	5YR	02/08/2016	2016-5/27
R512-100	In-Home Services	39905	AMD	01/07/2016	2015-22/65
R512-205	Child Protective Services, Investigation of Domestic Violence Related Child Abuse	40152	5YR	01/25/2016	2016-4/79
R512-301	Out-of-Home Services, Responsibilities Pertaining to a Parent or Guardian	39939	AMD	01/07/2016	2015-23/35
R512-305	Out-of-Home Services, Transition to Adult Living Services	39955	AMD	01/21/2016	2015-24/44
R512-309	Out-of-Home Services, Foster Parent Reimbursement of Motor Vehicle Insurance Coverage for Youth in Foster Care	39956	AMD	01/21/2016	2015-24/46
R512-310	Reasonable and Prudent Parent Standard	39940	AMD	01/07/2016	2015-23/38
Recovery Services					
R527-40	Retained Support	40096	AMD	03/09/2016	2016-3/485
R527-200	Administrative Procedures	40053	5YR	01/05/2016	2016-3/512
R527-250	Emancipation	40054	5YR	01/05/2016	2016-3/513
Substance Abuse and Mental Health, State Hospital					
R525-8	Forensic Mental Health Facility	40313	5YR	04/14/2016	2016-9/137

INSURANCE

Administration

R590-144	Commercial Aviation Insurance Exemption from Rate and Form Filings	40236	5YR	02/29/2016	2016-6/33
R590-154	Unfair Marketing Practices Rule; Misleading Names	39945	AMD	01/15/2016	2015-23/40
R590-164-6	Electronic Data Interchange Transactions	39998	AMD	02/23/2016	2016-2/97
R590-167-11	Actuarial Certification and Additional Filing Requirements	40182	AMD	03/23/2016	2016-4/57
R590-177	Life Insurance Illustrations Rule	40237	5YR	02/29/2016	2016-6/33
R590-200	Diabetes Treatment and Management	40238	5YR	02/29/2016	2016-6/34
R590-206	Privacy of Consumer Financial and Health Information Rule	40500	5YR	06/15/2016	Not Printed
R590-208	Uniform Application for Certificates of Authority	40346	5YR	04/21/2016	2016-10/85
R590-212	Requirements for Interest Bearing Accounts Used by Title Insurance Agencies for Trust Fund Deposits	40005	REP	03/16/2016	2016-2/99
R590-220-16	Classification of Documents	40155	AMD	03/23/2016	2016-4/59
R590-226	Submission of Life Insurance Filings	40156	AMD	03/23/2016	2016-4/60
R590-227	Submission of Annuity Filings	40157	AMD	03/23/2016	2016-4/62
R590-228-9	Correspondence and Status Checks	40158	AMD	03/23/2016	2016-4/64
R590-235	Medicare Prescription Drug Plan	40345	5YR	04/21/2016	2016-10/86
R590-247	Universal Health Insurance Application Rule	40321	AMD	06/15/2016	2016-9/117
R590-259	Dependent Coverage to Age 26	40154	5YR	01/25/2016	2016-4/80
R590-260	Utah Defined Contribution Risk Adjuster Plan of Operation	40271	5YR	03/18/2016	2016-8/94
R590-262	Health Data Authority Health Insurance Claims Reporting	40273	AMD	05/23/2016	2016-8/80
R590-266	Utah Essential Health Benefits Package	40275	AMD	05/23/2016	2016-8/82
R590-272	Commission Compensation Reporting	39755	NEW	06/15/2016	2015-19/72
R590-272	Commission Compensation Reporting	39755	CPR	06/15/2016	2016-2/124
R590-272	Commission Compensation Reporting	39755	CPR	06/15/2016	2016-9/126

Title and Escrow Commission

R592-11	Title Insurance Producer Annual and Controlled Business Reports	40183	AMD	04/15/2016	2016-4/65
R592-11	Title Insurance Producer Annual and Controlled Business Reports	40499	5YR	06/15/2016	Not Printed
R592-15	Submission of a Schedule of Minimum Charges for Escrow Services	40300	5YR	04/06/2016	2016-9/137
R592-17	Requirements for Interest Bearing Accounts Used by Title Insurance Agencies for Trust Fund Deposits	40006	NEW	03/16/2016	2016-2/101

JUDICIAL PERFORMANCE EVALUATION COMMISSION

Administration

R597-3-5	Public Comments	40192	AMD	04/20/2016	2016-5/14

LABOR COMMISSION

Adjudication

R602-2-4	Attorney Fees	40469	EMR	06/06/2016	Not Printed

Administration

R600-3	Definitions Applicable to Construction Licensees	40450	5YR	05/27/2016	2016-12/64

Industrial Accidents

R612-200-2	Payment of Benefits, Interest and Attorney Fees	40470	EMR	06/06/2016	Not Printed

MONEY MANAGEMENT COUNCIL

Administration					
R628-10	Rating Requirements to Be a Permitted Depository	40303	EXD	04/12/2016	2016-9/139
R628-12	Certification of Qualified Depositories for Public Funds	40227	5YR	02/26/2016	2016-6/35
R628-13	Collateralization of Public Funds	40228	5YR	02/26/2016	2016-6/35
R628-16	Certification as a Dealer	40229	5YR	02/26/2016	2016-6/36

NATURAL RESOURCES

Forestry, Fire and State Lands					
R652-2	Sovereign Land Management Objectives	40138	5YR	01/14/2016	2016-3/529
R652-8	Adjudicative Proceedings	40134	5YR	01/14/2016	2016-3/529
R652-9	Consistency Review	40133	5YR	01/14/2016	2016-3/530
R652-41	Rights of Entry	40136	5YR	01/14/2016	2016-3/530
R652-80	Land Exchanges	40135	5YR	01/14/2016	2016-3/531
R652-122	County Cooperative Agreements with State for Fire Protection	40304	5YR	04/14/2016	2016-9/138
R652-123	Exemptions to Wildland Fire Suppression Fund	40132	5YR	01/14/2016	2016-3/531
R652-150	Utah Bioprospecting Act	40482	5YR	06/09/2016	Not Printed
Geological Survey					
R638-1	Acceptance and Maintenance of Confidential Information	40214	5YR	02/17/2016	2016-6/36
Oil, Gas and Mining; Oil and Gas					
R649-1-1	Definitions	40302	NSC	04/15/2016	Not Printed
R649-3-23	Well Workover and Recompletion	40444	NSC	06/13/2016	Not Printed
Parks and Recreation					
R651-201	Definitions	40059	5YR	01/07/2016	2016-3/513
R651-202	Boating Advisory Council	40060	5YR	01/07/2016	2016-3/514
R651-203	Waterway Marking System	40061	5YR	01/07/2016	2016-3/514
R651-204	Regulating Waterway Markers	40062	5YR	01/07/2016	2016-3/515
R651-204	Regulating Waterway Markers	40090	NSC	02/02/2016	Not Printed
R651-205	Zoned Waters	40063	5YR	01/07/2016	2016-3/515
R651-206	Carrying Passengers for Hire	40064	5YR	01/07/2016	2016-3/516
R651-206	Carrying Passengers for Hire	40091	NSC	02/02/2016	Not Printed
R651-207	Registration Fee	40066	5YR	01/07/2016	2016-3/516
R651-207	Registration Fee	40188	NSC	02/25/2016	Not Printed
R651-208	Backing Plates	40067	5YR	01/07/2016	2016-3/517
R651-208	Backing Plates	40189	NSC	02/25/2016	Not Printed
R651-209	Anchored and Beached Vessels	40084	5YR	01/07/2016	2016-3/517
R651-210	Change of Address	40068	5YR	01/07/2016	2016-3/518
R651-210	Change of Address	40190	NSC	02/25/2016	Not Printed
R651-211	Assigned Numbers	40069	5YR	01/07/2016	2016-3/518
R651-211	Assigned Numbers	40191	NSC	02/25/2016	Not Printed
R651-212	Display of Yearly Registration Decals and Month of Expiration Decals	40070	5YR	01/07/2016	2016-3/519
R651-213	Dealer Numbers and Registrations	40072	5YR	01/07/2016	2016-3/519
R651-214	Temporary Registration	40073	5YR	01/07/2016	2016-3/520
R651-215	Personal Flotation Devices	40074	5YR	01/07/2016	2016-3/520
R651-216	Navigation Lights - Note: Figures 1 through 7 mentioned below are on file with the Utah Division of Parks and Recreation	40075	5YR	01/07/2016	2016-3/521
R651-217	Fire Extinguishers	40076	5YR	01/07/2016	2016-3/522
R651-218	Carburetor Backfire Flame Control	40077	5YR	01/07/2016	2016-3/522
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RULES INDEX - BY KEYWORD (SUBJECT)

ABBREVIATIONS

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

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