

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Nancy L. Lancaster, Managing Editor

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

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for August 2016 Medicaid Rate Changes

Effective August 1, 2016, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>

Health Health Care Financing, Coverage and Reimbursement Policy

Pediatric Dental Fee and Adult Dental Services

This notice updates the fiscal impact to a previous notice published in the June 15, 2016, issue of the Utah State Bulletin (2016-12, pg. 1).

The Division of Medicaid and Health Financing (DMHF) estimates total annual expenditures to be approximately \$5,500,000 to make dental services available to blind or disabled individuals, and estimates a total annual cost of about \$684,900 to implement the supplemental payment for pediatric dental providers.

DMHF will implement these services and payments through [SPA 16-0024-UT, Pediatric Dental Fee and Adult Dental Services](#), pending approval from the Centers for Medicare and Medicaid Services.

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.

Wildland Fire Management, Utah Exec. Order No. 2016-5

EXECUTIVE ORDER

Wildland Fire Management

WHEREAS, consistent with Utah Code Section 65A-8-211, the period of June 1st to October 31st is a closed fire season throughout the State of Utah; and

WHEREAS, the danger from wildland fires is high throughout Utah; and

WHEREAS, current precipitation and weather patterns in Utah contribute to high fuel loads of wildland vegetation; and

WHEREAS, wildland fires are burning and continue to burn throughout Utah; and

WHEREAS, many areas of Utah are extremely remote and inaccessible and conditions have the potential to greatly worsen if left unattended; and

WHEREAS, immediate action is required to suppress fires and mitigate post burn flash floods to protect public safety, property, natural resources and the environment should these dangerous conditions escalate to active wildfires; and

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

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

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, critical infrastructure, natural resources and the environment, effective for the month of July 2016, requiring aid, assistance and relief available pursuant to the provisions of State statutes, and the State Emergency Operations Plan, which is hereby activated.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 1st day of July 2016.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Lieutenant Governor
Spencer J. Cox

2016/005/EO

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between June 16, 2016, 12:00 a.m., and July 01, 2016, 11:59 p.m. are included in this, the July 15, 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 15, 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 November 12, 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 OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

Administrative Services, Finance
R25-7
Travel-Related Reimbursements for
State Employees

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40547

FILED: 06/24/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Because of an increase in food and hotel prices for in-state travel, the Division has determined that reimbursement rates should also increase. Also, Tier I and Tier II premium locations have changed, and the meal per diem rates per day have increased.

SUMMARY OF THE RULE OR CHANGE: The rule increases reimbursement rates for in-state food reimbursements and increases some in-state hotel rates. (Editor's Note: A corresponding 120-day (emergency) rule that is effective as of 07/01/2016 is under Filing No. 40548 in this issue, July 15, 2016, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-3-106 and Section 63A-3-107

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will potentially be an increased cost to the state as in-state food per diem rates have increased, and some in-state hotel rates have increased. There will also be an increased cost to the state if travel is to a Tier I or Tier II premium city because meal per diems have increased for these cities.

◆ **LOCAL GOVERNMENTS:** There will not be costs to local governments because the rule only governs reimbursements by the state to individuals traveling on state business.

◆ **SMALL BUSINESSES:** Small businesses may see an increase in revenue. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals eligible for reimbursement will see a slight increase in their per diem reimbursement amounts for in-state travel and travel to premium cities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the amendment only changes reimbursement rates and does not require any new action on the part of persons applying for reimbursements, there are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed these changes with the Division of Finance director and believe these changes are reasonable and warranted. Small business may see an increase in revenue. However we cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: John Reidhead, Director

R25. Administrative Services, Finance.

R25-7. Travel-Related Reimbursements for State Employees.

R25-7-1. Purpose.

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

R25-7-2. Authority and Exemptions.

This rule is established pursuant to:

(1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and

(2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing meeting per diem and travel expenses for board members attending official meetings.

R25-7-3. Definitions.

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(3) "Department" means all executive departments of state government.

- (4) "Finance" means the Division of Finance.
- (5) "Home-Base" means the location the employee leaves from and/or returns to.
- (6) "Per diem" means an allowance paid daily.
- (7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."
- (8) "Rate" means an amount of money.
- (9) "Reimbursement" means money paid to compensate an employee for money spent.
- (10) "State employee" means any person who is paid on the state payroll system.

R25-7-4. Eligible Expenses.

- (1) Reimbursements are intended to cover all normal areas of expense.
- (2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

R25-7-5. Approvals.

- (1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.
- (2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".
- (3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.
- (4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.

- (1) State employees who travel on state business may be eligible for a meal reimbursement.
- (2) The reimbursement will include tax, tips, and other expenses associated with the meal.
- (3) Allowances for in-state travel differ from those for out-of-state travel.
- (a) The daily travel meal allowance for in-state travel is ~~[\$40.00]~~ \$41.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00
Dinner	[\$16.00] \$17.00
Total	[\$40.00] \$41.00

- (b) The daily travel meal allowance for out-of-state travel is \$46.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00
Dinner	\$22.00
Total	\$46.00

- (4) When traveling to a Tier I premium location (~~[Atlanta,] Anchorage, [Baltimore, Boston,] Chicago, Hawaii, New York City, San Francisco, and Seattle[-and Washington, DC]~~), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to ~~[\$65]~~ \$66 per day.

When traveling to a Tier II premium location (~~Atlanta, [Austin] Baltimore, Boston, Dallas, [Houston,] Los Angeles, [Orlando, and] San Diego, and Washington, DC~~), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to ~~[\$56]~~ \$57 per day.

- (a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.
- (b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the premium location allowance as follows:
 - Tier I Location
 - (i) If breakfast is provided deduct \$15, leaving a premium allowance for lunch and dinner of actual up to ~~[\$50]~~ \$51.
 - (ii) If lunch is provided deduct \$20, leaving a premium allowance for breakfast and dinner of actual up to ~~[\$45]~~ \$46.
 - (iii) If dinner is provided deduct ~~[\$30]~~ \$31, leaving a premium allowance for breakfast and lunch of actual up to \$35.
 - Tier II Location
 - (i) If breakfast is provided deduct \$13, leaving a premium allowance for lunch and dinner of actual up to ~~[\$43]~~ \$44.
 - (ii) If lunch is provided deduct \$17, leaving a premium allowance for breakfast and dinner of actual up to ~~[\$39]~~ \$40.
 - (iii) If dinner is provided deduct ~~[\$26]~~ \$27, leaving a premium allowance for breakfast and lunch of actual up to \$30.

- (c) The traveler must use the same method of reimbursement for an entire day.
- (d) Actual meal cost includes tips.
- (e) Alcoholic beverages are not reimbursable.
- (5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed the actual meal cost, with original receipts, not to exceed the United States Department of State Meal and Incidental Expenses (M and IE) rate for their location.

- (a) The traveler may combine the reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.
- (b) Actual meal cost includes tips.
- (c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins			
1st Quarter a.m. 12:00-5:59 *B, L, D	2nd Quarter a.m. 6:00-11:59 *L, D	3rd Quarter p.m. 12:00-5:59 *D	4th Quarter p.m. 6:00-11:59 *no meals
In-State \$4[0]1.00	\$3[0]1.00	\$1[6]7.00	\$0
Out-of-State \$46.00	\$36.00	\$22.00	\$0

*B = Breakfast, L = Lunch, D = Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the hotel/conference facility. The meal is considered a "continental breakfast" if no hot food items are offered.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends			
1st Quarter a.m. 12:00-5:59 *no meals	2nd Quarter a.m. 6:00-11:59 *B	3rd Quarter p.m. 12:00-5:59 *B, L	4th Quarter p.m. 6:00-11:59 *B, L, D
In-State \$0	\$10.00	\$24.00	\$4[0]1.00
Out-of-State \$0	\$10.00	\$24.00	\$46.00

*B = Breakfast, L = Lunch, D = Dinner

(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's destination is at least 100 miles from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves their home base and returns at 6 p.m. or later.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

R25-7-7. Meals for Statutory Non-Salaried State Boards.

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

R25-7-8. Reimbursement for Lodging.

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) For stays at a conference hotel, the state will reimburse the actual cost plus tax and any mandatory fees charged by the hotel for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to \$70 per night for single occupancy plus tax and any mandatory fees charged by the hotel except as noted in the table below:

TABLE 5

Cities with Differing Rates

Beaver	\$75.00 plus tax and mandatory fees
Blanding	\$75.00 plus tax and mandatory fees
Bluff	[\$80.00] \$90.00 plus tax and mandatory fees
Brigham City	[\$75.00] \$80.00 plus tax and mandatory fees
Bryce Canyon City	\$75.00 plus tax and mandatory fees
Cedar City	[\$75.00] \$80.00 plus tax and mandatory fees
Duchesne	\$80.00 plus tax and mandatory fees
Ephraim	\$75.00 plus tax and mandatory fees
Farmington	\$85.00 plus tax and mandatory fees
Fillmore	\$75.00 plus tax and mandatory fees
Garden City	\$80.00 plus tax and mandatory fees
Green River	\$85.00 plus tax and mandatory fees
Heber	\$85.00 plus tax and mandatory fees
Kanab	[\$80.00] \$85.00 plus tax and mandatory fees
Layton	[\$80.00] \$85.00 plus tax and mandatory fees
Logan	[\$80.00] \$85.00 plus tax and mandatory fees
Moab	\$100.00 plus tax and mandatory fees

Monticello	\$80.00 plus tax and mandatory fees
Ogden	[\$80.00] \$85.00 plus tax and mandatory fees
Park City [/Heber City]/ Midway	[\$90.00] \$100.00 plus tax and mandatory fees
Price	\$75.00 plus tax and mandatory fees
Provo/Orem/Lehi/American Fork/ Springville	\$85.00 plus tax and mandatory fees
Roosevelt/Ballard	\$90.00 plus tax and mandatory fees
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	\$100.00 plus tax and mandatory fees
St. George/Washington/Springdale/ Hurricane	[\$80.00] \$85.00 plus tax and mandatory fees
Torrey	[\$80.00] \$85.00 plus tax and mandatory fees
Tremonton	\$90.00 plus tax and mandatory fees
Vernal [/Roosevelt/Ballard/Naples]	\$95.00 plus tax and mandatory fees
All Other Utah Cities	\$70.00 plus tax and mandatory fees

(3) State employees traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence. If the traveler returns to where they normally work (ie. Cannon Health Building), then the home-base for arrival calculations is the Cannon Health Building.

(a) In some cases, agencies must use judgement to determine a traveler's home-base. The following are some things to consider when determining a traveler's home-base.

(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50 miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

(ii) Is there a valid business reason for the traveler to go to the office (or to some other location) before driving to the destination?

(iii) Is the traveler required to work at the destination the next day?

(iv) Is the traveler going directly home after the trip, or is there a valid business reason for the traveler to first go to the office (or to some other location)?

(iv) Even if "it is not specifically against policy", would the lodging be considered necessary, reasonable and in the best interest of the State?

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel, not to exceed the federal lodging rate for the location. These reservations must be made through the State Travel Office.

(6) The state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

If lodging is not available at the allowable per diem rate in the area the employee needs to stay, the State Travel Office will book a hotel with the best available rate. In this circumstance, the employee will be reimbursed at the actual rate booked.

If an employee chooses to stay at a hotel that costs more than the allowable per diem rate, the employee will only be reimbursed for the allowable per diem rate plus tax and any mandatory fees charged by the hotel. These instances will be audited 100% by the State Finance Post-Auditors.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add \$20, for triple state employee occupancy, add \$40, for quadruple state employee occupancy, add \$60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.

(9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

~~[(a) The tissue copy of the charge receipt is not acceptable.]~~

~~[(b)]~~A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, signature of agent, number in the party, and (single, double, triple, or quadruple occupancy).

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to minimize transportation costs.

(11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) \$25 per night with no receipts required or

(ii) Actual cost up to \$40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - \$46 per day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidentals.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, transportation costs, maid service, and bellman. Gratuities/tips for various services such as assistance with baggage, maid service, and bellman, may be reimbursed up to a combined maximum of \$5.00 per day.

- (a) Tips for doormen and meals are not reimbursable.
- (b) No other gratuities will be reimbursed.
- (c) Include an original receipt for each individual incidental item above \$19.99.
- (2) The state will reimburse incidental ground transportation and parking expenses.
 - (a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.
 - (b) Personal use of such transportation to restaurants is not reimbursable.
 - (c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of \$20 or more.
 - (3) Registration should be paid in advance on a state warrant, ~~[or]~~ with a state purchase card~~[-]~~, or with a state travel card.
 - (a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.
 - (b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.
 - (4) Telephone calls related to state business are reimbursed at the actual cost.
 - (a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.
 - (b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.
 - (5) Allowances for personal telephone calls made while out of town on state business overnight may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.
 - (a) Four nights or less - actual amount up to \$2.50 per night.
 - (b) Five to eleven nights - actual amount up to \$20.00
 - (c) Twelve nights to thirty nights - actual amount up to \$30.00
 - (d) More than thirty days - start over
 - (6) Actual laundry expenses up to \$18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.
 - (a) The traveler must provide receipts for the laundry expense.
 - (b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.
 - (7) An amount of \$5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.
 - (a) This amount covers miscellaneous incidentals not covered in this rule.
 - (b) This allowance is not available for travelers going to conferences.
 - (8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

~~[(d) In order to preserve insurance coverage and because of federal security regulations, travelers must fly on tickets in their names only.]~~

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the ~~[economy lot]~~ long term parking rate at the airport they are flying out of.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B for amounts of \$20 or more.

(c) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 38 cents per mile or 54 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 54 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 38 cents per mile.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Any [E]xceptions to this mileage reimbursement rate guidance must be approved in writing by the employees Executive Director [of Finance] or designee.

(e) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if preapproved by the Department Director or designee.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 38 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) A ~~non-itinerary~~ comparison printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director or designee that the pilot is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, the pilot must certify the existence of at least \$500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least \$500,000 for liability coverage.

(d) Reimbursement will be made at 54 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowances, state employees, transportation

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

Notice of Continuation: April 15, 2013

Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106

Administrative Services, Purchasing and General Services

R33-1

Utah Procurement Rules, "General Procurement Provisions," Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40559

FILED: 06/30/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the changes to this rule are to comply with Title 63G, Chapter 6a, and to provide clarification regarding the definitions and applicability of the Utah Procurement Rules.

SUMMARY OF THE RULE OR CHANGE: The changes to the rule included adding, deleting, and clarifying the definitions of the Utah Procurement Rules. Sections R33-1-2,

R33-1-3, R33-1-4, and R33-1-12 were also added. Those sections address the applicability of rules, determinations by the Chief Procurement Officer or Head of a Procurement Unit with independent procurement authority, competitive procurement required for expenditure of public funds or use of public property or other public assets to acquire a procurement item unless exception is authorized, and mandatory minimum requirements in a solicitation.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The rule simply provides definitions for the Utah Procurement rules, and addresses the applicability of rules, determinations by the Chief Procurement Officer or Head of a Procurement Unit with independent procurement authority, competitive procurement required for expenditure of public funds or use of public property or other public assets to acquire a procurement item unless exception is authorized, and mandatory minimum requirements in a solicitation.

◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The rule simply provides definitions for the Utah Procurement rules, and addresses the applicability of rules, determinations by the Chief Procurement Officer or Head of a Procurement Unit with independent procurement authority, competitive procurement required for expenditure of public funds or use of public property or other public assets to acquire a procurement item unless exception is authorized, and mandatory minimum requirements in a solicitation.

◆ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. The rule simply provides definitions for the Utah Procurement rules, and addresses the applicability of rules, determinations by the Chief Procurement Officer or Head of a Procurement Unit with independent procurement authority, competitive procurement required for expenditure of public funds or use of public property or other public assets to acquire a procurement item unless exception is authorized, and mandatory minimum requirements in a solicitation.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, or local government entities. The rule simply provides definitions for the Utah Procurement rules, and addresses the applicability of rules, determinations by the Chief Procurement Officer or Head of a Procurement Unit with independent procurement authority, competitive procurement required for expenditure of public funds or use of public property or other public assets to acquire a procurement item unless exception is authorized, and mandatory minimum requirements in a solicitation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons. The rule simply provides definitions for the Utah Procurement

rules, and addresses the applicability of rules, determinations by the Chief Procurement Officer or Head of a Procurement Unit with independent procurement authority, competitive procurement required for expenditure of public funds or use of public property or other public assets to acquire a procurement item unless exception is authorized, and mandatory minimum requirements in a solicitation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:

There are no anticipated fiscal impacts that the rule may have on businesses. The rule simply provides definitions for the Utah Procurement rules and addresses the applicability of rules, determinations by the Chief Procurement Officer or Head of a Procurement Unit with independent procurement authority, competitive procurement required for expenditure of public funds or use of public property or other public assets to acquire a procurement item unless exception is authorized, and mandatory minimum requirements in a solicitation.

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

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the 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
◆ Kenneth Hansen by phone at 801-538-3777, by FAX at 801-538-3844, or by Internet E-mail at khansen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Jared Gardner, Chair, Procurement Policy Board

R33. Administrative Services, Purchasing and General Services.

R33-1. Utah Procurement Rules, [“]General Procurement Provisions[,”] Definitions[.”]

R33-1-1. Definitions.

(A) Terms used in the procurement rules are defined in Sections 63G-6a-103 and 104.

(B) In addition:

(1) "Actual Costs" means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.

(2) "Adequate Price" Competition means:

(a) when a minimum of two competitive bids, proposals, or quotes are received from responsive bidders or offerors.

(3) "Acquiring Agency" is a conducting procurement unit subject to Section 63F-1-205 acquiring new technology or technology as therein defined.

(4) "Bid Bond" is an insurance agreement, accompanied by a monetary commitment, by which a third party (the Surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

(5) "Bid Rigging" means agreement among potential competitors to manipulate the competitive bidding process, for example, by agreeing not to bid, to bid a specific price, to rotate bidding, or to give kickbacks.

(6) "Bid Security" means the deposit of cash, certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the owner that the bidder, if awarded the contract, will execute such contract in accordance with the bidding requirements and the contract documents.

(7) "Brand Name or Equal Specification" means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.

(8) "Brand Name Specification" means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU or catalogue number.

(9) "Collusion" means when two or more persons act together to achieve a fraudulent or unlawful act. Collusion inhibits free and open competition in violation of law.

(10) "Cost Analysis" means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred.

(11) "Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(12) "Cronyism" is an anticompetitive practice that may violate federal and state antitrust and procurement laws. Cronyism in government contracting is a form of favoritism where contracts are awarded on the basis of friendships, associations or political connections instead of fair and open competition.

~~(13) "Favored vendor" means, as it relates to this administrative rule, a situation wherein a procurement officer, evaluation committee member, contract administrator, or public employee unfairly, by means of deceit or in violation of law, favor one vendor over another vendor(s) in the process of awarding a public contract. Examples of ways in which public contracts are improperly steered to a "favored vendor" include, but are not limited to:~~

~~(a) Collusion or manipulation of the procurement to steer a contract award to a particular vendor;~~

~~(b) Illegal bribes or kickbacks paid by a vendor in exchange for a contract award;~~

~~(c) Unjustified sole source contract awards to a vendor;~~

~~(d) Bid rigging schemes;~~

~~(e) Writing specifications that are overly restrictive or in a way that gives an unfair advantage to a particular vendor;~~

~~(f) Improperly splitting purchases to avoid the standard competitive procurement process;~~

~~(g) Leaking bid or proposal information to a particular vendor at the exclusion of other vendors; or~~

~~(h) Not following established policies and procedures when approving changes orders.]~~

(13) "Include, Includes, or Including" has the same meaning as Section 68-3-12(1)(f). When used in code or rule, "include," "includes," or "including" means that the items listed are not an exclusive list, unless the word "only" or similar language is used to expressly indicate that the list is an exclusive list.

(14) "Mandatory Requirement" means a condition set out in the specifications/statement of work that must be met without exception.

(15) "Minor Irregularity" is a variation from the solicitation that does not affect the price of the bid, offer, or contract or does not give a bidder/offerer an advantage or benefit not shared by other bidders/offersors, or does not adversely impact the interests of the procurement unit.

(16) "New Technology" means any invention, discovery, improvement, or innovation, that was not available to the acquiring agency on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to, or new applications of, existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.

(17) "Participating Addendum" means an agreement issued in conjunction with a Cooperative Contract that authorizes a public entity to use the Cooperative Contract.

(18) "Payment Bond" is a bond that guarantees payment for labor and materials expended on the contract.

(19) "Person" means:

(a) an individual;

(b) an association;

(c) an institution;

(d) a corporation;

(e) a company;

(f) a trust;

(g) a limited liability company;

(h) a partnership;

(i) any other organization or entity.

~~[(19)](20) "Price Analysis" means the evaluation of price data without analysis of the separate cost components and profit.~~

~~[(20)](21) "Price Data" means factual information concerning prices for procurement items.~~

(22) "Reasonable Person Standard" means an objective test to determine if a reasonably prudent person who exercises an average degree of care, skill, and judgment would be justified in drawing the same conclusions under the same circumstances or having knowledge of the same facts.

[(21)](23) "Section and Subsection" refers to, as applicable, the Utah Code and the Administrative Rule.

(24) "Service" means labor, effort, or work to produce a result that is beneficial to a procurement unit and includes a:

(a) Professional service;

(b) Management and operation service;

- (c) Consulting service;
- (d) Advertising or promotional service;
- (e) Concession service;
- (f) Vending service;
- (g) Management and operation service;
- (h) Promotional service;
- (i) Banking service;
- (j) Credit card service;
- (k) Electronic benefit transfer (EBT) card service; or
- (l) Women, infants, and children (WIC) card service.

[(22)](25) "Surety bond" (performance bond) means a promise to pay one the obligee (owner) a certain amount if the principal (contractor) fails to meet some obligation, such as fulfilling the terms of a contract. The surety bond protects the obligee (owner) against losses resulting from the principal's failure to meet the obligation. In the event that the obligations are not met, the obligee (owner), will recover its losses via the bond.

(26) "Steering a Contract to a Favored Vendor" is defined as a person involved in the procurement process, including any phase of the procurement process, who inappropriately acts with bias or prejudice in violation of the law to favor one vendor over another vendor(s) in awarding a government contract.

(a) Steering a contract to a favored vendor includes:

(i) Taking part in collusion or manipulation of the procurement process;

(ii) Accepting any form of illegal gratuity, bribe or kickback paid by a vendor in exchange for a contract award;

(iii) Awarding a contract without engaging in a standard procurement process to a vendor without proper justification;

(iv) Involvement in a bid rigging scheme;

(v) Writing specifications that are overly restrictive, beyond the reasonable needs of the procurement unit, or in a way that gives an unfair advantage to a particular vendor without proper justification;

(vi) Intentionally dividing a purchase to avoid engaging in a standard competitive procurement process as set forth in Section 63G-6a-506(8);

(vii) Leaking bid, proposal, or other information to a particular vendor that is prejudicial to other vendors;

(viii) Improperly avoiding engaging in a standard procurement process in order to extend the duration of a vendor's existing contract through means of a contract extension; or

(ix) Participating in the procurement process while having a financial conflict of interest as set forth in Section R33-24-105.

[(23)](27) "Technology" means any type of technology defined in Section 63F-1-102(8).

R33-1-2 Applicability of Rules.

(1) Title R33 shall apply to:

(a) A procurement unit for which the Utah State Procurement Policy Board is identified in Section 63G-6a-103(3) as the applicable rulemaking authority, except to the extent the procurement unit has adopted its own administrative rules as authorized under Section 63G-6a-103(3); and

(b) A procurement unit with independent procurement authority or a procurement unit for which the Utah State Procurement Policy Board is not identified in Section 63G-6a-103(3) as the applicable rulemaking authority, and the procurement unit has adopted

Title R33 or, to the extent, a portion of Title R33 by rule, ordinance, policy, or other authorized means.

R33-1-3 Determinations by Chief Procurement Officer or Head of a Procurement Unit with Independent Procurement Authority.

(1) Unless specifically stated otherwise, all determinations under Utah Procurement Code and Title R33 shall be made by the chief procurement officer or head of a procurement unit with independent procurement authority.

(2) Determinations by the chief procurement officer or head of a procurement unit with independent procurement authority shall be made:

(a) In accordance with the provisions set forth in Sections 63G-6a-106 and 303 and other rules and laws if applicable; or

(b) By applying the reasonable person standard to determine:

(i) If the actions of a person involved in the procurement process would cause a reasonable person to conclude that the person has acted in violation of the Utah Procurement Code or Title R33;

(ii) If the circumstances surrounding a procurement would cause a reasonable person to conclude that a violation of the Utah Procurement Code or Title R33 has occurred; or

(iii) If the evidence presented would cause a reasonable person to conclude that certain facts associated with a procurement are true.

R33-1-4. Competitive Procurement Required for Expenditure of Public Funds or Use of Public Property or Other Public Assets to Acquire a Procurement Item Unless Exception is Authorized.

(1) Unless the chief procurement officer or head of a procurement unit with independent procurement authority issues a written exception in accordance with provisions set forth in the Utah Procurement Code and applicable Rules documenting why a competitive procurement process is not required and why it is in the best interest of the procurement unit to award a contract without engaging in a standard procurement process, a procurement unit shall conduct a standard procurement process whenever:

(a) Public funds are expended or used to acquire a procurement item; or

(b) A procurement unit's property, name, influence, assets, resources, programs, or other things of value is used as consideration in the formation of a contract for a procurement item.

R33-1-12 Mandatory Minimum Requirements in a Solicitation.

(1) Mandatory minimum requirements may be used in a solicitation to assist the conducting procurement unit in identifying the most qualified persons responding to a solicitation and to limit the number of persons eligible to move forward to subsequent stages in the solicitation or evaluation process. Examples of mandatory minimum requirements include:

(a) Ability to meet delivery deadlines;

(b) Qualifications;

(c) Certifications;

(d) Licensing;

(e) Experience;

(f) Compliance with State or Federal regulations;

(g) Type of services provided; or

(i) Availability of product, equipment, supplies, or services.

KEY: government purchasing, Utah procurement rules, general procurement provisions, definitions
Date of Enactment or Last Substantive Amendment: [~~January 28, 2015~~2016]
Notice of Continuation: July 8, 2014
Authorizing, and Implemented or Interpreted Law: 63G-6a

**Administrative Services, Purchasing
 and General Services**

R33-4

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

**NOTICE OF PROPOSED RULE
 (Amendment)**

DAR FILE NO.: 40560
 FILED: 06/30/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to address the supplemental procurement procedures.

SUMMARY OF THE RULE OR CHANGE: Sections were added to this rule for the rejection of a late solicitation response, and the delivery and time requirements. Additionally, Sections R33-4-104 through R33-4-108 were removed and moved to Rule R33-5. (Editor's Note: The proposed amendment to Rule R33-5 is under Filing No. 40571 in this issue, July 15, 2016, of the Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget relating to the changes in this rule. The rule addresses the supplemental procurement procedures and adds the section addressing the rejection of a late solicitation response, and the delivery and time requirements. The sections marked to be removed will be moved in Rule R33-5.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The rule addresses the supplemental procurement procedures and adds the section addressing the rejection of a late solicitation response, and the delivery and time requirements. The sections marked to be removed will be moved in Rule R33-5.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. The rule addresses the supplemental procurement procedures and adds the section

addressing the rejection of a late solicitation response, and the delivery and time requirements. The sections marked to be removed will be moved in Rule R33-5.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The rule addresses the supplemental procurement procedures and adds the section addressing the rejection of a late solicitation response, and the delivery and time requirements. The sections marked to be removed will be moved in Rule R33-5.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons. The rule addresses the supplemental procurement procedures and adds the section addressing the rejection of a late solicitation response, and the delivery and time requirements. The sections marked to be removed will be moved in Rule R33-5.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Any potential fiscal impact that this rule may have on businesses cannot be measured, as the rule addresses the supplemental procurement procedures, and the changes to this rule simply adds the section addressing the rejection of a late solicitation response, and the delivery and time requirements. The sections marked to be removed will be moved in Rule R33-5. Therefore, there are no anticipated fiscal impacts that this rule may have on businesses.

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

ADMINISTRATIVE SERVICES
 PURCHASING AND GENERAL SERVICES
 ROOM 3150 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the 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
- ◆ Kenneth Hansen by phone at 801-538-3777, by FAX at 801-538-3844, or by Internet E-mail at khansen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Jared Gardner, Chair, Procurement Policy Board

R33. Administrative Services, Purchasing and General Services.**~~R33-4. [General Procurement Provisions, Prequalifications, Specifications, and Small Purchases.]~~Supplemental Procurement Procedures.****~~R33-4-101. [Prequalification of Potential Vendors.]~~Request for Statement of Qualifications.**

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

R33-4-101a. Rejection of a Late Solicitation Response -- Delivery and Time Requirements.

(1) Except as provided in Subsection (4), an issuing procurement unit may not accept a response to a request for statement of qualifications after the time for submission of a request for statement of qualifications has expired.

(2) When submitting a response to a request for statement of qualifications electronically, vendors must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If a vendor is in the middle of uploading a response when the closing time arrives, the procurement unit will stop the process and the response will not be accepted.

(3) When submitting a response to a request for statement of qualification by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) vendors are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a response being late.

(a) All responses received by physical delivery will be date and time stamped by the procurement unit.

(4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a response not being received by the established due date and time, the response shall be accepted as being on time.

R33-4-101[a]b. Vendors with Exclusive Authorization to Bid.

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

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

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

(2) After the prequalified list has been compiled, a procurement unit may award a contract by obtaining bids or quotes

from all vendors on the prequalified list taking into consideration a best value analysis that includes, as applicable:

- (a) cost;
- (b) compatibility with existing equipment, technology, software, accessories, replacement parts, or service;
- (c) training, knowledge and experience of employees of the procurement unit and of the vendors;
- (d) past performance of vendors and pertaining to the procurement item being purchased;
- (e) the costs associated with transitioning from an existing procurement item to a new procurement item; or
- (f) other factors determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority.

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

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

~~[R33-4-102. Thresholds for Approved Vendor Lists.~~

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

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

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

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

~~(iii) Information Technology: \$500,000~~

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

R33-4-103. Specifications.

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

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

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

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

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

- (i) a design build construction project; and
- (ii) other procurements determined in writing by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.

(b) Violations of this ~~[Rule]Subsection~~ R33-4-104(3) may result in:

- (i) the bidder or offeror being declared ineligible for award of the contract;
- (ii) the solicitation being canceled;
- (iii) termination of an awarded contract; or
- (iv) any other action determined to be appropriate by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.

(4) Brand Name or Equal Specifications.

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

- (i) "or equivalent" reference is included in the specification; and,
- (ii) as many other brand names as practicable are also included in the specification.

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

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

(5) Brand Name ~~[Sole Source]~~Requirements.

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

(b) If there is only one provider that can meet the requirements set forth in the specifications, the procurement unit shall conduct the procurement in accordance with Section 63G-6a-802 and Section R33-8-101b.

~~[R33-4-104. Small Purchases.~~

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

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

~~(2) Small Purchase thresholds:~~

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

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

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

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

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

~~R33-4-105. Small Purchases Threshold for Design Professional Services.~~

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

~~(2) Design professional services may be procured up to a maximum of \$100,000, by direct negotiation after reviewing the qualifications of a minimum of three design professional firms.~~

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

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

~~(5) A procurement unit using this rule must comply with the following:~~

~~(a) Utah Code 63G-6a-408 (8) -- Prohibition against dividing a procurement into one or more smaller procurements;~~

~~(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;~~

~~(c) R33-24-104 -- Socialization with Vendors and Contractors;~~

~~(d) R33-24-105 -- Financial Conflict of Interests Prohibited;~~

~~(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and~~

~~(f) All other applicable laws and rules.~~

~~R33-4-106. Small Purchases Threshold for Construction Projects.~~

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

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

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

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

~~(5) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may procure small construction projects costing more than \$25,000 up to a~~

maximum of \$100,000 by obtaining a minimum of two competitive quotes that include minimum specifications and shall award to the contractor with the lowest quote that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.

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

(7) A procurement unit using this rule must comply with the following:

- (a) Utah Code 63G-6a-408 (8) -- Prohibition against dividing a procurement into one or more smaller procurements;
- (b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;
- (c) R33-24-104 -- Socialization with Vendors and Contractors;
- (d) R33-24-105 -- Financial Conflict of Interests Prohibited;
- (e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and
- (f) All other applicable laws and rules.

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

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

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

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

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

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

(6) A procurement unit using this rule must comply with the following:

- (a) Utah Code 63G-6a-408 (8) -- Prohibition against dividing a procurement into one or more smaller procurements;
- (b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;
- (c) R33-24-104 -- Socialization with Vendors and Contractors;
- (d) R33-24-105 -- Financial Conflict of Interests Prohibited;
- (e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and
- (f) All other applicable laws and rules.

R33-4-108. Small Purchases of Professional Service Providers and Consultants.

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

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

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

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

(4) A procurement unit using this rule must comply with the following:

- (a) Utah Code 63G-6a-408 (8) -- Prohibition against dividing a procurement into one or more smaller procurements;
- (b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;
- (c) R33-24-104 -- Socialization with Vendors and Contractors;
- (d) R33-24-105 -- Financial Conflict of Interests Prohibited;
- (e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions;
- (f) R33-4-103(3) -- Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications; and
- (g) All other applicable laws and rules.]

R33-4-109. Procedures When Two Bids, Quotes, or Statement of Qualifications Cannot Be Obtained.

(1) The requirement that a procurement unit obtain a minimum of two bids, quotes, or statements of qualifications is waived when only one vendor submits a bid, provides a quote, or submits a statement of qualifications under the following circumstances:

(a) A solicitation meeting the public notice requirements of Utah Code 63G-6a-[406]112 results in only one vendor willing to bid, provide quotes, or submit a statement of qualifications;

(b) Vendors on a multiple award contract, prequalification, or approved vendor list fail to bid, provide quotes, or submit statements of qualifications; or

(c) A procurement unit makes a reasonable effort to invite all known vendors to bid, provide quotes, or submit statements of qualifications and all but one of the invited vendors contacted fail to bid, provide quotes, or submit statements of qualifications.

(i) Reasonable effort shall mean:

(A) Public notice under Utah Code 63G-6a-~~406~~112;

(B) An electronic or manual search for vendors within the specific industry, fails to identify any vendors willing to submit bids or provide quotes;

(C) Contacting industry-specific associations or manufacturers for the names of vendors within that industry; or

(D) A determination by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority that a reasonable effort has been made.

(2) Before accepting a bid or quote from only one vendor, the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall consider:

(a) whether pricing is fair and reasonable as set forth in R33-6-109(1);

(b) canceling the procurement as set forth in R33-9-103; and

(c) bid security requirement as set forth in R33-11-202.

(3) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall maintain records documenting the circumstances and reasons why fewer than two bids, quotes, or statements of qualifications were obtained.

R33-4-110. Use of Electronic, Telephone, or Written Quotes.

(1) Quote means an informal purchasing process which solicits pricing information from several sources.

(2) Quotation means a statement of price, terms of sale, and description of goods or services offered by a vendor to a procurement unit; and

(a) A quotation is nonbinding and does not obligate a procurement unit to make a purchase or a vendor to make a sale.

(3) Electronic quote means a price quotation provided by a vendor through electronic means such as the internet, online sources, email, an interactive web-based market center, or other technology.

(4) A procurement unit may use electronic, telephone, or written quotes to obtain pricing and other information for a procurement item within the small purchase or approved vendor threshold limits established by rule provided:

(a) Quotations are for the same procurement item, including terms of sale, description, and quantity of goods or services;

(b) It is disclosed to the vendor that the quote is for a governmental entity and an inquiry is made as to whether the vendor is willing to provide a price discount to a governmental entity; and

(c) The procurement unit maintains a public record that includes:

(i) The name of each vendor supplying a quotation; and

(ii) The amount of each vendor's quotation.

(5) An executive branch procurement unit, subject to this rule:

(a) May obtain electronic, telephone, or written quotations for a procurement item costing less than \$5,000;

(b) Shall send a request to obtain quotations for a procurement item costing more than \$5,000 to the division of state purchasing;

(i) The division shall obtain quotations for executive branch procurement units for procurement items costing more than \$5,000; and

(c) May not obtain quotations for a procurement item available on state contract unless otherwise specified in the terms of a solicitation or contract or authorized by rule or statute.

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

Date of Enactment or Last Substantive Amendment: [~~August 21, 2015~~2016]

Notice of Continuation: July 8, 2014

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

Administrative Services, Purchasing and General Services

R33-5

Request for Information

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40571

FILED: 07/01/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to address the other standard procurement processes, which include a request for information, the small purchase subsections previously addressed in Rule R33-4, approved vendor list, contract award based on established terms, and other approved vendor list subsections. (Editor's Note: the proposed amendment to Rule R33-4 is under Filing No. 40560 in this issue, July 15, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The additions of Sections R33-5-104 through R33-5-108 were sections previously in Rule R33-4 and only differ in numbering. Sections R33-5-201 through R33-5-204 were added to address standard procurement processes outlined for approved vendor lists, including contract awards based on established terms, performance rating systems for vendors on an approved vendor list, and using the small purchase process for approved vendor lists.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Any anticipated cost or savings to the state budget, based on the changes to this rule, cannot be measured. The changes to this rule address approved vendor lists and the standard procurement process outlined for the approved vendor lists. There may be a chance that businesses associated to the approved vendor list could impact that state budget. However, it is impossible to determine that amount, and the changes in this rule do not directly address any financial implication to the state budget. Therefore, there are no anticipated costs or savings that this rule may have on the state budget.

◆ **LOCAL GOVERNMENTS:** Any anticipated cost or savings to the local government, based on the changes to this rule, cannot be measured. The changes address approved vendor lists and the standard procurement process outlined for the approved vendor lists. There may be a chance that businesses associated to the approved vendor list could impact local government costs or savings. However, it is impossible to determine that amount, and the changes in this Rule do not directly address any financial implication to local government finances. Therefore, there are no anticipated costs or savings that this rule may have on local government.

◆ **SMALL BUSINESSES:** Any anticipated cost or savings to small businesses, based on the changes to this rule, cannot be measured. The changes address approved vendor lists and the standard procurement process outlined for the approved vendor lists. There may be a chance that businesses may or may not be qualified for the approved vendor list. However, it is impossible to determine that result, and the changes in this Rule do not directly address any financial implication to small businesses. Therefore, there are no anticipated costs or savings that this rule may have on small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The changes to this rule simply address the standard procurement processes for approved vendor lists, and the additions of Sections R33-5-104 through R33-5-108 were sections previously in Rule R33-4 and only differ in numbering.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons. The changes to this rule simply address the standard procurement processes for approved vendor lists, and the additions of Sections R33-5-104 through R33-5-108 were sections previously in Rule R33-4 and only differ in numbering.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Any anticipated fiscal impacts that the rule may have on businesses, based on the changes to this rule, cannot be measured. The changes address approved vendor lists and the standard procurement process outlined for the approved vendor lists. There may be a chance that businesses may

may not be qualified for the approved vendor list. However, it is impossible to determine that result, and the changes in this rule do not directly address any financial implication to businesses. Therefore, there are no anticipated fiscal impacts that this rule may have on local government.

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

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

◆ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Jared Gardner, Chair, Procurement Policy Board

R33. Administrative Services, Purchasing and General Services.

R33-5. ~~[Request for Information]~~ Other Standard Procurement Processes.

R33-5-101. Request for Information.

In addition to the requirements of Part 5 of the Utah Procurement Code, a Request for Information should indicate the procedure for business confidentiality claims and other protections provided by the Utah Government Records and Access Management Act.

R33-5-104. Small Purchases.

Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-506. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(1) Small Purchase thresholds:

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

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

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

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

(3) Whenever practicable, the Division of Purchasing and General Services and procurement units shall use a rotation system or

other system designed to allow for competition when using the small purchases process.

R33-5-105. Small Purchases Threshold for Design Professional Services.

(1) The small purchase threshold for design professional services is a maximum amount of \$100,000.

(2) Design professional services may be procured up to a maximum of \$100,000, by direct negotiation after reviewing the qualifications of a minimum of three design professional firms.

(3) When using this rule in conjunction with an approved vendor list, the procurement unit shall select design professional firms identified in Subsection (2) from the approved vendor list using one or more of the following methods:

(a) A rotation system, organized alphabetically, numerically, or randomly;

(b) Assignment of vendors to a specified geographic area;

(c) Assignment of vendors based on each vendor's particular expertise or field; or

(d) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(4) A procurement unit shall include minimum specifications when using the small purchase threshold for design professional services.

(5) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing in the qualification process described under Section 63G-6a-410, the approved vendor list process described under Section 63G-6a-507, and the evaluation and fee negotiation process, described in Part 15 of the Utah Procurement Code in the procurement of design professional services.

(6) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and

(f) All other applicable laws and rules.

R33-5-106. Small Purchases Threshold for Construction Projects.

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

(2) A procurement unit shall include minimum specifications when using the small purchases threshold for construction projects.

(3) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing in the qualification process described under Section 63G-6a-410, the approved vendor list process described under Section 63G-6a-507, and the obtaining of quotes, bids or proposals in the procurement of small construction projects.

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

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

(6) When using this rule in conjunction with an approved vendor list, the procurement unit shall select vendors and contractors identified in Subsections (4) and (5) from the approved vendor list using one or more of the following methods:

(a) A rotation system, organized alphabetically, numerically, or randomly;

(b) Assignment of vendors to a specified geographic area;

(c) Assignment of vendors based on each vendor's particular expertise or field;

(d) Invite all contractors on the approved vendor list to submit quotes, applicable to Subsection (5) only; or

(e) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(7) Under this rule, the chief procurement officer or head of a procurement unit with independent procurement authority shall procure small construction projects costing more than \$100,000 up to a maximum of \$2.5 million through a two-stage process. Stage one, qualify vendors under Section 63G-6a-410 and develop an Approved Vendor List under Section 63G-6a-507. Stage two, issue to all vendors, qualified and approved in stage one, an invitation for bids or request for proposals and use the procedures set forth therein to award a contract.

(8) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and

(f) All other applicable laws and rules.

R33-5-107. Quotes for Small Purchases from \$1,001 to \$50,000.

(1) For procurement item(s) where the cost is greater than \$1,000 but up to a maximum of \$5,000, a procurement unit shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the

responsible vendor offering the lowest quote that meets the specifications.

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

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

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

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

(6) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and

(f) All other applicable laws and rules.

(7) When using this rule in conjunction with an approved vendor list, the procurement unit shall select vendors from the approved vendor list using one or more of the following methods:

(a) A rotation system, organized alphabetically, numerically, or randomly;

(b) Assignment of vendors to a specified geographic area;

(c) Assignment of vendors based on each vendor's particular expertise or field;

(d) Invite all vendors on the approved vendor list to submit quotes; or

(e) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

R33-5-108. Small Purchases of Professional Service Providers and Consultants.

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

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

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

(3) When using this rule in conjunction with an approved vendor list, the procurement unit shall select contractors from the approved vendor list using one or more of the following methods:

(a) A rotation system, organized alphabetically, numerically, or randomly;

(b) Assignment of vendors to a specified geographic area;

(c) Assignment of vendors based on each vendor's particular expertise or field;

(d) Invite all vendors on the approved vendor list to submit quotes; or

(e) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

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

(5) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions;

(f) R33-4-103(3) -- Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications; and

(g) All other applicable laws and rules.

R33-5-201. Approved Vendor List.

In accordance with the provisions set forth in Section 63G-6a-507, a procurement unit may establish an approved vendor list and award contracts using the following methods and all associated laws and rules:

(a) Section 63G-6a-113 and 507(6)(b), Contract Award Based on Established Terms;

(b) Section 63G-6a-609, Multiple Stage Bidding Process;

(c) Section 63G-6a-710, Multiple Stage RFP Process;

(d) Section 63G-6a, Part 15, Design Professional Services; or

(e) Section 63G-6a-506, Small Purchases.

R33-5-202. Contract Award Based on Established Terms.

(1) In accordance with Section 63G-6a-113 and 507(6)(b), a procurement unit may award a contract to a vendor on an approved vendor list at an established price based on:

(a) A price list, rate schedule, or pricing catalog:
(i) Submitted by a vendor and accepted by the procurement unit; or

(ii) Mandated by the procurement unit or a federal agency; or

(b) A federal regulation for a health and human services program.

(2) Established terms submitted by vendors on an approved vendor list:

(a) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog submitted by the vendor, the procurement unit shall, as applicable:

(i) Assign work or purchase from the approved vendor with the lowest price, rate or catalog price;

(A) In case of a tie for the lowest price, the procurement unit shall follow the process described in Section R33-6-111 to resolve tie; and

(B) If the lowest-cost approved vendor cannot provide the procurement item or quantity needed, then work shall be assigned or the purchase made from the next lowest-cost vendor, and so on, until the procurement unit's needs are met;

(ii) Establish a cost threshold based on cost analysis as set forth in Section R33-12-603 and 604, and assign work or purchase from an approved vendor meeting the cost threshold using one of the following methods:

(A) A rotation system, organized alphabetically, numerically, or randomly;

(B) Assignment of vendors to a specified geographic area;

(C) Assignment of vendors based on each vendor's particular expertise or field; or

(D) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority; and

(iii) In accordance with Section 63G-6a-1206.5, an approved vendor may lower its price, rate, or catalog price at any time during the time a contract is in effect in order to be assigned work or receive purchases under Subsections (i) and (ii).

(3) Established terms mandated by procurement unit or federal agency:

(a) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog mandated by the procurement unit or a federal agency, the procurement unit shall use one of the following methods to assign work or purchase from a vendor on an approved vendor list:

(i) A rotation system, organized alphabetically, numerically, or randomly;

(ii) Assignment of vendors to a specified geographic area;

(iii) Assignment of vendors based on each vendor's particular expertise or field; or

(iv) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(4) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog based on a federal regulation for a health and human services program the procurement unit shall follow the requirements set forth in the applicable federal regulation to assign work or make a purchase.

(5) In accordance with the provisions set forth in Section 63G-6a-2105, the chief procurement officer may award a contract(s) to vendors on an approved vendor list on a statewide, regional, or combined statewide and regional basis.

R33-5-203. Performance Rating System for Vendors on an Approved Vendor List.

(1) A procurement unit may develop a performance rating system to evaluate the performance of vendors on an approved vendor list, provided the performance rating system is described in the Request for Statement of Qualifications used to establish the approved vendor list, and includes:

(a) The minimum performance rating threshold that approved vendors must achieve in order to remain on the approved vendor list; and

(b) A statement indicating that vendors whose performance does not meet the minimum performance rating threshold may be disqualified and removed from the approved vendor list.

(2) A procurement unit that disqualifies and removes a vendor from an approved vendor list shall:

(a) Make a written finding that:

(i) Describes the performance rating system;

(ii) Identifies the minimum performance rating threshold; and

(iii) Explains the performance rating achieved by the disqualified vendor; and

(b) Provide a copy of the written finding to the disqualified vendor.

R33-5-204. Approved Vendor Lists -- Using Small Purchase Process.

(1) When awarding a contract to an approved vendor using the small purchasing process, the procurement unit shall follow the small purchase requirements set forth in Section 63G-6a-506 and the following Administrative Rules as applicable:

(a) Section R33-5-104. Small Purchases

(b) Section R33-5-105. Small Purchases Threshold for Design Professional Services;

(c) Section R33-5-106. Small Purchases Threshold for Construction Projects;

(d) Section R33-5-107. Quotes for Small Purchases from \$1,001, to \$50,000;

(e) Section R33-5-108. Small Purchases of Professional Service Providers and Consultants;

(2) Executive branch employees are required to use state contracts for all small purchases for procurement items available on state contract.

KEY: government purchasing, procurements, request for information

Date of Enactment or Last Substantive Amendment: ~~July 8, 2014~~2016

Notice of Continuation: July 8, 2014

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

**Administrative Services, Purchasing
and General Services**
R33-6
Bidding

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40561

FILED: 06/30/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to address bidding matters for the Utah Procurement rules.

SUMMARY OF THE RULE OR CHANGE: The title of Section R33-6-105 was changed, and the body of the section now addresses the late bid delivery and time requirements pursuant to Subsection 63G-6a-604(4). Additionally, Section R33-6-106 was replaced with "Voluntary Withdrawal of a Bid".

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There are no anticipated costs or savings that the changes to this rule will have on the state budget. The changes to the rule were made to comply with statute, and any financial impact is determined by law.
- ◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings that the changes to this rule will have on local government. The changes to the rule were made to comply with statute, and any financial impact is determined by law.
- ◆ SMALL BUSINESSES: There are no anticipated costs or savings that the changes to this rule will have on small businesses. The changes to the rule were made to comply with statute, and any financial impact is determined by law.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings that the changes to this rule will have on persons other than small businesses, businesses, or local government entities. The changes to the rule were made to comply with statute, and any financial impact is determined by law.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons. The changes to the rule were made to comply with statute, and any compliance costs are controlled by law.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts that this rule may have on businesses. The changes to the rule were made to comply with statute, and any potential fiscal impact has been evaluated by the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the 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
- ◆ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Jared Gardner, Chair, Procurement Policy Board

R33. Administrative Services, Purchasing and General Services.

R33-6. Bidding.

R33-6-101. Competitive Sealed Bidding; Multiple Stage Bidding; Reverse Auction.

(1) Competitive Sealed Bidding shall be conducted in accordance with the requirements set forth in Sections 63G-6a-601 through 63G-6a-612. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) The conducting procurement unit is responsible for all content contained in the competitive sealed bidding, multiple stage bidding, and reverse auction solicitation documents, including:

- (a) reviewing all schedules, dates, and timeframes;
- (b) approving content of attachments;
- (c) providing the issuing procurement unit with redacted documents, as applicable;

(d) assuring that information contained in the solicitation documents is public information; and

(e) understanding the description of the procurement item(s) being sought, all criteria, requirements, factors, and formulas to be used for determining the lowest responsible and responsive bidder.

(3)(a) The award of a contract shall be to the lowest responsive and responsible bidder who meets the objective criteria described in the invitation for bids.

(b) Bids shall be based on the lowest bid for the entire term of the contract, excluding renewal periods.

(c) Unless an exception is authorized in writing by the chief procurement officer or head of a procurement unit with independent procurement authority, cost may not be divided or evaluated on any other basis than the entire term of the contract, excluding renewal periods.

R33-6-102. Bidder Submissions.

(1) The invitation for bids shall include the information required by Section 63G-6a-603 and shall also include a "Bid Form" or forms, which shall provide lines for each of the following:

- (a) the bidder's bid price;
- (b) the bidder's acknowledged receipt of addenda issued by the procurement unit;
- (c) the bidder to identify other applicable submissions; and
- (d) the bidder's signature

(2) Bidders may be required to submit descriptive literature and/or product samples to assist the chief procurement officer or head of a procurement unit with independent procurement authority in evaluating whether a procurement item meets the specifications and other requirements set forth in the invitation to bid.

(a) Product samples must be furnished free of charge unless otherwise stated in the invitation for bids, and if not destroyed by testing, will upon written request within any deadline stated in the invitation for bids, be returned at the bidder's expense. Samples must be labeled or otherwise identified as specified in the invitation for bids by the procurement unit.

(3) The provisions of ~~[Rule]~~Section R33-7-105 shall apply to protected records.

(4) Bid, payment and performance bonds or other security may be required for procurement items as set forth in the invitation for bids. Bid, payment and performance bond amounts shall be as prescribed by applicable law or must be based upon the estimated level of risk associated with the procurement item and may not be increased above the estimated level of risk with the intent to reduce the number of qualified bidders.

(5) All bids must be based upon a definite calculated price

(a) "Indefinite quantity contract" means a fixed price contract for an indefinite amount of procurement items to be supplied as ordered by a procurement unit, and does not require a minimum purchase amount, or provide a maximum purchase limit;

(b) "Definite quantity contract" means a fixed price contract that provides for the supply of a specified amount of goods over a specified period, with deliveries scheduled according to a specified schedule; and

(c) Bids may not be based on using another bidder's price, including a percentage discount, formula, other amount related to another bidder's price, or conditions related to another bid or acceptance of an entire bid or a portion of a bid.

R33-6-103. Pre-Bid Conferences and Site Visits.

(1) Mandatory pre-bid conferences and site visits may be held to explain the procurement requirements in accordance with the following:

(a) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-bid conferences and site visits must require mandatory attendance by all bidders.

(b) Except as authorized in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority, pre-bid conferences and site visits allowing optional attendance by bidders are not permitted.

(c) A pre-bid conference may be attended via the following:

- (i) attendance in person;
- (ii) teleconference participation;

(iii) webinar participation;

(iv) participation through other electronic media approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

(d) Mandatory site visits must be attended in person.

(e) All pre-bid conferences and site visits must be attended by an authorized representative of the person or vendor submitting a bid and as may be further specified in the procurement documents.

(f) The solicitation must state that failure to attend a mandatory pre-bid conference shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory pre-bid conference.

(g) The solicitation must state that failure to attend a mandatory site visit shall result in the disqualification of any bidder that does not have an authorized representative attend the entire duration of the mandatory site visit.

(h) At the discretion of the conducting procurement unit, audio or video recordings of pre-bid conferences and site visits may be used.

(i) Listening to or viewing audio or video recordings of a mandatory pre-bid conference or site visit may not be substituted for attendance. If the chief procurement officer or the head of a procurement unit with independent procurement authority grants an exception to the mandatory requirement in writing, the procurement unit may require all bidders that do not have an authorized representative in attendance for the entire pre-bid conference or site visit to review any audio or video recording made.

(2)(a) If a pre-bid conference or site visit is held, the conducting procurement unit shall maintain:

(i) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;

(ii) minutes of the pre-bid conference or site visit; and

(iii) copies of any documents distributed by the conducting procurement unit to the attendees at the pre-bid conference or site visit.

(b) The issuing procurement unit shall publish as an addendum to the solicitation:

(i) the attendance log;

(ii) minutes of the pre-bid conference or site visit;

(iii) copies of any documents distributed to attendees at the pre-bid conference or site visit; and

(iv) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

R33-6-104. Addenda to Invitation for Bids.

Prior to the submission of bids, a procurement unit may issue addenda which may modify any aspect of the Invitation for Bids.

(a) Addenda shall be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.

(b) After the due date and time for submitting bids, at the discretion of the chief procurement officer or head of a procurement unit with independent procurement authority, addenda to the Invitation for Bids may be limited to bidders that have submitted bids, provided the addenda does not make a substantial change to the Invitation for Bids that, in the opinion of the chief procurement officer or head of a procurement unit with independent procurement authority, likely would have impacted the number of bidders responding to the Invitation for Bids.

R33-6-105. ~~[Bids and Modifications to a Bid Received After the Due Date and Time.]~~ Rejection of a Late Bid – Delivery and Time Requirements.

(1) ~~[Bids and modifications to a bid submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason, except as determined in R33-6-105(4).] Except as provided in Subsection (4), an issuing procurement unit may not accept a bid after the time for submission of a bid has expired as set forth in Section 63G-6a-604(4).~~

(2) When submitting a bid ~~[or modification]~~ electronically, bidders must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If a bidder is in the middle of uploading a bid when the closing time arrives, the ~~[system]~~ procurement unit will stop the process and the bid ~~[or modification to the bid]~~ will not be accepted.

(3) When submitting a bid ~~[or modification to a bid]~~ by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) bidders are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a bid ~~[or modification to a bid]~~ being late.

(a) All bids ~~[or modifications to bids]~~ received by physical delivery will be date and time stamped by the procurement unit.

(4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a bid ~~[or modification to a bid]~~ not being received by the established due date and time, the bid ~~[or modification to a bid]~~ shall be accepted as being on time.

R33-6-106. ~~[Errors in Bids.]~~ Voluntary Withdrawal of a Bid.

~~A bidder may voluntarily withdraw a bid at any time before a contract is awarded with respect to the invitation for bids for which the bid was submitted provided the bidder is not engaged in any type of bid rigging, collusion or other anticompetitive practice made unlawful under other applicable law. [The following shall apply to the correction or withdrawal of an inadvertently erroneous bid, or the cancellation of an award or contract that is based on an unintentionally erroneous bid. A decision to permit the correction or withdrawal of a bid or the cancellation of any award or a contract under this Rule shall be supported in a written document, signed by the in the chief procurement officer or head of a procurement unit with independent procurement authority.~~

~~(1) Errors attributed to a bidder's error in judgment may not be corrected.~~

~~(2) Provided that there is no change in bid pricing or the cost evaluation formula, errors not attributed to a bidder's error in judgment may be corrected if it is in the best interest of the procurement unit and correcting the mistake maintains the fair treatment of other bidders.~~

~~(a) Examples include:~~

~~(i) missing signatures;~~

~~(ii) missing acknowledging receipt of an addendum;~~

~~(iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the chief procurement officer or head of a procurement unit with independent procurement authority to correct this mistake;~~

~~(iv) typographical errors;~~

~~(v) mathematical errors not affecting the total bid price; or~~

~~(vi) other errors deemed by the chief procurement officer or head of a procurement unit with independent procurement authority to be immaterial or inconsequential in nature.~~

~~(3) The chief procurement officer or head of a procurement unit with independent procurement authority shall approve or deny, in writing, a bidder's request to correct or withdraw a bid.~~

~~(4) Corrections or withdrawal of bids shall be conducted in accordance with Section 63G-6a-605.]~~

R33-6-107. Errors Discovered After the Award of Contract.

(1) Errors discovered after the award of a contract may only be corrected if, after consultation with the chief procurement officer or head of a procurement unit with independent procurement authority and the attorney general's office or other applicable legal counsel, it is determined that the correction of the mistake does not violate the requirements of the Utah Procurement Code or these administrative rules.

(2) Any correction made under this subsection must be supported by a written determination signed by the chief procurement officer or the head of a procurement unit with independent procurement authority.

R33-6-108. Re-solicitation of a Bid.

(1) Re-solicitation of a bid may occur only if the chief procurement officer or head of a procurement unit with independent procurement authority determines that:

(a) A material change in the scope of work or specifications has occurred;

(b) procedures outlined in the Utah Procurement Code were not followed;

(c) additional public notice is desired;

(d) there was a lack of adequate competition; or

(e) other reasons exist that are in the best interests of the procurement unit.

(2) Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

R33-6-109. Only One Bid Received.

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

(a) a new invitation for bids solicited; or

(b) the procurement canceled; ~~[or]~~.

~~[(e) the procurement may be conducted as a sole source under Section 63G-6a-802.]~~

R33-6-110. Multiple or Alternate Bids.

(1) Multiple or alternate bids will not be accepted, unless otherwise specifically required or allowed in the invitation for bids.

(2) If a bidder submits multiple or alternate bids that are not requested in the invitation for bids, the chief procurement officer or head of a procurement unit with independent procurement authority

will only accept the bidder's primary bid and will not accept any other bids constituting multiple or alternate bids.

R33-6-111. Methods to Resolve Tie Bids.

(1) In accordance with Section 63G-6a-608, in the event of tie bids, the contract shall be awarded to the procurement item offered by a Utah resident bidder, provided the bidder indicated on the invitation to bid form that it is a Utah resident bidder.

(2) If a Utah resident bidder is not identified, the preferred method for resolving tie bids shall be for the chief procurement officer or head of a procurement unit with independent procurement authority by tossing a coin in the presence of a minimum of three witnesses with the firm first in alphabetical order being heads.

(3) Other methods to resolve a tie bid described in Section 63G-6a-608 may be used as deemed appropriate by the chief procurement officer or head of a procurement unit with independent procurement authority.

R33-6-112. Publication of Award.

(1) The issuing procurement unit shall, on the day on which the award of a contract is announced, make available to each bidder and to the public a notice that includes:

(a) the name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and

(b) the names and the prices of each bidder to which the contract is not awarded.

R33-6-113. Multiple Stage Bidding Process.

Multiple stage bidding shall be conducted in accordance with the requirements set forth in Section 63G-6a-609[~~Utah Procurement Code~~].

(1) The chief procurement officer or head of a procurement unit with independent procurement authority may hold a pre-bid conference as described in [Rule]Section R33-6-103 to discuss the multiple stage bidding process or for any other permissible purpose.

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

Date of Enactment or Last Substantive Amendment: [February 23], 2016

Notice of Continuation: July 8, 2014

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

**Administrative Services, Purchasing
and General Services**

R33-7

Request for Proposals

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40567

FILED: 06/30/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to address the request for proposals, and the process which shall be conducted in accordance with the requirements set forth in Sections 63G-6a-701 through 63G-6a-711 of the Utah Procurement Code.

SUMMARY OF THE RULE OR CHANGE: Section R33-7-103a was added to provide further clarification regarding the Multiple Stage Cost Qualification RFP process. Additionally, Sections R33-7-401, R33-7-403, and R33-7-503 were deleted, Section R33-7-402 was amended to address the rejection of late proposals and the delivery and time requirements, and Section R33-7-502 was amended to address the voluntary withdrawal of a proposal. Section R33-7-703 was also amended to add clarification regarding non-priced technical criteria.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Any anticipated cost or savings to the state budget, based on the changes to this rule, cannot be measured. The changes to this rule address the multiple stage cost qualification RFP process. It is impossible to determine what businesses may or may not qualify, or may or may not participate in the RFP process. Thus, it is impossible to determine what impact, if any, there may be on the state budget. Therefore, there are no anticipated costs or savings that this rule may have on the state budget.

♦ **LOCAL GOVERNMENTS:** Any anticipated cost or savings to local government, based on the changes to this rule, cannot be measured. The changes to this rule address the multiple stage cost qualification RFP process. It is impossible to determine what businesses may or may not qualify, or may or may not participate in the RFP process. Thus, it is impossible to determine what impact, if any, there may be on local government.

♦ **SMALL BUSINESSES:** There are no anticipated cost or savings to small businesses. The changes to this rule address the multiple stage cost qualification RFP process, and do not prevent any small businesses from participation in the process. Therefore, there are no anticipated costs or savings that this rule may have on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The changes to this rule address the multiple stage cost qualification RFP process, and do not prevent any persons from participation in the process. Therefore, there are no anticipated costs or savings that this rule may have on persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons.

The changes to this rule address the multiple stage cost qualification RFP process, and do not require compliance cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts that this rule may have on businesses. The changes to this rule address the multiple stage cost qualification RFP process, and do not prevent any businesses from participation in the process. Therefore, there are no anticipated fiscal impacts that this rule may have on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the 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
♦ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Jared Gardner, Chair, Procurement Policy Board

R33. Administrative Services, Purchasing and General Services.

R33-7. Request for Proposals.

R33-7-101. Conducting the Request for Proposals Standard Procurement Process.

Request for Proposals shall be conducted in accordance with the requirements set forth in Sections 63G-6a-701 through 63G-6a-711, Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-7-102. Content of the Request for Proposals.

(1) In addition to the requirements set forth under Section 63G-6a-703, the request for proposals solicitation shall include:

- (a) a description of the format that offerors are to use when submitting a proposal including any required forms; and
- (b) instructions for submitting price.

(2) The conducting procurement unit is responsible for all content contained in the request for proposals solicitation documents, including:

- (a) reviewing all schedules, dates, and timeframes;
- (b) approving content of attachments;
- (c) providing the issuing procurement unit with redacted documents, as applicable;
- (d) assuring that information contained in the solicitation documents is public information; and
- (e) understanding the scope of work, all evaluation criteria, requirements, factors, and formulas to be used in determining the scoring of proposals; and
- (f) for executive branch procurement units the requirements of Section 63G-6a-[402]110(6).

R33-7-103. Multiple Stage RFP Process.

(1) In addition to the requirements set forth under Section 63G-6a-710, the multiple stage request for proposals solicitation shall include:

- (a) a description of the stages and the criteria and scoring that will be used to evaluate proposals at each stage; and
- (b) the methodology used to determine which proposals shall be disqualified from additional stages.

R33-7-103a. Multiple Stage Cost Qualification RFP Process.

Section 63G-6a-710 authorizes procurement units to use a multiple stage RFP process. This Rule sets forth the process for issuing a multiple stage RFP process where cost is evaluated prior to the technical requirements. The concept behind this "multiple stage cost qualification RFP process" is that for certain types of procurements, a procurement unit may not want to spend time evaluating the technical responses of proposals with cost estimates that exceed the stated budget or significantly exceed the lowest cost proposal. Statute does not restrict the number of stages that may occur in a multiple stage RFP, the number or type of criteria that may be used to evaluate proposals or the sequencing of when evaluation criteria must be evaluated. However, statute does place restrictions on procedures such as separating cost, when the evaluation committee can and cannot change scores, issuing a justification statement and, if applicable, conducting a cost-benefit analysis, and so on. The instructions contained in this multiple stage cost qualification RFP process comply with all provisions set forth in Utah Code Title 63G-6a, Part 7 and associated Rule R33-7.

(1) Definitions:

(a) "Multiple stage cost qualification RFP process" means a multiple stage RFP process in which cost proposals are evaluated prior to the evaluation of technical criteria and are used to reject offerors based on established cost criteria.

(b) "Maximum cost differential percentage threshold" is a cost ceiling that is established by the conducting procurement unit that an offeror's cost proposal must not exceed or the offeror's proposal will be rejected and the offeror will not be allowed to proceed to a subsequent stage. The maximum cost differential percentage threshold may be based on the following:

- (i) The lowest cost proposal submitted;
- (ii) The conducting procurement's stated budget; or
- (iii) A combination of (i) and (ii).

(2) The chief procurement officer or head of procurement unit with independent procurement authority may issue a multiple stage RFP where cost is used to qualify offerors for subsequent stages or to narrow the number of offerors that will move on to subsequent

stages in accordance with the requirements set forth in Utah Code 63G-6a, Part 7 and Rule R33-7.

(3) When using the multiple stage cost qualification RFP process the conducting procurement unit shall establish and include in the RFP:

(a) The minimum mandatory pass or fail requirements that proposals must meet in stage one in order to move on to stage two;

(b) The maximum cost differential percentage threshold that proposals must not exceed in stage two in order to move on to stage three;

(c) The technical criteria and a score threshold that proposals must meet in stage three in order to be eligible to move on to stage four; and

(d) If applicable, the total combined score threshold in stage four that proposals must meet to determine best value and be eligible for contract award.

(4) Except as provided in Section 63G-6a-707(8), the following process shall be used to evaluate proposals and award a contract under this multiple stage process:

(a) During stage one, an individual assigned by the conducting procurement unit shall evaluate each offeror's proposal in response to the minimum mandatory pass or fail requirements set forth in the RFP:

(i) Offerors with proposals that do not meet the mandatory minimum pass or fail requirements shall be rejected and are not allowed to move on to subsequent stages and are not eligible to receive a contract award;

(ii) Offerors with proposals that meet the mandatory minimum pass or fail requirements shall be deemed qualified to move on to stage two;

(b) During stage two, the issuing procurement unit shall assign an individual, who is not a member of the evaluation committee, to evaluate the cost proposals of offerors qualified in stage one in response to the cost criteria and maximum cost differential percentage threshold set forth in the RFP.

(i) The individual assigned by the issuing procurement unit to evaluate cost proposals shall do so outside the presence of the evaluation committee and shall not share the cost proposals or the results of the cost proposal evaluations with the evaluation committee until all technical scoring is completed in stage three;

(ii) Offerors with cost proposals that exceed the maximum cost differential percentage threshold shall be rejected, not allowed to move on to subsequent stages, and not eligible to receive a contract award;

(iii) Offerors with cost proposals that do not exceed the maximum cost differential percentage threshold shall be deemed qualified to move on to stage three;

(iv) Cost shall be evaluated in accordance with Section 63G-6a-707(5)(b)(i); and

(v) A cost score shall be calculated based on the cost formula set forth in the RFP for each proposal identified in Subsection (3)(b)(iii) of this Rule;

(c) During stage three, the evaluation committee shall score the proposal of each offeror qualified in stage two, in response to the technical evaluation criteria set forth in the RFP, without having access to any information relating to the cost or the scoring of the cost. Technical criteria shall be scored in accordance with Section R33-7-704 or rules established by the applicable rulemaking authority;

(d) During stage four, the individual assigned by the issuing procurement unit, who is not a member of the evaluation committee, shall add the cost scores to the evaluation committee's final recommended technical scores to derive the total combined score for each proposal in accordance with the process set forth in Section 63G-6a-707(5)(a) through (c);

(e) In order to determine best value to the procurement unit, the evaluation committee shall prepare a justification statement and, if applicable, a cost-benefit analysis, in accordance with Section 63G-6a-708 and 709; and

(f) A contract may be awarded to the offeror with the proposal having the highest total combined score, or multiple contracts may be awarded to offerors with proposals meeting the total combined score threshold set forth in the RFP, in accordance with Section 63G-6a-709.

(5) Maximum cost differential percentage thresholds include the following examples:

(a) Lowest Cost Proposal Example: The maximum cost differential percentage threshold is within 10% above the lowest cost proposal:

(i) Offerors with cost proposals that exceed 10% above the proposal with the lowest cost will be rejected. Offerors with cost proposals that do not exceed 10% above the proposal with the lowest cost will move on to the subsequent stage;

(b) Stated Budget Example: The maximum cost differential percentage threshold is within 5% above the conducting procurement unit's stated project budget:

(i) Offerors with cost proposals that exceed 5% above the stated budget will be rejected. Offerors with cost proposals that do not exceed 5% above the stated budget will move on to the subsequent stage; and

(a) Combination Lowest Cost Proposal and Stated Budget Example: the maximum cost differential percentage threshold is within 8% above the lowest cost proposal and within 2% above the conducting procurement unit's stated project budget:

(i) Offerors with cost proposals that exceed 8% above the proposal with the lowest cost will be rejected and offerors with cost proposals that exceed 2% above the stated budget will be rejected. Offerors with cost proposals that do not exceed 8% above the proposal with the lowest cost and do not exceed 2% above the stated budget will move on to the subsequent stage.

(6) Additional multiple stage RFP processes may be developed and used to cover the wide range of different procurements that public entities encounter, provided the processes comply with the requirements set forth in the Utah Procurement Code and Title R33.

R33-7-106. Notification.

(1) A person who complies with [Rule]Section R33-7-105 shall be notified by the procurement unit prior to the public release of any information for which a claim of confidentiality has been asserted.

(2) Except as provided by court order, the procurement unit to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under [Rule]Section R33-7-105 but which the procurement unit or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. [This Rule]Section R33-7-106 does not apply where the claimant, after notice, has waived the claim by not appealing

or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

(3) Any allowed disclosure of public records submitted in the request for proposal process will be made only after the selection of the successful offeror(s) has been made public in compliance with Section 63G-6a-709.5.

~~[R33-7-401. Modification or Withdrawal of Proposal Prior to Deadline.~~

~~———— A proposals may be modified or withdrawn prior to the established due date and time for responding.]~~

~~R33-7-402. [Proposals and Modifications, Delivery and Time Requirements.] Rejection of Late Proposals -- Delivery and Time Requirements.~~

~~[Except as provided in Rule R33-7-402(3), the following shall apply:~~

~~———— (1) proposals and modifications to a proposal submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason.] (1) Except as provided in Subsection (4), an issuing procurement unit may not accept a proposal after the time for submission of a proposal has expired as set forth in Section 63G-6a-704(2).~~

~~(2) When submitting a proposal [or modification to a proposal] electronically, offerors must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If an offeror is in the middle of uploading a proposal when the closing time arrives, the [system] procurement unit [should] will stop the process and the proposal [or modification to a proposal] will not be accepted.~~

~~(3) When submitting a proposal [or modification to a proposal] by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) offerors are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a proposal [or modification to a proposal] being late.~~

~~(a) All proposals [or modifications to proposals] received by physical delivery will be date and time stamped by the procurement unit.~~

~~(4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a proposal [or modification to a proposal] not being received by the established due date and time, the proposal [or modification to a proposal] shall be accepted as being on time.~~

~~[R33-7-403. Errors in Proposals.~~

~~———— The following shall apply to the correction or withdrawal of an unintentionally erroneous proposal, or the cancellation of an award or contract that is based on an unintentionally erroneous proposal. A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract shall be supported in a written document, signed by the chief procurement officer or head of a procurement unit with independent procurement authority.~~

~~———— (1) Mistakes attributed to an offeror's error in judgment may not be corrected.~~

~~———— (2) Unintentional errors not attributed to an offeror's error in judgment may be corrected if it is in the best interest of the~~

~~procurement unit and correcting the error maintains the fair treatment of other offerors:~~

~~———— (a) Examples include:~~

~~———— (i) missing signatures;~~

~~———— (ii) missing acknowledgement of an addendum;~~

~~———— (iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the chief procurement officer or head of a procurement unit with independent procurement authority to correct this mistake;~~

~~———— (iv) typographical errors;~~

~~———— (v) mathematical errors not affecting the total proposed price; or~~

~~———— (vi) other errors deemed by the chief procurement officer or head of a procurement unit with independent procurement authority to be immaterial or inconsequential in nature.~~

~~———— (3) Unintentional errors discovered after the award of a contract may only be corrected if, after consultation with the chief procurement officer or head of a procurement unit with independent procurement authority and the attorney general's office or other applicable legal counsel, it is determined that the correction of the error does not violate the requirements of the Utah Procurement Code or these administrative rules.]~~

~~R33-7-502. Voluntary Withdrawal of a Proposal.] Correction or Withdrawal of Proposal.]~~

~~———— (1) In the event an offeror submits a proposal that on its face appears to be impractical, unrealistic or otherwise in error, the chief procurement officer or head of a procurement unit with independent procurement authority may contact the offeror to either confirm the proposal, permit a correction of the proposal, or permit the withdrawal of the proposal, in accordance with Section 63G-6a-706.~~

~~———— (2) Offerors may not correct errors, deficiencies, or incomplete responses in a proposal that has been determined to be not responsible, not responsive, or that does not meet the mandatory minimum requirements stated in the request for proposals in accordance with Section 63G-6a-704.] An offeror may voluntarily withdraw a proposal at any time before a contract is awarded with respect to the RFP for which the proposal was submitted provided the offeror is not engaged in any type of bid rigging, collusion or other anticompetitive practice made unlawful under other applicable law.~~

~~[R33-7-503. Interviews and Presentations.~~

~~———— (1) Interviews and presentations may be held as outlined in the RFP.~~

~~———— (2) Offerors invited to interviews or presentations shall be limited to those offerors meeting minimum requirements specified in the RFP.~~

~~———— (3) Representations made by the offeror during interviews or presentations shall become an addendum to the offeror's proposal and shall be documented. Representations must be consistent with the offeror's original proposal and may only be used for purposes of clarifying or filling in gaps in the offeror's proposal.~~

~~———— (4) The chief procurement officer or head of a procurement unit with independent procurement authority shall establish a date and time for the interviews or presentations and shall notify eligible offerors of the procedures. Interviews and presentations will be at the offeror's expense.]~~

R33-7-601. Best and Final Offers.

Best and Final Offers shall be conducted in accordance with the requirements set forth in Section 63G-6a-707.5, or the Utah Procurement Code. ~~Rule R33-7~~[This administrative rule] provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(1) The best and final offers (BAFO) process is an optional step in the evaluation phase of the request for proposals process in which offerors are requested to modify their proposals.

(a) An evaluation committee may request best and final offers when:

- (i) no single proposal addresses all the specifications;
- (ii) all or a significant number of the proposals received are unclear and the evaluation committee requires further clarification;
- (iii) additional information is needed in order for the evaluation committee to make a decision;
- (iv) the differences between proposals in one or more categories are too slight to distinguish;
- (v) all cost proposals are too high or over the budget;
- (vi) multiple contract awards are necessary to achieve regional or statewide coverage for a procurement item under an RFP and there are insufficient cost proposals within the budget to award the number of contracts needed to provide regional or statewide coverage.

(2) Only offerors meeting the minimum qualifications or scores described in the RFP are eligible to respond to best and final offers.

(3) Proposal modifications submitted in response to a request for best and final offers may only address the specific issues and/or sections of the RFP described in the request for best and final offers.

(a) Offerors may not use the best and final offers process to correct deficiencies in their proposals not addressed in the request for best and final offers issued by the procurement unit.

(4) When a request for best and final offers is issued to reduce cost proposals, offerors shall submit itemize cost proposals clearly indicating the tasks or scope reductions that can be accomplished to bring costs within the available budget.

(a) The cost information of one offeror may not be disclosed to competing offerors during the best and final offers process and further, such cost information shall not be shared with other offerors until the contract is awarded.

(b) A procurement unit shall ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals.

(5) The best and final offers process may not be conducted as part of the contract negotiation process. It may only be conducted during the evaluation phase of the RFP process.

(6) A procurement unit may not use the best and final offers process to allow offerors a second opportunity to respond to the entire request for proposals.

(7) If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.

(8) A request for best and final offers issued by a procurement unit shall:

(a) comply with all public notice requirements provided in Section 63G-6a-~~406~~112;

(b) include a deadline for submission that allows offerors a reasonable opportunity for the preparation and submission of their responses;

(c) indicate how proposal modifications in response to a request for best and final offers will be evaluated;

(9) If an offeror does not submit a best and final offer, its immediately previous proposal will be considered its best and final offer;

(10) Unsolicited best and final offers will not be accepted from offerors.

R33-7-703. Evaluation Committee Procedures for Scoring Non-Priced Technical Criteria.~~[Other Than Cost.]~~

~~[(1)(a) In accordance with Utah Code 63G-6a-704, the conducting procurement unit shall conduct an initial review of any applicable pass/fail minimum requirements set forth in the RFP to determine whether proposals are responsive and responsible or in violation of the Utah Procurement Code prior to submitting proposals to the evaluation committee. Examples of pass/fail minimum requirements include:~~

- ~~(i) Timeliness of receipt of proposals~~
- ~~(ii) Qualifications;~~
- ~~(iii) Certifications;~~
- ~~(iv) Licensing;~~
- ~~(v) Experience;~~
- ~~(vi) Compliance with State or Federal regulations;~~
- ~~(vii) Services provided;~~
- ~~(viii) Product availability;~~
- ~~(ix) Equipment;~~
- ~~(x) Other pass/fail minimum requirements set forth in the RFP.~~

~~(b) The evaluation committee may not evaluate proposals deemed non-responsive, nonresponsible or disqualified for violations of the Utah Procurement Code under (1)(a):~~

~~(c) In accordance with Utah Code 63G-6a-704, an evaluation committee may, after the initial pass/fail review by the conducting procurement unit or at any time during the RFP process, reject a proposal if it is determined that the person submitting the proposal is not responsible or the proposal is not responsive:~~

~~(2) In accordance with Utah Code 63G-6a-707, the evaluation committee shall evaluate each responsive and responsible proposal that has not been disqualified from consideration under the provisions of this chapter, using the criteria described in the request for proposals using the following procedures:~~

~~(a) Prior to the scoring of proposals, a procurement officer from the issuing procurement unit will meet with the evaluation committee and any staff that will have access to the proposals to:~~

~~(i) discuss the evaluation and scoring process to ensure that each committee member has a clear understanding of the scoring process and how points will be assigned;~~

~~(ii) discuss requirements regarding conflicts of interests, the appearance of impropriety, and the importance of confidentiality;~~

~~(iv) discuss the scoring sheet and evaluation criteria set forth in the RFP; and~~

~~(v) provide a copy of Administrative Rule R33-7-703 to the evaluation committee and any staff that will have access to the proposals.~~

~~(b) Once the proposals have been received and it is clear which offerors are involved in the RFP process, all members of the evaluation committee must sign a written statement certifying that they do not have a conflict of interest as set forth in Utah Code 63G-6a-707 and administrative rule R33-24-107.~~

~~(3) Unless an exception is authorized by the head of the issuing procurement unit, in order to avoid cost influencing the evaluation committee's scoring of non-price criteria, in accordance with Utah Code 63G-6a-707, costs may not be revealed to the evaluation committee until after the committee has finalized its scoring on all other technical non-price criteria in the RFP.~~

~~(4) After receipt of proposals, each committee member shall independently, as described in R33-7-705, read and score each proposal based on the technical non-price criteria set forth in the RFP to assess the completeness, quality, and desirability of each proposal:~~

~~(a) proposals must be evaluated solely on the stated criteria listed in the RFP:~~

~~(i) past performance ratings and references may be considered if listed as evaluation criteria in the RFP;~~

~~(ii) personal bias based on prior experience with a procurement item or the offeror cannot be considered in scoring proposals, except as provided in the RFP;~~

~~(iii) personal favoritism for a vendor or bias against a vendor cannot be considered in scoring proposals; and~~

~~(iv) subsections (ii) and (iii) shall not be construed to prevent a committee member from having a bias based on their review of a proposal in regard to the criteria in the solicitation. Evaluators are encouraged to request technical support from the conducting procurement unit or the issuing procurement unit when conducting their independent assessments and scoring.~~

~~(b) any request for technical support shall be submitted in writing to the conducting procurement unit or the issuing procurement unit.~~

~~(c) After the proposals have been evaluated and scored by individual committee members, the entire committee shall meet to discuss the proposals, if applicable conduct interviews, resolve any factual disagreements, and arrive at the final scoring. All committee members must be present to take any official action.~~

~~(i) If a committee member does not attend an evaluation committee meeting, the member shall be removed from the evaluation committee and the remainder of the committee may proceed with the evaluation, provided there are at least three evaluation committee members remaining.~~

~~(d) During committee discussions, each member may change their initial scoring. If additional information or clarification is needed from an offeror, the committee may, with approval by the issuing procurement unit, request information or clarification from an offeror. Such request will only be approved if it can be done in a manner that is fair to all offerors.~~

~~(e) At any time during the evaluation process, the evaluation committee may, with the approval of the issuing procurement unit, request best and final offers from responsible and responsive offerors and evaluate those offers in accordance with Utah Code 63G-6a-708 and Administrative Rule R33-7-601.~~

~~(5) The evaluation committee may tally the final scores for criteria other than cost to arrive at a consensus score by the following methods:~~

~~(a) total of all of the points given by individual committee members; or~~

~~(b) an average of the individual scores.~~

~~(c) The evaluation committee shall turn in a completed sheet, signed and dated by each evaluation committee member.~~

~~(6) The evaluation committee shall submit its final recommended scores for all criteria other than cost to the issuing procurement unit.~~

~~(7) The issuing procurement unit shall follow the procedures set forth in Utah Code 63G-6a-707(5) pertaining to the following:~~

~~(a) reviewing the evaluation committee's final recommended scores for each proposal for all criteria other than cost;~~

~~(b) scoring cost based on the applicable scoring formula; and~~

~~(c) calculating the total combined score for each responsive and responsible proposal.~~

~~(8) The evaluation committee and the conducting procurement unit shall prepare the cost justification statement and any applicable cost-benefit analysis in accordance with Utah Code 63G-6a-708.~~

~~(9) The issuing procurement unit's role as a non-voting member of the evaluation committee will be to facilitate the evaluation process within the guidelines of the Utah procurement code and administrative rule.~~

~~(10) The issuing procurement unit may replace any member on the committee or reconstitute the committee in any way the issuing procurement unit deems appropriate to cure any impropriety. If the impropriety cannot be cured by replacing a member, then a new committee may be appointed or the procurement cancelled. Evaluation committee members, employees of procurement units, and any other person involved in an RFP evaluation process are required to review Utah Code Title 63G-6a, Parts 7 and 24; and Section R33-7-703 prior to participating in the evaluation process.~~

~~(1)(a) In accordance with Section 63G-6a-704, the conducting procurement unit may conduct a review of proposals to determine if:~~

~~(i) the person submitting the proposal is responsible;~~

~~(ii) the proposal is responsive; and~~

~~(iii) the proposal meets the mandatory minimum requirements set forth in the RFP.~~

~~(b) An evaluation committee may not evaluate proposals deemed non-responsive, not responsible or not meeting the mandatory minimum requirements of the RFP.~~

~~(2)(a) Prior to the evaluation and scoring of proposals, an employee from the issuing procurement unit will meet with the evaluation committee, staff members of the conducting procurement unit, and any other person involved in the procurement process that may have access to the proposals to:~~

~~(i) Explain the evaluation and scoring process;~~

~~(ii) Discuss requirements and prohibitions pertaining to:~~

~~(A) socialization with vendors as set forth in Section R33-24-104;~~

~~(B) financial conflicts of interest as set forth in Section R33-24-205;~~

~~(C) personal relationships, favoritism, or bias as set forth in Section R33-24-106;~~

~~(D) disclosing confidential information contained in proposals or the deliberations and scoring of the evaluation committee; and~~

(E) ethical standards for an employee of a procurement unit involved in the procurement process as set forth in Section R33-24-108.

(iii) review the scoring sheet and evaluation criteria set forth in the RFP; and

(iv) provide a copy of Section R33-7-703 to the evaluation committee, employees of the procurement unit involved in the procurement, and any other person that will have access to the proposals.

(b) Prior to participating in any phase of the RFP process, all members of the evaluation committee must sign a written statement certifying that they do not have a conflict of interest as set forth in Section 63G-6a-707 and Section R33-24-107.

(i) At each stage of the procurement process, the conducting procurement unit is required to ensure that evaluation committee members, employees of the procurement unit and any other person participating in the procurement process:

(A) do not have a conflict of interest with any of the offerors;

(B) do not contact or communicate with an offeror concerning the procurement outside the official procurement process; and

(C) conduct or participate in the procurement process in a manner that ensures a fair and competitive process and avoids the appearance of impropriety.

(3) Unless an exception is authorized by the head of the issuing procurement unit, the evaluation committee is prohibited from knowing, or having access to, any information relating to the cost, or the scoring of the cost, of a proposal until after the evaluation committee has finalized its scoring of non-price technical criteria for each proposal and submitted those scores to the issuing procurement unit as set forth in Section 63G-6a-707.

(4)(a) In accordance with Section 63G-6a-707, the conducting procurement unit shall appoint an evaluation committee to evaluate each responsive and responsible proposal that has not been rejected from consideration under the provisions of the Utah Procurement Code, using the criteria described in the RFP.

(b) Using the provisions set forth in Section R33-7-705, the evaluation committee shall exercise independent judgement in the evaluation and scoring of the non-priced technical criteria in each proposal.

(c) Proposals must be evaluated solely on the criteria listed in the RFP. The evaluation committee shall assess each proposal's completeness, accuracy, and capability of meeting the technical criteria listed in the RFP.

(d) The evaluation committee may receive assistance from an expert or consultant authorized by the conducting procurement unit in accordance with the provisions set forth in Section 63G-6a-707(4).

(e) The evaluation committee may enter into discussions, conduct interviews with, or attend presentations by responsible offerors with responsive proposals that meet the mandatory minimum requirements of the RFP for the purpose of clarifying information contained in proposals in accordance with the provisions set forth in Section 63G-6a-707(5).

(5) After each proposal has been independently evaluated by each member of the evaluation committee, each committee member independently shall assign a preliminary draft score for each proposal for each of the non-priced technical criteria listed in the RFP.

(a) After completing the preliminary draft scoring of the non-priced technical criteria for each proposal, the evaluation committee shall enter into deliberations to:

(i) review each evaluation committee member's preliminary draft scores;

(ii) resolve any factual disagreements;

(iii) modify their preliminary draft scores based on their updated understanding of the facts; and

(iv) derive the committee's final recommended consensus score for the non-priced technical criteria of each proposal.

(b) During the evaluation process, the evaluation committee may make a recommendation to the conducting procurement unit that a proposal be rejected for being non-responsive, not responsible, not meeting the mandatory minimum requirements, or not meeting any applicable minimum score threshold.

(c) If an evaluation committee member does not attend an evaluation committee meeting, the meeting may be canceled and rescheduled.

(d) In order to score proposals fairly, an evaluation committee member must be present at all evaluation committee meetings and must review all proposals, including if applicable oral presentations. If an evaluation committee member fails to attend an evaluation committee meeting or leaves a meeting early or fails for any reason to fulfill the duties and obligations of a committee member, that committee member shall be removed from the committee. The remainder of the evaluation committee members may proceed with the evaluation, provided there are at least three evaluation committee members remaining.

(i) Attendance or participation on an evaluation committee via electronic means such as a conference call, a webcam, an online business application, or other electronic means is permissible.

(6)(a) The evaluation committee shall derive its final recommended consensus score for the non-priced technical criteria of each proposal using the following methods:

(i) the total of each individual evaluation committee member's scores for each proposal shall be the consensus score for the evaluation committee; or

(ii) an average of each individual evaluation committee member's scores for each proposal shall be the consensus score for the evaluation committee.

(b) The evaluation committee shall submit its final score sheet, signed and dated by each committee member, to the issuing procurement unit for review.

(7) The evaluation committee may not change its consensus final recommended scores of the non-priced technical criteria for each proposal after the scores have been submitted to the issuing procurement unit, unless the issuing procurement unit authorizes that a best and final offer process to be conducted under the provisions set forth in Section 63G-6a-707.5 and Section R33-7-601.

(8) In accordance with Section 63G-6a-707, the issuing procurement unit shall:

(a) review the evaluation committee's final recommended scores for each proposal's non-priced technical criteria and correct any errors, scoring inconsistencies, and reported noncompliance with this chapter or cancel the solicitation in accordance with Sections 63G-6a-106(4) or 63G-6a-303(3).

(b) score the cost of each proposal based on the applicable scoring formula; and

(c) calculate the total combined score for each proposal.

(9) The evaluation committee may, with approval from the issuing procurement unit, request best and final offers from responsible offerors who have submitted responsive proposals that meet the minimum qualifications, evaluation criteria, or applicable score thresholds identified in the RFP, under the circumstances set forth in Section 63G-6a-707.5 and Section R33-7-601.

(10) The evaluation committee and the conducting procurement unit shall prepare a justification statement and any applicable cost-benefit analysis in accordance with Section 63G-6a-708.

(11) The issuing procurement unit's role as a non-scoring member of the evaluation committee will be to facilitate the evaluation process within the guidelines of the Utah Procurement Code and applicable Rules.

(12)(a) The head of the issuing procurement unit may remove a member of an evaluation committee for:

(i) having a conflict of interest or the appearance of a conflict of interest with a person responding to a solicitation;

(ii) having an unlawful bias or the appearance of unlawful bias for or against a person responding to a solicitation;

(iii) having a pattern of arbitrary, capricious, or clearly erroneous scores that are unexplainable or unjustifiable;

(iv) having inappropriate contact or communication with a person responding to a solicitation;

(v) socializing inappropriately with a person responding to a solicitation;

(vi) engaging in any other action or having any other association that causes the head of the issuing procurement unit to conclude that the individual cannot fairly evaluate a solicitation response; or

(vii) any other violation of a law, rule, or policy.

(b) The head of the issuing procurement unit may reconstitute an evaluation committee in any way deemed appropriate to correct an impropriety described in Subsection (12)(a). If an impropriety cannot be cured by replacing a member, the head of the issuing procurement unit may appoint a new evaluation committee, cancel the procurement or cancel and reissue the procurement.

R33-7-802. Publicizing Awards.

(1) In addition to the requirements of Section 63G-6a-709.5, the following shall be disclosed after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

(a) the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under ~~[Rule]~~Section R33-7-105;

(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under ~~[Rule]~~Section R33-7-105;

(c) the rankings of the proposals;

(d) the names of the members of any selection committee (reviewing authority);

(e) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings.

(f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under ~~[Rule]~~Section R33-7-105.

(2) After due consideration and public input, the following has been determined by the Procurement Policy Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and will not be disclosed by the governmental entity at any time to the public including under any GRAMA request:

(a) the names of individual scorers/evaluators in relation to their individual scores or rankings;

(b) any individual scorer's/evaluator's notes, drafts, and working documents;

(c) non-public financial statements; and

(d) past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the governmental entity. To the extent such past performance or reference information is included in the written justification statement; it is subject to public disclosure.

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

Date of Enactment or Last Substantive Amendment: ~~August 7, 2015~~2016

Notice of Continuation: July 8, 2014

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

Administrative Services, Purchasing and General Services **R33-8** Exceptions to Procurement Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40570

FILED: 07/01/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to address the exceptions to the standard procurement process pursuant to Section 63G-6a-802.

SUMMARY OF THE RULE OR CHANGE: The title of Section R33-8-101 was changed. The body of the section was amended to address the provisions set forth in Section 63G-6a-801 and Sections R33-8-101a through R33-8-101f; and Sections R33-8-102 and R33-8-110 were added to clearly define said provisions.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings that the changes to this rule will have on state

budget. The changes to the rule were made to comply with statute, and any financial impact is determined by the statute.

◆ LOCAL GOVERNMENTS: There are no anticipated costs or savings that the changes to this Rule will have on local government. The changes to the rule were made to comply with statute, and any financial impact is determined by the statute.

◆ SMALL BUSINESSES: There are no anticipated costs or savings that the changes to this rule will have on small businesses. The changes to the rule were made to comply with statute, and any financial impact is determined by the statute.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings that the changes to this rule will have on persons other than small businesses, businesses, or local government entities. The changes to the rule were made to comply with statute, and any financial impact is determined by the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons. The changes to the rule were made to comply with statute, and any compliance costs would be controlled by the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts that this rule may have on businesses. The changes to the rule were made to comply with statute, and any potential fiscal impact has been evaluated by the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 PURCHASING AND GENERAL SERVICES
 ROOM 3150 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the 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
 ◆ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Jared Gardner, Chair, Procurement Policy Board

R33. Administrative Services, Purchasing and General Services.

R33-8. Exceptions to ~~[Procurement Requirements]~~ Standard Procurement Process.

R33-8-101. ~~Award of Contract Without Engaging in a Standard Procurement Process.~~ ~~[Sole Source – Award of Contract Without Competition.]~~

~~[(1) Sole source procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-802, Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and should be used in conjunction with the Procurement Code.~~

~~_____ (2) A sole source procurement may be conducted if:~~

~~_____ (a) there is only one source for the procurement item;~~

~~_____ (b) the award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item; or~~

~~_____ (c) the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the procurement unit.~~

~~_____ (3) An urgent or unexpected circumstance or requirement for a procurement item does not justify the award of a sole source procurement.~~

~~_____ (4) Requests for a procurement to be conducted as a sole source shall be submitted in writing to the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority for approval.~~

~~_____ (5) The sole source request shall be submitted to the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, and shall include:~~

~~_____ (a) a description of the procurement item;~~

~~_____ (b) the total dollar value of the procurement item, including, when applicable, the actual or estimated full lifecycle cost of maintenance and service agreements;~~

~~_____ (c) the duration of the proposed sole source contract;~~

~~_____ (d) an authorized signature of the conducting procurement unit;~~

~~_____ (e) unless the sole source procurement is conducted under Rule R33-8-101-2(b) or (c), research completed by the conducting procurement unit documenting that there are no other competing sources for the procurement item;~~

~~_____ (f) any other information requested by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority; and~~

~~_____ (6) a sole source request form containing all of the requirements of Rule R33-8-101(5) shall be available on the division's website.~~

~~_____ (7) Except as provided in (b), sole source procurements over \$50,000 shall be published in accordance with Section 63G-6a-406.~~

~~_____ (a) Sole source procurements of \$50,000 or less are not required to be published but may be published at the discretion of the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.~~

~~_____ (b) The requirement for publication of notice for a sole source procurement is waived for:~~

~~_____ (i) public utility services;~~

- ~~_____ (ii) conference and convention facilities and services;~~
- ~~_____ (iii) conference fees, including materials;~~
- ~~_____ (iv) membership dues;~~
- ~~_____ (v) speakers or trainers and associated training materials;~~
- ~~_____ (vi) hosting of out-of-state and international dignitaries;~~
- ~~_____ (vii) promotion by a public entity;~~
- ~~_____ (viii) an award when the Legislature identifies the intended recipient of a contract;~~
- ~~_____ (ix) an award to a specific supplier, service provider, or contractor if the award is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item; or~~
- ~~_____ (x) other circumstances as determined in writing by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.~~

~~_____ (8) A person may contest a sole source procurement prior to the closing of the public notice period set forth in Section 63G-6a-406 by submitting the following information in writing to the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority:~~

- ~~_____ (a) the name of the contesting person; and~~
- ~~_____ (b) a detailed explanation of the challenge, including documentation showing that there are other competing sources for the procurement item.~~

~~_____ (9) Upon receipt of information contesting a sole source procurement, the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge. (1) Under the provisions set forth in Section 63G-6a-802, the chief procurement officer or head of a procurement unit with independent procurement authority may award a contract without engaging in a standard procurement process under the following circumstances:~~

- ~~_____ (a) There is only one source for the procurement item;~~
- ~~_____ (b) Transitional costs are a significant consideration in selecting a procurement item and the results of a cost-benefit analysis document that transitional costs are unreasonable or cost-prohibitive and awarding a contract without engaging in a standard procurement process is in the best interest of the procurement unit; or~~
- ~~_____ (c) Other circumstances described by the applicable rulemaking authority that make awarding a contract through a standard procurement process impractical and not in the best interest of the procurement unit.~~

R33-8-101a. Sole Source Contract Awards.

(1) The underlying purposes and policies of the Utah Procurement Code are to ensure the fair and equitable treatment of all persons who deal with the procurement system and to foster effective broad-based competition within the free enterprise system. The most effective way to achieve this is by conducting a standard procurement process whenever public funds are expended for a procurement item. Sole source contract awards do not involve a standard procurement process and should only be used when justified after reasonable research has been conducted to determine if there are other available sources and an analysis has been conducted to determine if a sole source award is cost justified.

(2) Circumstances for which a sole source contract award may be justified include procurements for:

_____ (a) A procurement item for which there is no comparable product or service, such as a one-of-a-kind item available from only one vendor;

_____ (b) A component or replacement part for which there is no commercially available substitute, and which can be obtained only directly from the manufacturer; or

_____ (c) An exclusive maintenance, service, or warranty agreement.

(3) Prior to awarding a sole source contract, the chief procurement officer or head of a procurement unit with independent procurement authority shall, whenever practicable, conduct a price analysis in accordance with Section R33-12-603.

(4) An urgent or unexpected circumstance or requirement for a procurement item does not justify the award of a contract without engaging in a standard procurement process.

R33-8-101b. Transitional Costs -- Cost-Benefit Analysis.

(1) For the purpose of this section, the following definitions shall apply:

_____ (a) "Competing type of procurement item" means a type of procurement item that is the same, equivalent, or superior to the existing type of procurement item currently under contract in all material aspects including:

- _____ (i) performance;
- _____ (ii) specifications;
- _____ (iii) scope of work; and
- _____ (iv) provider qualifications, certifications, and licensing.

_____ (b) "Competing provider" means another provider other than the existing provider under contract that provides a competing type of procurement item.

_____ (c) "Significant", "unreasonable or cost-prohibitive" transitional costs are defined as costs associated with changing from an existing provider of a procurement item to another provider of that procurement item or from an existing type of procurement item to another type that:

- _____ (i) constitute a measurably large amount that would likely have an influence or effect on the award of a contract if a competitive procurement were to be conducted for the procurement item being considered; and
- _____ (ii) provides a compelling justification for not conducting a competitive standard procurement process.

(2) Transitional costs that must be considered in a cost-benefit analysis include:

_____ (a) Costs that are directly associated with changing from an existing provider of a procurement item to a competing provider of that procurement item or from an existing type of procurement item to a competing type of procurement item; and

_____ (b) A full lifecycle cost analysis of the existing type of procurement item and competing type of procurement items in order to determine which procurement item is more cost-effective.

(3) Transitional costs that may be considered in a cost-benefit analysis include:

_____ (a) Costs identified in Subsection 63G-6a-103(95)(b);

_____ (b) Costs offered by a competing provider(s) for a competing type of procurement item in a competitive bid or RFP process conducted within the last 12 months;

_____ (c) Costs offered by a competing provider(s) for a competing type of procurement item in a competitive bid or RFP

process conducted prior to the most recent 12 months, updated using an applicable price index:

(d) Written cost estimates obtained by the conducting procurement unit from a competing provider(s) for a competing type of procurement item; and

(e) Other transitional costs determined to be applicable by the chief procurement officer or head of a procurement unit with independent procurement authority.

(4) Transitional costs or other information that may not be considered in a cost-benefit analysis include:

(a) Costs prohibited in Subsection 63G-6a-103(95)(c);

(b) Data provided by the existing provider for the purpose of establishing:

(i) the market value of the existing type of procurement item; or

(ii) a competing provider's price for a competing type of procurement item;

(c) Costs associated with any other procurement item other than the existing type of procurement item or a competing type of procurement item;

(d) Non-monetary factors, such as the provider's performance, agency preference, and other data or information not specific to the transitional costs associated with the existing type of procurement item or a competing type of procurement item;

(e) Factors other than the monetary transitional costs directly associated with changing from an existing provider of a procurement item to a competing provider of that procurement item or from an existing type of procurement item to a competing type of procurement item; and

(f) Other transitional costs or other information deemed inappropriate by the chief procurement officer or head of a procurement unit with independent procurement authority.

(5) The conducting procurement unit shall complete a written cost-benefit analysis and submit it to the issuing procurement unit for approval.

(6) The cost-benefit analysis should not be overly time-consuming to complete or involve hiring costly consultants or financial analysts.

R33-8-101c. Other Circumstances That May Make Awarding a Contract Through a Standard Procurement Process Impractical.

(1) In accordance with Section 63G-6a-802(1)(c), the chief procurement officer or head of a procurement unit with independent procurement authority may consider, as applicable, the following circumstances when making a determination as to whether awarding a contract through a standard procurement process is impractical and not in the best interest of the procurement unit:

(a) a contract award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item;

(b) public utility services, when only one public utility service is available in an area;

(c) an item where compatibility is the overriding consideration; or

(d) a used procurement item that presents a unique, specialized, or time-limited buying opportunity.

R33-8-101d. Notice of Intent to Award a Contract Without Engaging in a Standard Procurement Process.

(1)(a) The division shall make available a Form titled: "Notice of intent to award a contract without engaging in a standard procurement process" that requires the conducting procurement unit to provide, at a minimum, the following information:

(i) a description of the procurement item, including, when applicable, the proposed scope of work;

(ii) the total dollar value of the procurement item, including, when applicable, the actual or estimated full lifecycle cost of maintenance and service agreements;

(iii) the duration of the proposed contract;

(iv) the signature of an authorized official of the conducting procurement unit; and

(v) research completed by the conducting procurement unit documenting that:

(A) There are no other competing vendors or sources for the procurement item in accordance with the provisions set forth in Section R33-8-101a;

(B) Transitional costs are a significant consideration in selecting a procurement item and the results of a cost benefit analysis documenting that transitional costs are unreasonable or cost-prohibitive and awarding a contract without engaging in a standard procurement process is in the best interest of the procurement unit in accordance with the provisions set forth in Section R33-8-101b; or

(C) Other circumstances that make awarding a contract through a standard procurement process impractical and not in the best interest of the procurement unit in accordance with the provisions set forth in Section R33-8-101c.

(b) A procurement unit with independent procurement authority may use the division's Form or develop its own Form to provide notice of intent to award a contract without engaging in a standard procurement process that contains, at a minimum, the same basic information in Subsection (1)(a).

(c) The conducting procurement unit shall submit in writing a completed "Notice of intent to award a contract without engaging in a standard procurement process" to the chief procurement officer, or head of a procurement unit with independent procurement authority for approval.

R33-8-101e. Public Notice -- Waiver of Public Notice.

(1) Except as provided in Subsection (2), publication of a "Notice of intent to award a contract without engaging in a standard procurement process" shall be published in accordance with Section 63G-6a-112 if the cost of the procurement being considered under this rule exceeds \$50,000.

(2)(a) When making a determination under Sections R33-8-101a, 101b, or 101c, the chief procurement officer or head of a procurement unit with independent procurement authority may waive the requirement to publish the "Notice of intent to award a contract without engaging in a standard procurement process" for the following procurements:

(i) procurements of \$50,000 or less;

(ii) public utility services;

(iii) conference and convention facilities with unique or specialized amenities, abilities, location, or services;

- (iv) conference fees, including materials;
 - (v) membership dues;
 - (vi) speakers or trainers with unique or proprietary presentations or training materials;
 - (vii) hosting of in-state, out-of-state, and international dignitaries;
 - (viii) international, national, or local promotion of the state or a public entity;
 - (ix) an award when the Legislature identifies the intended recipient of a contract;
 - (x) an award to a specific supplier, service provider, or contractor if the award is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item;
 - (xi) catering services at government functions where the event requires a caterer with unique and specialized qualifications, skills, and abilities; or
 - (xii) other circumstances as determined in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority.
- (b) The chief procurement officer or head of a procurement unit with independent procurement authority may require publication of a "Notice of intent to award a contract without engaging in a standard procurement process" for any procurement identified in Subsection (2)(a) if deemed necessary to uphold the fair and equitable treatment of all persons who deal with the procurement system.

R33-8-101f. Contesting a Notice of Intent to Award a Contract Without Engaging in a Standard Procurement Process.

- (1) A person may contest the notice of intent to award a contract without engaging in a standard procurement process prior to the closing of the public notice period set forth in Section 63G-6a-112 by submitting the following information in writing to the chief procurement officer or head of a procurement unit with independent procurement authority:
- (a) the name of the contesting person; and
 - (b) a detailed explanation of the challenge, including documentation that:
 - (i) there are other competing sources for the procurement item;
 - (ii) transitional costs are not significant, unreasonable, or cost-prohibitive; or
 - (iii) conducting a standard procurement process is in the best interest of the conducting procurement unit.
- (2) Upon receipt of a challenge contesting an award of a contract without engaging in a standard procurement process, the chief procurement officer or the head of a procurement unit with independent procurement authority shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.
- (a) If a challenge is upheld, the conducting procurement unit shall conduct a standard procurement process for the procurement item being considered or cancel the procurement;
 - (b) If a challenge is not upheld, the conducting procurement unit may proceed with awarding a contract without engaging in a standard procurement process.
- (3) A vendor's right to file a protest under Title 63G, Chapter 6a; Part 16, is not waived by a vendor's actions to contest or challenge a procurement unit's notice of intent to award a contract

without engaging in a standard procurement process under Section R33-8-101f.

R33-8-102. Adding Additional Funds to a Contract.

(1) Adding funds to an existing contract constitutes an expenditure of public funds without competition and is an exception to the standard procurement process. Two of the purposes of the Utah Procurement Code identified in Section 63G-6a-102 are to ensure the fair and equitable treatment of all persons who deal with the procurement system; and to provide increased economy in state procurement activities. In order to achieve these competing objectives, when adding additional funds to a contract, the following provisions shall apply to executive branch procurement units:

(a) Up to 25 percent in additional funds may be added to the initial total amount of a contract issued and conducted by an executive branch procurement unit if, after reviewing the applicable laws and rules, the chief procurement officer or head of a procurement unit with independent procurement authority approves adding the additional funds.

(b) Over 25 percent in additional funds may be added to the initial total amount of a contract issued and conducted by an executive branch procurement unit if approved by the chief procurement officer or head of an executive branch procurement unit with independent procurement authority and the Attorney General's Office. The approval from the Attorney General's Office shall include a written determination that adding the additional funds does not violate state or federal antitrust laws and is consistent with the purpose of ensuring the fair and equitable treatment of all persons who deal with the procurement system.

(c) Explicit statutory authorization to add additional funds to a specific existing contract issued and conducted by an executive branch agency overrides subsections (a) and (b).

(d) Additional funds may only be added to an existing contract for the procurement item(s) identified in the scope of work or procurement specifications set forth in the solicitation and resulting contract.

R33-8-110. Extension of a Contract Without Engaging in a Standard Procurement Process.

(1) One of the underlying purposes and policies of the Utah Procurement Code is to ensure the fair and equitable treatment of all persons who deal with the procurement system and to foster effective broad-based competition within the free enterprise system. The most effective way to achieve this is by conducting a standard procurement process whenever public funds are expended for a procurement item. A contract extension does not involve a standard procurement process and should only be used after thorough analysis and proper justification.

(2) Pursuant to Section 63G-6a-103, "contract administration" is a duty of the conducting procurement unit and includes all functions, duties, and responsibilities associated with closing out a contract. In fulfillment of these duties, the conducting procurement unit shall maintain a process or system for tracking contract expiration dates in order to determine well in advance of a contract expiration date if there is a continuing need for the procurement item. If the conducting procurement unit determines there is a continuing need for the procurement item, the conducting procurement unit shall whenever practicable:

(a)(i) Initiate a standard procurement process no later than 90 days prior to the contract expiration date of an existing contract; and

(ii) No later than 45 days prior to the contract expiration date, publish, if applicable, a solicitation for the procurement item; or

(b)(i) If the conducting procurement unit determines that a procurement will be complex or involve a change in industry standards or new specifications requiring negotiations, no later than 180 days prior to the contract expiration date, initiate a standard procurement process; and

(ii) No later than 45 days prior to the contract expiration date, publish, if applicable, a solicitation for the procurement item.

(3) The following do not justify an extension of a contract under Section 63G-6a-802.7:

(a) A procurement unit's intentional delay in conducting a standard procurement process to award a contract to replace an expiring contract; and

(b) A procurement unit or vendor's intentional delay in executing a contract to replace an expiring contract.

(4) Improperly avoiding engaging in a standard procurement process in order to extend the duration of a vendor's existing contract through means of a contract extension, may be classified as "steering a contract to a favored vendor" which is reportable as unlawful conduct under Section 63G-6a-2407.

R33-8-201. Trial Use or Testing of a Procurement Item, Including New Technology.

The trial use or testing of a procurement item, including new technology, shall be conducted as set forth in Section 63G-6a-802.3, Utah Procurement Code.

R33-8-301. Reserved.

Reserved.

R33-8-401. Emergency Procurement.

(1) Emergency procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-803, and this rule.

(2) An emergency procurement is a procurement procedure where the procurement unit is authorized to obtain a procurement item without using a standard competitive procurement process.

(3) An emergency procurement may only be used when circumstances create harm or risk of harm to public health, welfare, safety, or property.

(a) Circumstances that may create harm or risk to health, welfare, safety, or property include:

(i) damage to a facility or infrastructure resulting from flood, fire, earthquake, storm, or explosion;

(ii) failure or eminent failure of a public building, equipment, road, bridge or utility;

(iii) terrorist activity;

(iv) epidemics;

(v) civil unrest;

(vi) events that impair the ability of a public entity to function or perform required services;

(vii) situations that may cause harm or injury to life or property; or

(viii) other conditions as determined in writing by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.

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

(5) While a standard procurement process is not required under an emergency procurement, when practicable, procurement units should seek to obtain as much competition as possible through use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property, or impairing the ability of a public entity to function or perform required services.

(6) The procurement unit shall make a written determination documenting the basis for the emergency and the selection of the procurement item. A record of the determination and selection shall be kept in the contract file. The documentation may be made after the emergency condition has been alleviated.

R33-8-501. Declaration of "Official State of Emergency".

Upon a declaration of an "Official State of Emergency" by the authorized state official, the chief procurement officer shall implement the division's Continuity of Operations Plan, or COOP. When activated, the division shall follow the procedures outlined in the plan and take appropriate actions as directed by the procurement unit responsible for authorizing emergency acquisitions of procurement items.

KEY: government purchasing, exceptions to procurement requirements, emergency procurement
Date of Enactment or Last Substantive Amendment: ~~June 23, 2015~~ 2016

Notice of Continuation: July 8, 2014

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

Administrative Services, Purchasing and General Services

R33-9

Cancellations, Rejections, and Debarment

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40565

FILED: 06/30/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to address the cancellations, rejections, and debarment within the procurement process.

SUMMARY OF THE RULE OR CHANGE: Section R33-9-103 was amended to clarify that a solicitation may be cancelled before award but after opening all bids or offers when the procurement unit determines in writing that an infraction of code, rule, or policy has occurred or that there is other good cause including inadequate, erroneous, or

ambiguous specifications or requirements were cited in the solicitation. Additionally, Section R33-9-105 was deleted.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Any anticipated costs or savings to the state budget, based on the changes to this rule, cannot be measured. The changes to the rule address the cancellation of an award if it is determined that there was an infraction of code, rule, or policy that has occurred or that there is other good cause including inadequate, erroneous, or ambiguous specifications or requirements were cited in the solicitation. It is impossible to determine, prior to the incident, what reasons for a cancellation would occur. Therefore, there are no anticipated costs or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Any anticipated costs or savings to local government, based on the changes to this rule, cannot be measured. The changes to the rule address the cancellation of an award if it is determined that there was an infraction of code, rule, or policy that has occurred or that there is other good cause including inadequate, erroneous, or ambiguous specifications or requirements were cited in the solicitation. It is impossible to determine, prior to the incident, what reasons for a cancellation would occur. Therefore, there are no anticipated costs or savings to local government.

◆ **SMALL BUSINESSES:** Any anticipated costs or savings to small businesses, based on the changes to this rule, cannot be measured. The changes to the rule address the cancellation of an award if it is determined that there was an infraction of code, rule, or policy that has occurred or that there is other good cause including inadequate, erroneous, or ambiguous specifications or requirements were cited in the solicitation. It is impossible to determine, prior to the incident, what reasons for a cancellation would occur. Therefore, there are no anticipated costs or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Any anticipated costs or savings to persons other than small businesses, businesses, or local government entities, based on the changes to this rule, cannot be measured. The changes to the rule address the cancellation of an award if it is determined that there was an infraction of code, rule, or policy that has occurred or that there is other good cause including inadequate, erroneous, or ambiguous specifications or requirements were cited in the solicitation. It is impossible to determine, prior to the incident, what reasons for a cancellation would occur. Therefore, there are no anticipated costs or savings to the local government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons. The changes to the rule simply address the cancellation of an award if it is determined that there was an infraction of code, rule, or policy that has occurred or that there is other good cause including inadequate, erroneous, or ambiguous specifications or requirements were cited in the solicitation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to the rule address the cancellation of an award if it is determined that there was an infraction of code, rule, or policy that has occurred or that there is other good cause including inadequate, erroneous, or ambiguous specifications or requirements were cited in the solicitation. As it is impossible to determine, prior to the incident, what reasons for a cancellation would occur, and fiscal impacts cannot be measured. Therefore, there are no anticipated fiscal impacts that the rule may have on businesses.

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

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the 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
◆ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Jared Gardner, Chair, Procurement Policy Board

R33. Administrative Services, Purchasing and General Services.

R33-9. Cancellations, Rejections, and Debarment.

R33-9-101. General Provisions.

(1) An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled prior to the deadline for receipt of bids, proposals, or other submissions, when it is in the best interests of the procurement unit as determined by the procurement unit. In the event a solicitation is cancelled, the reasons for cancellation shall be made part of the procurement file and shall be available for public inspection and the procurement unit shall:

- (a) re-solicit new bids or proposals using the same or revised specifications; or,
- (b) withdraw the requisition for the procurement item(s).

R33-9-102. Re-solicitation.

(1) In the event there is no initial response to an initial solicitation, the chief procurement officer or head of a procurement unit with independent procurement authority may:

- (a) contact the known supplier community to determine why there were no responses to the solicitation;
- (b) research the potential vendor community; and,

(c) based upon the information in (a) and (b) require the conducting procurement unit to modify the solicitation documents.

(2) If the conducting procurement unit has modified the solicitation documents and after the re-issuance of a solicitation, there is still no competition or there is insufficient competition, the chief procurement officer or head of a procurement unit with independent procurement authority, shall:

- (a) require the conducting procurement unit to further modify the procurement documents; or,
- (b) cancel the requisition for the procurement item(s).

R33-9-103. Cancellation Before Award.

(1) When it is determined before award but after opening that the specifications, scope of work or other requirements contained in the solicitation documents were not met by any bidder or offeror the solicitation shall be cancelled.

(2) ~~A [Solicitations]~~solicitation may be cancelled before award but after opening all bids or offers when the procurement unit determines in writing that an infraction of code, rule, or policy has occurred or that there is other good cause including:

- (a) inadequate, erroneous, or ambiguous specifications or requirements were cited in the solicitation;
- (b) the specifications in the solicitation have been or must be revised;
- (c) the procurement item(s) being solicited are no longer required;
- (d) the solicitation did not provide for consideration of all factors of cost to the procurement unit, such as cost of transportation, warranties, service and maintenance;
- (e) bids or offers received indicate that the needs of the procurement unit can be satisfied by a less expensive procurement item differing from that in the solicitation;
- (f) except as provided in Section 63G-6a-607, all otherwise acceptable bids or offers received are at unreasonable prices, or only one bid or offer is received and the chief procurement officer or head of a procurement unit with independent procurement authority cannot determine the reasonableness of the bid price or cost proposal;
- (g) the responses to the solicitation were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or,
- (h) no responsive bid or offer has been received from a responsible bidder or offer;

R33-9-104. Alternative to Cancellation.

In the event administrative difficulties are encountered before award but after the deadline for submissions that may delay award beyond the bidders' or offerors' acceptance periods, the bidders or offerors should be requested, before expiration of their bids or offers, to extend in writing the acceptance period (with consent of sureties, if any) in order to avoid the need for cancellation.

~~R33-9-105. Continuation of Need.~~

~~If the solicitation has been cancelled for the reasons specified in Rule R33-9-103(1)(f), (g), or (h) and the chief procurement officer or head of a procurement unit with independent procurement authority has made the written determination in Rule R33-9-103(1) and the conducting procurement unit has an existing contract, the division or a procurement unit with independent~~

~~procurement authority may permit an extension of the existing contract under Section 63G-6a-802(7).]~~

R33-9-201. Rejections and Debarments.

An issuing procurement unit may reject any or all bids, offers or other submissions, in whole or in part, as may be specified in the solicitation, when it is in the best interest of the procurement unit. In the event of a rejection of any or all bids, offers or other submissions, in whole or in part, the reasons for rejection shall be made part of the procurement file and shall be available for public inspection.

R33-9-202. Conformity to Solicitation Requirements.

(1)(a) Any bid or offer that fails to conform to the essential requirements of the solicitation shall be rejected.

(b) Any bid or offer that does not conform to the applicable specifications shall be rejected unless the solicitation authorized the submission of alternate bids or offers and the procurement item(s) offered as alternates meet the requirements specified in the solicitation.

(c) Any bid or offer that fails to conform to the delivery schedule or permissible alternates stated in the solicitation shall be rejected.

(2) A bid or offer shall be rejected when the bidder or offeror imposes conditions or takes exceptions that would modify requirements or terms and conditions of the solicitation or limit the bidder or offeror's liability to the procurement, since to allow the bidder or offeror to impose such conditions or take exceptions would be prejudicial to other bidders or offerors. For example, bids or offers shall be rejected in which the bidder or offeror:

- (a) for commodities, protects against future changes in conditions, such as increased costs, if total possible costs to the procurement unit cannot be determined;
- (b) fails to state a price and indicates that price shall be the price in effect at time of delivery or states a price but qualifies it as being subject to price in effect at time of delivery;
- (c) when not authorized by the solicitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder or offeror receives (or does not receive) an award under a separate solicitation;

(d) requires that the procurement unit is to determine that the bidder or offeror's product meets applicable specifications; or

(e) limits rights of the State under any contract clause.

(3) A bidder or offeror may be requested to delete objectionable conditions from a bid or offer provided doing so is not prejudicial to other bidders or offerors, or the conditions do not go to the substance, as distinguished from the form, of the bid. A condition goes to the substance of a bid or offer where it affects price, quantity, quality, or delivery of the procurement item(s) offered.

R33-9-203. Unreasonable or Unbalanced Pricing.

(1)(a) Any bid or offer may be rejected if the chief procurement officer or head of a procurement unit with independent procurement authority determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid or offer, but the prices for individual line items as well.

(b) Any bid or offer may be rejected if the prices for any line items or subline items are materially unbalanced. Unbalanced pricing may increase performance risk and could result in payment of

unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly over or understated as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when:

(i) startup work, mobilization, procurement item sample production or testing are separate line items;

(ii) base quantities and option quantities are separate line items; or

(iii) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.

(c) All bids or offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the procurement unit shall:

(i) consider the risks to the procurement unit associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and

(ii) consider whether award of the contract will result in paying unreasonably high prices for contract performance.

(d) A bid or offer may be rejected if the procurement unit and the chief procurement officer or head of a procurement unit with independent procurement authority determine that the lack of balance poses an unacceptable risk to the State.

R33-9-204. Rejection for Nonresponsibility or Nonresponsiveness.

(1) Subject to Section 63G-6a-903, the chief procurement officer or head of a procurement unit with independent procurement authority shall reject a bid or offer from a bidder or offeror determined to be nonresponsible. A responsible bidder or offeror is defined in Section 63G-6a-103(42).

(2) In accordance with Section 63G-6a-604(3) the chief procurement officer or head of a procurement unit with independent procurement authority may not accept a bid that is not responsive. Responsiveness is defined in Section 63G-6a-103(43).

(3) When a bid security is required and a bidder fails to furnish the security in accordance with the requirements of the invitation for bids, the bid shall be rejected.

(4) The originals of all rejected bids, offers, or other submissions, and all written findings with respect to such rejections, shall be made part of the procurement file and available for public inspection.

R33-9-301. Rejection for Suspension/Debarment.

Bids, offers, or other submissions, received from any person that is suspended, debarred, or otherwise ineligible as of the due date for receipt of bids, proposals, or other submissions shall be rejected.

KEY: government purchasing, cancellations, rejections, debarment

Date of Enactment or Last Substantive Amendment: ~~July 8, 2014~~ **2016**

Notice of Continuation: July 8, 2014

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

Administrative Services, Purchasing and General Services

R33-21

Interaction Between Procurement Units

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40568

FILED: 06/30/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to address the cooperative purchasing, which shall be conducted in accordance with the requirements set forth in Section 63G-6a-2105.

SUMMARY OF THE RULE OR CHANGE: Section R33-21-201e was added to this rule, which outlines the following: 1) in accordance with Section 63A-1-109.5 and Subsections 63A-2-103(3) and 63G-6a-303(2)(b), and other applicable State of Utah law, the director of the Division of Purchasing and General Services serving as the chief procurement officer of the state shall administer the state's cooperative purchasing program and may impose or assess an administrative fee on contractors and vendors on state cooperative contracts as part of its internal service fund authorization; and 2) the Division shall include a provision in each state cooperative contract prohibiting any other procurement unit from charging any type of fee, surcharge, or rebate on a state cooperative contract issued by the chief procurement officer.

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

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no anticipated costs or savings that are expected as a result of the changes to this rule. The changes to this rule do not give the Division the authority to charge an administrative fee. The Division's authority to charge an administrative fee is authorized pursuant to Section 63A-1-109.5, Subsection 63G-6a-303(2)(b), and Section 63A-2-103. This rule simply clarifies that only the Division, and no other public entity, may charge an administrative fee on state cooperative contracts or contracts issued by the Chief Procurement Officer. The statutory authorization allowing the Division to charge an administrative fee to vendors on state contract has been in place for over five years. Therefore, the changes to this rule, which simply clarify that no other public entity may impose an administrative fee on state contracts, will not have any impact on the state budget.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings that are expected as a result of the changes to this rule. The changes to this rule do not give the Division the authority to charge an administrative fee. The Division's authority to charge an administrative fee is authorized pursuant to Section 63A-1-109.5, Subsection 63G-6a-303(2)(b), and Section 63A-2-103. This rule simply clarifies that only the Division, and no other public entity, may charge an administrative fee on state cooperative contracts or contracts issued by the Chief Procurement Officer. The statutory authorization allowing the Division to charge an administrative fee to vendors on state contract has been in place for over five years. Therefore, the changes to this rule, which simply clarify that no other public entity may impose an administrative fee on state contracts, will not have any impact on local government.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings that are expected as a result of the changes to this rule. The changes to this rule do not give the Division the authority to charge an administrative fee. The Division's authority to charge an administrative fee is authorized pursuant to Section 63A-1-109.5, Subsection 63G-6a-303(2)(b), and Section 63A-2-103. This rule simply clarifies that only the Division, and no other public entity, may charge an administrative fee on state cooperative contracts or contracts issued by the Chief Procurement Officer. The statutory authorization allowing the Division to charge an administrative fee to vendors on state contract has been in place for over five years. Therefore, the changes to this rule, which simply clarify that no other public entity may impose an administrative fee on state contracts, will not have any impact on small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings that are expected as a result of the changes to this rule. The changes to this rule do not give the Division the authority to charge an administrative fee. The Division's authority to charge an administrative fee is authorized pursuant to Section 63A-1-109.5, Subsection 63G-6a-303(2)(b), and Section 63A-2-103. This rule simply clarifies that only the Division, and no other public entity, may charge an administrative fee on state cooperative contracts or contracts issued by the Chief Procurement Officer. The statutory authorization allowing the Division to charge an administrative fee to vendors on state contract has been in place for over five years. Therefore, the changes to this rule, which simply clarify that no other public entity may impose an administrative fee on state contracts, will not have any impact on persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons. The changes to this rule clarify that no other public entity may impose an administrative fee on state contracts.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts that this rule will have

on businesses, as a result of the changes to this rule. The changes to this rule do not give the Division the authority to charge an administrative fee. The Division's authority to charge an administrative fee is authorized pursuant to Section 63A-1-109.5, Subsection 63G-6a-303(2)(b), and Section 63A-2-103. This rule simply clarifies that only the Division, and no other public entity, may charge an administrative fee on state cooperative contracts or contracts issued by the Chief Procurement Officer. The statutory authorization allowing the Division to charge an administrative fee to vendors on state contract has been in place for over five years. Therefore, the changes to this rule, which simply clarify that no other public entity may impose an administrative fee on state contracts, will not have a fiscal impact on businesses.

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

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the 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
♦ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Jared Gardner, Chair, Procurement Policy Board

R33. Administrative Services, Purchasing and General Services.

R33-21. Interaction Between Procurement Units.

R33-21-101. Cooperative Purchasing.

Cooperative purchasing shall be conducted in accordance with the requirements set forth in Section 63G-6a-2105. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This Rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R33-21-201. State Cooperative Contracts.

(a) An executive branch procurement unit shall obtain procurement items from state cooperative contracts whether statewide or regional unless the chief procurement officer determines, in accordance with Section 63G-6a-~~408~~506(5)(b)(i), that it is in the best interest of the state to obtain an individual procurement item outside the state contract.

(b) In accordance with Section 63G-6a-2105, public entities, nonprofit organizations, and agencies of the federal government may obtain procurement items from state cooperative contracts awarded by the chief procurement officer.

R33-21-201e. Division May Charge Administrative Fees on State Cooperative Contracts - Prohibition Against Other Procurement Units Charging Fees on State Contracts.

(1) In accordance with Section 63A-1-109.5, 63A-2-103(3), 63G-6a-303(2)(b), and other applicable State of Utah law, the Director of the Division of Purchasing and General Services serving as the chief procurement officer of the state shall administer the state's cooperative purchasing program and may impose or assess an administrative fee on contractors and vendors on state cooperative contracts as part of its internal service fund authorization.

(2) The Division shall include a provision in each state cooperative contract prohibiting any other procurement unit from charging any type of fee, surcharge, or rebate on a state cooperative contract issued by the chief procurement officer.

R33-21-301. Discount Pricing for Large Volume Purchases for Items on State Contract.

(1) Eligible users of state cooperative contracts may seek to obtain additional volume discount pricing for large volume orders provided state cooperative contractors are willing to offer additional discounts for large volume orders.

(a) Eligible users may not coerce, intimidate or in any way compel vendors on state cooperative contracts to offer additional discount pricing.

(b) Eligible users seeking additional pricing discounts for large volume purchases shall issue a "Request for Price Quotations" to each vendor on a state cooperative contract for the procurement item being purchased.

(c) Executive branch procurement units without independent procurement authority shall contact the division to issue the request for price quotations.

(d) The request for price quotations shall include:

(i) a detailed description of the procurement item;

(ii) the estimated number or volume of procurement items that will be purchased;

(iii) the period of time that price quotations will be accepted, including the date and time price quotations will be opened;

(iv) the manner in which price quotations will be accepted;

(v) the place where price quotations shall be submitted; and

(vi) the period of time the price quotation must be guaranteed.

(e) Price quotations shall be kept confidential until the date and time of the opening and may not be disclosed to other vendors on state cooperative contracts until after the date and time of the opening. Email quotations are acceptable.

(f) Price quotations will be opened in the presence of a minimum of two witnesses.

(g) Price quotations will become public at the time of the opening.

(2) All terms and conditions of the state cooperative contract shall remain in effect unless the chief procurement officer approves the modification.

(3) This process may not be used for:

(a) an anti-competitive practice such as:

(i) bid rigging;

(ii) steering a contract to a preferred state cooperative contractor;

(iii) utilizing auction techniques where price quotations are improperly disclosed and contractors bid against each other's price;

(iv) disclosing pricing or other confidential information prior to the date and time of the opening; or

(v) any other practice prohibited by the Utah Procurement Code.

(4) All sales resulting from the quotations received under the process conducted in accordance with ~~[Rule]~~Section R33-21-301 shall be recorded as usage under the existing state cooperative contract, are subject to the administrative fee associated with the state cooperative contract, and shall be reported to the division.

KEY: cooperative purchasing, state contracts, procurement units
Date of Enactment or Last Substantive Amendment: [July 8, 2014]2016

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

Administrative Services, Purchasing and General Services **R33-24** Unlawful Conduct

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40569

FILED: 06/30/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to address the unlawful conduct for the procurement rules, which shall be governed in accordance with the requirements set forth in Sections 63G-6a-2401 through 63G-6a-2407.

SUMMARY OF THE RULE OR CHANGE: This rule title was amended to add "and Ethical Standards." Additionally, Section R33-24-108 was added to address the ethical standards for an employee of a procurement unit involved in the procurement process.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The changes to this rule simply address the ethical standards for an employee of a procurement unit involved in the procurement process.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings that are expected for local government. The changes to this rule simply address the ethical standards for

an employee of a procurement unit involved in the procurement process.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings expected for small businesses. The changes to this rule simply address the ethical standards for an employee of a procurement unit involved in the procurement process.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings for persons other than small businesses, businesses, or local government entities. The changes to this rule simply address the ethical standards for an employee of a procurement unit involved in the procurement process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons. The changes to this rule simply address the ethical standards for an employee of a procurement unit involved in the procurement process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts that this rule may have on businesses. The changes to this rule simply address the ethical standards for an employee of a procurement unit involved in the procurement process.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 PURCHASING AND GENERAL SERVICES
 ROOM 3150 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the 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
 ♦ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Jared Gardner, Chair, Procurement Policy Board

R33. Administrative Services, Purchasing and General Services.

R33-24. Unlawful Conduct and Ethical Standards.

R33-24-101. Unlawful Conduct.

Unlawful conduct shall be governed in accordance with the requirements set forth in Sections 63G-6a-2401 through 2407. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule

provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-24-102. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Procurement Professionals.

(1) Each executive branch employee classified as a "Procurement Professional" shall be governed by:

(a) Part 24 of the Utah Procurement Code, "Unlawful Conduct and Penalties."

(b) Executive Order EO/003/2010 issued by the Governor (<http://www.rules.utah.gov/execcdocs/2010/ExecDoc149415.htm>);

(c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act;"

(d) Section 76-8-103, "Bribery or Offering a Bribe;" and

(e) any other applicable law.

R33-24-103. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Employees.

(1) Each executive branch employee not classified as a "Procurement Professional" shall be governed by:

(a) Executive Order EO/003/2010 issued by the Governor (<http://www.rules.utah.gov/execcdocs/2010/ExecDoc149415.htm>);

(c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act;"

(d) Section 76-8-103, "Bribery or Offering a Bribe;" and

(e) any other applicable law.

R33-24-104. Socialization with Vendors and Contractors.

(1) A procurement professional shall not:

(a) participate in social activities with vendors or contractors that will interfere with the proper performance of the procurement professional's duties;

(b) participate in social activities with vendors or contractors that will lead to unreasonably frequent disqualification of the procurement professional from the procurement process; or

(c) participate in social activities with vendors or contractors that would appear to a reasonable person to undermine the procurement professional's independence, integrity, or impartiality.

(2) If an executive branch procurement professional participates in a social activity prohibited under R33-24-104(1), or has a close personal relationship with a vendor or contractor, the procurement professional shall promptly notify their supervisor and the supervisor shall take the appropriate action, which may include removal of the procurement professional from the procurement or contract administration process that is affected.

R33-24-105. Financial Conflict of Interests Prohibited.

(1) A procurement conflict of interest is a situation in which the potential exists for an executive branch employee's personal financial interests, or for the personal financial interests of a family member, to influence, or have the appearance of influencing, the employee's judgment in the execution of the employee's duties and responsibilities when conducting a procurement or administering a contract.

(2) In order to preserve the integrity of the State's procurement process, an executive branch employee may not take part in any procurement process, contracting or contract administration decision:

(a) relating to the employee or a family member of the employee; or

(b) relating to any entity in which the employee or a family member of the employee is an officer, director or partner, or in which the employee or a family member of the employee owns or controls 10% or more of the stock of such entity or holds or directly or indirectly controls an ownership interest of 10% or more in such entity.

(3) If a procurement process, contracting or contract administration matter arises relating to the employee or a family member of the employee, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the procurement, contracting or administration matter. The employee must also comply with all disclosure requirements in Utah Code Title 67 Chapter 16, Utah Public Officers' and Employees' Ethics Act.

R33-24-106. Personal Relationship, Favoritism, or Bias Participation Prohibitions.

(1) Executive branch employees are prohibited from participating in any and all discussions or decisions relating to the procurement, contracting or administration process if they have any type of personal relationship, favoritism, or bias that would appear to a reasonable person to influence their independence in performing their assigned duties and responsibilities relating to the procurement process, contracting or contract administration or prevent them from fairly and objectively evaluating a proposal in response to a bid, RFP or other solicitation. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

(2) If an executive branch employee has a personal relationship, favoritism, or bias toward any individual, group, organization, or vendor responding to a bid, RFP or other solicitation, the employee must make a written disclosure to the supervisor and the supervisor shall take appropriate action, which may include recusing the employee from any and all discussions or decisions relating to the solicitation, contracting or administration matter in question. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

R33-24-107. Professional Relationships and Social Acquaintances Not Prohibited.

(1) It is not a violation for an executive branch employee who participates in discussions or decisions relating to the procurement, contracting or administration process to have a professional relationship or social acquaintance with a person, contractor or vendor responding to a solicitation, or that is under contract with the State, provided that there is compliance with [Rule]Section R33-24-105, [Rule]Section R33-24-106, the Utah Public Officers' and Employees' Ethics Act, The Governor's Executive Order (EO 002 2014) "Establishing an Ethics Policy for Executive Branch Agencies and Employees," and other applicable State laws.

R33-24-108. Ethical Standards for an Employee of a Procurement Unit Involved in the Procurement Process.

An employee of a procurement unit involved in the procurement process shall uphold and promote the independence, integrity, and impartiality of the procurement process as required in the

Utah Procurement Code and, as applicable, Title R33 and shall avoid impropriety and the appearance of impropriety.

KEY: executive branch employees, procurement code, procurement professionals, unlawful conduct

Date of Enactment or Last Substantive Amendment: [~~October 8, 2014~~2016]

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

Agriculture and Food, Animal Industry **R58-18** Elk Farming

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40584

FILED: 07/01/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purposes of these rule changes are to clarify what is necessary for identification of the animals, as well as to establish clear expectations for inspections.

SUMMARY OF THE RULE OR CHANGE: The rule changes clarify that identification must be either through a tattoo or an electronic identification tag. Also, the rule clarifies that there may only be a 95% error rate between physical inventory and bookkeeping inventory. Further, there will only be a 10% error rate on samples for chronic wasting disease for farms with more than 20 elk and no error rate for those with less than 10.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 4, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Little to no additional cost: legislation appropriated money to the program in 2016 will help pay for a full-time employee that, as part of their duties, will be to inspect records and facilities. Electronic tags have already been in use, and the wording is changed to clarify what is used. There will be no additional cost. Chronic wasting disease testing has been required from the beginning of the program for all deaths. The changing of acceptable error rates will have no effect on the state's budget.

♦ **LOCAL GOVERNMENTS:** No cost or savings to local government, as this program is not regulated by anyone other than the State Department of Agriculture and Food.

♦ **SMALL BUSINESSES:** There should be no additional costs or savings to small business, including the elk farms themselves. This rule has been in place since the beginning of the program. Adding percentages for error rates or dates of removal will not change costs from current costs.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There should be no effect on costs or savings to any other entity. This rule is only pertinent to the elk industry and has no effect to cost or savings on the elk industry.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no additional compliance costs to the elk farms. The rule already required testing and there should be no additional financial cost to the producers. Adding percentages for error rates or dates of removal will not change costs from current costs. Electronic tags have already been in use and the wording is changed to clarify what is used. There will be no additional cost. Chronic wasting disease testing has been required from the beginning of the program for all deaths. The changing of acceptable error rates will have no effect on or change what they are doing now.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These rule changes will help protect the Domestic Elk Industry as well as wildlife. The changes made should have no additional impact on producers as they are already required to supply these samples. The only change is the error rate for inspection purposes.

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:

◆ 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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2016

AUTHORIZED BY: LuAnn Adams, Commissioner

R58. Agriculture and Food, Animal Industry.

R58-18. Elk Farming.

R58-18-1. Authority.

Regulations governing elk farming promulgated under authority of 4-39-106.

R58-18-2. Definitions.

In addition to the definitions found in Sections 4-1-8, 4-7-3, 4-24-2, 4-32-3 and 4-39-102, the following terms are defined for purposes of this rule:

(1) "Adjacent Herd" means a herd of Cervidae occupying premises that border an affected herd, including herds separated by fences, roads or streams, herds occupying a premises where Chronic Wasting Disease (CWD) was previously diagnosed, and herds that share the same license as the affected or source herd, even if separate records are maintained and no commingling has taken place.

(2) "Affected herd" means a herd of Cervidae where an animal has been diagnosed with Chronic Wasting Disease (CWD) caused by protease resistant prion protein (PrP), and confirmed by means of an approved test, within the previous 5 years.

(3) "Animal identification" means a device or means of animal identification.

(4) "Approved test" means approved tests for Chronic Wasting Disease CWD surveillance shall be those laboratory or diagnostic tests accepted nationally by USDA and approved by the State Veterinarian.

(5) "Commingled", "commingling" means that animals are commingled if they have direct contact with each other, have less than 10 feet of physical separation, or share equipment, pasture, or water sources/watershed. Animals are considered to have commingled if they have had such contact with a positive animal or contaminated premises within the last 5 years.

(6) "CWD-exposed animal" means an animal that is part of a CWD-positive herd, or that has been exposed to a CWD-positive animal or contaminated premises within the previous 5 years.

(7) "CWD-exposed herd" means a herd in which a CWD-positive animal has resided within 5 years prior to that animal's diagnosis as CWD-positive.

(8) "CWD Herd Certification Program" means the Chronic Wasting Disease Herd Certification Program.

(9) "CWD-positive animal" means an animal that has had a diagnosis of CWD confirmed by means of an official CWD test.

(10) "CWD-positive herd" means a herd in which a CWD positive animal resided at the time it was diagnosed and which has not been released from quarantine.

(11) "CWD-suspect animal" means an animal for which has been determined that laboratory evidence or clinical signs suggest a diagnosis of CWD.

(12) "CWD-suspect herd" means a herd in which a CWD suspect animal resided and which has not been released from quarantine.

(13) "Destination Herd" means the intended herd of residence, which will be occupied by the animal which is proposed for importation.

(14) "Domestic elk" as used in this chapter, in addition to 4-39-102, means any elk which has been born inside of, and has spent its entire life within captivity.

(15) "Elk" as used in this chapter means North American Wapiti or Cervus Elaphus Canadensis.

(16) "Herd of Origin" means the herd, which an imported animal has resided in, or does reside in, prior to importation.

(17) "Official slaughter facility" means a place where the slaughter of livestock occurs that is under the authority of the state or federal government and receives state or federal inspection.

(18) "Quarantine Facility" means a confined area where selected elk can be secured, contained and isolated from all other elk and livestock.

(19) "Raised" as used in the act means any possession of domestic elk for any purpose other than hunting.

(20) "Secure Enclosure" means a perimeter fence or barrier that is so constructed as to prevent domestic elk from escaping into the wild or the ingress of native wildlife into the facility.

(21) "Separate location" as used in Subsection 4-39-203(5) means any facility that may be separated by two distinct perimeter fences, not more than 10 miles apart, owned by the same person.

(22) "Trace Back Herd/Source Herd" means a herd of Cervidae where an animal affected with CWD has formerly resided.

(23) "Trace Forward Herd" means a herd of Cervidae which has received exposed animals that originated from a CWD positive herd within 5 years prior to the diagnosis of CWD in the positive herd or from the identified date of entry of CWD into the positive herd.

R58-18-3. Application and Licensing Process.

(1) Each applicant for a license shall submit a signed, complete, accurate and legible application on a Department issued form.

(2) In addition to the application, a general plot plan should be submitted showing the location of the proposed farm in conjunction with roads, towns, etc. in the immediate area.

(3) A facility number shall be assigned to an elk farm at the time a completed application is received by the Department.

(4) A complete facility inspection and approval shall be conducted prior to the issuing of a license or entry of elk to any facility. This inspection shall be made by an approved Department of Agriculture and Food employee and Division of Wildlife Resources employee. It shall be the responsibility of the applicant to request this inspection at least 72 hours in advance.

(5) Upon receipt of an application, inspection and approval of the facility and completion of the facility approval form and receipt of the license fee, a license will be issued.

(6) All licenses expire on July 1st in the year following the year of issuance.

(7) Elk may enter into the facility only after a license is issued by the Department and received by the applicant.

R58-18-4. License Renewal.

(1) Each elk farm must make renewal application to the Department on the prescribed form no later than April 30th indicating its desire to continue as an elk farm. This application shall be accompanied by the required fee. Any license renewal application received after April 30th will have a late fee assessed.

(2) Any license received after July 1st is delinquent and any animals on the farm will be quarantined until due process of law against the current owner has occurred. This may result in revocation of the license, loss of the facility number, closure of the facility and removal of the elk from the premises.

(3) Documentation showing that genetic purity has been maintained throughout the year is also required for annual license renewal.

(4) The licensee shall provide a copy of the inventory sheet to the inspector at the time of inspection.

(5) Prior to renewal of the license, the facility will again be inspected by a Utah Department of Agriculture and Food employee.

(a) The employee will document that all fencing and facility requirements are met as required.

(b) The employee will perform an inventory count on all elk on the premises.

(c) The employee will perform a visual general health check of all animals.

(d) Every ~~third~~ year, the employee will perform an inventory of all elk by matching individual animal identification with the inventory records received from the owner/manager of the elk facility.

(e) The physical inventory and bookkeeping inventory must have at least a 95% match.

R58-18-5. Facilities.

(1) All perimeter fences and gates shall meet the minimum standard as defined in Section 4-39-201.

(a) The perimeter fences and gates shall be constructed to prevent the movement of cervids, both captive and wild, into or out of the facility.

(2) Internal handling facilities shall be capable of humanely restraining an individual animal for the applying or reading of any animal identification, the taking of blood or tissue samples, or conducting other required testing by an inspector or veterinarian.

(a) Any such restraint shall be properly constructed to protect inspection personnel while handling the animals.

(b) Minimum requirements include a working pen, an alley way and a restraining chute.

(3) The licensee shall provide an isolation or quarantine holding facility which is adequate to contain the animals and provide proper feed, water and other care necessary for the physical well being of the animal(s) for the period of time necessary to separate the animal from other animals on the farm.

(4) Each location of a licensed facility with separate perimeter fences must have its own separate loading facility.

R58-18-6. Records.

(1) Licensed elk farms shall maintain accurate and legible office records showing the inventory of all elk on the facility.

(2) The inventory record of each animal shall include:

(a) Name and address of agent(s) which the elk was purchased from,

(b) Identification number (tattoo or microchip) and official ear tag number,

(c) Age,

(d) Sex,

(e) Date of purchase or birth,

(f) Date of death or change of ownership (name of new owner and address should be recorded and retained), and

(g) Certificate of Veterinary Inspection if purchased out of state.

(3) The inventory sheet may be one that is either provided by the Department or may be a personal design of similar format.

(4) Any animal born on the property or transported into a facility must be added to the inventory sheet within seven days.

(5) Any elk purchased must be shown on the inventory sheet within 30 days after acquisition, including source.

(6) A death record of all elk 12 months of age and over that die; or that are otherwise harvested, slaughtered, killed, or destroyed shall be submitted to the Department within 48 hours after death of the animal.

R58-18-7. Genetic Purity.

(1) All elk entering Utah, except those going directly to slaughter, must have written evidence of genetic purity.

(2) Written evidence of genetic purity will include one of the following:

(a) Test charts from an approved lab that have run either a:

(i) Blood genetic purity test or

(ii) DNA genetic purity test.

(b) Registration papers from the North American Elk Breeders Association.

(c) Herd purity certification papers issued by another state agency.

(3) Genetic purity records must be kept on file and presented to the inspector at the time elk are brought into the state and also each year during the license renewal process.

(4) Any elk identified as having red deer genetic influence shall be destroyed, or immediately removed from the state.

R58-18-8. Acquisition of or [s]Slaughter of Elk.

(1) Only domesticated elk will be allowed to enter and be kept on any elk farm in Utah.

(2) All new elk brought into a facility shall be held in a quarantine facility until a livestock inspector has inspected the animal(s) to verify that all health, identification and genetic purity requirements have been met. New animals may not co-mingle with any elk already on the premises until this verification is completed by the livestock inspector.

(3) All elk presented for slaughter at an official slaughter facility, that have come from an out of state source, must arrive on a day when no Utah raised elk or elk carcasses are present at the plant.

(4) Individual elk identification must be maintained throughout slaughter and processing until such time that CWD test results have been returned from the laboratory.

(5) Out of state elk shall be tested for Brucellosis at the time of slaughter.

R58-18-9. Identification.

(1) All elk shall be permanently identified with either a tattoo or ~~[microchip]~~electronic identification tag.

(2) If the identification method chosen to use is the ~~[microchip]~~electronic identification tag, a reader must be made available, by the owner, to the inspector at the time of any inspection to verify ~~[microchip]~~electronic identification number. The ~~[microchip]~~electronic identification tag shall be placed in the right ear.

(3) If tattooing is the chosen method of identification, each elk shall bear a tattoo number consisting of the following:

(a) UT (indicating Utah) followed by a number assigned by the Department (indicating the facility number of the elk farm) and

(b) Any alphanumeric combination of letters or numbers consisting of not less than 3 digits, indicating the individual animal number herein referred to as the "ID number".

Example:

UTxxx

ID number (001)

(c) Each elk shall be tattooed on either the right peri-anal hairless area beside the tail or in the right ear.

(d) Each alphanumeric character must be at least 3/8 inch high.

(e) Each newly purchased elk will not need to be retattooed or microchipped if they already have this type of identification.

(f) Any purchased elk not already identified shall be tattooed or microchipped within 30 days after arriving on the farm.

(g) All calves must be tattooed or microchipped within 15 days after weaning or in no case later than September 15th or before leaving the premises where they were born.

(4) In addition to one of the two above mentioned identification methods, each elk shall be identified by an official USDA ear tag or other ear tag approved by the State Veterinarian within 15 days after weaning or in no case later than September 15th or before leaving the premises where they were born or within 30 days after arriving on the farm.

R58-18-10. Inspections.

(1) All facilities must be inspected within 60 days before a license or the renewal of an existing license is issued. It is the responsibility of the applicant to arrange for an appointment with the Department for such inspection, giving the Department ample time to respond to such a request.

(2) All elk must be inspected for inventory purposes within 60 days before a license renewal can be issued.

(3) All elk must be inspected when any change of ownership, moving out of state, leaving the facility, slaughter or selling of elk products, such as antlers, occurs except as indicated in (f) below.

(a) It is the responsibility of the licensee to arrange for any inspection with the local state livestock inspector.

(b) A minimum of 48 hours advance notice shall be given to the inspector.

(c) When inspected, the licensee or his representative shall make available such records as will certify ownership, genetic purity, and animal health.

(d) All elk to be inspected shall be properly contained in facilities adequate to confine each individual animal for proper inspection.

(e) Animals shall be inspected before being loaded or moved outside the facility.

(f) Animals moving from one perimeter fence to another within the facility may move directly from one site to another site without a brand inspection, but must be accompanied with a copy of the facility license.

(4) Any elk purchased or brought into the facility from an out-of-state source shall be inspected upon arrival at a licensed farm before being released into an area inhabited by other elk. All requirements of R58-18-10(3) above shall apply to the inspection of such animals.

(5) A Utah Brand Inspection Certificate shall accompany any shipment of elk or elk products, including velveted antlers, which are to be moved from a Utah elk farm.

(a) Shed antlers are excluded from needing an inspection.

(6) Proof of ownership and proper health papers shall accompany all interstate movement of elk to a Utah destination.

(7) Proof of ownership may include:

(a) A brand inspection certificate issued by another state.

- (b) A purchase invoice from a licensed public livestock market showing individual animal identification.
- (c) Court orders.
- (d) Registration papers showing individual animal identification.
- (e) A duly executed bill (notarized) of sale.

R58-18-11. Health Rules.

(1) Prior to the importation of elk, whether by live animals, gametes, eggs, sperm or other genetic material into the State of Utah, the importing party must obtain an import permit from the Utah State Veterinarian's office.

(a) An import permit number shall be issued only if the destination is licensed as an elk farm by the Utah Department of Agriculture and Food or an official slaughter facility.

(b) The import permit number for Utah shall be obtained by the local veterinarian conducting the official health inspection by contacting the Utah Department of Agriculture and Food.

(2) All elk imported into Utah must be examined by an accredited veterinarian prior to importation and must be accompanied by a valid Certificate of Veterinary Inspection, health certificate, certifying a disease free status.

(a) Minimum specific disease testing results or health statements must be included on the Certificate of Veterinary Inspection. Minimum disease testing requirement may be waived on elk traveling directly to an official slaughter facility.

(b) A negative tuberculosis test must be completed within 60 days prior to entry into the state. A retest is also optional at the discretion of the State Veterinarian.

(c) If animals do not originate from a tuberculosis accredited, qualified or monitored herd, they may be imported only if accompanied by a certificate stating that such domestic cervidae have been classified negative to two official tuberculosis tests that were conducted not less than 90 days apart, that the second test was conducted within 60 days prior to the date of movement. The test eligible age is six months or older, or less than six months of age if not accompanied by a negative testing dam.

(d) All elk being imported shall test negative for brucellosis if six months of age or older, by at least two types of official USDA brucellosis tests.

(e) The Certificate of Veterinary Inspection must also include the following signed statement: "To the best of my knowledge the elk listed herein are not infected with Johne's Disease (Paratuberculosis), Chronic Wasting Disease or Malignant Catarrhal Fever and have never been east of the 100 degree meridian."

(f) The Certificate of Veterinary Inspection shall also contain the name and address of the shipper and receiver, the number, sex, age and any individual identification on each animal.

(3) Additional disease testing may be required at the discretion of the State Veterinarian prior to importation or when there is reason to believe other disease(s), or parasites are present, or that some other health concerns are present.

(4) Imported or existing elk may be required to be quarantined at an elk farm if the State Veterinarian determines the need for and the length of such a quarantine.

(5) Any movement of elk outside a licensed elk farm shall comply with standards as provided in the document entitled: "Uniform Methods and Rules (UM and R)", as approved and published by the

USDA. The documents, entitled: "Tuberculosis Eradication in Cervidae, Uniform Methods and Rules", the May 15, 1994 edition, and "Brucellosis Eradication, Uniform Methods and Rules", the May 6, 1992 edition as published by the USDA, are hereby incorporated by reference into this rule. These are the standards for tuberculosis and brucellosis eradication in domestic cervidae.

(6) Treatment of all elk for internal and external parasites is required within 30 days prior to entry, except elk going directly to slaughter.

(7) All elk imported into Utah must originate from a state or province, which requires that all suspected or confirmed cases of Chronic Wasting Disease (CWD), be reported to the State Veterinarian or regulatory authority. The state or province of origin must have the authority to quarantine source herds and herds affected with or exposed to CWD.

(8) Based on the State Veterinarian's approval, all elk imported into Utah shall originate from states, which have implemented a Program for Surveillance, Control, and Eradication of CWD in Domestic Elk. All elk imported to Utah must originate from herds that have been participating in a verified CWD surveillance program for a minimum of 5 years. Animals will be accepted for movement only if epidemiology based on vertical and horizontal transmission is in place.

(9) No elk originating from a CWD affected herd, trace back herd/source herd, trace forward herd, adjacent herd, or from an area considered to be endemic to CWD, may be imported to Utah.

(10) Elk semen, eggs, or gametes, require a Certificate of Veterinary Inspection verifying the individual source animal has been tested for genetic purity for Rocky Mountain Elk genes and certifying that it has never resided on a premises where Chronic Wasting Disease has been identified or traced. An import permit obtained by the issuing veterinarian must be listed on the Certificate of Veterinary Inspection.

R58-18-12. Chronic Wasting Disease Surveillance and Investigation.

(1) The owner, veterinarian, or inspector of any elk which is suspected or confirmed to be affected with Chronic Wasting Disease (CWD) in Utah is required to report that finding to the State Veterinarian.

(2) The State Veterinarian will promptly investigate all animals reported as CWD-exposed, CWD-suspect, or CWD-positive animals, including but not limited to:

(a) Conduct an epidemiologic investigation of CWD-positive, CWD-exposed, and CWD-suspect herds that includes the designation of suspect and exposed animals and that identifies animals to be traced;

(b) Conduct tracebacks of CWD-positive animals and traceouts of CWD-exposed animals and report any out-of-State traces to the appropriate State promptly after receipt of notification of a CWD-positive animal; and

(c) Conduct tracebacks based on slaughter or other sampling promptly after receipt of notification of a CWD-positive animal at slaughter.

(d) With the approval of the Commissioner of Agriculture, the State Veterinarian will place the facility under quarantine and any trace-back or trace-forward facility as needed.

(e) Any elk over 12 months of age that dies or is otherwise slaughtered or destroyed from a CWD-positive, CWD-exposed, and CWD-suspect herd shall have the brain stem (obex portion of the

medulla) and medial retropharyngeal lymph nodes collected for testing for Chronic Wasting Disease (CWD) by an official test.

(i) The samples shall be collected by an accredited veterinarian, or an approved laboratory, or person trained and approved by the State Veterinarian.

(ii) Carcasses and tissues from these animals will be either incinerated or stored by a state or federally inspected slaughter establishment until testing is completed.

(iii) Carcasses and tissues from animals testing positive must be disposed of by incineration or other means approved by the State Veterinarian.

(3) Each elk farm, licensed in Utah, shall be required to submit the brain stem (obex portion of the medulla) and medial retropharyngeal lymph nodes of any elk over 12 months of age that dies or is otherwise slaughtered or destroyed, for testing for Chronic Wasting Disease (CWD) by an official test. The samples shall be collected by an accredited veterinarian, or an approved laboratory, or person trained and approved by the State Veterinarian. Farms owning 20 or more elk maybe allowed up to a 10% error rate on samples per year; farms owning less than 20 elk will not have an acceptable error rate.

(4) Each hunting park, licensed in Utah, shall be required to submit the brain stem (obex portion of the medulla) and medial retropharyngeal lymph nodes of all elk over 12 months of age that die; or that are otherwise harvested, slaughtered, killed, or destroyed, for testing for Chronic Wasting Disease with an official test. The samples shall be collected by an accredited veterinarian, approved laboratory, or person trained and approved by the State Veterinarian. Hunting parks maybe allowed up to a 10% error rate on samples per year with consideration taken when elk are shot in an area of the elk that causes an unacceptable sample.

(5) The CWD surveillance samples from elk residing on licensed elk farms and elk hunting parks shall be collected and preserved in formalin within 48 hours following the death of the animal, and submitted within 7 days, to a laboratory approved by the State Veterinarian. Training of approved personnel shall include collection, handling, shipping, and identification of specimens for submission.

(6) Laboratory fees and expenses incurred for collection and shipping of samples shall be the responsibility of the participating elk farm or hunting park.

(7) The designation and disposition of CWD exposed, positive, or suspect animals or herds in Utah shall be determined by the State Veterinarian.

R58-18-13. Herd Status.

(1) Initial and subsequent status.

(a) When a herd is first enrolled in the CWD Herd Certification Program, it will be placed in First Year status, except that; if the herd is comprised solely of animals obtained from herds already enrolled in the Program, the newly enrolled herd will have the same status as the lowest status of any herd that provided animals for the new herd.

(b) If the herd continues to meet the requirements of the CWD Herd Certification Program, each year, on the anniversary of the enrollment date the herd status will be upgraded by 1 year; i.e., Second Year status, Third Year status, Fourth Year status, and Fifth Year status.

(c) One year from the date a herd is placed in Fifth Year status, the herd status will be changed to "Certified", and the herd will

remain in "Certified" status as long as it is enrolled in the program, provided its status is not lost or suspended in accordance with this section.

(2) Loss or suspension of herd status.

(a) If a herd is designated a CWD-positive herd or a CWD-exposed herd, it will immediately lose its program status and may only reenroll after entering into a herd plan.

(b) If a herd is designated a CWD-suspect herd, a trace back herd, or a trace forward herd, it will immediately be placed in Suspended status pending an epidemiologic investigation.

(i) If the epidemiologic investigation determines that the herd was not commingled with a CWD-positive animal, the herd will be reinstated to its former program status, and the time spent in Suspended status will count toward its promotion to the next herd status level.

(ii) If the epidemiologic investigation determines that the herd was commingled with a CWD-positive animal, the herd will lose its program status and will be designated a CWD-exposed herd.

(iii) If the epidemiological investigation is unable to make a determination regarding the exposure of the herd, because the necessary animal or animals are no longer available for testing (i.e., a trace animal from a known positive herd died and was not tested) or for other reasons, the herd status will continue as Suspended unless and until a herd plan is developed for the herd.

(iv) If a herd plan is developed and implemented, the herd will be reinstated to its former program status, and the time spent in Suspended status will count toward its promotion to the next herd status level; Except that, if the epidemiological investigation finds that the owner of the herd has not fully complied with program requirements for animal identification, animal testing, and recordkeeping, the herd will be reinstated into the CWD Herd Certification Program at the First Year status level, with a new enrollment date set at the date the herd entered into Suspended status.

(v) Any herd reinstated after being placed in Suspended status must then comply with the requirements of the herd plan as well as the requirements of the CWD Herd Certification Program. The herd plan will require testing of all animals that die in the herd for any reason, regardless of the age of the animal, may require movement restrictions for animals in the herd based on epidemiologic evidence regarding the risk posed by the animals in question, and may include other requirements found necessary to control the risk of spreading CWD.

(c) If the Department determines that animals from a herd enrolled in the program have commingled with animals from a herd with a lower program status, the herd with the higher program status will be reduced to the status of the herd with which its animals commingled.

(3) Cancellation of enrollment by the Department.

(a) The Department may cancel the enrollment of an enrolled herd by giving written notice to the herd owner.

(b) In the event of such cancellation, the herd owner may not reapply to enroll in the CWD Herd Certification Program for 5 years from the effective date of the cancellation.

(c) The Department may cancel enrollment after determining that the herd owner failed to comply with any requirements of this section. Before enrollment is canceled, the Department will inform the herd owner of the reasons for the proposed cancellation.

(d) Herd owners may appeal cancellation of enrollment or loss or suspension of herd status by writing to the Commissioner of Agriculture within 10 days after being informed of the reasons for the proposed action.

(i) The appeal must include all of the facts and reasons upon which the herd owner relies to show that the reasons for the proposed action are incorrect or do not support the action.

(ii) The Commissioner of Agriculture will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision.

(iii) If there is a conflict as to any material fact, a hearing will be held to resolve the conflict.

(iv) The cancellation of enrollment or loss or suspension of herd status shall become effective pending final determination in the proceeding if the Commissioner of Agriculture determines that such action is necessary to prevent the possible spread of CWD.

(A) Such action shall become effective upon oral or written notification, whichever is earlier, to the herd owner.

(B) In the event of oral notification, written confirmation shall be given as promptly as circumstances allow.

(v) This cancellation of enrollment or loss or suspension of herd status shall continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Commissioner of Agriculture.

(4) Herd status of animals added to herds.

(a) A herd may add animals from herds with the same or a higher herd status in the CWD Herd Certification Program with no negative impact on the certification status of the receiving herd.

(b) If animals are acquired from a herd with a lower herd status, the receiving herd reverts to the program status of the sending herd.

(c) If a herd participating in the CWD Herd Certification Program acquires animals from a nonparticipating herd, the receiving herd reverts to First Year status with a new enrollment date of the date of acquisition of the animal.

R58-18-14. Herd Plan.

(1) A written herd plan will be developed by the State Veterinarian with input from the herd owner, USDA, and other affected parties.

(2) The herd plan sets out the steps to be taken to eradicate CWD from a CWD positive herd, to control the risk of CWD in a CWD-exposed or CWD-suspect herd, or to prevent introduction of CWD into another herd.

(3) A herd plan will require:

(a) specified means of identification for each animal in the herd;

(b) regular examination of animals in the herd by a veterinarian for signs of disease;

(c) reporting to a State or USDA representative of any signs of central nervous system disease in herd animals;

(d) maintaining records of the acquisition and disposition of all animals entering or leaving the herd, including the date of acquisition or removal, name and address of the person from whom the animal was acquired or to whom it was disposed, cause of death, if the animal died while in the herd.

(4) A herd plan may also contain additional requirements to prevent or control the possible spread of CWD, depending on the

particular condition of the herd and its premises, including but not limited to:

(a) specifying the time for which a premises must not contain cervids after CWD positive, exposed, or suspect animals are removed from the premises;

(b) fencing requirements;

(c) depopulation or selective culling of animals;

(d) restrictions on sharing and movement of possibly contaminated livestock equipment;

(e) cleaning and disinfection requirements, or other requirements.

(5) The State Veterinarian must approve all movement of cervids onto or off of the facility.

(a) Movement restriction of cervids will remain in place until requirements of the plan have been met.

(6) The State Veterinarian may review and revise a herd plan at any time in response to changes in the situation of the herd or premises or improvements in understanding of the nature of CWD epidemiology or techniques to prevent its spread.

R58-18-15. Grounds for Denial, Suspension, or Revocation of Licenses for Domestic Elk Facilities.

(1) A license to operate a domestic elk facility may be denied, suspended, or revoked by the Department for any of the following reasons:

(a) Incomplete application or incorrect application information;

(b) Incorrect records or failure to maintain required records;

(c) Not presenting animals for identification at the request of the Department;

(d) Failure to notify Department of movement of elk onto or off of the facility;

(e) Failure to identify elk as required;

(f) Movement of imported elk onto facility without obtaining a Certificate of Veterinary Inspection which has an import permit number obtained from the Department;

(g) Importing animals that are prohibited or controlled as listed in rule R657-3;

(h) Failure to notify the Department concerning an escape of an animal from a domestic elk facility;

(g) Failure to maintain a perimeter fence that prevents escape of domestic elk or ingress of wild cervids into the facility;

(i) Failure to notify the Division of Wildlife Resources that there are wild cervids inside a domestic elk farm or hunting park;

(j) Failure to participate with the Utah Department of Agriculture and Food and the Utah Division of Wildlife Resources in a cooperative wild cervid removal program;

(k) Failure to have inventories match with at least a 95% match;

(l) Failure to submit the acceptable rate of CWD test samples;

(~~k~~)(m) Failure to have the minimum proper equipment necessary to safely and humanely handle animals in the facility; or

(l) Inhumane handling or neglect of animals on the facility as determined by the Department.

(2) Once the Department has notified the operator of a domestic elk facility of the denial, suspension, or revocation of a license to operate a domestic elk facility, the operator has 15 calendar days to request an appeal with the Commissioner of Agriculture.

(3) An operator of a domestic elk facility that has had their license revoked shall remove all elk from the facility within 30 calendar days by:

- (a) Sending all elk to an inspected facility for slaughter; or
- (b) Selling elk to another facility;

(4) Any elk remaining on the facility at the end of 30 days will be sold by the Department during a special sale conducted for that purpose.

KEY: inspections, elk, chronic wasting disease

Date of Enactment or Last Substantive Amendment: [September 10, 2013]2016

Notice of Continuation: January 18, 2012

Authorizing, and Implemented or Interpreted Law: 4-39-106

Crime Victim Reparations, Administration

R270-6

Recusal of a Board Member for a Conflict of Interest

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40524

FILED: 06/17/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish standards and procedures for addressing potential conflicts of interest.

SUMMARY OF THE RULE OR CHANGE: This rule establishes standards and procedures for addressing potential conflicts of interest and the recusal of a Board member for a conflict of interest.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63M-7-506

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings to state budget that are expected as a result of this rule. The rule simply addresses the standards and procedures for addressing potential conflicts of interest for a Board member.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government that are expected as a result of this rule. The rule simply addresses the standards and procedures for addressing potential conflicts of interest for a Board member.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses that are expected as a result of this rule. The rule does not apply to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings that are expected as a result of this rule. The rule simply addresses the standards and procedures for addressing potential conflicts of interest for a Board member.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons. The rule simply addresses the standards and procedures for addressing potential conflicts of interest for a Board member.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts that the rule may have on businesses. The rule does not apply to businesses.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Gary Scheller, Director

R270. Crime Victim Reparations, Administration.
R270-6. Recusal of a Board Member for a Conflict of Interest.
R270-6-1. Authority.

This rule is authorized by Section 63M-7-506.

R270-6-2. Purpose.
The purpose of this rule is to establish standards and procedures for addressing potential conflicts of interest.

R270-6-3. Definitions.
Terms used in this rule are defined in Section 63M-7-502.

R270-6-4. Potential Conflicts of Interest.
A board member has a potential conflict of interest with respect to a matter to be considered by the board if:
(1) the board member's participation would be prohibited under Title 67, Chapter 16, the Utah Public Officers' and Employees' Ethics Act;

(2) the board member's participation constitutes a violation of constitutional due process under the Utah or United States constitutions; or

(3) the board member has a pecuniary interest in the outcome of the proceeding and may gain or lose some benefit from the outcome.

R270-6-5. Procedures.

(1) A board member, who has a potential conflict of interest with respect to a matter before the board, shall:

(a) disclose the conflict of interest on a form provided by the Office;

(b) refrain from directly or indirectly influencing the board's decision on the specific issue which gave rise to the conflict of interest; and

(c) recuse himself or herself from voting with the board on the matter.

(2) This rule does not preclude a board member from participating in a general discussion as a subject matter expert.

KEY: conflict of interest, Crime Victim Reparations and Assistance Board

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: 67-16; 63M-7-506

Health, Family Health and
Preparedness, Licensing
R432-14
Birthing Center Construction Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40550

FILED: 06/28/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule amendment is to modify, clarify, and define birthing center construction requirements. The Health Facility Committee reviewed and approved these rule amendments on 06/07/2016. A required public hearing regarding this amendment was held on 06/20/2016.

SUMMARY OF THE RULE OR CHANGE: The rule amendment is to modify, clarify, and define birthing center construction requirements. The amendment includes modifications to allow for one birth room centers to be licensed, clarifies required emergency lighting, and outlines which guidelines and construction rules will not apply. This amendment also corrects many outdated references and corrects numbering errors.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There is no impact to the state budget because there will be no change in current practice.

◆ LOCAL GOVERNMENTS: There is no impact to the local government budget because there will be no change in current practice.

◆ SMALL BUSINESSES: There is no impact to the small businesses budget because there will be no change in current practice.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to businesses, individuals, local governments, and persons that are not small businesses because there will be no change in current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to affected persons because there will be no change in current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because there are no required changes to current practice.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carmen Richins by phone at 801-273-2802, by FAX at 801-274-0658, or by Internet E-mail at carmenrichins@utah.gov

◆ Joel Hoffman by phone at 801-273-2804, by FAX at 801-274-0658, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

**R432. Health, Family Health and Preparedness, Licensing.
R432-14. Birthing Center Construction Rule.**

R432-14-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-14-2. Purpose.

This rule provides construction and physical plant standards for birthing centers.

R432-14-3. General Design Requirements.

(1) Birthing centers shall be constructed in accordance with the requirements of R432-4-1 through R432-4-23 and the requirements of section 5.2 of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition (Guidelines) and are adopted and incorporated by reference.

(2) Birthing centers shall consist of at least ~~two~~ one, but not more than five birth rooms. Licensure is not required for birthing centers with only one birth room.

(3) Birthing rooms and ancillary service areas shall be organized in a contiguous physical arrangement.

(4) Birthing centers with ~~4 or 5 birth rooms~~ shall comply with NFPA 101, Life Safety Code, Chapter 20, New Ambulatory Health Care Occupancies. Birthing centers with one to three birth rooms shall comply with NFPA 101, Life Safety Code, Chapter 38, New Business Occupancies and NFPA 101 A.3.3.178.3, as indicated in section 5.2-7.1 of the Guidelines.

(5) A Birthing center located contiguous with a general hospital may share radiology services, laboratory services, pharmacy services, engineering services, maintenance services, laundry services, housekeeping services, dietary services, and business functions. The owner shall retain in the birthing center a written agreement for the shared services.

R432-14-4. General Construction Patient Facilities.

(1) Requirements of section 5.2 of the Guidelines shall be met except as modified in this section.

(2) When a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

(3) The facility shall be designed to allow access to service areas and common areas without compromising patient privacy.

(4) Birth rooms and service areas shall be grouped to form a physically defined service unit.

(5) Spaces shall be provided for each of the required services.

(6) Interior finishes, lighting, and furnishings shall reflect a residential rather than an institutional setting.

(7) Maximum room occupancy shall be one mother and her newborn infant or infants.

(8) ~~Each birthing room shall have a window in accordance with R432-4-23(5).~~ Windows in a birth room with a sight line which permits observation from the exterior shall be arranged or draped to ensure patient privacy.

(9) Birth rooms shall provide each patient a wardrobe, closet, or locker, having minimum clear dimensions of 24 inches by 20 inches, suitable for hanging full-length garments. A clothes rod and adjustable shelf shall be provided.

(10) A toilet room with direct access from the birth room shall be accessible to each birth room.

(a) The toilet room shall contain a toilet and a lavatory. A shower or tub shall be accessible to each birth room and may be located in the toilet room.

(b) A toilet room may serve two birth rooms.

(c) All toilet room fixtures shall be handicapped accessible and shall have grab bars in compliance with ADA/ABA-AG.

(11) Newborn infant resuscitation ~~facilities~~ equipment ~~remote from facilities serving the mother~~, including electrical receptacles, oxygen, and suction shall be immediately available to each

birth room in addition to resuscitation equipment provided for the mother. Portable oxygen and suction equipment shall be permitted.

(12) A ~~separate room~~ mechanically exhausted area for storage of facility maintenance materials and equipment shall be provided and may be combined with the environmental services room. ~~(a) The room may serve as a maintenance office with storage for maintenance files, facility drawings, and operation manuals.~~

~~(b) The storage room shall be in addition to the required environmental services room.~~

(13) Special surgical lighting is not required.

(14) An examination light shall be ~~provided~~ readily available in each birth room. ~~The light, if portable, shall be immediately accessible.~~

(15) An emergency ~~electrical~~ lighting system ~~connected to an on-site emergency generator~~ is required ~~and must include:~~

(a) ~~Services shall be connected to the emergency generator to include:~~ emergency exit signs:

~~(i) fire alarm system;~~

~~(ii) telephone;~~

~~(iii) nurse call;~~

~~(iv) one duplex receptacle in each patient room located to allow use of a portable examination light;~~

~~(v) one duplex receptacle at each nurse station;~~

~~(vi) heating system;~~

~~(vii) emergency lighting system.~~

~~(b) There shall be sufficient fuel storage capacity to permit at least four hours continuous operation.~~

~~(b) sufficient lighting to safely exit the building; and~~

~~(c) an examination light.~~

R432-14-5. ~~Sections of the Guidelines which are~~ Excluded Guidelines and Administrative Code.

(1) The following sections of the Guidelines do not apply:

~~(1) a) Location, Subsection 5.2-1.3.1.1;~~

~~(b) Soiled workroom 5.2-2.6.10.1; and~~

~~(c) Soiled holding room 5.2-2.6.10.2;~~

~~(2) d) Ventilation of Health Care Facilities, Part 6.~~

(2) The following sections of Administrative Code do not apply:

~~(a) General construction R432-4-23(5); and~~

~~(b) General construction R432-4-23(17).~~

R432-14-6. Penalties.

The Department may assess a civil money penalty of up to \$10,000 and deny approval for patient utilization of new or remodeled areas ~~denied~~ if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to \$10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to \$1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: ~~February 21, 2012~~ **2016**

Notice of Continuation: April 10, 2014

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-16

Health, Family Health and
Preparedness, Licensing
R432-550
Emergency and Disaster

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40551

FILED: 06/28/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule amendment is to clarify and define the facilities requirements for patients and staff safety during a disaster. The Health Facility Committee reviewed and approved this rule amendment on 06/07/2016. A required public hearing regarding this amendment was held on 06/20/2016.

SUMMARY OF THE RULE OR CHANGE: The rule amendment adds and defines the facilities requirements to have disaster plans and procedures in place to ensure the health and safety of patients during a disaster.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because there will be no change in current practice.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to the local government budget because there will be no change in current practice.
- ◆ **SMALL BUSINESSES:** There is no impact to the small businesses budget because there will be no change in current practice.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to businesses, individuals, local governments, and persons that are not small businesses because there will be no change in current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to affected persons because there will be no change in current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact to business because there is no required change to current practice.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,

LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carmen Richins by phone at 801-273-2802, by FAX at 801-274-0658, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-273-2804, by FAX at 801-274-0658, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R432. Health, Family Health and Preparedness, Licensing.

R432-550. Birthing Centers.

R432-550-12. Emergency and Disaster.

(1) The ~~administrator shall make provisions to maintain a safe environment~~ facility shall assure the safety and well-being of patients in the event of an emergency or disaster. An emergency or disaster may include[s] but is not limited to ~~utility~~ interruption of public utilities, explosion, fire, earthquake, bomb threat, flood, windstorm, epidemic and injury.

(2) The administrator shall educate, train and drill staff to respond appropriately in an emergency in accordance with NFPA 101, Life Safety Code ~~2009~~.

(3) The administrator shall ~~review the written emergency procedures at least annually and update them as appropriate.~~ be responsible for the development of an emergency and disaster plan, coordinated with state and local emergency or disaster authorities, to respond to emergencies and disasters as appropriate. The plan shall:

(a) be in writing and personnel shall have ready access when on duty;

(b) be reviewed and updated at least annually by the administrator and the licensee; and

(c) address evacuation of occupants to a safe place within the facility or to another location.

(4) ~~Personnel shall have ready access to written emergency and disaster plans when on duty.~~ The facility must maintain safe ambient air temperatures within the facility.

(a) Emergency heating must have the approval of the local fire department.

(b) The facility shall have, and be capable of implementing contingency plans regarding excessively high or low ambient air temperatures within the facility that may affect the health and safety of the patients.

~~_____ (5) The administrator shall review the disaster plan with local disaster agencies as appropriate.~~

~~_____ (6) The smoking policy shall comply with Title 26, Chapter 38, the "Utah Clean Air Act" and Section 20.7.4 of the Life Safety Code, 2009 edition.]~~

KEY: health care facilities
Date of Enactment or Last Substantive Amendment: 2016
Notice of Continuation: November 9, 2015
Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-16

Public Safety, Fire Marshal
R710-5
Automatic Fire Sprinkler System
Inspecting and Testing

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40522
FILED: 06/16/2016

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 to 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. Rule R710-5 section numbers have been corrected. References to fee amounts found in the Utah State Fee Schedule 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 local budgets 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 small business' budgets 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' budgets 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 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Coy Porter, State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-5. Automatic Fire Sprinkler System Inspecting and Testing.
R710-5-1. [Adoption, Title, Purpose, and Prohibitions].
~~[Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts] The purpose of this rule is to establish the minimum rules to provide regulation to those who inspect and test Automatic Fire Sprinkler Systems.~~
~~[—There is adopted as part of these rules the following code which are incorporated by reference:~~
~~— 1.1 National Fire Protection Association, NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2008 edition, except as amended by provisions listed in R710-5-6, 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.~~

R710-5-2. Authority.

This rule is authorized by Section 53-7-204.

R710-5-[2]3. Definitions.

[2-1](1) "Annual" means a period of one year or 365 calendar days.

[2-2](2) "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

[2-3](3) "Board" means Utah Fire Prevention Board.

[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) "NFPA" means National Fire Protection Association.

[2-6](6) "NICET" means National Institute for Certification in Engineering Technologies.

[2-7](7) "SFM" means State Fire Marshal or authorized deputy.

~~2.8 "UCA" means Utah State Code Annotated 1953 as amended.~~

R710-5-[3]4. Certificates of Registration.

~~3.1 Required Certificates of Registration.~~

(1) No person shall engage in the inspecting and testing of automatic fire sprinkler systems without first receiving a certificate of registration issued by the SFM as required in [UCA]Section 53-7-225.5.

(2) The following groups are exempted from the requirements of this part:

[3-1-1](a) [F]the AHJ that is performing the initial installation acceptance testing of the automatic fire sprinkler system or ongoing inspections to verify compliance with the adopted NFPA standards and these rules[-]; or

[3-1-2](b) [F]the building owner or designee that performs additional periodic inspections beyond the annual inspection required in Section [6.2 of these rules]R710-5-7(2), to satisfy requirements set by company policy, insurance, or risk management.

~~3.2 Application.~~

[3-2-1](3) Application for a certificate of registration to inspect and test automatic fire sprinkler systems shall be made in writing to the SFM on forms provided the SFM and signed by the applicant. ~~The applicant shall sign the application.~~

(a) The SFM or his deputies may request picture identification of the applicant for a certificate of registration.

[3-2-2](b) The applicant shall indicate on the application which of the four technician levels the applicant will apply for:

[3-2-2-1](i) Technician I;

[3-2-2-2](ii) Technician II

[3-2-2-3](iii) Technician III; or

[3-2-2-4](iv) Master Technician.

[3-2-3](c) The application for a certificate of registration shall be accompanied with proof of public liability insurance from the certificate holder or employing concern.

(i) A public liability insurance carrier showing coverage of at least \$100,000 for each incident, and \$300,000 in total coverage shall issue the public liability insurance.

(ii) The certificate of registration holder shall notify the SFM within 30 days after the public liability insurance coverage required is no[t] longer in effect for any reason.

~~3.3 Technician Examination.~~

(4) The SFM shall require all applicants for a certificate of registration as a technician to complete the following:

[3-3-1](a) Technician I shall:

(i) pass a written examination on wet pipe sprinkler systems, antifreeze sprinkler systems, and standpipes[-]; and

(ii) complete the manipulative skills task book[-];

[3-3-2](b) Technician II shall:

(i) pass all the requirements listed for Technician I;

(ii) pass a written examination on dry pipe sprinkler systems, deluge sprinkler systems, preaction sprinkler systems, combined dry pipe-preaction systems, fire pumps, and water storage tanks[-]; and

(iii) complete the manipulative skills task book[-];

[3-3-3](c) Technician III shall:

(i) pass all the requirements listed for Technician I and II;

(ii) pass a written examination on water spray fixed systems, foam-water sprinkler systems, and foam-water spray systems[-]; and

(iii) complete the manipulative skills task book[-]; and

[3-3-4](d) Master Technician shall:

(i) have successfully completed and be certified as NICET III in Inspection and Testing of Water-based Systems[-]; and

(ii) complete the manipulative skills task book.

[3-4](5) Examinations will be given according to the following requirements:

[3-4-1](a) [A]all certification examinations given are open book examinations. ~~[F]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 are prohibited in the examination room[-];~~

[3-4-2](b) [E]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[-];

[3-4-3](c) [E]each certification examination taken has a time limit of two hours to completion[-];

(d) [F]to successfully pass the written examination, the applicant must obtain a minimum grade of [seventy percent] (70% [-]);

(e) [E]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[-];

[3-4-4](f) [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[-]; and

[3-4-5](g) [F]to successfully complete the manipulative skills task book, all required skill tasks shall be signed as completed by a person duly qualified or certified in that skill.

~~[3-5](6)~~ As required in ~~[3-3-4]~~Subsection R710-5-4(4)(d), those applicants that have successfully completed the requirements of NICET III, in Inspection and Testing of Water-based Systems, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial written examination waived, after appropriate documentation is provided to the SFM by the applicant.

~~[3-6 Issuance.]~~

~~(7)~~ Following receipt of the properly completed application ~~[, compliance with Section 3.3 of these rules] and successful completion of required testing~~, the SFM shall issue a certificate of registration.

~~[3-7 Original and Renewal Valid Date.]~~

~~(8)~~ 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.

~~[3-8 Renewal Date.]~~

~~(9)~~ Application for renewal shall be made as directed by the SFM.

~~[3-9 Re-examination.]~~

~~(10)~~ Every holder of a valid certificate of registration shall take a re-examination every three years, from date of original certificate, to comply with the provisions of Section ~~[3-3 of these rules]~~ R710-5-4 as follows:

~~[3-9-1](a)~~ ~~[F]~~the re-examination to comply with the provisions of Section 3.3 of these rules shall consist of an open book examination for each level of certification, to be mailed to the certificate holder at least 60 days before the renewal date~~[-]~~;

~~[3-9-2](b)~~ ~~[F]~~the re-examination will consist of questions that focus on changes in the last three years to the adopted NFPA standards, the statute, and the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the ~~[B]~~board or the SFM~~[-]~~;

~~[3-9-3](c)~~ ~~[F]~~the certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew~~[-]~~; and

~~[3-9-4](d)~~ ~~[F]~~the certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

~~[3-10 Refusal to Renew.]~~

~~(11)~~ 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 7, to deny an original certificate of registration] pursuant to R710-5-8(2)~~. The applicant shall, upon such refusal, have the same rights as are granted by Section ~~[7 of these rules to an applicant for an original certificate of registration, which has been denied by the SFM]~~ R710-5-8.

~~[3-11 Inspection.]~~

~~(12)~~ The holder of a certificate of registration shall submit such certificate for inspection, upon request of the AHJ.

~~[3-12 Type.]~~

~~(13)~~ Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified as follows:

~~[3-12-1](a)~~ Technician I: A person who is engaged in the inspection and testing of wet pipe sprinkler systems, antifreeze sprinkler systems, and standpipes~~[-]~~;

~~[3-12-2](b)~~ Technician II: A person who is engaged in the inspection and testing of dry pipe sprinkler systems, deluge sprinkler systems, preaction sprinkler systems, combined dry pipe-preaction systems, fire pumps and water storage tanks~~[-]~~;

~~[3-12-3](c)~~ Technician III: A person who is engaged in the inspection and testing of foam-water sprinkler systems, foam-water spray systems, and water spray fixed systems~~[-]~~; and

~~[3-12-4](d)~~ Master Technician: A person who has obtained NICET III certification in Inspection and Testing of Water-based Systems.

~~[3-13 Change of Address.]~~

~~(14)~~ 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 30 days of such change.

~~[3-14 Duplicate.]~~

~~(15)~~ A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate, which has been lost or destroyed.

~~[3-15 Minimum Age.]~~

~~(16)~~ No certificate of registration shall be issued to any person who is under 18 years of age.

~~[3-16](17) Restrictive Use.~~

~~[3-16-1](a)~~ A certificate of registration may be used for identification purposes only as long as such certificate remains valid.

~~[3-16-2](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.

~~[3-17](18) Right to Contest.~~

~~[3-17-1](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.

~~[3-17-2](b)~~ Every contention as to the validity of individual questions of an examination shall be made within 48 hours after taking said examination.

~~[3-17-3](c)~~ The decision as to the action to be taken on the submitted contention shall be made by the SFM, and such decision shall be final.

~~[3-17-4](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.

~~[3-18 Non-Transferable.]~~

~~(19)~~ Certificates of Registration shall not be transferable. The person to whom issued shall carry individual certificates of registration.

~~[3-19 Certificate of Registration Identification.]~~

~~(20)~~ Every certificate shall be identified by a number, delineated as AFS-(number). Such number shall not be transferred from one person to another.

~~[3-20 New Employees]~~

~~(21)~~ New or existing employees desiring to attain a Certificate of Registration may perform the various acts required while under the constant direct supervision of a person holding a valid certificate of registration for a period not to exceed 60 days from the initial date of employment or beginning service in the field.

R710-5-[4]5. Service Tags.

[4-1](1) Size and Color.

[4-1-1](a) 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.

[4-1-2](b) Tags may be produced in any color except red or a variation of red.

[4-1-3](c) A red tag shall be used to indicate the system fails to ensure a reasonable degree of protection for life and property from fire through inspecting and testing of automatic fire sprinkler systems as required in NFPA, Standard 25, and the requirements of these rules.

(i) After placing the red tag on the system, the certified person shall notify the AHJ and provide the AHJ with a written copy of the noted deficiencies.

[~~4.2 Placement of Tag.~~]

(2) The service tag shall be attached at the sprinkler riser for each system inspected or at other locations as needed to show compliance. The service tag shall be attached to the riser in such a position as to be conveniently inspected by the AHJ.

[~~4.3 Tag Information.~~]

[~~4.3-1~~](3) Service tags shall bear the following information:

[4.3-1-1](a) [P]rovisions of Section 4.7[-];

[4.3-1-2](b) [A]pproved Seal of Registration of the SFM[-];

[4.3-1-3](c) [C]ertificate of registration "AFS" number of individual who performed or supervised the service or services performed[-];

[4.3-1-4](d) [S]ignature of individual whose certificate of registration number appears on the tag[-];

[4.3-1-5](e) [C]oncern's name[-];

[4.3-1-6](f) [C]oncern's address[-];

[4.3-1-7](g) [F]type of service performed[-];

[4.3-1-8](h) [F]type of system serviced[-]; and

[4.3-1-9](i) [D]ate service is performed.

[4.3-2](4) 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.

[4.4](5) Legibility.

[4.4-1](a) The certificate of registration number required in Section [4.3-1-3]R710-5-5(3)(c), and the signature required in Section [4.3-1-4]R710-5-5(3)(d), shall be printed or written distinctly.

[4.4-2](b) All information pertaining to date and type of service shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

[~~4.5 Format.~~]

~~ILLUSTRATION ON FILE IN STATE FIRE MARSHAL'S OFFICE~~

(6) A sample service tag is on file in the State Fire Marshal's Office for review.

[~~4.6 New Tag.~~]

(7) A new service tag shall be attached to a system each time a service is performed.

[~~4.7 Tag Wording.~~]

(8) 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".

[4-8](9) Removal.

[4-8-1](a) No person or persons shall remove a service tag except when further service is performed.

[4-8-2](b) No person shall deface, modify, or alter any service tag that is required to be attached to the system.

[4-8-3](c) A red tag can only be removed by written authority from the AHJ.

[~~4.9 Tag Dates~~]

(10) Service tags may be printed for any number of years not to exceed eight years.

R710-5-[5]6. Seal of Registration.

[~~5.1 Description.~~]

(1) The official seal of registration of the SFM shall consist of the following:

[5-1-1](a) [F]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) [F]the top portion of the outer ring shall have the wording "Utah State"[-];

[5-1-1-2](ii) [F]the bottom portion of the outer ring shall have the wording "Fire Marshal"[-]; and

[5-1-2](b) [A]ppending below the bottom portion and in a centered position, shall be a box provided for the displaying of the certification number assigned to the person.

[~~5.2 Use of Seal.~~]

(2) No person shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

[~~5.3 Permissive Use.~~]

(3) Certificate holders or concerns shall use the Seal of Registration on every service tag.

[~~5.4 Cease Use Order.~~]

(4) 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 certificate of registration.

[~~5.5 Legibility.~~]

(5) 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.

R710-5-[6]7. Amendments and Additions.

[~~6.1 Service.~~]

(1) At the time of service, all servicing shall be done in accordance with the adopted NFPA standard, adopted statutes, and these rules.

[6-2](2) NFPA 25, Chapter 5, Section 5.1, Table 5.1 is amended as follows: On line 16 of the "Inspection" section, the "Obstruction Reference" is changed from 14.2.2 to 14.2.1.

[6-3](3) NFPA 25, Chapter 5, Section 5.1, Table 5.1 is amended as follows: On line one of the "Investigation" section, the "Obstruction Reference" is changed from 14.2.1 to 14.2.2.

[6-4](4) Frequency and Labels.

[6-4-1](a) Automatic fire sprinkler systems, standpipes, and fire pumps shall be inspected annually by a person holding a certificate of registration as required in Section 3.1 of these rules.

~~[6.4.2](b)~~ Automatic fire sprinkler systems that pass the three-year and five-year inspection requirements as required in NFPA 25, Tables 5.1 and 13.1, shall have a label affixed to the riser indicating the specific inspection or inspections that was completed, the month and year those inspections was performed, the person who performed the inspection, and the person performing the inspections certificate of registration number.

~~[6.4.3](c)~~ The label shall be affixed to the riser using a heatless process, shall be 3 in. X 5 in., shall have the official seal of registration of the SFM affixed to the label, shall be constructed of durable material, and shall be the self-destructive type when removal is attempted.

~~[6.5](5)~~ Accepted Inspection Forms.

~~[6.5.1](a)~~ Inspection forms listed in NFPA 25, Annex B, Section B.2, shall be used as the accepted inspection forms.

~~[6.5.2](b)~~ Inspection form format shall be as required in NFPA 25, Annex B, Section B.1(4).

~~[6.5.3](c)~~ A similar equivalent inspection form approved by the SFM may be used as the accepted forms for inspection, testing, and maintenance of water-based fire protection systems.

~~[6.5.4](d)~~ A copy of the completed inspection forms shall be left in a water proof container affixed to the riser.

~~[6.6 New Systems]~~

~~(6)~~ Newly installed automatic fire sprinkler systems, standpipes, and fire pumps are exempt from the annual testing requirement required in Section 6.2 of these rules, for one year from the approval date of the initial installation acceptance testing.

R710-5-[7]8. Adjudicative Proceedings.

~~[7.1](1)~~ All adjudicative proceedings performed by the agency shall proceed informally as authorized by ~~[UCA,]~~ Sections 63G-4-202 and 63G-4-203.

~~[7.2](2)~~ The issuance, renewal, or continued validity of a certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant or the person has committed any of the following violations:

~~[7.2.1](a)~~ ~~[F]~~the applicant or person is not the real person in interest[-];

~~[7.2.2](b)~~ ~~[F]~~the applicant or person provides material misrepresentation or false statements on the application[-];

~~[7.2.3](c)~~ ~~[F]~~the applicant or person refuses to allow inspection by the SFM, or his duly authorized deputies[-];

~~[7.2.4](d)~~ ~~[F]~~the applicant or person for a certificate of registration does not have the proper equipment to conduct the operations for which application is made[-];

~~[7.2.5](e)~~ ~~[F]~~the applicant or person 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 pursuant to Section 3.3 of these rules[-];

~~[7.2.6](f)~~ ~~[F]~~the applicant or person refuses to take the examination required by Section 3.3 of these rules[-];

~~[7.2.7](g)~~ ~~[F]~~the applicant or person fails to pay the certification of registration, examination or other required fees as required in Section 8 of these rules[-];

~~[7.2.8](h)~~ ~~[F]~~the applicant or person has been convicted of one or more federal, state or local laws[-];

~~[7.2.9](i)~~ ~~[F]~~the applicant or person has been convicted of a violation of the adopted rules or been found by a ~~[B]~~board administrative proceeding to have violated the adopted rules[-];

~~[7.2.10](j)~~ ~~[A]~~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 certificate of registration[-]; ~~or~~

~~[7.2.11](k)~~ ~~[F]~~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 fire sprinkler system equipment.

~~[7.3](3)~~ A person whose certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the ~~[B]~~board if requested by that person within 20 days after receiving notice.

~~[7.4](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.

~~[7.5](5)~~ The ~~[B]~~board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The ~~[B]~~board shall be the final authority on the suspension or revocation of a certificate of registration.

~~[7.6](6)~~ The ~~[B]~~board shall direct the SFM to issue a signed order to the parties involved giving the decision of the ~~[B]~~board within a reasonable time of the hearing pursuant to ~~[UCA,]~~ Section 63G-4-203.

~~[7.7](7)~~ Reconsideration of the ~~[B]~~board decision may be requested in writing within 20 days of the date of the decision pursuant to ~~[UCA,]~~ Section 63G-4-302.

~~[7.8](8)~~ After a period of three years from the date of revocation, the ~~[B]~~board shall review the submitted written application of a person whose certificate of registration has been revoked. After timely notice to all parties involved, the ~~[B]~~board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the ~~[B]~~board. After the hearing, the ~~[B]~~board shall direct the SFM to allow the person to complete the certification process or shall direct that the revocation be continued.

~~[7.9](9)~~ Judicial review of all final ~~[B]~~board actions resulting from informal adjudicative proceedings shall be conducted pursuant to ~~[UCA,]~~ Section 63G-4-402.

R710-5-[8]9. Fees.

~~[8.1 Fee Schedule.~~

~~8.1.1 Certificates of Registration (new and renewals):~~

~~8.1.1.1 Certificate of registration – \$30.00~~

~~8.1.1.2 Duplicate – \$30.00~~

~~8.1.2 Examinations:~~

~~8.1.2.1 Initial examination – \$20.00~~

~~8.1.2.2 Re-examination – \$20.00~~

~~8.1.2.3 Three-year examination – \$20.00~~

~~8.2 Payment of Fees:-]~~

~~(1)~~ The required fee shall accompany the application for certificate of registration.

~~(a)~~ Certificate of registration fees will be refunded if the application is denied.

~~[8.3 Late Renewal Fees.]~~

~~[8.3.1 Any certificate of registration not renewed on or before the original date of issuance will be subject to an additional fee equal to 10% of the required fee.~~

~~8.3.2](2) 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.~~

KEY: automatic fire sprinklers

Date of Enactment or Last Substantive Amendment:
~~[September 7, 2010]2016~~

Notice of Continuation: March 25, 2013

Authorizing, and Implemented or Interpreted Law: 53-7-204

Public Safety, Fire Marshal **R710-8** Day Care Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40523

FILED: 06/16/2016

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 to 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. Specific references from the state adopted fire code have been removed. IFC code references have been updated. The term "window" has been replaced with "opening" to match applicable code references.

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 local budgets 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 small business' budgets 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 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Coy Porter, State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-8. Day Care Rules.

R710-8-1. [Adoption of Codes] Purpose.

[Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts] The purpose of this rule is to establish minimum standards for the prevention of fire and for the protection of life and property against fire and panic in any day care facility or children's home.

[~~There is further 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 codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.]~~

R710-8-2. Authority.

This rule is authorized by Section 53-7-204.

R710-8-2[3]. Definitions.

[2-1](1) "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

[2-2](2) "Board" means Utah Fire Prevention Board.

[2-3](3) "Client" means a child or adult receiving care from other than a parent, guardian, relative by blood, marriage or adoption.

[2-4](4) "Day Care Facility" means any building or structure occupied by clients of any age who receive custodial care for less than 24 hours by individuals other than parents, guardians, relatives by blood, marriage or adoption.

[2-5](5) "Day Care Center" means providing care for five or more clients in a place other than the home of the person cared for. This would also include Child Care Centers or Hourly Child Care Centers licensed by the Department of Health.

[2-6](6) "Family Day Care" means providing care for clients listed in the following two groups:

[2-6-1](a) Type 1 - Services provided for five to eight clients in a home. This would also include a home that is certified by the Department of Health as Residential Certificate Child Care or licensed as Family Child Care[-]; and

[2-6-2](b) Type 2 - Services provided for nine to sixteen clients in a home with sufficient staffing. This would also include a home that is licensed by the Department of Health as Family Child Care.

[2-7](7) "ICC" means International Code Council, Inc.

[2-8](8) "IFC" means International Fire Code.

[2-9](9) "NFPA" means National Fire Protection Association.

[2-10](10) "SFM" means State Fire Marshal.

R710-8-3[4]. [Amendments and] Additions.

~~3.1 Exemptions]~~

~~[3-1-1](1) Places of religious worship shall not be required to meet the provisions of this rule in order to operate a nursery or day care while religious services are being held in the building.~~

~~[3.2 Fire Code Amendments~~

~~3.2.1 IFC, Chapter 2, Section 202, General Definitions, Occupancy Classification, Educational Group E, Day Care, is amended as follows: On line three delete the word "five" and replace it with the word "four".~~

~~3.2.2 IFC, Chapter 2, Section 202, General Definitions, Occupancy Classification, Institutional Group I-4, day care facilities, Child care facility, is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".~~

~~3.2.3 IFC, Chapter 46, Section 4603.6.1 Group E is deleted.]~~

~~[3-3](2) Family [D]day [E]care.~~

~~[3-3-1](a) Family [D]day [E]care units shall have on each floor occupied by clients, two separate means of egress, arranged so that if one is blocked the other will be available.~~

~~[3-3-2](b) Family [D]day [E]care units that are located in the basement or on the second story shall be provided with two means of egress, one of which shall discharge directly to the outside.~~

~~[3-3-2-1](i) Type 1 [F]family [D]day [E]care units, located on the ground level or in a basement, may use an emergency escape or rescue [window]openings as allowed in IFC, Chapter 10, Section [4029]1030.~~

~~[3-3-3](c) Family [D]day [E]care units shall not be located above the second story.~~

~~[3-3-4](d) In [F]family [D]day [E]care units, clients under the age of two shall not be located above or below the first story.~~

~~[3-3-4-1](i) Clients under the age of two may be housed above or below the first story where there is at least one exit that leads directly to the outside and complies with IFC, Section [4009]1011 or Section [1010]1012 or Section [1026]1027.~~

~~[3-3-5](e) Family [D]day [E]care units located in split entry/split level type homes in which stairs to the lower level and upper level are equal or nearly equal, may have clients housed on both levels when approved by the AHJ.~~

~~[3-3-6](f) Family [D]day [E]care units shall have a portable fire extinguisher on each level occupied by clients, which shall have a classification of not less than 2A:10BC, and shall be serviced in accordance with NFPA, Standard 10, Standard for Portable Fire Extinguishers.~~

~~[3-3-7](g) Family [D]day [E]care units shall have single station smoke detectors in good operating condition on each level occupied by clients. Battery operated smoke detectors shall be permitted if the facility demonstrates testing, maintenance, and battery replacement to insure continued operation of the smoke detectors.~~

~~[3-3-8](h) Rooms in [F]family [D]day [E]care units that are provided for clients to sleep or nap, shall have at least one [window]opening or door approved for emergency escape.~~

~~[3-3-9](i) Fire drills shall be conducted in [F]family [D]day [E]care units quarterly and shall include the complete evacuation from the building of all clients and staff.~~

~~(i) At least annually, in [F]type I [F]family [D]day [E]care units, the fire drill shall include the actual evacuation using the escape or rescue [window]opening, if one is used as a substitute for one of the required means of egress.~~

~~[3-4](3) Day [E]care [E]centers.~~

~~[3-4-1](a) Day [E]care [E]centers shall comply with either I-4 requirements or E requirements of the IBC, whichever is applicable for the type of [D]day [E]care [E]center.~~

~~[3-4-2](b) Emergency [E]evacuation [D]drills shall be completed as required in IFC, Chapter 4, Section 405.~~

~~[3-5](4) Requirements for all [D]day [E]care.~~

~~[3-5-1](a) Heating equipment in spaces occupied by children shall be provided with partitions, screens, or other means to protect children from hot surfaces and open flames.~~

~~[3-5-2](b) A fire escape plan shall be completed and posted in a conspicuous place.~~

(i) All staff shall be trained on the fire escape plan and procedure.

[3-5-3](c) The AHJ shall insure at each inspection there is sufficient adult staff to client ratios to allow safe and orderly evacuation in case of fire.

[3-5-3-1](i) For [B]day [C]care involving children, the AHJ may use the care giver to children ratios established in rule by the Department of Health as an established guideline.

R710-8-[4]5. Repeal of Conflicting Board Actions.

All former [B]board actions, or parts thereof, conflicting or inconsistent with the provisions of this [B]board action or of the codes hereby adopted, are hereby repealed.

R710-8-[5]6. Validity.

The [B]board hereby declares that should any section, paragraph, sentence, or word of this [B]board action, or of the codes hereby adopted, be declared invalid, it is the intent of the [B]board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-8-[6]7. 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.

R710-8-[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 [B]board within 20 days after receiving the 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 [B]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 [B]board shall direct the SFM to issue a signed order to the parties involved giving the decision of the [B]board within a reasonable time of the hearing pursuant to [UCA,] Section 63G-4-203.

[7-6](6) Reconsideration of the [B]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 [B]board actions resulting from informal adjudicative proceedings is available pursuant to [UCA,] Section 63G-4-402.

KEY: fire prevention, day care

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

Notice of Continuation: March 13, 2012

Authorizing, and Implemented or Interpreted Law: 53-7-204

Public Safety, Fire Marshal
R710-9
Rules Pursuant to the Utah Fire
Prevention and Safety Act
NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40546

FILED: 06/23/2016

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 to 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; references to chair and vice chair have been corrected to make them gender neutral; meeting notification have been changed from 21 days to 14 days, an individual's ability to make a code amendment proposal to the board have been clarified; and the use of anti-freeze in existing systems has been clarified.

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 local budgets 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 small business' budgets 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 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Coy Porter, State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-9. Rules Pursuant to the Utah Fire Prevention and Safety Act.

R710-9-1. ~~[Title, Authority, and Adoption of Codes]~~Purpose.

~~[1-1] These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention and Safety Act", and may be cited as such, and will be hereafter referred to as "these rules".~~

~~1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204; Title 15A, Chapter 1, Section 403; and, Title 15A, Chapter 5, Section 208, Utah Code Annotated 1953, as amended.~~

~~1.3 These rules are adopted by the Utah Fire Prevention Board]The purpose of this rule is to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, deputizing Special Deputy State Fire Marshals, procedures to amend incorporated references, establishing board subcommittees, enforcement of the rules of the State Fire Marshal, requirements for the firefighter support restricted account, regulation of novelty lighters, procedures for the issuance of blasting permits, and amendments and additions.~~

~~[1-4 There is further adopted as part of these rules the following codes which are incorporated by reference:~~

~~1.4.1 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, except as amended by provisions listed in R710-9-11, et seq.~~

~~1.5 Copies of the above code are on file in the Division of Administrative Rules and the Office of the State Fire Marshal.]~~

R710-9-2. Authority.

~~This rule is authorized by Section 53-7-204.~~

R710-9-[2]3. 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) "Committee" means the Firefighter Support Restricted Account Advisory Committee.~~

~~[2-5](4) "Division" means State Fire Marshal.~~

~~[2-4](5) "Dwelling Unit" means one or more rooms arranged for the use of one or more individuals living together, as in a single housekeeping unit normally having cooking, living, sanitary, and sleeping facilities. For purposes of this standard, dwelling unit includes hotel rooms, dormitory rooms, apartments, condominiums, sleeping rooms in nursing homes, and similar living units.~~

~~[2-6](6) "IFC" means International Fire Code.~~

~~[2-7](7) "LFA" means Local Fire Authority.~~

~~[2-8](8) "Premixed" means the mixing of antifreeze with water that is prepared by the manufacturer with a quality control procedure that ensures that the antifreeze and water solution does not separate.~~

~~[2-9](9) "Restricted Account" means Firefighter Support Restricted Account.~~

~~[2-10](10) "SFM" means State Fire Marshal or authorized deputy.~~

~~[2-11](11) "[Sub-Committee]Subcommittee" means Fire Prevention Board Budget [Sub-Committee]Subcommittee or Amendment [Sub-Committee]Subcommittee.~~

~~[2-12 "UCA" means Utah Code Annotated, 1953-]~~

R710-9-[3]4. Conduct of Board Members and Board Meetings.

~~[3-1](1) Board meetings shall be presided over and conducted by the chair[man] and in [his]the chair's absence, by the vice chair[man] or the chair[man]'s designee.~~

~~[3-2](2) A quorum shall be required to approve any action of the [B]board.~~

~~[3-3](3) The chair[man] of the [B]board and [B]board members shall be entitled to vote on all issues considered by the [B]board. A [B]board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.~~

~~[3-4](4) Meetings of the [B]board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less than [21]14 days before the regularly scheduled [B]board meetings.~~

~~[3-5](5) Public notice of [B]board meetings shall be made by the [D]division as prescribed in [UCA]Section 52-4-6.~~

~~[3-6](6) The division shall provide the [B]board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the [B]board to fulfill its responsibility. The~~

minutes of [B]board meetings shall be completed and sent to [B]board members at least 14 days prior to the scheduled [B]board meeting.

[3-7](7) A [B]board member's standing on the [B]board shall come under review after two unexcused absences in one year from regularly scheduled board meetings.

(a) The [B]board member's name shall be submitted to the governor's office for status review.

R710-9-[4]5. Deputizing Persons to Act as Special Deputy State Fire Marshals.

[4-1](1) Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

[4-2](2) Pursuant to Section 53-7-101[~~-et seq.~~], special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancy classifications listed in the International Fire Code.

[4-3](3) Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

[4-4](4) Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

[4-5](5) Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

R710-9-[5]6. Procedures to Amend the International Fire Code.

[5-1](1) All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for presentation to the [B]board at the next regularly scheduled [B]board meeting.

[5-2](2) Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the [B]board may be delayed in presentation until the next regularly scheduled [B]board meeting.

[5-3](3) Upon presentation of a proposed amendment, the [B]board shall do one of the following:

[5-3-1](a) accept the proposed amendment as submitted or as modified by the [B]board;

[5-3-2](b) reject the proposed amendment;

[5-3-3](c) submit the proposed amendment to the Board Amendment Subcommittee for further study; or

[5-3-4](d) return the proposed amendment to the requesting person or agency, accompanied by [B]board comments, allowing the requesting person or agency to resubmit the proposed amendment with modifications.

[5-4](4) The Board Amendment Subcommittee shall report its recommendation to the [B]board at the next regularly scheduled [B]board meeting.

[5-5](5) The [B]board shall make a final decision on the proposed amendment at the next [B]board meeting following the original submission.

[5-6](6) The [B]board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

[5-7](7) When approved by the [B]board, the requesting agency shall provide to the division within 45 days, the completed ordinance.

[5-8](8) The division shall maintain a list of amendments to the IFC that have been granted by the [B]board.

[5-9](9) The division shall make available to any person or agency copies of the approved amendments upon request, and may charge a reasonable fee for multiple copies in accordance with the provisions of [UCA,]Section 63-2-203.

R710-9-[6]7. Fire Advisory and Code Analysis Committee.

[6-1](1) There is created by the [B]board a Fire Advisory and Code Analysis Committee whose duties are to provide direction to the [B]board in the matters of fire prevention and building codes.

[6-2](2) The committee shall serve in an advisory position to the [B]board, members shall be appointed by the [B]board, shall serve for a term of three years, and shall consist of the following members:

[6-2-1](a) [A]a representative from the State Fire Marshal's Office[-];

[6-2-2](b) [F]the Code Committee Chairman of the Fire Marshal's Association of Utah[-];

[6-2-3](c) [A]a fire marshal or fire inspector from a local fire department or fire district[-];

[6-2-4](d) [A]a representative from the Department of Health[-];

[6-2-5](e) [F]the Chief Elevator Inspector from the Utah Labor Commission[-];

[6-2-6](f) [A]a representative from the Department of Human Services[-]; and

[6-2-7](g) [A]a representative from Forestry, Fire and State Lands.

[6-3](3) This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

[6-4](4) The Council shall meet as directed by the [B]board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

[6-5](5) The Council shall select one of its members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

[6-6](6) The chair or vice chair of the council shall report to the [B]board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

R710-9-[7]8. Enforcement of the Rules of the State Fire Marshal.

[7-1](1) Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

[7-2](2) Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

[7-3](3) Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

[7-4](4) The following listed occupancies shall be inspected by the LFA~~[- If not completed by the LFA],~~ the SFM, or his authorized deputies~~[- shall inspect]~~

[7-4.1](a) [P]publicly owned buildings other than state owned buildings~~[- as referenced in 9.1 of this rule]~~

[7-4.2](b) [P]public and private schools~~[-];~~

[7-4.3](c) [P]privately owned colleges and universities~~[-];~~

[7-4.4](d) [F]institutional occupancies~~[-]; and [- as defined in Section 9-2 of this rule]~~

[7-4.5](e) [P]places of assembly~~[- as defined in Section 9-2 of this rule]~~

[7-5](5) The [B]board shall require prior to approval of a grant the following:

[7-5.1](a) [F]that the applying fire agency be actively participating in the statewide fire statistics reporting program~~[-]; and~~

[7-5.2](b) ~~[The Board shall also require]~~that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

R710-9-[8]9. Fire Prevention Board Budget and Amendment Subcommittees.

[8-1](1) There [is]are created two Fire Prevention Board subcommittees known as the Budget Subcommittee, and the Amendment Subcommittee. Each subcommittee's membership shall be appointed from members of the [B]board.

[8-2](2) Subcommittee membership shall be by appointment of the [B]board [C]chair or as volunteered by [B]board members. Subcommittee membership shall be limited to four [B]board members.

[8-3](3) Each subcommittee shall meet as necessary and shall vote and appoint a chair to represent the subcommittee at regularly scheduled [B]board meetings.

R710-9-[9]10. Firefighter Support Restricted Account.

[9-1](1) There is created by the [B]board a Firefighter Support Restricted Account Advisory Committee whose duties are to provide direction to the [D]division in the distribution of funds in the [R]restricted [A]account.

[9-2](2) The Committee shall be appointed by the [D]division, approved by the [B]board, and shall consist of the following members:

[9-2.1](a) [F]two representatives from the Utah State Firemen's Association~~[-];~~

[9-2.2](b) [F]two representatives from the Utah State Fire Chiefs Association~~[-];~~

[9-2.3](c) [F]two representatives from the Professional Firefighters of Utah~~[-]; and~~

[9-2.4](d) [O]ne representative from the general public.

[9-3](3) The [C]committee members shall serve for a term of three years, shall meet as directed by the [D]division, and a majority of members shall be present to constitute a quorum.

[9-4](4) The [C]committee shall select one of its members to act in the position of chair. The chair shall serve for a term of one year, and shall be a voting member only in the event of a tie vote.

[9-5](5) The [C]committee shall assist the [D]division in preparing application forms to be used to apply for distributions from the [R]restricted [A]account.

[9-6](6) The Division shall set a specific time period each year for the receiving of applications, the review of applications by the committee, and the distribution of the [R]restricted [A]account funds.

[9-7](7) The [D]division shall distribute the [R]restricted [A]account funding to charitable organizations meeting the requirements listed in [UCA]Subsection 53-7-109(4), and to be expended for only the purposes allowed in accordance with [UCA]Subsection 53-7-109(5)(b).

[9-8](8) In the event of a conflict in the distribution of the [R]restricted [A]account funds, an appeal for resolution shall be made to the [B]board. The [B]board shall be the final authority in the resolution of the conflict.

R710-9-[10]11. Regulation of Novelty Lighters.

~~[9-1]~~All novelty lighters that have been identified as toy-like lighters by the Novelty and Toy-Like Lighter Assessment Committee, and placed by picture and description on the Utah Department of Public Safety, State Fire Marshal Website, Toy and Novelty Lighter Initiative, Toy-like Lighters Disavowed List, <http://publicsafety.utah.gov/firemarshal>, shall not be sold or offered for sale in the State of Utah.

R710-9-[11]12. Amendments and Additions.

There are currently no amendments and additions adopted by the Board for application statewide.

[R710-9-12. Issuing of Blasting Permits.

~~12.1 When a local fire department or AHJ does not have a procedure in place for the issuance of a blasting permit, or when blasting occurs as part of an on-going/continuous project across more than one fire service jurisdiction, the requesting applicant must provide all of the following to the SFM:~~

~~12.1.1 Completion of an approved blasting permit application~~

~~12.1.2 A copy of a current Alcohol, Tobacco, and Firearms (ATF) License/Permit~~

~~12.1.3 A copy of a current ATF listed Responsible Parties and Employee Possessors Permit~~

~~12.1.4 Twenty-Four (24) hour emergency contact information; including name, address, phone numbers, and email for responsible parties, local/site project supervisor or foreman, and primary contact(s) information for the requested permit.~~

~~12.1.5 Purpose of the permit requested~~

~~12.1.6 Location of proposed blasting including the physical address and/or map of the area~~

~~12.1.7 Information on explosive types, quantities in storage, shot quantities and day use estimates.~~

~~12.1.8 Proof of insurance.~~

~~12.2 Upon approval, the applicant shall present the permit to all affected jurisdictions.~~

~~12.3 Appeals of permit denials shall follow the procedures outlined in R710-9-15.]~~

R710-9-13. Repeal of Conflicting Board Actions.

All former [B]board actions, or parts thereof, conflicting or inconsistent with the provisions of this [B]board action or of the codes hereby adopted, are hereby repealed.

R710-9-14. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this [B]board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-9-15. Adjudicative Proceedings.

[+5.1](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.

[+5.2](2) If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the IFC, the appealing party may petition the [B]board to act as the board of appeals.

[+5.3](3) A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the [B]board within 20 days after receiving final decision.

[+5.4](4) All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with [UCA,]Section 63G-4-201.

[+5.5](5) The [B]board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

[+5.6](6) The [B]board shall direct the SFM to issue a signed order to the parties involved giving the decision of the [B]board within a reasonable time of the hearing pursuant to [UCA,]Section 63G-4-203.

[+5.7](7) Reconsideration of the [B]board's decision may be requested in writing within 20 days of the date of the decision pursuant to [UCA,]Section 63G-4-302.

[+5.8](8) Judicial review of all final [B]board actions resulting from informal adjudicative proceedings is available pursuant to [UCA,]Section 63G-4-402.

KEY: fire prevention, law

Date of Enactment or Last Substantive Amendment:
[November 21, 2012]2016

Notice of Continuation: June 7, 2012

Authorizing, and Implemented or Interpreted Law: 53-7-204[; 15A-1-403; 15A-5-208]

**Public Safety, Fire Marshal
R710-10
Rules Pursuant to Fire Service
Training, Education, and Certification**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40544

FILED: 06/23/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is reformatting to meet the requirements of the Rulewriting Manual and make other minor corrections.

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, corrects rule references changed to meet the requirements of the Rulewriting Manual, and deletes reference to Hazardous Materials Institute and changes it to State Fire Marshal's Office.

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 formatting and other minor changes.
- ◆ **LOCAL GOVERNMENTS:** There will not be an anticipated cost or savings to local budgets because the changes made to the rule are specific to formatting and other minor changes.
- ◆ **SMALL BUSINESSES:** There will not be an anticipated cost or savings to small business' budgets because the changes made to the rule are specific to formatting and other minor changes.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will not be an anticipated cost or savings to persons' budgets because the changes made to the rule are specific to formatting and other minor changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will not be an anticipated cost or savings because the changes made to the rule are specific to formatting and other minor changes.

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 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Coy Porter, State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-10. Rules Pursuant to Fire Service Training, Education, and Certification.

R710-10-1. ~~[Title, Authority, and Adoption of Codes] Purpose.~~

~~[1.1 These rules shall be known as the "Rules Pursuant to Fire Service Training, Education, and Certification, and may be cited as such, and will be hereafter referred to as "these rules".~~

~~1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.~~

~~1.3 These rules are adopted by the Utah Fire Prevention Board.]~~ The purpose of this rule is to provide minimum rules for fire service training, education and certification by establishing a Fire Service Education Administrator, a Fire Education Program Coordinator, the Fire Service Standards and Training Council, the Fire Service Certification Council, the Utah Fire and Rescue Academy, and standards for those agencies conducting non-affiliated fire service training.

~~[1.4 There is adopted as part of these rules the following code which is incorporated by reference:~~

~~1.4.1 National Fire Protection Association (NFPA), NFPA-1403, Standard on Live Fire Training Evolutions, 2002 edition.]~~

R710-10-2. Authority.

This rule is authorized by Section 53-7-204.

R710-10-2(3). Definitions.

[2-1](1) "Academy" means Utah Fire and Rescue Academy.

[2-2](2) "Academy Director" means the Director of the Utah Fire and Rescue Academy.

[2-3](3) "Administrator" means Fire Service Education Administrator.

[2-4](4) "Board" means Utah Fire Prevention Board.

[2-5](5) "Career Firefighter" means one whose primary employment is directly related to the fire service.

[2-6](6) "Certification Council" means the Fire Service Certification Council.

[2-7](7) "Certification System" means the Utah Fire Service Certification System.

[2-8](8) "Coordinator" means Fire Service Education Program Coordinator.

[2-9](9) "EMT" means Emergency Medical Technician.

[2-10](10) "Non-Affiliated" means an individual who is not a member of an organized fire department.

[2-11](11) "Plan" means Fire Academy Strategic Plan.

[2-12](12) "RCA" means Recruit Candidate Academy

[2-13](13) "SFM" means State Fire Marshal or authorized deputy.

[2-14](14) "Standards Council" means Fire Service Standards and Training Council.

~~[2-15 "UCA" means Utah Code Annotated, 1953.]~~

[2-16](15) "Volunteer/Part-Paid Firefighter" means one whose primary employment is not directly related to the fire service.

R710-10-3(4). Fire Service Education Administrator.

[3-1](1) There is created by the Board a Fire Service Education Administrator for the State of Utah. This [A]administrator shall be the State Fire Marshal.

[3-2](2) The [A]administrator shall oversee statewide fire service education of all personnel receiving training monies from the Fire Academy Support Account.

[3-2-1](a) The [A]administrator shall oversee fire service education in fire suppression, fire prevention, fire administration, operations, hazardous materials, rescue, fire investigation, and public fire education in the State of Utah.

[3-3](3) The [A]administrator shall dedicate sufficient time and efforts to ensure that those monies dedicated from the Fire Academy Support Account are expended in the best interests of all personnel receiving fire service education.

[3-4](4) The [A]administrator shall ensure equitable monies are expended in fire service education to volunteer, career, and prospective fire service personnel.

[3-5](5) The [A]administrator shall as directed by the [B]board, solicit the legislature for funding to ensure that fire service personnel receive sufficient monies to receive the education necessary to prevent loss of life or property.

[3-6](6) The [A]administrator shall oversee the Fire Department Assistance Grant program by completing the following:

[3-6-1](a) [F]ensure that a broad based selection committee is impaneled each year[.];

[3-6-2](b) [C]compile for presentation to the [B]board the proposed grants[.]; and

[3-6-3](c) [R]receive the [B]board's approval before issuing the grants.

[3-7](7) The [A]administrator shall if necessary, establish proposed changes to fire service education statewide, insuring personnel receive the most proficient and professional training available, [F]ensure completion of agreements and contracts, and [F]ensure that payments on agreements and contracts are completed expeditiously.

[3-8](8) The [A]administrator shall report to the [B]board at each regularly scheduled [B]board meeting the current status of fire service education statewide.

_____ (a) The [A]administrator shall present any proposed changes in fire service education to the [B]board, and receive direction and approval from the [B]board, before making those changes.

R710-10-[4]5. Fire Service Education Program Coordinator.

[4-1](1) The Fire Service Education Program Coordinator shall assist the [A]administrator in statewide fire service education.

[4-2](2) The [C]coordinator shall conduct fire service education evaluations, budget reviews, performance audits, and oversee the effectiveness of fire service education statewide.

[4-3](3) The [C]coordinator shall ensure that there is an established Utah Fire Service Strategic Training Plan for fire service education statewide. The [C]coordinator shall work with the [A]academy [D]director to update the Strategic Plan and keep it current to the needs of the fire service.

[4-4](4) The [C]coordinator shall report findings of audits, budgetary reviews, training contracts or agreements, evaluation of training standards, and any other necessary items of interest with regard to fire service education to the [A]administrator.

[4-5](5) The [C]coordinator shall ensure that contracts are established each year for training and education of fire personnel that meets the needs of those involved in fire service education statewide.

[4-6](6) The [C]coordinator shall be the staff assistant to the Fire Service Standards and Training Council and shall present agenda items to the [C]council [C]chair that need resolution or review. As the staff assistant to the Training Council, the coordinator shall ensure that appointed members attend, encourage that the decisions made further the interests of fire service education statewide, and ensure that the [B]board is kept informed of the Training Council's decisions.

R710-10-[5]6. Fire Service Standards and Training Council.

[5-1](1) There is created by the [B]board, the Fire Service Standards and Training Council, whose duties are to provide direction to the [B]board and [A]academy in matters relating to fire service standards, training, and certification.

[5-2](2) The Standards Council shall serve in an advisory position to the [B]board, members shall be appointed by the [B]board, shall serve four year terms, and shall consist of the following members:

[5-2-1](a) [R]representative from the Utah State Fire Chiefs Association[-];

[5-2-2](b) [R]representative from the Utah State Firemen's Association[-];

[5-2-3](c) [R]representative from the Fire Marshal's Association of Utah[-];

[5-2-4](d) [S]specialist in hazardous materials representing the [~~Hazardous Materials Institute~~]State Fire Marshals Office[-];

[5-2-5](e) [F]fire/arson investigator representing the Utah Chapter of the International Association of Arson Investigators[-];

[5-2-6](f) [S]specialist in wildland fire suppression and prevention from the Utah State Division of Forestry, Fire and State Lands[-];

[5-2-7](g) [R]representative from the International Association of Firefighters[-];

[5-2-8](h) [R]representative from the Utah Fire Service Certification Council[-];

[5-2-9](i) [R]representative from the Utah Fire and Life Safety Education Association[-]; and

[5-2-10](j) [R]representative from the Utah Fire Training Officers Association.

[5-3](3) The Standards Council shall meet quarterly and may hold other meetings as necessary for proper transaction of business.

_____ (a) A majority of the Standards Council members shall be present to constitute a quorum.

[5-4](4) The Standards Council shall select one of its members to act in the position of chair, and another member to act as vice chair.

_____ (a) The chair and vice chair shall serve one year terms on a calendar year basis.

_____ (b) Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

_____ (c) If voted upon by the council, the vice chair will become the chair the next succeeding calendar year.

[5-5](5) If a Standards Council member has two or more unexcused absences during a 12 month period, from regularly scheduled Standards Council meetings, it is considered grounds for dismissal pending review by the [B]board.

_____ (a) The [C]coordinator shall submit the name of the Standards Council member to the [B]board for status review.

[5-6](6) A member of the Standards Council may have a representative of their respective organization sit in proxy of that member, if submitted and approved by the [C]coordinator prior to the meeting.

[5-7](7) The [C]chair or [V]vice [C]chair of the Standards Council shall report to the [B]board the activities of the Standards Council at regularly scheduled [B]board meetings. The [C]coordinator may report to the [B]board the activities of the Standards Council in the absence of the [C]chair or [V]vice [C]chair.

[5-8](8) The Standards Council shall consider all subjects presented to them, subjects assigned to them by the [B]board, and shall report their recommendations to the [B]board at regularly scheduled [B]board meetings.

[5-9](9) One-half of the members of the Standards Council shall be reappointed or replaced by the [B]board every two years.

R710-10-[6]7. Utah Fire Service Certification Council.

[6-1](1) There is created by the [B]board, the Utah Fire Service Certification Council, whose duties are to oversee fire service certification in the State of Utah.

[6-2](2) The Certification Council shall be made up of 12 members, appointed by the [A]academy [D]director, approved by the [B]board, and each member shall serve three year terms.

[6-3](3) The Certification Council shall be made up of users of the certification system and be comprised of both paid and volunteer fire personnel, members with special expertise, and members from various geographical locations in the state.

[6-4](4) The purpose of the Certification Council is to provide direction on all aspects of certification, and shall report the activities of the Certification Council to the Fire Service Standards and Training Council.

[6-5](5) Functioning of the Certification Council with regard to certification, re-certification, testing, meeting procedures, examinations, suspension, denial, annulment, revocation, appeals, and reciprocity, shall be conducted as specified in the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual.

[6-6](6) A copy of the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual, shall be kept on file at the State Fire Marshal's Office and the Utah Fire and Rescue Academy.

R710-10-7]8. Utah Fire and Rescue Academy.

[7-1](1) The primary fire service training school shall be known as the Utah Fire and Rescue Academy.

[7-2](2) The [D]director of the Utah Fire and Rescue Academy shall report to the [A]administrator the activities of the [A]academy with regard to completion of the agreed academy contract.

[7-3](3) The [A]academy [D]director may recommend to the [A]administrator or [E]coordinator new or expanded standards regarding fire suppression, fire prevention, public fire education, safety, certification, and any other items of necessary interest about the [A]academy.

[7-4](4) The [A]academy shall receive approval from the [A]administrator, after being presented to the Standards and Training Council, any substantial changes in [A]academy training programs that vary from the agreed contract.

[7-5](5) The [A]academy [D]director shall provide to the [E]coordinator by October 1st of each year, a numerical summary of those career, volunteer/part-paid, and non-affiliated students attending the [A]academy in the following categories:

[7-5-1](a) Those who have received certification during the previous contract period at each certification level.

[7-5-2](b) Those who have received an academic degree in any Fire Science category in the previous contract period.

[7-5-3](c) Those who have completed other [A]academy classes during the previous contract period.

[7-6](6) The [A]academy [D]director shall provide to the [E]coordinator by October 1st of each year, a numerical comparison of the categories required in [Section 7.5]Subsection R710-10-8(5), comparing attendance in the previous contract period.

[7-7](7) The [A]academy [D]director shall provide to the [E]coordinator by October 1st of each year, in accepted budgeting practices, the following:

[7-7-1](a) A cost analysis of classes to include the total spent for each class title, the average cost per class, the number of classes delivered, the number of participants per class title, and the cost per participant for each class title provided by the [A]academy.

[7-7-2](b) A budget summary comparing amounts budgeted to actual expenditures for each budget code funded by the contract.

[7-8](8) The [A]academy [D]director shall provide to the [E]coordinator by October 1st of each year, a numerical summary of those students attending [A]academy courses in the following categories:

[7-8-1](a) Non-affiliated personnel enrolled in college courses.

[7-8-2](b) Career fire service personnel enrolled in college credit courses.

[7-8-3](c) Volunteer and part-paid fire service personnel enrolled in college credit courses.

[7-8-4](d) Non-affiliated personnel enrolled in non-credit continuing education courses.

[7-8-5](e) Career fire service personnel enrolled in non-credit continuing education courses.

[7-8-6](f) Volunteer and part-paid fire service personnel enrolled in non-credit continuing education courses.

[7-9](9) The [A]academy [D]director shall present to the [E]coordinator by January of each year, proposals to be incorporated in the [A]academy contract for the next fiscal year.

R710-10-8]9. Non-Affiliated Fire Service Training.

[8-1](1) Those training organizations that desire to offer certification through the Certification System for non-affiliated personnel must receive accreditation in writing from the Standards Council and the [A]academy [D]director.

[8-2](2) Before accreditation is granted, the training organization requesting approval shall demonstrate the following:

[8-2-1](a) Complete a written application requesting approval to conduct the training course.

[8-2-2](b) Designate an approved course coordinator to oversee the course delivery and [i]ensure the course meets each of the applicable objectives.

[8-2-3](c) [i]Ensure that qualified instructors are used to teach each subject.

[8-2-4](d) [i]Ensure sufficient student to instructor ratios for all subjects or skills to be taught to include those designated high hazard.

[8-2-5](e) Demonstrate that sufficient equipment and facilities will be provided to meet the training requirements of the course being taught.

[8-2-6](f) Maintain course documentation as required through the Certification System to [i]ensure that all elements of the necessary training is completed.

[8-2-7](g) Follow the accepted requirements of the Certification System for requesting testing and certification.

[8-3](3) As required in [Section 8.2.2]Subsection R710-10-9(2)(b)[of these rules], the designated course coordinator shall meet the following requirements:

[8-3-1](a) Be currently certified at the certification level as established by the Standards Council.

[8-3-2](b) [i]Ensure that all assigned instructors meet the requirements as required in [Section 8.4]Subsection R710-10-9(4)[of these rules].

[8-3-3](c) [i]Ensure that the course syllabus and practical skills guide meet the requirements of the Certification System.

[8-3-4](d) [i]Ensure that the requirements of [Sections 8.2.4, 8.2.5, 8.2.6, and 8.2.7]Subsections R710-10-9(2)(d), (e), (f) and (g) [of these rules] are met.

[8-4](4) As required in [Section 8.2.3]Subsection R710-10-9(2)(c)[of these rules], qualified instructors shall meet the following requirements:

[8-4-1](a) Must be currently certified at the certification level as established by the Standards Council.

[8-4-2](b) If the instructor is not certified, instructor qualification can be satisfied by special knowledge, experience or establishment of expertise.

[8-5](5) An Introduction to Emergency Services class shall be completed by the non-affiliated student wishing to receive an RCA within the time period stated in [8-7]Subsection R710-10-9(7)[of these rules]. The Introduction to Emergency Services class may be waived if the applicant can demonstrate to the [A]academy sufficient competency or prior experience in the fire service to make the class unwarranted.

[8-6](6) Non-affiliated training providers shall follow the curriculum outline that is taught at the [A]academy in the [Repeal Candidate Academy (RCA)] program in order to award students an RCA Certificate of Completion. Any changes to the curriculum of the RCA program at the [A]academy shall be provided by the [A]academy to the non-affiliated training providers to maintain consistency in the RCA program.

[8-7](7) An RCA Certificate of Completion may be issued to the non-affiliated student by the [A]academy upon successful completion of the following within a 24 month period:

[8-7-1](a) Introduction to Emergency Services class or accepted waiver.

[8-7-2](b) EMT Basic Course.

[8-7-3](c) Completion of an accredited RCA.

[8-8](8) Non-affiliated training providers that have received accreditation shall be reaccredited every five years from the date of initial accreditation.

R710-10-[9]10. Repeal of Conflicting Board Actions.

All former [B]board actions, or parts thereof, conflicting or inconsistent with the provisions of this [B]board action or of the codes hereby adopted, are hereby repealed.

R710-10-[10]11. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this [B]board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-10-[11]12. Adjudicative Proceedings.

[11-1](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.

[11-2](2) A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the [B]board within 20 days after receiving final decision.

[11-3](3) All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with [UCA,]Section 63G-4-201.

[11-4](4) The [B]board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

[11-5](5) The [B]board shall direct the SFM to issue a signed order to the parties involved giving the decision of the [B]board within a reasonable time of the hearing pursuant to [UCA,]Section 63G-4-203.

[11-6](6) Reconsideration of the [B]board's decision may be requested in writing within 20 days of the date of the decision pursuant to [UCA,]Section 63G-4-302.

[11-7](7) Judicial review of all final [B]board actions resulting from informal adjudicative proceedings is available pursuant to [UCA,]Section 63G-4-402.

KEY: fire training

Date of Enactment or Last Substantive Amendment: ~~May 22, 2012~~ **2016**

Notice of Continuation: October 5, 2015

Authorizing, and Implemented or Interpreted Law: 53-7-204

Public Safety, Fire Marshal R710-11 Fire Alarm System Inspecting and Testing

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40521

FILED: 06/16/2016

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. This amendment corrects rule references changed to meet the requirements of the Rulewriting Manual, deletes sections of state adopted codes and standards from this rule that are part of another code, and removes reference to fee amounts that are found in the State Fee Schedule.

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 local budgets 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 small business' budgets 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'

budgets 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 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 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Coy Porter, State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-11. Fire Alarm System Inspecting and Testing.

R710-11-1. ~~[Adoption, Title, Purpose, and Prohibitions].~~

~~[Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts.]~~ The purpose of this rule is to establish minimum rules to provide regulation to those who inspect and test fire alarm systems.

~~[There is adopted as part of these rules the following codes which are incorporated by reference:~~

~~1.1 National Fire Protection Association (NFPA), Standard 72, National Fire Alarm Code, 2007 edition, except as amended by provisions listed in R710-11-6, et seq.~~

~~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 A copy of the above-mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.]~~

R710-11-2. Authority.

This rule is authorized by Section 53-7-204.

R710-11-2]3. Definitions.

~~[2-1](1)~~ "Annual" means a period of one year or 365 calendar days.

~~[2-2](2)~~ "Authority Having Jurisdiction (AHJ) means the State Fire Marshal, his duly authorized deputies, the local fire enforcement authority, and building officials.

~~[2-3](3)~~ "Board" means Utah Fire Prevention Board.

~~[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)~~ "Inspecting and Testing" means work completed to ensure that the system operates properly as required ~~[in Section 1-2 of these rules]~~ by applicable statute, codes and standards.

~~[2-6](6)~~ "IFC" means International Fire Code.

~~[2-7](7)~~ "NFPA" means National Fire Protection Association.

~~[2-8](8)~~ "NICET" means National Institute for Certification in Engineering Technologies.

~~[2-9](9)~~ "SFM" means State Fire Marshal or authorized deputy.

~~[2-10](10)~~ "Service" means inspecting and testing of fire alarm systems.

~~[2-11] "UCA" means Utah State Code Annotated 1953 as amended.]~~

R710-11-3]4. Certificates of Registration.

~~[3-1 Required Certificates of Registration.]~~

~~(1)~~ No person shall engage in the inspecting and testing of fire alarm systems without first receiving a certificate of registration issued by the SFM.

~~(2)~~ The following groups are exempted from the requirements of this part:

~~[3-1-1(a)]~~ [F]the AHJ that is performing the initial installation acceptance testing of the fire alarm system or ongoing inspections to verify compliance with the adopted NFPA standards and these rules[.]; and

~~[3-1-2(ii)]~~ [F]the building owner or designee that performs additional periodic inspections beyond the annual inspection required in Section ~~[6-2 of these rules]~~ R710-11-7(2), to satisfy requirements set by company policy, insurance, or risk management.

~~[3-2 Application.]~~

~~[3-2-1(3)]~~ Application for a certificate of registration to inspect and test fire alarm systems shall be made in writing to the SFM on forms provided by the SFM and signed by the applicant. ~~[The applicant shall sign the application.]~~

~~(a)~~ The SFM or his deputies may request picture identification of the applicant for a certificate of registration.

~~[3-2-2(b)]~~ The applicant shall indicate on the application which of the three technician levels the applicant will apply for:

- ~~[3-2-2-1](i) Basic Fire Alarm Technician;~~
~~[3-2-2-2](ii) Fire Alarm Technician; or~~
~~[3-2-2-3](iii) Master Fire Alarm Technician.~~

~~[3-2-3](c) The application for a certificate of registration shall be accompanied with proof of public liability insurance from the certificate holder or employing concern.~~

~~(i) A public liability insurance carrier showing coverage of at least \$100,000 for each incident, and \$300,000 in total coverage shall issue the public liability insurance.~~

~~(ii) The certificate of registration holder shall notify the SFM within 30 days after the public liability insurance coverage required is no[t] longer in effect for any reason.~~

~~[3-3 Technician Examination.]~~

~~(4) The SFM shall require all applicants for a certificate of registration as a technician to complete the following:~~

- ~~[3-3-1](a) Basic Fire Alarm Technician shall:~~

~~(i) pass a written examination on basic testing of fire alarm systems or shall be certified as a NICET I[-]; and[-] ~~The Basic Fire Alarm Technician shall~~~~

- ~~(ii) complete the manipulative skills task book.~~

~~(iii) Work as a Basic Fire Alarm Technician shall be performed under direct supervision of a Fire Alarm Technician or Master Fire Alarm Technician.~~

- ~~[3-3-2](b) Fire Alarm Technician shall:~~

~~(i) pass all the requirements listed for Basic Fire Alarm Technician[-]; and~~

~~(ii) [shall] pass a written examination on basic testing and maintenance of fire alarm systems limited up to and including four story buildings or shall be certified as a NICET II.~~

- ~~[3-3-3](c) Master Fire Alarm Technician shall:~~

~~(i) pass all the requirements listed for Basic Fire Alarm Technician and Fire Alarm Technician[-]; and~~

~~(ii) [shall] pass a written examination on fire alarm systems in buildings over four stories, voice alarm/evacuation systems, and smoke control systems or shall be certified as a NICET III or as NICET IV.~~

~~[3-4](5) Examinations,[-] will be given according to the following requirements:~~

- ~~[3-4-1](a) All certification examinations given are open book examinations[-];~~

~~(i) The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination[-]; and~~

~~(ii) Any other materials to include cellular telephones are prohibited in the examination room.~~

~~[3-4-2](b) 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.~~

~~[3-4-3](c) Each certification examination taken has a time limit of two hours to completion.~~

~~(i) To successfully pass the written examination, the applicant must obtain a minimum grade of [seventy percent (70%)]~~

~~(ii) 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.~~

~~[3-4-4](d) 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.~~

~~[3-4-5](e) To successfully complete the manipulative skills task book, all required skill tasks shall be signed as completed by a person duly qualified or certified in that skill.~~

~~[3-5](6) [As required in 3-3 of these rules, t]Those applicants that have successfully completed the requirements outlined in Section R710-11-5, and are certified by NICET in the skills that correspond to the work to be performed by the applicant, shall have the requirement for written examination waived[-] after appropriate documentation is provided to the SFM by the applicant.~~

~~[3-6 Issuance.]~~

~~(7) Following receipt of the properly completed application[-, compliance with Section 3-3 of these rules] and successful completion of required testing, the SFM shall issue a certificate of registration.~~

~~[3-7 Original and Renewal Valid Date.]~~

~~(8) 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.~~

~~[3-8 Renewal Date.]~~

~~(9) Application for renewal shall be made as directed by the SFM.~~

~~[3-9 Re-examination.]~~

~~(10) Every holder of a valid certificate of registration shall take a re-examination every three years, from date of original certificate[-, to comply with the provisions of Section 3-3 of these rules as follows:]~~

~~[3-9-1](a) The re-examination [to comply with the provisions of Section 3-3 of these rules,] shall consist of an examination for each level of certification, to be mailed to the certificate holder at least 60 days before the renewal date.~~

~~[3-9-2](b) The re-examination will consist of questions that focus on changes in the last three years to the adopted NFPA standards, the statute, and the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the [B]oard or the SFM.~~

~~[3-9-3](c) The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.~~

~~[3-9-4](d) The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.~~

~~[3-10 Refusal to Renew.]~~

~~(11) 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 7, to deny an original certificate of registration] pursuant to R710-11-8(2).~~

~~(a) The applicant shall, upon such refusal, have the same rights as are granted by Section [7 of these rules] R710-11-8[-] to an applicant for an original certificate of registration, which has been denied by the SFM.~~

~~[3-11 Inspection.]~~

~~(12) The holder of a certificate of registration shall submit such certificate for inspection, upon request of the AHJ.~~

~~[3-12 Type.]~~

~~(13) Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified.~~

~~[3.13 Change of Address.]~~

(14) 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 30 days of such change.

~~[3.14 Duplicate.]~~

(15) A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate, which has been lost or destroyed.

~~[3.15 Minimum Age.]~~

(16) No certificate of registration shall be issued to any person who is under 18 years of age.

~~[3.16](17) Restrictive Use.~~

~~[3.16.1](a)~~ A certificate of registration may be used for identification purposes only as long as such certificate remains valid.

~~[3.16.2](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.

~~[3.17](18) Right to Contest.~~

~~[3.17.1](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.

~~[3.17.2](b)~~ Every contention as to the validity of individual questions of an examination shall be made within 48 hours after taking said examination.

~~[3.17.3](c)~~ The decision as to the action to be taken on the submitted contention shall be made by the SFM, and such decision shall be final.

~~[3.17.4](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.

~~[3.18 Non-Transferable.]~~

(19) Certificates of Registration shall not be transferable. The person to whom issued shall carry individual certificates of registration.

~~[3.19 Certificate of Registration Identification.]~~

(20) Every certificate shall be identified by a number. The certificate of registration shall be worn in a visible manner when inspecting and testing fire alarm systems.

~~[3.20 New Employees]~~

(21) New or existing employees desiring to attain a certificate of registration may perform the various acts required while under the constant direct supervision of a person holding a valid certificate of registration for a period not to exceed 90 days from the initial date of employment or beginning service in the field.

R710-11-415. Service Tags.

[4.1](1) Size and Color.

[4.1.1](a) 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.

[4.1.2](b) Tags may be produced in any color except red or a variation of red.

[4.1.3](c) A red tag shall be used to indicate the system fails to ensure a reasonable degree of protection for life and

property from fire through inspecting and testing of fire alarm systems as required in NFPA, Standard 72, and the requirements of these rules.

~~_____ (i)~~ After placing the red tag on the system, the certified person shall notify the AHJ and provide the AHJ with a written copy of the noted deficiencies.

[4.1.4](d) If the AHJ reviews the noted deficiencies on the attached red tag and finds the deficiencies are not consistent with the requirements in NFPA, Standard 72, the red tag shall be removed by the certified person that attached the red tag.

~~[4.2 Placement of Tag.]~~

(2) The service tag shall be attached at the fire alarm control panel for each system inspected or at other locations as needed to show compliance.

~~_____ (a)~~ The service tag shall be attached to the control panel in such a position as to be conveniently inspected by the AHJ.

~~[4.3 Tag Information.]~~

~~_____ 4.3.1(3)~~ Service tags shall bear the following information:

~~[4.3.1.1](a)~~ [P]rovisions of Section 4.7[-];

~~[4.3.1.2](b)~~ [A]pproved Seal of Registration of the SFM[-];

~~[4.3.1.3](c)~~ [E]ertificate of registration number of individual who performed or supervised the service or services performed[-];

~~[4.3.1.4](d)~~ [S]ignature of individual whose certificate of registration number appears on the tag[-];

~~[4.3.1.5](e)~~ [C]oncern's name[-];

~~[4.3.1.6](f)~~ [C]oncern's address[-];

~~[4.3.1.7](g)~~ [T]ype of service performed[-];

~~[4.3.1.8](h)~~ [T]ype of system serviced[-]; and

~~[4.3.1.9](i)~~ [D]ate service is performed.

~~[4.3.2](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.

[4.4](4) Legibility.

[4.4.1](a) The certificate of registration number required in Section [4.3.1.3]R710-11-5(3)(c), and the signature required in Section [4.3.1.4]R710-11-5(3)(d), shall be printed or written distinctly.

[4.4.2](b) All information pertaining to date and type of service shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

~~[4.5 Format.]~~

~~_____ ILLUSTRATION ON FILE IN STATE FIRE MARSHAL'S OFFICE]~~

~~_____ (5) An sample service tag is on file in the State Fire Marshal's Office for review.~~

~~[4.6 New Tag.]~~

(6) A new service tag shall be attached to a system each time a service is performed.

~~[4.7 Tag Wording.]~~

(7) 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".

[4.8](8) Removal.

[4.8.1](a) No person or persons shall remove a service tag except when further service is performed.

~~[4.8.2](b)~~ No person shall deface, modify, or alter any service tag that is required to be attached to the system.

~~[4.8.3](c)~~ A red tag can only be removed by written authority from the AHJ. Verbal authority to initially remove the tag is allowed as long as it is followed by written authority.

~~[4.9 Tag Dates:]~~

~~(9)~~ Service tags may be printed for any number of years not to exceed eight years.

R710-11-[5]6. Seal of Registration.

~~[5.1 Description:]~~

~~(1)~~ The official seal of registration of the SFM shall consist of the following:

~~[5.1.1](a)~~ [F]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)~~ [F]the top portion of the outer ring shall have the wording "Utah State"[-]; and

~~[5.1.1.2](ii)~~ [F]the bottom portion of the outer ring shall have the wording "Fire Marshal".

~~[5.1.2](b)~~ Appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the certification number assigned to the person.

~~[5.2 Use of Seal:]~~

~~(2)~~ No person shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

~~[5.3 Permissive Use:]~~

~~(3)~~ Certificate holders or concerns shall use the Seal of Registration on every service tag.

~~[5.4 Cease Use Order:]~~

~~(4)~~ 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 certificate of registration.

~~[5.5 Legibility:]~~

~~(5)~~ 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.

R710-11-[6]7. Amendments and Additions.

~~[6.1 Service:]~~

~~(1)~~ At the time of service, all servicing shall be done in accordance with the adopted NFPA standard, adopted statutes, and these rules.

~~[6.2 Frequency:]~~

~~(2)~~ Fire alarm systems shall be inspected annually by a person holding the appropriate certificate of registration as required in Section ~~[3.1 of these rules]~~ R710-11-4(1).

~~[6.3 New Systems:]~~

~~(3)~~ Newly installed fire alarm systems are exempt from the annual testing requirement required in Section ~~[6.2 of these rules]~~ R710-11-7(2), for one year from the approval date of the initial installation acceptance testing.

~~[6.4 International Fire Code]~~

~~6.4.1 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".~~

~~6.4.2 IFC, Chapter 46, Section 4603.6, Fire alarm systems, 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".~~

~~6.5 National Fire Protection Association~~

~~6.5.1 NFPA 72, Chapter 2, Section 2.2 is amended to add the following NFPA standard: NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, 2007 edition.~~

~~6.5.2 NFPA 72, Chapter 4, Section 4.3.2.2(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.~~

~~6.5.3 NFPA 72, Chapter 4, Section 4.3.3(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.~~

~~6.5.4 NFPA 72, Chapter 4, Section 4.4.3.7.2 is amended to add the following sentence: When approved by the AHJ, the audible notification appliances may be deactivated during the investigation mode to prevent unauthorized reentry into the building.~~

~~6.5.5 NFPA 72, Chapter 4, Section 4.4.5 is deleted and rewritten as follows: Automatic smoke detection shall be provided at the location of each fire alarm control unit(s), notification appliance circuit power extenders, and supervising station transmitting equipment to provide notification of fire at the location.~~

~~6.5.5.1 NFPA 72, Chapter 4, Section 4.4.5, Exception No. 1: When ambient conditions prohibit installation of automatic smoke detection, automatic heat detection shall be permitted.~~

~~6.5.6 NFPA 72, Chapter 4, Section 4.5.2.1, RECORD OF COMPLETION, or equivalent form approved by the SFM shall be used as the accepted forms for testing and inspecting fire alarm systems.~~

~~6.5.7 NFPA 72, Chapter 6, Section 6.8.5.9 is amended to add the following section: 6.8.5.9.3 Automatic fire pumps shall be supervised in accordance with NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, and the AHJ.~~

~~6.5.8 NFPA 72, Chapter 7, Section 7.4.1.2 is amended as follows: On line three delete "110dBA" and replace it with "120dBA".~~

~~6.5.9 NFPA 72, Chapter 8, Section 8.3.4.7 is amended as follows: On line two, after the word "notified" insert the words "without delay".~~

~~6.5.10 NFPA 72, Chapter 10, Section 10.2.2.5.1 is deleted and rewritten as follows: Service personnel shall be qualified and experienced in the inspection, testing and maintenance of fire alarm systems. Qualified personnel shall meet the certification requirements stated in Utah Administrative Code, R710-11-3, Fire Alarm System Inspecting and Testing.]~~

R710-11-[7](8). Adjudicative Proceedings.

[7-1](1) All adjudicative proceedings performed by the agency shall proceed informally as authorized by [UCA,] Sections 63G-4-202 and 63G-4-203.

[7-2](2) The issuance, renewal, or continued validity of a certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant or the person has committed any of the following violations:

[7-2-1](a) [F]the applicant or person is not the real person of interest[-];

[7-2-2](b) [F]the applicant or person provides material misrepresentation or false statements on the application[-];

[7-2-3](c) [F]the applicant or person refuses to allow inspection by the SFM, or his duly authorized deputies[-];

[7-2-4](d) [F]the applicant or person for a certificate of registration does not have the proper equipment to conduct the operations for which application is made[-];

[7-2-5](e) [F]the applicant or person 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 or manipulative skills pursuant to Section [3.3]R710-11-4(3) of these rules[-];

[7-2-6](f) [F]the applicant or person refuses to take the examination required by Section [3-3]R710-11-4(3) of these rules[-];

[7-2-7](g) [F]the applicant or person fails to pay the certification of registration, examination or other required fees as required in Section [8 of these rules:]R710-11-9;

[7-2-8](h) [F]the applicant or person has been convicted of violating one or more federal, state or local laws[-];

[7-2-9](i) [F]the applicant or person has been convicted of a violation of the adopted rules or been found by a [B]board administrative proceeding to have violated the adopted rules[-];

[7-2-10](k) [A]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 certificate of registration[-]; or

[7-2-11](l) [F]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 fire alarm system equipment.

[7-3](3) A person whose certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the [B]board if requested by that person within 20 days after receiving notice.

[7-4](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.

[7-5](5) The [B]board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The [B]board shall be the final authority on the suspension or revocation of a certificate of registration.

[7-6](6) The [B]board shall direct the SFM to issue a signed order to the parties involved giving the decision of the [B]board within a reasonable time of the hearing pursuant to [UCA,] Section 63G-4-203.

[7-7](7) Reconsideration of the [B]board decision may be requested in writing within 20 days of the date of the decision pursuant to [UCA,] Section 63G-4-302.

[7-8](8) After a period of three years from the date of revocation, the [B]board shall review the submitted written application of a person whose certificate of registration has been revoked. After timely notice to all parties involved, the [B]board shall convene to review the revoked person's application, and that person shall be allowed to present themselves and their case before the [B]board. After the hearing, the [B]board shall direct the SFM to allow the person to complete the certification process or shall direct that the revocation be continued.

[7-9](9) Judicial review of all final [B]board actions resulting from informal adjudicative proceedings shall be conducted pursuant to [UCA,] Section 63G-4-402.

R710-11-[8](9). Fees.

[-----]8.1 Fee Schedule.

-----8.1.1 Certificates of Registration (new and renewals):

-----8.1.1.1 Certificate of registration - \$40.00

-----8.1.1.2 Duplicate - \$30.00

-----8.1.2 Examinations:

-----8.1.2.1 Initial examination - \$30.00

-----8.1.2.2 Re-examination - \$30.00

-----8.1.2.3 Three-year examination - \$30.00

-----8.2 Payment of Fees.

(1) The required fee shall accompany the application for certificate of registration.

(a) Certificate of registration fees will be refunded if the application is denied.

[-----]8.3 Late Renewal Fees.

[-----]8.3.1 Any certificate of registration not renewed on or before the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

[8-3-2](2) 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.

KEY: fire alarm systems

Date of Enactment or Last Substantive Amendment:
[September 21, 2010]2016

Notice of Continuation: October 11, 2011

Authorizing, and Implemented or Interpreted Law: 53-7-204

Public Safety, Fire Marshal
R710-12
Hazardous Materials Training and
Certification

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 40520

FILED: 06/16/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to reformat the rule to meet the requirements of the Rulewriting Manual, to delete redundant sections, and to make other minor corrections.

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. This amendment removes adoption from the purpose statement, creates a new section for adoption, and removes redundant definitions. This amendment also replaces Hazardous Materials Institute with State Fire

Marshal's office, corrects certification authority by removing Institute of Emergency Services and Homeland Security, and removes reference to fee amounts that are found in the State Fee Schedule.

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 formatting and other minor changes.
- ◆ **LOCAL GOVERNMENTS:** There will not be an anticipated cost or savings to local budgets because the changes made to the rule are specific to formatting and other minor changes.
- ◆ **SMALL BUSINESSES:** There will not be an anticipated cost or savings to small businesses' budgets because the changes made to the rule are specific to formatting and other minor changes.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will not be an anticipated cost or savings to persons' budgets because the changes made to the rule are specific to formatting and other minor changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will not be an anticipated cost or savings because the changes made to the rule are specific to formatting and other minor changes.

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 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Coy Porter, State Fire Marshal

R710. Public Safety, Fire Marshal.**R710-12. Hazardous Materials Training and Certification.****R710-12-1. [Adoption, Title, Purpose, and Prohibitions].**

~~[Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts.]~~ The purpose of this rule is to establish minimum rules establishing ongoing training standards for hazardous materials emergency response agencies. The Board also adopts minimum rules for certification for persons who provide hazardous materials emergency response services.

~~[There is adopted as part of these rules the following codes which are incorporated by reference:~~

~~1.1 National Fire Protection Association (NFPA), Standard 472, Standard for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents, 2008 edition, except as amended by provisions listed in R710-12, 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.]~~

R710-12-2. Authority.

This rule is authorized by Section 53-7-204.

R710-12-3. Adoption.

There is adopted as part of these rules the National Fire Protection Association (NFPA), Standard 472, Standard for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents, 2008 edition, except as amended by provisions as outlined in this rule.

R710-12-[2]4. Definitions.

~~[2-1](1)~~ "AHJ" means Authority Having Jurisdiction.

~~[2-2](2)~~ "Board" means Utah Fire Prevention Board.

~~[2-3](3)~~ "Certificate" means a written document issued by the Institute of Emergency Services and Homeland Security through the Utah Fire Service Certification System, to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

~~[2-4](4)~~ "Council" means Hazardous Materials Advisory Council.

~~[2-5](5)~~ "Emergency response agencies" means those agencies that are created and under the control of local, state or

federal government or regional inter-governmental agencies to provide emergency response for hazardous materials.

[2-6](6) "Hazardous Material" means a substance that can be solid, liquid or gas, that when released is capable of creating harm to people, the environment and property and includes weapons of mass destruction as well as illicit labs, environmental crimes, and industrial sabotage.

[2-7](7) "Emergency Response Services" means providing or coordinating on-site protective or offensive actions to reduce the risk of harm to people, the environment and property during the initial, time-critical phase of a hazardous materials/WMD incident.

[2-8](8) "Institute of Emergency Services and Homeland Security" means a college entity of Utah Valley University of that same name.

[2-9](9) "NFPA" means National Fire Protection Association.

[2-10](10) "SFM" means State Fire Marshal or authorized deputy.

[2-11] "~~UCA" means Utah State Code Annotated 1953 as amended.~~

[2-12](11) "Utah Fire Service Certification System" means the system approved by the Board to provide certification to those emergency personnel certifying in hazardous materials.

R710-12-35. Hazardous Materials Advisory Council.

[3-1](1) There is created by the [B]board, the Hazardous Materials Advisory Council, whose duties are to provide direction to the [B]board in matters relating to training and certification standards for hazardous materials emergency responders and emergency response agencies.

[3-2](2) The [E]council's members shall be appointed by the [B]board, shall serve four year terms, and shall consist of the following members:

[3-2-1](a) a [R]representative from the career fire service[-];

[3-2-2](b) a [R]representative from the volunteer fire service[-];

[3-2-3](c) a [R]representative from the Department of Environmental Quality[-];

[3-2-4](d) a [R]representative from the Department of Transportation[-];

[3-2-5](e) a [R]representative from law enforcement[-];

[3-2-6](f) a [R]representative from the Fire and Rescue Academy[-];

[3-2-7](g) a [R]representative from the [~~Hazardous Materials Institute~~]State Fire Marshal office[-];

[3-2-8](h) a [R]representative from the National Guard[-];

[3-2-9](i) a [R]representative from a Local Emergency Planning Committee[~~(LEPC)~~]; and

[3-2-10](k) a [R]representative from private industry.

[3-3](3) The [E]council shall meet quarterly or as directed, and a majority of the members shall be present to constitute a quorum.

[3-4](4) The [E]council shall select one of its members to act in the position of chair, and another member to act as vice chair.

(a) The chair and vice chair shall serve one year terms on a calendar year basis.

(b) Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of each calendar year.

(c) If voted upon by the council, the vice chair will become the chair the next succeeding calendar year.

[3-5](5) If a [E]council member has two or more unexcused absences during a 12 month period, from regularly scheduled meetings, it is considered grounds for dismissal pending review by the [B]board. The Coordinator shall submit the name of the member to the [B]board for status review.

[3-6](6) A member of the [E]council that cannot be in attendance, may have a representative of their respective organization attend and vote by proxy for that member or the member may have another council member vote by proxy, if submitted and approved by the [E]coordinator prior to the meeting.

[3-7](7) The [E]chair or [V]vice [E]chair of the [E]council shall report to the [B]board the activities of the council at regularly scheduled [B]board meetings. The [E]coordinator may report to the [B]board the activities of the council in the absence of the [E]chair or [V]vice [E]chair.

[3-8](8) The [E]council shall consider all subjects presented to them, subjects assigned to them by the [B]board, and shall report their recommendations to the [B]board at regularly scheduled [B]board meetings.

[3-9](9) One-half of the members of the [E]council shall be reappointed or replaced by the [B]board every two years.

R710-12-46. Training.

[4-1](1) Instruction materials designed for statewide use that will teach minimum core competencies for those persons certifying to provide response services regarding hazardous material emergencies shall be approved by the [E]council and accepted by the Utah Fire Service Certification Council.

[4-2](2) Written examinations, practical or actual demonstrations, and any other required testing given for core competency, for those persons certifying to provide response services regarding hazardous material emergencies statewide, shall be approved by the [E]council and accepted by the Utah Fire Service Certification Council.

R710-12-57. Certificates.

[5-1](1) [~~Required Certificates.~~]No person shall provide hazardous materials services as a member of an emergency response agency without first receiving[~~a certificate issued by the Institute of Emergency Services and Homeland Security or~~] a certification issued by the Utah Fire Service Certification Council.

[5-2](2) [~~Application.~~

~~5-2-1]~~To be certified in hazardous material response, a request for certification shall be made in writing to the Utah Fire Service Certification System.

[5-2-2](a) The applicant shall indicate which of the five certification levels the applicant will apply for:

[5-2-2-1](i) Awareness Level;

[5-2-2-2](ii) Operations Level Responder;

[5-2-2-3](iii) Hazardous Materials Technician;

[5-2-2-4](iv) Hazardous Materials Officer; or

[5-2-2-5](v) Hazardous Materials Incident Commander;

[5-3](3) Examination.

~~[The applicant for a certificate shall complete the following:~~

~~5.3.1(a)~~ An applicant certifying at the Awareness Level shall be trained to meet all the competencies in Chapter 4 of NFPA 472 and pass a written examination with a minimum score of 70%.

~~5.3.2(b)~~ An applicant certifying as an Operations Level Responder shall meet all the requirements listed in Section ~~[5.3.1 of these rules]~~ R710-12-7(3)(a), and shall be trained to meet all the competencies in Chapter 5 of NFPA 472, and pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.

~~5.3.3(c)~~ An applicant certifying as a Hazardous Materials Technician shall pass all the requirements listed in Sections ~~[5.3.1 and 5.3.2 of these rules]~~ R710-12-7(3)(a) and R710-12-7(3)(b), and shall be trained to meet all the competencies in Chapter 7 of NFPA 472, and shall pass a written examination with a

minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.

~~5.3.4(d)~~ An applicant certifying as a Hazardous Materials Officer shall meet all the requirements listed in Sections ~~[5.3.1, 5.3.2 and 5.3.3 of these rules]~~ R710-12-7(3)(a) through R710-12-7(3)(b), and shall be trained to meet all the competencies in Chapter 10 of NFPA 472, and shall pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.

~~5.3.5(e)~~ An applicant certifying as a Hazardous Materials Incident Commander shall meet all the requirements listed in Sections ~~[5.3.1, 5.3.2 and 5.3.3 of these rules]~~ R710-12-7(3)(a) through R710-12-7(3)(b), and shall be trained to meet all the competencies in Chapter 8 of NFPA 472, and shall pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.

~~5.4(4)~~ ~~[Issuance.—]~~ Following receipt of the properly completed application ~~[.]~~ and compliance with Section ~~[5.3 of these rules]~~ R710-12-7(3), the Institute of Emergency Services and Homeland Security through the Utah Fire Service Certification Council shall issue a certificate.

~~5.5(5)~~ ~~[Original and Renewal Valid Date.—]~~ Original certificates shall be valid for three years from the date of certification issuance. Thereafter, each certificate of registration shall be renewed every three years from issuance, unless otherwise specified by a Utah certification standard.

~~5.6(6)~~ ~~[Renewal Date.—]~~ Renewal shall be made as directed by the Utah Fire Service Certification Council.

~~5.7(7)~~ ~~[Re-certification Renewal.—]~~ Every holder of a valid certificate shall provide to the Utah Fire Service Certification Council written verification from the authorizing agency that they have received continuing training in hazardous materials necessary to maintain competency over the previous three-year period of certification issuance.

R710-12-~~6~~8. Adjudicative Proceedings.

~~[6.1—]~~ All adjudicative proceedings performed with regard to a certificate issued under Section ~~[5 of these rules]~~ R710-12-7 shall proceed as outlined in the Utah Fire Service Certification System, Policy and Procedures Manual.

R710-12-~~7~~9. Fees.

~~[7.1—Payment of Fees.—]~~ The required fee for certification and recertification shall be paid to the Utah Fire Service Certification System.

KEY: hazardous materials

Date of Enactment or Last Substantive Amendment: ~~[May 23, 2008]~~ **2016**

Notice of Continuation: March 8, 2013

Authorizing, and Implemented or Interpreted Law: 53-7-204

Public Safety, Fire Marshal **R710-13** Reduced Cigarette Ignition Propensity and Firefighter Protection Act

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40519

FILED: 06/16/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to reformat the rule to meet the requirements of the Rulewriting Manual, to delete redundant sections, and to make other minor corrections.

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. Excerpts from Sections 53-7-404 through 53-7-408 have been removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-407

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 formatting and other minor changes.
- ◆ **LOCAL GOVERNMENTS:** There will not be an anticipated cost or savings to local budgets because the changes made to the rule are specific to formatting and other minor changes.

- ◆ **SMALL BUSINESSES:** There will not be an anticipated cost or savings to small businesses' budgets because the changes made to the rule are specific to formatting and other minor changes.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will not be an anticipated cost or savings to persons' budgets because the changes made to the rule are specific to formatting and other minor changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will not be an anticipated cost or savings because the changes made to the rule are specific to formatting and other minor changes.

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 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Coy Porter, State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-13. Reduced Cigarette Ignition Propensity and Firefighter Protection Act.
R710-13-1. ~~[Adoption, Title, Purpose, and Prohibitions].~~
~~[Pursuant to Section 53-7-407, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts.]~~ The purpose of this rule is to establish minimum rules for the enactment of the Reduced Cigarette Ignition Propensity and Firefighter Protection Act.

R710-13-2. Authority.
 This rule is authorized by Section 53-7-407.

R710-13-~~2~~3. Definitions.
~~[2-1](1)~~ "AG" means Attorney General
~~[2-2](2)~~ "Board" means Utah Fire Prevention Board.

~~[2-3](3)~~ "NFPA" means National Fire Protection Association.
~~[2-4](4)~~ "SFM" means State Fire Marshal or authorized deputy.
~~[2-5](5)~~ "Tax Commission" means the Utah State Tax Commission.
~~[2-6]~~ "UCA" means Utah State Code Annotated 1953 as amended.]

R710-13-~~3~~4. Certification and Product Change.
~~[3-1]~~ As required in UCA 53-7-404(1), accepted alternative test methods of other states that are equal to or stricter performance standards as allowed in UCA 53-7-403(4), may also be accepted as meeting the standards established in the statute.]

~~[3-2](1)~~ If the SFM intends to remove a brand from the certified list, it will send a notice of intent to deny to the manufacturer. The notice of intent shall include the following:

~~[3-2-1](a)~~ [F]the factual and legal deficiencies upon with the SFM intended action rests[.];

~~[3-2-2](b)~~ [F]the actions the manufacturer must take to satisfy the factual or legal deficiencies upon with the intended action is based[.]; and

~~[3-2-3](c)~~ [F]the notification that the manufacturer shall have 15 working days to cure the deficiencies and submit documentation or other information to correct the deficiencies. The SFM may extend the time period for a manufacturer to cure the deficiencies.

~~[R710-13-4. Implementation and Inspection.~~
~~4.1~~ As required in UCA 53-7-404(3), 53-7-405(6)(c), 53-7-407(2), and 53-7-408, the SFM, AG, and the Tax Commission will cooperate to produce a list or lists of cigarette brands that are legal for sale under any and all statutes of the State of Utah.]

R710-13-5. Adjudicative Proceedings.
~~[5-1](1)~~ Adjudicative proceedings performed by the agency shall proceed informally as authorized by ~~[UCA,]~~ Sections 63G-4-202 and 63G-4-203.

KEY: fire safe cigarettes
Date of Enactment or Last Substantive Amendment: ~~[November 24, 2008]2016~~
Notice of Continuation: November 13, 2013
Authorizing, and Implemented or Interpreted Law: 53-7-407

Public Safety, Highway Patrol
R714-158
 Vehicle Safety Inspection Program
 Requirements

NOTICE OF PROPOSED RULE
 (Repeal and Reenact)
 DAR FILE NO.: 40552
 FILED: 06/28/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2012 General Session, changes were made to the safety inspection statutes. Following these changes, the Safety Inspection Section reviewed safety inspection manuals to update the information in an effort to make the program more effective and incorporated the information into the proper rule format.

SUMMARY OF THE RULE OR CHANGE: In Section R714-158-3, a paragraph is added. Changes to Section R714-158-3 also include adding definitions, redefining some current ones, and removing some. In Section R714-158-4, the title is changed. A Safety Inspection station will be required to employ a station manager who possesses a valid certificate. Amount of the surety bond required is changed from \$1,000 to \$10,000 or Garage Keepers Insurance. The \$25 annual license fee is eliminated from the rule. The \$100 reinstatement fee for a station or inspector that has been suspended or revoked is eliminated from the rule. The \$100 fee required for a station name or address change is changed to \$87 and is no longer found in the rule. A Safety Inspection must obtain and maintain a valid business license and business registration from the Utah Department of Commerce unless it is a government station. The application and denial process for a new Safety Inspection station is more clearly defined. In Section R714-158-5, the title is changed. Building and equipment requirements for Safety Inspection stations that inspect passenger vehicles and light trucks and heavy vehicles are defined. In Section R714-158-6, the title is changed. A person applying to become an inspector no longer needs a valid driver license, but must present a passport or copy of a valid driver license or identification card issued by a state government within the United States to verify identity. The application and denial process for an inspector is more clearly defined. The \$10 processing fee is reduced to \$7 and is no longer found in the rule. The \$20 fee to replace a lost or missing inspector certification card is reduced to \$1 and is no longer found in the rule. In Section R714-158-7, the title is changed. In order for an inspector to renew a certificate, they are required to successfully complete the training course within six months prior to the expiration date of the certificate. The renewal and denial process for inspectors is re-defined. In Section R714-158-8, the title is changed. Actions for students who falsify information or cheat are added. In Section R714-158-9, the title is changed. Stations will no longer be required to be open for at least eight hours during normal business days. They will no longer be required to have at least one inspector on duty during business hours. Changes also require all inspection certificates to be issued through the online inspection program unless it is temporarily unavailable. If the online program is unavailable for more than three days, the station will be required to contact the division. Paper inspection certificates can be used while the online program is temporarily unavailable, but the information from the inspection will need to be entered into the online program within 72 hours after the it becomes available again. The changes require that safety inspections be conducted and

certificates be issued only at the station where the inspector is employed unless the inspection is performed on a government-owned emergency fire response vehicle or ambulance. Inspectors should avoid conducting safety inspections on their personally-owned or operated vehicles. Inspectors can only use their username and password when using the online inspection program. The changes redefine other general safety inspection program requirements. In Section R714-158-10, the title is changed. Station Fee to Utah Interactive language is removed from the rule. Changes the limits on number of inspection certificate books that can be purchased. In Section R714-158-11, the title is changed. Violation of federal safety inspection laws, rules, or regulations are added. Delinquent fee for Utah Interactive language is removed from the rule. An applicant or licensee who is denied a certificate or permit will not be eligible to reapply for a period of 90 days from the date of denial. A licensee whose certificate or permit is revoked will not be eligible to reapply for another certificate or permit for a period of one year from the date of revocation. In Section R714-158-12, time to request an appeal hearing is lengthened from 10 days to 15 days. A hearing is required to be held within 30 days of the request. The hearing officer will have 10 days instead of 5 days to issue a written decision. An appeal to the advisory council will be able to be made within 30 days instead of 10 days. The written decision of the council will constitute final agency action and will be subject to judicial review. Reconsideration of the order of the advisory council by the department is removed. In Section R714-158-13, procedures for safety inspection station closures is added as required by statute.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 49 FMCSR III B and Section 53-8-102 and Section 53-8-202 and Subsection 53-8-204(5)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** It is anticipated that the state budget will experience a loss of revenue as a result of the changes made to this rule. Several fees that are collected by the Safety Inspection program have been removed from this rule. The fees that have been removed are not supported by statutory language. Some of the fees are still collected, although at a lower rate, which are referenced in statute. The changes include the following: the \$25 annual license fee has been eliminated; the \$100 reinstatement fee for a station or inspector that has been suspended or revoked has been eliminated; the \$100 fee required for a station name or address changed has been changed to \$87 and is no longer found in the rule; the \$10 processing fee has been reduced to \$7 and is no longer found in the rule; and the \$20 fee to replace a lost or missing inspector certification card has been reduced to \$1 and is no longer found in the rule.

◆ **LOCAL GOVERNMENTS:** Prior to the rule change, the application packet for new stations required proof of a business license and registration with the Department of Commerce. This requirement has now been incorporated into the rule. The addition of this language will require that an

inspection station pay fees to local government agencies to obtain a business license.

♦ **SMALL BUSINESSES:** Required inspection station tools and equipment were listed in the application packet. Now those requirements are listed in the rule. Stations that were not using the online inspection system will now be required to use it. This requires a computer, internet connection, and printer. The manager of a station will now be required to be a certified vehicle safety inspector. Compliance with these requirements may result in a cost impact to some inspection stations that have not yet come into compliance.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No other persons will be affected financially as this rule only imposes fee requirements as they apply to small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost of a computer, internet connection, and printer would be applicable to stations that are not already equipped. There would be no compliance cost for the changes associated with the appeal process as it relates to the Vehicle Safety Advisory Council.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and have determined that there may be a potential fiscal impact on businesses. The surety bond amount required has increased from \$1,000 to \$10,000. Businesses may experience an increase in the premium amount for a surety bond as a result of the increase in the required coverage amount. Both the \$25 annual license fee and the \$100 reinstatement fee have been eliminated from the rule and will no longer be paid by a business. In addition, the \$100 address change fee has been reduced to \$87, the \$10 processing fee has been reduced to \$7, and the \$20 replacement license fee has been reduced to \$1. The changes to the fees will result in a cost savings for businesses. A business that has not yet obtained computer equipment or is not currently using the online inspection system will now be required to use it. This could result in a fiscal impact to the business in order to obtain required equipment for use in connecting to the online system.

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
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Steven Winward, Captain

R714. Public Safety, Highway Patrol.

~~R714-158. Vehicle Safety Inspection Program Requirements.~~

~~R714-158-1. Authority.~~

~~————— This rule is authorized by Subsection 53-8-204(5).~~

~~R714-158-2. Purpose.~~

~~————— The purpose of this rule is to set standards governing the administration and enforcement of the safety inspection program in accordance with Title 53, Chapter 8, Part 2.~~

~~R714-158-3. Definitions.~~

~~————— As used in this rule:~~

~~————— (1) "Agency Action" means a written warning, suspension or revocation applied against a certification or license.~~

~~————— (2) "Certificate" means the certificate of inspection given when a vehicle fails or meets the requirements of the inspection program.~~

~~————— (3) "Certification" means the authority given to an inspector by the department to conduct safety inspections.~~

~~————— (4) "Commercial motor vehicle" means any vehicle, machine, tractor, trailer or semi-trailer, propelled or drawn by mechanized power upon the highway in transportation of passengers or property, or any combination thereof. It does not include implements of husbandry.~~

~~————— (5) "Department" means the Utah Department of Public Safety.~~

~~————— (6) "Fleet station" means a station licensed by the department and capable of conducting safety inspections of commercial motor vehicles, provided the fleet owns a minimum of twenty-five vehicles.~~

~~————— (7) "Inspector" means a person employed by a station licensed to conduct safety inspections.~~

~~————— (8) "License" means the authority given to a station by the department to conduct safety inspections.~~

~~————— (9) "Notice of agency action" means a written notice that the department intends to suspend or revoke a certification or license.~~

~~————— (10) "Re-inspection" means an inspection of previously rejected items that is completed within fifteen days of the original inspection. An inspection that is completed outside of the fifteen days is considered a new inspection, which all vehicle components are required to be inspected.~~

~~————— (11) "Station" means a business, including public garages, service stations, and repair shops licensed by the department to conduct safety inspections.~~

~~————— (12) "Sticker" means the sticker intended to be placed on the windshield or side wing window of a vehicle which has met the requirements of the inspection program. On trailers they should be placed on either of the two front corners where they can easily be seen.~~

(13) "Utah Interactive (UI)" means the company that has contracted with the State Of Utah for the setup and facilitation of the web-based inspection program.

R714-158-4. Station License.

A. Application for a license as a station can be made on forms provided by the department's Safety Inspection Section, 5500 West Amelia Earhart Drive, Suite 360, Salt Lake City, Utah 84116.

(1) A \$1,000 surety bond or garage keepers insurance is required for all stations except fleet stations and publicly owned stations:

(2) A \$100 station application fee is required.

(3) A \$25 annual license fee is required for all stations except publicly owned stations.

(4) A \$100 fee is required to renew a license that has been suspended or revoked.

(5) A \$100 fee is required for a station name and/or address change.

B. Upon receiving an application for a license, the department will assign an investigator to inspect the place of business to determine if the applicant meets the requirements of this rule. This includes that the application is filled out completely and in addition to providing a list of all the station's certified inspectors.

C. An applicant for a license shall meet the building and equipment requirements set forth in the "Vehicle Inspection Manual" prior to approval and throughout their certification.

D. Upon approval, the license will be issued to the applicant and shall be displayed in a prominent location at the address shown on the license.

E. Licenses are not transferable. A change in the ownership, name, or location of a station requires a new application, bond, and license.

F. All new stations upon making application will be required to enroll in the web-based inspection program through Utah Interactive. All of the station's inspections will have to be completed on-line.

G. An agency action against a station using only paper certificates will require, after reinstatement, that the station's inspections be conducted on the on-line program.

R714-158-5. Inspector Certification.

A. An applicant for certification as an inspector shall:

(1) obtain training in accordance with the requirements of Section R714-158-6 of this rule;

(2) pay a \$10 non-refundable processing fee;

(3) be at least eighteen years of age; and

(4) have a valid drivers license.

B. Certification is valid for five years and expires on the month, day, and year shown on the certificate.

C. Certification can be renewed up to two months before the expiration date.

(1) A \$100 fee is required to process a return to the safety inspection program in the event of a suspension or revocation of certification.

D. A \$20 fee is required to replace a lost/missing inspector certification card.

R714-158-6. Inspector Training and Testing.

A. Inspector applicants shall obtain training, reference materials, and instructions from the department prior to certification.

B. The department may contract with educational institutions to provide training, re-training, or testing.

(1) Every educational institution will be required to have the same tools that each station is required to have for each individual vehicle type that they will be instructing.

C. An inspector seeking re-certification of his/her safety inspection authority shall do one of the following options:

(1) Option #1- Participate in the full 16 hour Safety Inspection Training Course and pass the final test.

(2) Option #2- Participate in either an on-line, or "CD" formatted recertification training program, and pass the quizzes.

D. An inspector whose certification has expired for more than one (1) year is required to re-take the 16 hour certification.

E. Every student that takes the 16 hour certification course, is required to attend all sixteen hours of the course, regardless of what vehicle type they are applying for. If they miss any portion of the course, they will be required to make up that missed portion before being allowed to take the certification test.

F. If an educational institute offers a motorcycle only course, then the student must attend the entire portion of that course that is covered under the curriculum set forth by the department before being allowed to take the certification test.

R714-158-7. General Safety Inspection Program Requirements.

A. Inspections shall be conducted honestly and thoroughly. Any attempt to coerce customers, or to sell unneeded parts or repairs is prohibited.

(1) Repairs or adjustments may not be made to a vehicle without prior approval of the customer.

(a) Any part that is replaced as a result of an inspection must be returned to the customer.

(b) If a part cannot be returned, it must be shown to the customer.

(c) The customer is under no obligation to have a vehicle repaired at the station. Repairs may be made at any business selected by the customer.

(2) A current set of inspection records, including the plate brake test records, shall be retained at each station or record keeping office.

(a) The records shall be retained for a minimum of twelve months.

(b) When requested, records shall be made available for inspection by the department.

(3) Reports required by the department shall be submitted to the department prior to every third order of inspection supplies.

(a) Reports submitted to the department shall be legible and in sequence.

(b) Certificates and stickers shall be filled out completely to include the name and address of the registered owner. They must be completed on the same date that the vehicle inspection was conducted.

(4) Each station in the safety inspection program shall maintain an adequate supply of certificates, stickers, and other inspection supplies.

~~(a) Certificates, stickers, and other inspection supplies shall be safeguarded against loss or theft.~~

~~(b) Missing or stolen certificates or stickers shall be immediately reported to the department.~~

~~(5) No certificate or sticker shall be issued without making a proper inspection, or issued to any vehicle that does not meet safety inspection requirements.~~

~~(6) An inspector may conduct inspections, print certificates, issue certificates, and attach stickers to vehicles only at the location designated on the license.~~

~~(7) Inspectors will not be added to a station on the Admin Console, without a member of the station's management first contacting our office. This management contact may be done in person, by phone or on a station's letterhead with an official signature.~~

~~(8) Certificates, stickers, or other inspection supplies, may not be sold or transferred from one station to another.~~

~~(9) Each station must be open for a least eight hours during the normal business day. Stations may close on holidays, Saturdays and Sundays.~~

~~(a) At least one inspector must be on duty at each station during business hours.~~

R714-158-8. Vehicle Safety Inspection Manual.

~~The department shall prepare the "Vehicle Inspection Manual" which shall be based on the "Utah Code," the "Federal Code of Regulations," the "Vehicle Inspection Handbook" of the American Association of Motor Vehicle Administrators, and on vehicle manufacturer specifications.~~

~~(1) The department shall seek the advice of the Safety Inspection Advisory Council prior to any substantive changes in the "Vehicle Inspection Manual."~~

~~(2) Inspectors shall conduct inspections in accordance with the "Vehicle Inspection Manual."~~

~~(3) All stations are required to have a copy of the most recent manual available. This requirement can be met by having a hard copy on hand or by downloading a copy to a file on the station's computer from the Safety Inspection website. Accessing the manual through the website does not qualify for meeting this requirement.~~

R714-158-9. Certificates, Stickers, and Inspection Reports.

~~A. Paper Certificates will be issued in books of twenty-five for ATVs and fifty for Passenger/Light Truck.~~

~~(1) A maximum of ten books of certificates and twenty books of stickers may be purchased on one order.~~

~~(2) Each on-line station may be allowed to purchase a maximum of two books of certificates that are only to be used as a backup to the on-line program when the system is down.~~

~~(3) All orders shall be paid by check, except as authorized by the department.~~

~~(4) Unused certificates or stickers, if less than two years old and in quantities of ten or more, may be returned to the department for reimbursement or exchange.~~

~~(5) Returned certificates and stickers must be in the original book and sequence.~~

~~(6) Utah Interactive is responsible for billing the on-line stations for all completed on-line certificates each month.~~

~~(7) Each on-line station shall submit a full payment for each monthly bill received from UI.~~

~~(8) Entering a safety inspection certificate number into an outside agency computer system for the purpose of printing a certificate is prohibited.~~

~~(9) All 'ATV' inspections shall be conducted on a department approved ATV paper certificate, or on the on-line program under the 'ATV' vehicle type.~~

~~B. Certificates, stickers, and inspection reports, shall be completed and issued as set forth in the "Vehicle Inspection Manual."~~

R714-158-10. Incorporation of Federal Standards for Commercial Vehicles.

~~The department adopts federal regulation 49 CFR 393, 396, and 396 Appendix G (1997 edition), applicable to commercial motor vehicles and trailers operating in interstate commerce, and incorporates those regulations in this rule by reference.~~

R714-158-11. Grounds for Denial, Suspension, or Revocation of License or Certification.

~~A license or certification may be denied, suspended, or revoked for either of the following reasons:~~

~~(1) violation of state laws or rules applicable to vehicle inspections;~~

~~(2) conviction of any crime involving moral turpitude;~~

~~(3) Providing any false information on a station or inspector application;~~

~~(4) A station that transfers ownership while serving a suspension/revocation period, shall serve the full period of the suspension/revocation before reinstatement of certification or approval as a new inspection station will be made.~~

~~(5) An on-line station that is more than 60 days delinquent on their balance with Utah Interactive, may have an agency action filed against them until their full payment is received by Utah Interactive.~~

R714-158-12. Adjudicative Proceedings.

~~A. All adjudicative proceedings set forth in this section shall be conducted informally, and as authorized by Sections 53-8-204, 63G-4-202, and 63G-4-203.~~

~~B. Action to deny, suspend or revoke any license or certification or to appeal any denial, suspension, or revocation shall be made on forms provided by the department in accordance with Section 63G-4-201.~~

~~C. Appeal to department. A person who has been issued a notice of agency action to suspend or revoke a license or certification may request a hearing before the department by filing an appeal with the department within ten days of receipt of the notice of agency action. If a timely appeal is filed, the intended agency action shall automatically be stayed.~~

~~(1) The hearing before the department shall be informal and is intended to provide the person with an opportunity to show cause why the intended agency action should not be taken.~~

~~(2) The department will issue a signed order to the parties within five days of the hearing, ordering or denying the intended agency action.~~

~~D. Appeal to Advisory Council. A person who has been denied a license or certification, or a person whose license or certification has been suspended or revoked by the department, may request a hearing before the Advisory Council pursuant to Section 53-8-203, by filing an appeal with the department within ten days of receipt of the denial, suspension, or revocation.~~

~~(1) Except in the case of an emergency order, a timely appeal to the department requesting an Advisory Council hearing shall automatically stay a department order of suspension or revocation.~~

~~(2) The hearing before the Advisory Council shall be informal and shall be held within thirty days after the appeal is filed.~~

~~(3) The Advisory Council shall make written findings and conclusions and issue a signed order within ten days of the hearing, affirming, denying, or modifying the order of the department.~~

~~E. Reconsideration of the order of the Advisory Council may be requested in writing within twenty days of the date of the order in accordance with Section 63G-4-302.~~

~~F. The order of the Advisory Council shall be subject to judicial review in accordance with Section 63G-4-402.~~

~~G. A default order may be entered against a party who fails to participate in any of the hearings provided for in this section in accordance with Section 63G-4-209.]~~

R714-158. Vehicle Safety Inspection Program Requirements.

R714-158-1. Authority.

This rule is authorized by Subsection 53-8-204(5).

R714-158-2. Purpose.

The purpose of this rule is to set standards governing the administration and enforcement of the safety inspection program in accordance with Title 53, Chapter 8, Part 2.

R714-158-3. Definitions.

(1) Terms used in this rule are defined in Sections 53-8-102, 53-8-202, and the Federal Motor Carrier Safety Regulations contained in Subchapter B, Chapter III, Subtitle B of the Code of Federal Regulations Title 49 - Transportation.

(2) In addition:

(a) "agency action" means a written warning, suspension, revocation, or denial applied against a certification, license, or application.

(b) "applicant" means a person who has applied to the division for a permit or certificate;

(c) "certificate" means the authorization for a safety inspector to conduct safety inspections;

(d) "conviction" means an adjudication of guilt regarding criminal conduct, including:

(i) a finding of guilt by a court or a jury;

(ii) a guilty plea;

(iii) a plea of nolo contendere; or

(iv) a plea which is held in abeyance pending the successful completion of a probationary period;

(e) "division" means the Vehicle Safety Inspection section of the Utah Highway Patrol;

(f) "fleet station" means a station that only conducts safety inspections on vehicles that are owned or leased by the same company that owns the station;

(g) "inspection certificate" means the certificate of inspection given when a vehicle passes or fails the requirements of the inspection program;

(h) "licensee" means a person who has been granted a permit or certificate by the division;

(i) "OEM" means original equipment manufacturer;

(j) "online inspection program" means the web-based inspection program used to record safety inspections;

(k) "permit" means the authorization for a person to operate a station;

(l) "revocation" means the permanent deprivation of a certificate or permit;

(m) "inspector" means a person with a valid certificate who is employed by a licensed station;

(n) "station" means a business or government facility located in Utah that is managed or operated by a valid permit holder and conducts safety inspections;

(o) "suspension" means the temporary deprivation of a certificate or permit;

(p) "sticker" means a safety inspection sticker distributed by the division to a station which affixes it to a vehicle with a gross vehicle weight rating of 26,001 pounds or more, or is equipped with an air braking system regardless of weight rating, when that vehicle meets the safety inspection requirements;

(q) "sticker report" means the document of inspection given when a vehicle with a gross vehicle weight rating of 26,001 pounds or more, or a vehicle equipped with an air braking system regardless of weight rating, fails or meets the safety inspection requirements; and

(r) "Utah Interactive" means the company that has contracted with the division for the setup and facilitation of the online inspection program.

R714-158-4. Safety Inspection Station Permits.

(1) To be eligible for a new permit or to retain a current permit, an applicant shall:

(a) employ a station manager who possesses a valid certificate;

(b) obtain and maintain a \$10,000 surety bond or garage keepers insurance for the station that the permit holder seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government or fleet station;

(c) obtain and maintain a valid business license for the station that the applicant seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government station;

(d) obtain and maintain a valid business registration from the Utah Department of Commerce for the safety inspection station that the applicant seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government station; and

(e) enroll the station in the online inspection program after receiving approval from the division.

(2)(a) An applicant seeking to manage or operate a safety inspection station shall submit a completed permit application packet to the division.

(b) The permit application packet shall include:

(i) a completed permit application form provided by the division;

(ii) a non-refundable permit application fee, unless the station the applicant seeks to manage or operate is a government station;

(iii) proof of a \$10,000 surety bond or garage keepers insurance for the station that the applicant seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government or fleet station;

(iv) documentation of a valid business license for the station that the applicant seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government station; and

(v) documentation of a valid business registration from the Utah Department of Commerce for the safety inspection station that the applicant seeks to manage or operate, unless the station the applicant seeks to manage or operate is a government station.

(3)(a) Upon receipt of a completed application packet, the division shall review the materials to determine if the applicant is eligible for a permit.

(b) The division may request additional information to determine if the applicant is eligible for a permit.

(4) After receipt of all of the necessary documentation, the division shall inspect the station that the permit holder intends to manage or operate to determine if the station meets the requirements of the safety inspection program.

(5)(a) If the division determines that the applicant has met all of the requirements for a permit, the division shall issue the permit to the applicant.

(b) The permit is non-transferable.

(6)(a) If the division determines that the applicant does not meet the requirements for a permit, the division shall issue a denial letter to the applicant.

(b) The denial letter shall state the reasons for denial and indicate that the applicant may have the matter reviewed as provided in Section 11 of this Rule.

R714-158-5. Building and Equipment Requirements.

(1) To be eligible for a permit or to maintain a permit, the inspection station building and site must meet the following conditions:

(a) the building is capable of housing the vehicles to be inspected;

(b) the building has a level concrete or asphalt floor; and

(c) the site has a business sign of a permanent construction, properly displaying the business name that is listed on the business station application, unless the station the applicant seeks to manage or operate is a government or fleet station.

(2) An inspection station shall have the following tools and equipment:

(a) a current hard copy of the safety inspection manual, or an electronic copy that has been downloaded as a file on a station computer;

(i) accessing the manual online does not meet this requirement;

(b) the necessary hand tools to conduct an inspection;

(c) a hoist capable of lifting all four tires simultaneously off of the ground;

(i) stations in operation prior to January 1, 2009 are exempt from this requirement, but the station shall possess a hoist or heavy-duty jack with jack stands;

(d) measuring gauges and instruments for determining minimum specifications in the inspection process;

(e) a two-piece approved light meter kit capable of measuring window light transmittance at a minimum of +/- 3%;

(f) a dial indicator for measuring ball joint and suspension component tolerances;

(g) a tire tread depth gauge;

(i) a riveted brake lining gauge may be used for tire tread depth gauge;

(h) a tire pressure gauge;

(i) a tape measure; and

(j) the following brake gauges:

(i) bonded;

(ii) riveted;

(iii) disc pad;

(iv) rotor; and

(v) drum.

(3) An inspection station that performs inspections on heavy motor vehicles, trailers, or buses shall have the following tools and equipment:

(a) a hoist;

(b) a two-piece light meter approved by division;

(c) hand tools including wrenches, screwdrivers, and ratchets;

(d) a dial indicator for measuring ball joint and suspension component tolerances;

(e) a tire tread depth gauge;

(f) a current hard copy of the safety inspection manual, or an electronic copy that has been downloaded as a file on a station computer;

(i) accessing the manual online does not meet this requirement;

(g) a tire pressure gauge;

(h) a king pin gauge;

(i) a fifth wheel jaw tester;

(j) a measuring tape;

(k) a current copy of the School Bus Standards and Inspection Manual, if the station inspects school buses; and

(l) the following brake gauges:

(i) bonded;

(ii) riveted;

(iii) disc pad;

(iv) rotor; and

(v) large drum.

(4) The division may grant an exception to the minimum requirements of this section upon written request from the applicant or licensee that shows extenuating circumstances justifying the exemption.

R714-158-6. Safety Inspector Certificates.

(1) To be eligible for a certificate, an applicant shall:

(a) be 18 years of age or older; and

(b) attend and successfully complete the safety inspector training course.

(2)(a) An applicant seeking to perform safety inspections shall submit a completed certificate application packet to the division.

(b) The application packet shall include:

(i) a completed certificate application form provided by the division;

(ii) a non-refundable certificate application fee;

(iii) a passport, copy of a valid driver license, or identification card issued by a state government within the United States or one of its territories to verify the applicant's identity; and

(iv) documentation that the applicant attended and successfully completed the safety inspector training course.

(3)(a) Upon receipt of a completed application packet, the division shall review the materials to determine if the applicant is eligible for a certificate.

(b) The division may request additional information to determine if the applicant is eligible for a certificate.

(4)(a) If the division determines that the applicant has met all of the requirements for a certificate, the division shall issue the certificate to the applicant.

(b) The certificate is non-transferable and shall expire five years from the date of issuance.

(5)(a) If the division determines that the applicant does not meet the requirements for a certificate, the division shall issue a letter of denial to the applicant.

(b) The denial letter shall state the reasons for denial and indicate that the applicant may have the matter reviewed as provided in Section 11 of this Rule.

R714-158-7. Renewal of Certificates.

(1) To be eligible to renew a certificate, a licensee shall retake and successfully complete the safety inspector training course within six months prior to the expiration date of the certificate, either in person or online.

(2)(a) A licensee seeking to renew a certificate must submit a completed certificate renewal packet to the division.

(b) The certificate renewal packet shall include:

(i) a written renewal form provided by the division;

(ii) a non-refundable certificate renewal fee; and

(iii) documentation the inspector has re-taken and successfully completed the safety inspector training course, either in person or online, within six months prior to the expiration date of inspector's certificate.

(3)(a) Upon receipt of a completed renewal packet, the division shall review the materials to determine if the licensee is eligible to renew the permit or certificate.

(b) The division may request additional information to determine if the licensee is eligible to renew the certificate.

(4) If the division determines the licensee has met all of the requirements for renewal, it shall renew the certificate for the licensee.

(5)(a) If the division determines the licensee does not meet the renewal requirements, it shall deny the renewal application for the certificate and notify the licensee in writing.

(b) The denial notification shall state the reasons for denial and state the licensee may have the decision reviewed by filing a written request for hearing within 30 calendar days as provided in Section 11 of this Rule.

R714-158-8. Safety Inspector Training Program.

(1)(a) The safety inspector training course shall consist of a 16-hour training program provided by an educational institution approved by the division.

(b) The educational institution shall:

(i) possess all of the necessary tools to conduct a safety inspection in accordance with Administrative Rules R714-160, R714-161, R714-162, and R714-163;

(ii) teach the safety inspection curriculum approved by the division; and

(iii) administer the quizzes and final test generated by the division.

(2) The safety inspector training course shall be taught by instructors that are employees of an educational institution approved by the division.

(3) Students shall attend all 16 hours of the safety inspector training course and pass the final test in order to successfully complete the course.

(4)(a) Any student who falsifies information or cheats on a quiz or test during the safety inspection training course shall be removed from the course and not allowed to complete it.

(b) A student removed from a safety inspection training course may not retake the class for a period of one year.

R714-158-9. General Safety Inspection Program Requirements.

(1) A permit holder shall be responsible for the management and operation of a station and shall:

(a) acquire and maintain the required equipment at the station;

(b) ensure all inspections are performed at the station and are conducted in accordance with Administrative Rules R714-158-8, R714-160, R714-161, R714-162, R714-163;

(c) ensure all inspection certificates are issued through the online inspection program, unless the program is temporarily unavailable;

(i) if the online inspection program is unavailable for more than three business days, the station shall contact the division;

(d) retain a copy of all station records for a period of one year, including plate brake test records;

(e) make the station and its records available for inspection by the division;

(f) ensure the station has an adequate supply of paper inspection certificates and stickers;

(g) ensure the paper inspection certificates and stickers are safeguarded against loss or theft;

(h) immediately report missing or stolen paper inspection certificates or stickers to the division;

(i) display the permit at the station in a prominent location that is easily visible to the public;

(j) report any changes in the station's name or address to the division;

(k) report any changes in the permit holder's mailing address to the division;

(l) notify the division if there is a change in inspectors who are employed at the station;

(m) ensure that the station uses and displays only the name of the station provided to the division; and

(n) ensure that the station's Utah Interactive account is not delinquent.

(2) An inspector shall:

(a) work under the direction of a permit holder;

(i) an inspector may also be a permit holder for the same station;

(b) only conduct inspections onsite at the station designated on the employer's permit;

(c) conduct all inspections fully as described in Administrative Rules R714-160, R714-161, R714-162, and R714-163 before an inspection certificate or sticker may be issued or a customer is informed about any reject items;

(d) conduct all safety inspections honestly and thoroughly;

(e) not coerce customers or sell unneeded parts or repairs;
(f) advise customers the vehicle need not be repaired or adjusted at the station that conducted the safety inspection, but needed repairs may be made at any business selected by the customer;

(g) obtain the customer's authorization before performing any repair or adjustments;

(h) return any part that is replaced to the customer, upon request;

(i) show a part that is to be replaced or repaired to the customer if it cannot be returned, upon request;

(j) issue all inspection certificates using the online inspection program if the station is enrolled in the program, unless the program is temporarily unavailable;

(k) enter the information from a paper inspection certificate to the online inspection program within 72 hours after the program becomes available again;

(l) only use his or her assigned username and password issued by the division when using the online inspection program to complete a safety inspection;

(m) complete all paper safety inspection records legibly;

(n) fully complete everything on the inspection certificates, stickers, and sticker reports on the same date the vehicle inspection is conducted;

(o) conduct inspections, issue certificates, and attach stickers to vehicles only at the station where the inspector is employed, unless the inspection is performed on a government-owned emergency fire response vehicle or ambulance;

(p) not sell or transfer inspection certificates, stickers, or sticker reports to another station;

(q) complete inspection paperwork or enter the information in the online inspection program whenever a vehicle is inspected;

(r) avoid conducting safety inspections on his or her personally owned or operated vehicles;

(s) report any change to his or her mailing address to the division; and

(t) notify the division if he or she changes employers.

R714-158-10. Inspection Certificates, Stickers, and Sticker Reports.

(1) Inspection certificates will be issued in books of 50 for passenger/light truck, books of 25 for ATVs, and books of 25 for stickers and sticker reports.

(2) A station may purchase two books of inspection certificates for passenger/light truck, four books of inspection certificates for ATV, and four books of sticker reports to use when the online inspection program is temporarily unavailable.

(3) A station may not purchase another book of inspection certificates or sticker reports until the station returns one of the used books that it previously purchased to the division.

(4) Unused books of inspection certificates, sticker reports, or stickers may be returned to the division for reimbursement.

R714-158-11. Grounds for the Denial, Suspension, or Revocation of Station Permit or Inspector Certificate.

(1) An applicant or licensee may be denied, suspended, or revoked for any of the following reasons:

(a) a violation of any Utah state or federal safety inspection law, rule or regulation;

(b) providing any false or misleading information during:
(i) the application or renewal process for a permit or certificate;

(ii) a division investigation or station visit; or

(iii) an administrative hearing; or

(c) conviction of a crime involving dishonesty, deception, or theft.

(2) In determining whether denial, suspension or revocation of a permit or certificate is appropriate, the division shall consider the applicant or licensee's previous history with the safety inspection program.

(3)(a) If an inspector is suspended, the inspector may not conduct safety inspections or represent him or herself to be an inspector.

(b) If a permit holder is suspended, no one at the permit holder's station may conduct safety inspections or represent the station as a safety inspection station.

(c) An applicant or licensee who is denied a certificate or permit may not be eligible to reapply for a period of 90 days from the date of denial.

(d) A licensee whose certificate or permit is revoked shall not be eligible to reapply for another certificate or permit for a period of one year from the date of revocation.

R714-158-12. Adjudicative Proceedings.

(1) All adjudicative proceedings set forth in this section shall be conducted informally as provided in Section 63G-4-202.

(2) The division shall initiate agency action against an applicant or licensee with a notice of agency action in accordance with Section 63G-4-201.

(3)(a) An applicant or licensee who receives a notice of agency action indicating that the division intends to deny, suspend, or revoke a permit or a certificate may request a hearing by filing a written request for hearing with the division within 15 calendar days from the date of the notice of agency action.

(b) A hearing shall be held before a hearing officer designated by the division, within 30 calendar days of the day that the division receives the timely written request for hearing, unless the parties agree to a later date.

(c) If a timely request for hearing is filed, the agency action shall be stayed until the division's hearing officer issues a written decision.

(d) At the hearing, the applicant or licensee shall have an opportunity to explain why the division should not take agency action.

(e) The hearing officer shall issue a written decision in accordance with Section 63G-4-203 within ten business days of the hearing.

(4)(a) An applicant or licensee may appeal the hearing officer's decision to the council by filing an appeal with the division within 30 calendar days of the issuance of the hearing officer's decision.

(b) If a timely appeal to the council is filed, the agency action shall be stayed until the council issues a written decision.

(c) A hearing shall be held before the council within 30 calendar days of the day that the division receives the written appeal, unless the parties agree to a later date.

(d) At the hearing, the applicant or licensee shall have an opportunity to explain why the division's action should be overturned.

(e) The council shall issue a written decision in accordance with Section 63G-4-301 within ten business days of the hearing.

(f) The written decision of the council shall constitute final agency action and is subject to judicial review pursuant to Section 63G-4-402.

R714-158-13. Procedures for Safety Inspection Station Closure.

(1) When a safety inspection station is going out of business, the manager or owner of the station shall:

(a) notify the division of the effective date of the closure at least one week prior to the date of closure;

(b) discontinue conducting safety inspections on the date of closure; and

(c) within one week after the date of closure, return the following to the division:

(i) the station permit;

(ii) all inspection certificates;

(iii) all stickers; and

(iv) all sticker reports.

(2) The division shall cancel online access to the Vehicle Safety Inspection System on the effective date of the station closure.

KEY: motor vehicle safety, inspections

Date of Enactment or Last Substantive Amendment: [~~December 1, 2008~~2016]

Notice of Continuation: July 2, 2012

Authorizing, and Implemented or Interpreted Law: [~~53-8-201; 53-8-203; 63G-4~~53-8-204]

Public Safety, Highway Patrol
R714-161
Equipment Standards for Motorcycle
and ATV Safety Inspections

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 40543

FILED: 06/23/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The language and format of this rule has been updated. The inspection standards for motorcycles are, for the most part, the same.

SUMMARY OF THE RULE OR CHANGE: For Rule R714-161, "ATV" has been eliminated from the title. In Section R714-161-1, Subsection 53-8-204(5) has been added as giving authorization. In Section R714-161-2, "ATV" has been eliminated. Statutory reference to Section 53-8-204 has been added as giving authorization. In Section R714-161-3, the

title has been changed. It also states that terms used in this rule are found in Sections 41-1a-102, 41-6a-102, and 49 CFR 571. Seven definitions have also been added. In Section R714-161-4, the title has been changed. This rule incorporates by reference the standards found in 49 CFR 571 as the minimum standards a motor vehicle must meet to pass a safety inspection, unless state law provides a different standard. In Section R714-161-5, the title has been changed. It also states this rule is applicable to all motorcycles. In Section R714-161-6, the title has been changed. If a test drive needs to be performed off the station's property, the customer shall be informed. Inspection fees have been removed from the rule, but are found in statute. In Section R714-161-7, the title has been changed. Some of the wording for inspecting license plates has changed, but violations are still an "advise". License plate positioning is more clearly defined. In Section R714-161-8, the title has been changed. In Section R714-161-9, the title has been changed. In Section R714-161-10, the title has been changed. In Section R714-161-11, the title has been changed. Some of the wording has been modified, but is essentially the same criteria. If a tail lamp bulb or lens is tinted or covered with any material that impairs the intended original performance expectations of the light, it is a "reject". Headlamps may be covered with a clear lens cover. In Section R714-161-12, the title has been changed. In Section R714-161-13, the title has been changed. In Section R714-161-14, the title has been changed. The rule now states that a chain or sprocket is rejected if worn beyond manufacturer's specification rather than stating a chain or sprocket is rejected for being worn. The words "A stay strap or bar is acceptable" have been removed from the part related to inspecting handholds on a seat designed for two people. In Section R714-161-15, the title has been changed. In Section R714-161-16, the title has been changed. "Excessive noise" has been removed as an item the inspector checks for. In Section R714-161-17, the title has been changed. In Section R714-161-18, the title has been changed. This section replaces the "Two Wheel Dirt Bikes" section. It has been simplified and requires that a motorcycle originally designed to travel off-highway and has been modified to be street legal is subject to the same vehicle standards in Rule R714-161. The section for inspecting street-legal all-terrain vehicles (ATVs) will be replaced by a new rule (Rule R714-163). The section titled "Mopeds and Mini-motorcycles" has been eliminated because safety inspections are not required for mopeds and are exempt from registration. Mini-motorcycles do not need to be safety inspected or registered in Utah. (Editor's Note: The proposed new Rule R714-163 is under Filing No. 40542 in this issue, July 15, 2016, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-6a-1601 and Section 53-8-204 and Section 53-8-205

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget since the inspection standards for motorcycles are relatively the same.

- ◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local governments because the inspection standards for motorcycles are relatively the same.
- ◆ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses because the inspection standards for motorcycles are relatively the same.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the inspection standards for motorcycles are relatively the same.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with changes in this rule. There should be no increased costs to safety inspection stations and inspectors to comply with the changes in this rule. Compliance costs for customers that fail a safety inspection vary, depending on what item needs to be repaired, but that cost is determined by the person or business that repairs the item.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and found that the amendment will not have a fiscal impact on businesses.

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
 ◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Steven Winward, Captain

R714. Public Safety, Highway Patrol.
~~[R714-161. Equipment Standards for Motorcycle and ATV Safety Inspections.~~
R714-161-1. Authority.
 This rule is authorized by Subsection 53-8-204(5).

~~**R714-161-2. Purpose.**
 The purpose of this rule is to set minimum equipment standards governing motorcycle and ATV safety inspections in accordance with U.C.A. 41-6a-1601(2)(a).~~

- ~~**R714-161-3. Inspection Procedures.**~~
- ~~A. Initiating the Inspection.~~
- ~~(1) Collection of appropriate paperwork (i.e. registration, title, bill of sale).~~
 - ~~(2) Verification of vehicle identification number (VIN).~~
 - ~~(3) Write the date of inspection on the inspection certificate.~~
 - ~~(4) Write owner and vehicle information on inspection certificate.~~
 - ~~(5) Record vehicle mileage.~~
 - ~~(6) Inspectors must write their inspector number onto the inspection certificate.~~
 - ~~(7) Identify requirement to test drive vehicle and the purpose of test drive.~~
- ~~B. Inspect Motorcycle.~~
- ~~(1) Inspect windshield, if equipped.~~
 - ~~(2) Inspect for adequate visibility from required mirrors.~~
 - ~~(3) Inspect for looseness in steering.~~
 - ~~(4) Inspect for play in brake pedal.~~
 - ~~(5) Inspect horn. Horn must be audible at 200 feet.~~
 - ~~(6) Inspect high and low beam headlights.~~
 - ~~(7) Inspect headlights for proper aim.~~
 - ~~(8) Inspect parking lights, tail lights, signal lights, brake lights, marker lights and reflectors.~~
 - ~~(9) Inspect for the proper color of lights.~~
 - ~~(10) Inspect tires for wear, damage and proper inflation.~~
 - ~~(11) Inspect body and fenders.~~
 - ~~(12) Inspect battery and electrical wiring.~~
 - ~~(13) Inspect exhaust system.~~
 - ~~(14) Inspect master cylinder.~~
- ~~C. Inspect Suspension and Undercarriage.~~
- ~~(1) Inspect wheel bearings.~~
 - ~~(2) Inspect shock absorbers.~~
 - ~~(3) Inspect springs.~~
 - ~~(4) Inspect the fuel system.~~
- ~~D. Inspect Wheels and Brakes.~~
- ~~(1) Inspect for loose or missing lug nuts.~~
 - ~~(2) Inspect wheel spokes.~~
 - ~~(3) Inspect for cracked wheels.~~
 - ~~(4) Inspect pads and/or shoes.~~
 - ~~(5) Inspect rotors and/or drums.~~
 - ~~(6) Record brake measurement on the inspection certificate.~~
 - ~~(7) Inspect for fluid leaks.~~
 - ~~(8) Inspect brake hoses.~~
- ~~E. Reject Vehicle Procedures- Paper Certificates.~~
- ~~(1) When a reject item is found, a full vehicle inspection must still be completed.~~
 - ~~(2) If a vehicle fails an inspection and no repairs are made, give the owner the reject certificate.~~
 - ~~(3) Do not sign the inspection certificate if a reject certificate is issued.~~
 - ~~(4) A customer with a rejected vehicle has up to 15 calendar days to complete all repairs and return to the same station to verify~~

repairs at no charge, unless a waiver has been granted from the Safety Inspection Office. Customers may contact the Safety Inspection Office to request a waiver for additional fees if they exceed 15 days for circumstances beyond their control, such as back ordered parts.

(5) On rejected vehicles that fail to return, the State Tax and Owner copies must be returned to the Safety Inspection Office within 45 days of the inspection date.

(6) Any item rejected and repaired during an inspection must be documented as repaired on the certificate.

(7) Any certified inspector at the inspection facility may verify repairs of rejected items.

(8) When all rejected items have been repaired, the verifying inspector must sign the safety inspection certificate.

(9) If the verifying inspector is not the original inspector, he/she must sign the safety inspection certificate, and enter their inspector license number on the safety inspection certificate.

F. Reject Vehicle Procedures—On-line Certificates.

(1) When all rejected items have been repaired, the verifying inspector must sign the safety inspection certificate.

(2) If no repairs are made, print out and give the owner the reject certificate.

(3) Do not sign a reject certificate.

(4) A customer with a rejected vehicle has up to 15 calendar days to complete all repairs and return to any station that performs on-line inspections to verify repairs at no charge, unless a waiver has been granted from the Safety Inspection Office. Customers may contact the Safety Inspection Office to request a waiver for additional fees if they exceed 15 days for circumstances beyond their control, such as back ordered parts.

(5) Any item rejected and repaired during an inspection must be documented as repaired on the certificate.

(6) Any certified inspector and any inspection on-line facility shall certify rejected repairs. No additional charges may be added.

G. Passed Vehicle Procedures—Paper Certificates

(1) The inspector performing the inspection must sign the vehicle inspection certificate.

(2) The customer must receive the State Tax and Owner copies of the inspection certificate.

(3) Maximum Safety Inspection fees are as follows:

(a) \$9.00 for motorcycles and ATV's.

(b) \$17.00 for passenger vehicles and light trucks.

(c) \$17.00 for heavy trucks and buses.

(d) \$22.00 for any vehicle that requires disassembly of a front hub or removal of a rear axle for inspection.

H. Passed Vehicle Procedures—On-line Certificates

(1) Print out the on-line passed vehicle inspection certificate.

(2) The inspector performing the inspection must sign the vehicle inspection certificate.

(3) The customer must be given the passing inspection certificate.

(4) Maximum safety inspection fees are as follows:

(a) \$9.00 for motorcycles and ATV's.

(b) \$17.00 for passenger vehicles and light trucks.

(c) \$17.00 for heavy trucks and buses.

(d) \$22.00 for any vehicle that requires disassembly of a front hub or removal of a rear axle for inspection.

I. Inspection Report Procedure—Paper Certificates Only

(1) Report forms are to be completed as follows:

(a) Date the inspection was completed.

(b) Owner's name.

(c) Year and make of the vehicle.

(d) Vehicle identification number.

(e) Appropriate notation in any of the fifteen repair columns.

(f) Total cost of the repair, including the inspection fee.

(g) Certificate or sticker number.

(2) Certificate or sticker numbers of paper books must be listed in numerical order starting with the lowest number and listed in groups of 25.

(3) A separate report form must be used for the certificates and for the stickers.

(4) Duplicate certificates or stickers must be noted as "duplicate" on the report form. Not required with On-line inspections.

(5) Lost or stolen certificates or stickers must be listed as "lost or stolen" on the report form.

(6) Certificates and stickers rendered unusable through some mishap must be recorded as "voided" on the report form and certificates/stickers must be returned to the Vehicle Safety Inspection office. Not required with On-line inspections.

(7) Rejected vehicles that have not returned within 15 days to the original station must be listed in the same order and the words "rejected," printed on the same line. Not required with On-line inspections.

(8) Failure to submit the required reports will be considered grounds for suspension or revocation of a license. Not required with On-line inspections.

(9) Returning of Rejects with paper issued certificates:

(a) On rejected vehicles that fail to return for re-inspection, the State Tax and Owner copies must be returned to the Safety Inspection Office within 45 days of the original inspection date. Not required with On-line inspections.

R714-161-4. Building and Equipment Requirements.

A. The following conditions must be met before a license will be granted:

(1) The building (inspection site) must be capable of housing the vehicle that is being inspected.

(2) The station must have the following:

(a) A level concrete or asphalt floor.

(b) The necessary hand tools to conduct an inspection.

(c) Measuring gauges and instruments for determining minimum specifications in the inspection process.

(d) A two-piece light meter kit capable of measuring window light transmittance at a minimum of +/- 3%.

(e) A current safety inspection manual (This requirement may be met by a hard copy or a downloaded a copy to a file on the station's computer from the Safety Inspection website). (Accessing the manual through the website does not meet this requirement.)

(3) Any exceptions to the minimum building and equipment requirements must be submitted in writing to the Vehicle Safety Inspection office for approval.

(4) A \$1,000.00 Surety Bond or Garage Keepers Insurance is required while the station is in business as an official Safety Inspection Station.

~~B. Motorcycle Requirements:~~

~~(1) Current Safety Inspection Manual (This requirement may be met by a hard copy or a downloaded a copy to a file on the station's computer from the Safety Inspection website). (Accessing the manual through the website does not meet this requirement.~~

~~(3) Hand Tools (wrenches, screwdrivers, ratchets, etc.)~~

~~(4) Disc Pad Brake Gauge.~~

~~(5) Rotor Thickness Gauge.~~

~~(6) Tire Tread Depth Gauge (interchangeable with riveted brake gauge.)~~

~~(7) Tire Pressure Gauge~~

~~(8) 2 piece Light Meter approved by division~~

~~C. Tools can be purchased from any company that manufactures these types of tools.~~

R714-161-5. Registration.~~A. Agreement Among Papers.~~

~~(1) Check vehicle registration certificate, identification number on vehicle, license plate and vehicle description for agreement. Record the manufacturer's VIN and license plate number on the safety inspection certificate.~~

~~(a) Advise when:~~

~~(i) Paperwork disagreements are accidental and clerical in nature.~~

~~(b) Reject when:~~

~~(i) Registration certificate, identification number, license plate and vehicle description are not in agreement.~~

~~(ii) Vehicle Identification Number is missing or obscured.~~

~~B. Plate Mounting.~~

~~(1) If the vehicle is registered, inspect the license plates to see that they are securely mounted and clearly visible.~~

~~(a) Advise when:~~

~~(i) Plates are not securely fastened, obscured or cannot be clearly identified.~~

~~(ii) Plates have tinted or colored covers. License plates must be displayed horizontally to be read from left to right and visible from 100 feet.~~

~~(b) Motorcycles are issued one license plate only, which is required to be displayed on the rear of the motorcycle.~~

R714-161-6. Tires and Wheels.~~A. Wheels~~

~~(1) Check wheel bolts.~~

~~(a) Reject when:~~

~~(i) Wheel bolts or nuts are loose, missing or damaged.~~

~~(2) Check wheels for damage.~~

~~(a) Reject when:~~

~~(i) Any part of the wheel is bent, out of round, cracked, re-welded or if any spokes are missing, loose or broken.~~

~~(ii) Wheel is not centered on the axle or wobbles in excess of 3/16 inch.~~

~~(3) Check bearings by grasping the tire at the top and bottom and rocking it in and out.~~

~~(a) Reject when:~~

~~(i) Wheel bearing play exceeds the manufacturer's recommended tolerances.~~

~~B. Tires:~~

~~(1) Check tread depth.~~

~~(a) Reject when:~~

~~(i) Any tread wear indicator contacts the road.~~

~~(ii) Tread depth is less than 2/32 when measured in any two adjacent major tread grooves at three equally spaced intervals around the circumference of the tire.~~

~~(b) Tread depth shall not be measured on wear bars.~~

~~(2) Check Tire Condition.~~

~~(a) Reject when:~~

~~(i) A tire has any damage, including cuts and weather cracks, when cords are exposed.~~

~~(ii) Tire is worn to the extent secondary rubber is exposed in the tread or sidewall area.~~

~~(3) Check for bumps or bulges.~~

~~(a) Reject when:~~

~~(i) A tire has visible bumps or bulges indicating partial failure or separation of the tire.~~

~~(4) Check for re-grooved, re-cut or "not for highway" use tire.~~

~~(a) Reject when:~~

~~(i) A tire has been re-grooved, re-cut, or is marked for other than highway use.~~

~~(5) Check valve stems.~~

~~(a) Reject when:~~

~~(i) Rubber stems are cracked or cut.~~

~~(ii) Metal stem lock nut is missing.~~

~~(6) Check tire pressure with tire pressure gauge.~~

~~(a) Reject when:~~

~~(i) Tires are flat, have noticeable air leak, or are inflated to less than half (50%) of the vehicle manufacturer's recommended tire pressure.~~

R714-161-7. Steering.~~A. Steering Head Inspection:~~

~~(1) Check the steering head bearing and front forks.~~

~~(a) Reject when:~~

~~(i) The steering head bearing adjustment does not meet the manufacturer's recommended torque value maximum for turning.~~

~~(ii) There is detectable play or roughness within the steering head bearings.~~

~~B. Wheel Alignment Longitudinal Inspection:~~

~~(1) Check the rear wheel centerline.~~

~~(a) Reject when:~~

~~(i) The rear wheel does not track within one half (1/2) inch of the front wheel.~~

~~C. Handlebar Inspection:~~

~~(1) Check the handlebar for proper construction.~~

~~(a) Reject when:~~

~~(i) Cracks, deformation or improper alignment is found.~~

~~(ii) If handlebar is loose or not secure.~~

~~(iii) If handlebars are above the shoulder height of the driver.~~

~~(iv) If throttle grip is broken or missing.~~

~~(b) The handlebar must be constructed of at least .060 inch thick metal tubing.~~

~~D. Front Fork Inspection:~~

~~(1) Inspect front forks for looseness, binding and leakage.~~

~~(a) Reject when:~~

~~(i) Forks are loose, or there is evidence of binding or leakage.~~

R714-161-8. Brakes:~~A. Mechanical Brake System:~~

~~(1) A motorcycle must be equipped front and rear brakes. A Vintage Motorcycle is only required to have one operational brake, if OEM:~~

~~(a) Reject when:~~

~~(i) Any brake fails to produce adequate braking.~~

~~(ii) Missing the front or rear brake.~~

~~(2) Check hand levers and foot pedals:~~

~~(a) Reject when:~~

~~(i) Lever is broken or sufficient leverage cannot be applied.~~

~~(ii) Lever or pedal is improperly positioned, misaligned or does not return freely.~~

~~(iii) Modifications make lever or pedal inaccessible for adequate leverage and safe operation.~~

~~(iv) Lever or pedal is rusted, frozen or inoperative.~~

~~(3) Check the adjusters, actuating cam, cam shaft, anchor pins, springs and linkage for wear and looseness.~~

~~(a) Reject when:~~

~~(i) Brake adjusters are unable to be locked.~~

~~(ii) Brake adjustment changes when the fork is extended.~~

~~(iii) Brake adjustment is not within OEM specifications.~~

~~(iv) The cam operating lever has been repositioned on the shaft to avoid replacing a worn cam, worn shoes or worn lining.~~

~~(v) There is binding in linkage or components.~~

~~(vi) There is wear in the cam or if springs are not strong enough to return and hold shoes against cam.~~

~~(vii) Any brake component is missing or broken.~~

~~(4) Check springs, cables, cotter pins, devices, couplings and grease retainers:~~

~~(a) Reject when:~~

~~(i) Cables are frayed, broken, or pinched during normal operation.~~

~~(ii) Cotter pins are missing or broken.~~

~~(iii) Cables are rusted or frozen.~~

~~(iv) Grease retainers are leaking.~~

~~B. Hydraulic Brake System:~~

~~(1) Check hydraulic hoses and tubing for leaks, cracks, chafing, flattened or restricted sections:~~

~~(a) Reject when:~~

~~(i) Hoses or tubing leak.~~

~~(ii) Hoses are cracked or chafed exposing metal or fabric eord.~~

~~(iii) Hoses are flattened or restricted.~~

~~(iv) Hoses and tubes are not securely fastened.~~

~~(v) The master cylinder leaks or the fluid level is lower than the manufacturer's specifications.~~

~~(vi) Leakage is noted anywhere in the braking system or wheel cylinder.~~

~~C. Lining and Pads:~~

~~(1) Check lining for contamination and wear:~~

~~(a) Reject when:~~

~~(i) Linings are contaminated with oil, grease or brake fluid.~~

~~(ii) The thinnest point of the lining measures 1/32 inch or less or the pads are worn to the wear indicators:~~

~~(iii) Arrow indicator is past the last mark on the wear indicating plate.~~

~~(b) On motorcycles with an enclosed rear drum, check the wear indicator or adjustment indicator arrows. Disassembly is not required if indicator is present.~~

~~(c) Once a brake lining has been contaminated, replacement is required.~~

~~D. Brake Drums:~~

~~(1) Check for external cracks, mechanical damage or wear beyond manufacturer's specifications:~~

~~(a) Reject when:~~

~~(i) There are external cracks or evidence of mechanical damage.~~

~~(ii) Brake drum is worn beyond the manufacturer's specifications.~~

~~E. Brake Rotor:~~

~~(1) Check rotors and friction surface for mechanical damage or contamination and wear beyond manufacturer's specifications:~~

~~(a) Reject when:~~

~~(i) A crack extends to the edge of rotor or there is evidence of mechanical damage.~~

~~(ii) The friction surface is contaminated.~~

~~(iii) The rotor is worn beyond manufacturer's specifications.~~

R714-161-9. Lighting:~~A. Headlamps:~~

~~(1) Check for proper headlamp equipment and proper functioning:~~

~~(a) Reject when:~~

~~(i) Headlamp is not marked USDOT approved (unless vintage motorcycle prior to USDOT markings were made).~~

~~(ii) Headlamp minimum height is less than 22 inches or more than 54 inches to the center of the lowbeam.~~

~~(iii) The high beam indicator fails to function when equipped.~~

~~(iv) Headlamp fails to light, or headlamp switch fails to function.~~

~~(v) Headlamp coverings are placed on or in front of any headlamp.~~

~~(v) Headlamp is tinted, colored, or painted.~~

~~(b) One headlamp is required and not more than two headlamps are permitted. Pulsating headlights, if USDOT approved, are legal both day and night.~~

~~(c) Lenses that are patched with another automotive lens piece is an acceptable repair, so long as it is glued on and permanent. Any other repairs that are patched, taped or covered with any other foreign substance must be rejected. Lights must conform to lighting manufacturer's specifications, Federal Motor Vehicle Safety Standards (FMVSS) and Utah State Law. The use of a clear cover for headlamps is acceptable. Utah law states lighting devices shall not be used if they "tend to change the original design or performance" of the original device.~~

~~B. Headlamp Aiming:~~

~~(1) Headlamps- High and Low Beams:~~

~~(a) Reject when:~~

~~(i) Low and/or high beam are out of adjustment.~~

~~C. Turn Signals:~~

~~(1) Check turn signal operation for proper functioning:~~

~~(a) Reject when:~~

- ~~_____ (i) Turn signals are missing when required. (Required after January 1, 1973)~~
- ~~_____ (ii) Turn signals fail to function properly.~~
- ~~_____ (iii) Turn signal lamps do not indicate amber to the front and red or amber to the rear.~~
- ~~_____ (iv) Any cover over the lense~~
- ~~_____ (b) When a motorcycle is originally equipped with turn signals, they must be present and function as designed by OEM.~~
- ~~_____ D. Stop Lamps:~~
 - ~~_____ (1) Check for stop lamp.~~
 - ~~_____ (a) Reject when:~~
 - ~~_____ (i) Stop lamp fails to operate when brakes are applied.~~
 - ~~_____ (ii) Stop lamp does not emit red light.~~
 - ~~_____ (iii) Stop Lamps are painted or are covered by any lens cover or material. (Blue dot taillights are illegal).~~
 - ~~_____ (vi) Stop lamp bulb or lenses are painted or covered.~~
 - ~~_____ (b) As of January 1, 1969, the stop lamp must operate with the front brake application and separately with the application of the rear brake.~~
 - ~~_____ (c) Some vintage motorcycles were not manufactured with handlebar actuated brake lights, and should not be rejected.~~
- ~~_____ E. Tail Lamps:~~
 - ~~_____ (1) Check for tail lamp.~~
 - ~~_____ (a) Reject when:~~
 - ~~_____ (i) At least one red tail lamp is not present. The lamp must be visible from 1,000 feet.~~
 - ~~_____ (ii) Lamps are painted or are covered by any lens cover or material.~~
- ~~_____ F. Rear Reflector~~
 - ~~_____ (1) Check for rear reflector.~~
 - ~~_____ (a) Reject when:~~
 - ~~_____ (i) Reflectors are missing or are not red in color.~~
 - ~~_____ (b) When one reflector is used, it must be mounted at the rear centerline. If two reflectors are used, they must be evenly spaced about the rear centerline. Reflectors must be red in color.~~
- ~~_____ G. Driving Lights:~~
 - ~~_____ (1) Check for driving light operation.~~
 - ~~_____ (a) Reject when:~~
 - ~~_____ (i) Headlamps or driving lamps are not properly aimed.~~
 - ~~_____ (ii) Headlamps are any improper color, painted or are covered by any lens cover or material.~~

R714-161-10. Electrical System:

- ~~_____ A. Horn:~~
 - ~~_____ (1) Check for proper operation of horn.~~
 - ~~_____ (a) Reject when:~~
 - ~~_____ (i) Horn is missing, loose, fails to function or is not electrical.~~
 - ~~_____ (ii) The horn button is not easily accessible.~~
 - ~~_____ (iii) The horn is not audible for at least 200 feet.~~
- ~~_____ B. Switches:~~
 - ~~_____ (1) Check for proper functioning of switches.~~
 - ~~_____ (a) Reject when:~~
 - ~~_____ (i) Any required switch is broken, missing or fails to function properly.~~
 - ~~_____ (b) Required switches include headlight high/low, engine kill, turn signal and brake light.~~
- ~~_____ C. Wiring Inspection:~~
 - ~~_____ (1) Check the condition of the wiring.~~

- ~~_____ (a) Reject when:~~
 - ~~_____ (i) Insulation is worn, bare wires are exposed, or shows evidence of short circuiting and/or is inadequate to operate items properly.~~
- ~~_____ D. Connection Inspection:~~
 - ~~_____ (1) Check for loose connections and proper functioning.~~
 - ~~_____ (a) Reject when:~~
 - ~~_____ (i) Connections are loose, corroded or fail to function properly.~~

R714-161-11. Windshield:

- ~~_____ A. Windshield~~
 - ~~_____ (1) Check windshield, if equipped, for cracks, scratches, discoloration, obstruction, light transmittance and for approved type of windshield. A wind deflector may be tinted if it does not interfere with the drivers vision~~
 - ~~_____ (a) Reject when:~~
 - ~~_____ (i) Vision is obscured due to cracks, scratches or discoloration.~~
 - ~~_____ (ii) Windshield is not an approved type.~~
 - ~~_____ (iii) Stiffener device is mounted in the line of vision.~~
 - ~~_____ (iv) There is less than 70% light transmittance.~~

R714-161-12. Frame and Body:

- ~~_____ A. Frame:~~
 - ~~_____ (1) Check frame for welds, cracks or structural damage.~~
 - ~~_____ (a) Reject when:~~
 - ~~_____ (i) There are welds, cracks, or structural damage that constitutes a hazard.~~
- ~~_____ B. Fender:~~
 - ~~_____ (1) Check fenders for proper mounting, cracks, breaks, bends and sharp edges.~~
 - ~~_____ (a) Reject when:~~
 - ~~_____ (i) Fenders are missing, improperly mounted, cracked, bent or have sharp edges.~~
 - ~~_____ (b) The front fender must cover 45 degrees to the front and 45 degrees to the rear. The rear fender must cover the top half of the tire.~~
- ~~_____ C. Chain and Sprocket:~~
 - ~~_____ (1) Check chain, sprocket or belt protective guards for proper operation.~~
 - ~~_____ (a) Advise when:~~
 - ~~_____ (i) Chain or belt guard is missing, broken or cracked.~~
 - ~~_____ (b) Reject when:~~
 - ~~_____ (i) Chain is worn.~~
 - ~~_____ (ii) Sprocket is worn.~~
 - ~~_____ (iii) Belt drive or drive belt is worn beyond manufacturer's specifications.~~
- ~~_____ D. Seat:~~
 - ~~_____ (1) Check seat for proper attachment.~~
 - ~~_____ (a) Reject when:~~
 - ~~_____ (i) Seat is not properly and securely attached. (Locking device must function properly.)~~
 - ~~_____ (2) Check seat area for hand hold on seats designed for two people.~~
 - ~~_____ (a) Reject when:~~
 - ~~_____ (i) A hand hold is not present.~~
 - ~~_____ (b) When a seat is designed for two people, a properly attached hand hold device of sufficient strength and size must be~~

provided to adequately support 200 pounds. (A stay strap or bar is acceptable.)

(3) Check foot rests on motoreycles that have seats designed for two people:

(a) Reject when:

(i) Foot rests are not present.

(b) If a motoreycle is capable of carrying two people it must be equipped with a foot rest on each side where the passenger can safely rest his/her feet.

E. Engine Mounting:

(1) Check frame and mounting brackets on engine.

(a) Reject when:

(i) Engine mounts or brackets are cracked or broken.

F. Stand:

(1) Check motoreycle stand for proper operation.

(a) Reject when:

(i) Stand fails to hold the motoreycle in an up-right position.

(ii) Stand fails to stay in the stored position. Wire or other methods to hold position are not permitted.

(iii) The side or center stand is cracked, broken or loose.

G. Mirrors:

(1) Check the left side mirror.

(a) Reject when:

(i) Left side mirror is missing.

(ii) Mirror is broken, cracked, or otherwise damaged to the point rearward vision is obscured.

R714-161-13. Suspension:

A. Swing Arm Bushing:

(1) Check swing arm bushing. (Suspension should be adjusted according to the manufacturer's tolerances.)

(a) Reject when:

(i) Swing arm bushing is worn beyond manufacturer's recommended specifications.

R714-161-14. Exhaust System:

A. Exhaust System:

(1) Check exhaust system for proper operation and excessive noise:

(a) Advise when:

(i) Joints are loose, broken, or if any leakage exists.

(b) Reject when:

(i) Components are not properly mounted or supporting brackets are not secure.

(ii) Muffler has been removed or is not functioning properly.

(iii) Any muffler cutout or bypass is used.

(iv) The exhaust system has been changed, or modified, and is not as effective as OEM specifications.

R714-161-15. Fuel System:

A. Fuel System:

(1) Check the fuel system for securement and for any leaks.

(2) Check that the gas tank meets OEM specifications.

(3) Check that gas tank is properly capped.

(a) Reject when:

(i) Any part of the fuel system is not securely fastened.

(ii) There is leakage at any point in the fuel system.

(iii) The gas tank is not properly capped or does not meet OEM specifications.

R714-161-16. Two Wheel Dirt Bikes:

A. Two Wheel Dirt Bikes:

(1) Two wheel dirt bikes may be inspected provided that they have been modified to be street legal. They shall be equipped with the following items, which shall comply with the regulations of the department:

(a) Reject when any of the following requirements are not met:

(i) One head lamp which, when factory equipped with an automatic lighting ignition system, shall not be disconnected.

(ii) One tail lamp.

(iii) Either a tail lamp or a separate lamp which shall be so constructed and placed as to illuminate with a white light the rear registration plate.

(iv) One red reflector on the rear, either as part of the tail lamp or separately.

(v) One stop lamp.

(vi) A braking system, other than a parking brake.

(vii) A horn or warning device.

(viii) A muffler and emission control system.

(ix) A mirror.

(x) Tires must be highway approved.

(xi) Non-metal gas tanks are acceptable.

(xii) Working odometers, although not a safety inspection requirement, are nevertheless required on all vehicles in order to be registered in the state of Utah.

(xiii) Equipped with turn signals if manufactured after January 1, 1973.

(b) A mini-motoreycle cannot be safety inspected or registered in the state of Utah.

R714-161-17. Street-legal All Terrain Vehicle:

A. Street-legal all-terrain vehicles:

(1) All-terrain vehicles must be inspected to be registered as a street-legal ATV. They shall be equipped with the following items, which shall comply with the regulations of the department:

(a) Reject when any of the following requirements are not met:

(i) One or more headlamps.

(ii) One or more tail lamps.

(iii) A tail lamp or other lamp constructed and placed to illuminate the registration plate with a white light.

(iv) One or more red reflectors on the rear.

(v) One or more stop lamps on the rear.

(vi) Amber or red electric turn signals, one on each side of the front and rear. (Amber for the front and red for the rear.)

(vii) A braking system, other than a parking brake.

(viii) A horn or other warning device.

(ix) A muffler and emission control system.

(x) Rearview mirrors on the right and left side of the driver.

(A type I ATV requires only a left side mirror and a UTV requires both a left side and right side mirror.)

(xi) A windshield, unless the operator wears eye protection while operating the vehicle.

(xii) A speedometer, illuminated for nighttime operations.

~~_____ (xiii) Vehicles designed by the manufacturer for carrying one or more passengers, a seat designed for passengers, including a footrest and handhold for each passenger.~~

~~_____ (xiv) Vehicles with side-by-side seating, seatbelts for each vehicle occupant.~~

~~_____ (xv) Must not be less than 30 inches in width or exceed 70 inches in width. Measurement must be taken at the widest point of the vehicle, including tires.~~

~~_____ (xvi) Drivers seat must not be less than 25 inches in height or exceed 40 inches in height. This measurement must be made from the ground to the top of the forward edge of the seating position when measured on a flat level surface.~~

~~_____ (xvii) The tire tread depth must be at least 2/32 of an inch and the tires must not exceed OEM specification. Generally, the maximum tire height is 26 inches. The tire tread depth must be at least 2/32 of an inch and OEM specification. Generally, the maximum tire height is 26 inches.~~

~~_____ (xviii) Golf carts, go-carts, vehicles not designed for and capable of travel over unimproved terrain, motorcycles and snowmobiles will not be allowed to be inspected and registered as a street-legal ATV.~~

R714-161-18. Mopeds and Mini-motorcycles.

~~_____ A. Safety Inspections are not required for mopeds. Mopeds are exempt from registration (UCA 41-1a-202). A mini-motorcycle cannot be safety inspected or registered in the state of Utah. Do not inspect mini-motorcycles. They are not designed for highway use.]~~

R714-161. Equipment Standards for Motorcycle Safety Inspections.

R714-161-1. Authority.

~~_____ This rule is authorized by Subsections 53-8-204(5) and 41-6a-1601(2).~~

R714-161-2. Purpose.

~~_____ The purpose of this rule is to set minimum equipment standards governing motorcycle safety inspections in accordance with Sections 53-8-204 and 41-6a-1601.~~

R714-161-3. Definitions.

~~_____ (1) Terms used in this rule are found in Sections 41-1a-102, 41a-6a-102, and 49 C.F.R. 571, et seq.~~

~~_____ (2) In addition:~~

~~_____ (a) "division" means the Vehicle Safety Inspection section of the Utah Highway Patrol;~~

~~_____ (b) "inspector" means a person employed by a station licensed to conduct safety inspections;~~

~~_____ (c) "online inspection certificate" means an inspection certificate created electronically through the Vehicle Safety Inspection System;~~

~~_____ (d) "online inspection program" means the web-based inspection program used to record safety inspections;~~

~~_____ (e) "OEM" means original equipment manufacturer;~~

~~_____ (f) "paper inspection certificate" means an inspection certificate created by paper form; and~~

~~_____ (g) "station" means a business or government facility located in Utah that is managed or operated by a valid permit holder and conducts safety inspections.~~

R714-161-4. Incorporation of Federal Motor Vehicle Safety Standards.

~~_____ This rule incorporates by reference the standards found in 49 C.F.R. Part 571 as the minimum standards a motor vehicle must meet to pass a safety inspection, unless state law provides a different standard.~~

R714-162-5. Applicability of Rule.

~~_____ This rule applies to all motorcycles.~~

R714-161-6. Inspection Procedures.

~~_____ (1) The inspector shall complete the following tasks prior to inspecting the vehicle:~~

~~_____ (a) collect the appropriate paperwork such as registration, title, and bill of sale;~~

~~_____ (b) verify the vehicle identification number (VIN);~~

~~_____ (c) record the owner's full name and complete vehicle information;~~

~~_____ (d) record the vehicle mileage;~~

~~_____ (e) enter the inspection date and inspector number if using a paper inspection certificate; and~~

~~_____ (f) determine whether the vehicle needs a test drive and the purpose of test drive.~~

~~_____ (2) If a test drive needs to be conducted off the station's property, the customer shall be informed.~~

~~_____ (3) The inspector shall examine the vehicle by completing the following tasks:~~

~~_____ (a) inspect the windshield, if equipped;~~

~~_____ (b) inspect for adequate visibility from required mirrors;~~

~~_____ (c) inspect for looseness in steering;~~

~~_____ (d) inspect for play in the brake pedal;~~

~~_____ (e) inspect the horn;~~

~~_____ (f) inspect high and low beam headlights;~~

~~_____ (g) inspect headlights for proper aim;~~

~~_____ (h) inspect parking lights, tail lights, signal lights, brake lights, marker lights, and reflectors;~~

~~_____ (i) inspect for the proper color of lights;~~

~~_____ (j) inspect tires for wear, damage, and proper inflation;~~

~~_____ (k) inspect body and fenders;~~

~~_____ (l) inspect battery and electrical wiring;~~

~~_____ (m) inspect exhaust system; and~~

~~_____ (n) inspect master cylinder.~~

~~_____ (4) The inspector shall examine the vehicle's suspension and undercarriage by completing the following tasks:~~

~~_____ (a) inspect wheel bearings;~~

~~_____ (b) inspect shock absorbers;~~

~~_____ (c) inspect springs; and~~

~~_____ (d) inspect the fuel system.~~

~~_____ (5) The inspector shall examine the vehicle's braking system by completing the following tasks:~~

~~_____ (a) inspect for loose or missing lug nuts;~~

~~_____ (b) inspect wheel spokes;~~

~~_____ (c) inspect for cracked wheels;~~

~~_____ (d) inspect pads or shoes;~~

~~_____ (e) inspect rotors or drums;~~

~~_____ (f) record the brake measurements using the online inspection program or on the paper inspection certificate if not using the online program;~~

(g) inspect for fluid leaks; and
(h) inspect brake hoses.
(5) The following procedures apply when a vehicle fails the safety inspection and the inspector is using a paper inspection certificate:
(a) the inspector shall complete a full vehicle inspection even after a reject item is found;
(b) if a vehicle fails an inspection and no repairs are immediately made at that station, then the inspector shall give the customer a rejection inspection certificate;
(c) the inspector shall not sign the rejection inspection certificate;
(d) a customer with a rejected vehicle has up to 15 calendar days to complete all repairs and return to the same station to verify repairs at no charge;
(i) customers may contact the division to request a waiver of additional fees if they exceed 15 days for circumstances beyond their control, such as backordered parts;
(e) the inspector shall return the State Tax Commission and owner copies to the division within 45 days of the inspection date for rejected vehicles that fail to return to the inspecting station;
(f) the inspector shall document any item rejected and repaired during an inspection as repaired on the inspection certificate;
(g) any inspector at a station may verify repairs of rejected items;
(h) if all rejected items have been repaired, the verifying inspector shall sign the safety inspection certificate; and
(i) if the verifying inspector is not the original inspector, the verifying inspector shall sign the safety inspection certificate, and enter his or her inspector license number on the safety inspection certificate.
(6) The following procedures apply when a vehicle fails the safety inspection and the inspector is using an online inspection certificate:
(a) if all rejected items have been repaired, the verifying inspector shall sign the safety inspection certificate;
(b) if no repairs are made, the inspector shall print the rejection inspection certification and give it to the customer;
(c) the inspector shall not sign a rejection inspection certificate;
(d) a customer with a rejected vehicle has up to 15 calendar days to complete all repairs and return to any station that conducts online inspections to verify repairs at no additional vehicle inspection charge;
(i) customers may contact the division to request a waiver of additional fees if they exceed 15 days for circumstances beyond their control, such as back ordered parts;
(e) the inspector shall document any item rejected and repaired during an inspection as repaired on the inspection certificate; and
(f) any inspector at a facility may certify repairs made to rejected items.
(7) The following procedures apply when a vehicle passes the safety inspection and the inspector is using a paper inspection certificate:
(a) the inspector performing the inspection shall sign the vehicle inspection certificate; and
(b) the customer shall be given the State Tax Commission and owner copies of the inspection certificate.

(8) The following procedures apply when a vehicle passes the safety inspection and the inspector is using an online inspection certificate:
(a) the inspector shall print the vehicle inspection certificate and give it to the customer; and
(b) the inspector performing the inspection shall sign the printed inspection certificate prior to giving it to the customer.
(9) The following inspection report procedures apply when the inspector is using a paper inspection certificate:
(a) the report forms shall include the following information:
(i) date the inspection was completed;
(ii) owner's name;
(iii) year and make of the vehicle;
(iv) vehicle identification number;
(v) appropriate notation in any of the repair columns;
(vi) total cost of the repair, including the inspection fee; and
(vii) inspection certificate or sticker number;
(b) inspection certificate or sticker numbers of paper books shall be listed in numerical order starting with the lowest number and listed in groups of 25;
(c) a separate report form shall be used for the inspection certificates and for the stickers;
(d) duplicate inspection certificates or stickers shall be noted as "duplicate" on the report form;
(e) lost or stolen inspection certificates or stickers shall be listed as "lost or stolen" on the report form;
(f) inspection certificates and stickers rendered unusable through mishap shall be recorded as "voided" on the report form and inspection certificates and stickers shall be returned to the Vehicle Safety Inspection office;
(g) rejected vehicles that have not returned within 15 days to the original station shall be included in the report, and the words "rejected," printed on the same line as the rejected certificate is listed;
(h) failure to submit the required reports may result in suspension or revocation of a permit; and
(i) the inspector shall return the State Tax Commission and owner copies to the division within 45 days of the original inspection date for rejected vehicles that fail to return for re-inspection.

R714-161-7. Registration.

(1) When reviewing registration papers of a vehicle, the inspector shall:
(a) check the vehicle registration certificate, vehicle identification number, license plate, and vehicle description for agreement;
(b) enter the manufacturer's vehicle identification number and license plate number into the online program or record on the safety inspection certificate if not using the online program;
(c) advise the customer when paperwork disagreements are accidental or clerical in nature; and
(d) issue a rejection inspection certificate when:
(i) the registration certificate, vehicle identification number, license plate, and vehicle description are not in agreement; or
(ii) the vehicle identification number is missing or obscured.
(2) The inspector shall examine the vehicle's license plate and comply with the following requirements:
(a) if the vehicle is registered, verify the license plate is securely mounted and clearly visible; and

_____ (b) advise the customer when the license plate:
_____ (i) is not securely fastened to the rear of the vehicle, in a horizontal position, not less than 12 inches from the ground when measured from the bottom of the license plate;
_____ (ii) is not located in a clearly visible position; or
_____ (iii) is covered with foreign material or otherwise not clearly legible.

R714-161-8. Tires and Wheels.

_____ (1) When examining the tires and wheels of a vehicle, the inspector shall:

_____ (a) check the wheel bolts; and
_____ (i) issue a rejection inspection certificate when wheel bolts or nuts are loose, missing, or damaged;

_____ (b) check the wheels for damage; and
_____ (i) issue a rejection inspection certificate when:
_____ (A) any part of the wheel is bent, out of round, cracked, re-welded, or if any spokes are missing, loose, or broken; or

_____ (B) a wheel is not centered on the axle or wobbles in excess of 3/16 inch at three equally spaced intervals around the circumference of the tire;

_____ (c) check the bearings by grasping the tire at the top and bottom and rocking it in and out; and

_____ (i) issue a rejection inspection certificate when the wheel bearing play exceeds the manufacturer's recommended tolerances;

_____ (d) check the tire tread depth, which may not be measured on the tread wear bar; and

_____ (i) issue a rejection inspection certificate when:
_____ (A) any tread wear indicator contacts the ground; or
_____ (B) the tread depth is less than 2/32 when measured in any two adjacent major tread grooves at any location around the circumference of the tire;

_____ (e) check the tire's condition; and
_____ (i) issue a rejection inspection certificate when:
_____ (A) a tire has any damage including cuts, weather cracks, or cords that are exposed; or

_____ (B) a tire is worn to the extent secondary rubber is exposed in the tread or sidewall area;

_____ (f) check the tires for bumps or bulges; and
_____ (i) issue a rejection inspection certificate when a tire has visible bumps or bulges indicating partial failure or separation of the tire;

_____ (g) check for tires that are re-grooved, re-cut, or labeled "not for highway use"; and

_____ (i) issue a rejection inspection certificate when a tire has been re-grooved, re-cut, or is marked for other than highway use; and

_____ (h) check the valve stems;
_____ (i) issue a rejection inspection certificate when:
_____ (A) the rubber stems are cracked or cut; or
_____ (B) a metal stem lock nut is missing; and

_____ (i) check the tire pressure with tire pressure gauge; and
_____ (i) issue a rejection inspection certificate when tires are flat, have noticeable air leak, or are inflated to less than 50% of the vehicle manufacturer's recommended tire pressure.

R714-161-9. Steering.

_____ (1) When inspecting the steering system of a vehicle, the inspector shall:

_____ (a) check the steering head bearing and front forks; and

_____ (i) issue a rejection inspection certificate when:
_____ (A) the steering head bearing adjustment does not meet the manufacturer's recommended torque value maximum for turning; or
_____ (B) there is detectable play or roughness within the steering head bearings;

_____ (b) check the rear wheel centerline; and
_____ (i) issue a rejection inspection certificate when the rear wheel does not track within one 1/2 inch of the front wheel;

_____ (c) check the handlebar for proper construction and determine if it is constructed of at least .060 inch thick metal tubing; and

_____ (i) issue a rejection inspection certificate when:
_____ (A) cracks, deformation, or improper alignment are found;
_____ (B) handlebars are loose or not secure;
_____ (C) handlebars are above the shoulder height of the driver;
_____ (D) the throttle grip is broken or missing; or
_____ (E) handlebars are not constructed of at least .060 inch thick metal tubing; and

_____ (d) check front forks for looseness, binding, and leakage; and

_____ (i) issue a rejection inspection certificate when forks are loose, or there is evidence of binding or leakage.

R714-161-10. Brakes.

_____ (1) When inspecting the braking system of a vehicle, the inspector shall:

_____ (a) check to ensure the vehicle is equipped with front and rear brakes; and

_____ (i) issue a rejection inspection certificate when:
_____ (A) any brake fails to produce adequate braking; or
_____ (B) the vehicle is missing the front or rear brake;
_____ (I) a vintage vehicle is only required to have one operational brake if OEM;

_____ (b) check hand levers and foot pedals; and
_____ (i) issue a rejection inspection certificate when:
_____ (A) a hand lever is broken or sufficient leverage cannot be applied;

_____ (B) a hand lever or foot pedal is improperly positioned, misaligned, or does not return freely;

_____ (C) modifications made to the hand levers or foot pedal make a hand lever or foot pedal inaccessible for adequate leverage and safe operation; or

_____ (D) a hand lever or foot pedal is rusted, frozen, or inoperative;

_____ (c) check the adjusters, actuating cam, cam shaft, anchor pins, springs, and linkage for wear and looseness; and

_____ (i) issue a rejection inspection certificate when:
_____ (A) brake adjusters are unable to be locked;
_____ (B) the brake adjustment changes when the fork is extended;

_____ (C) the brake adjustment is not within OEM specifications;
_____ (D) the cam-operating lever has been repositioned on the shaft to avoid replacing a worn cam, worn shoes, or worn lining;

_____ (E) there is binding in linkage or components;
_____ (F) there is wear in the cam or if springs are not strong enough to return and hold shoes against cam; or

_____ (G) any brake component is missing or broken;
_____ (d) check springs, cables, cotter pins, devices, couplings, and grease retainers; and

- _____ (i) issue a rejection inspection certificate when:
 _____ (A) cables are frayed, broken, or pinched during normal operation;
 _____ (B) cotter pins are missing or broken;
 _____ (C) cables are rusted or frozen; or
 _____ (D) grease retainers are leaking;
 _____ (e) check the hydraulic hoses and tubing for leaks, cracks, chafing, flattened, or restricted sections; and
 _____ (i) issue a rejection inspection certificate when:
 _____ (A) hoses or tubing leak;
 _____ (B) hoses are cracked or chafed exposing metal or fabric cord;
 _____ (C) hoses are flattened or restricted;
 _____ (D) hoses and tubes are not securely fastened;
 _____ (E) the master cylinder leaks or the fluid level is lower than the manufacturer's specifications; or
 _____ (F) leakage is found anywhere in the braking system or wheel cylinder;
 _____ (f) check the brake lining for contamination and wear, which must be replaced once it has been contaminated;
 _____ (g) check the wear indicator or adjustment indicator arrows on vehicle with an enclosed rear drum; and
 _____ (i) issue a rejection inspection certificate when:
 _____ (A) linings are contaminated with oil, grease, or brake fluid;
 _____ (B) the thinnest point of the lining measures 1/32 inch or less or the pads are worn to the wear indicators; or
 _____ (C) the arrow indicator is past the last mark on the wear indicating plate;
 _____ (h) check the vehicles brake drums for external cracks, mechanical damage, or wear beyond manufacturer's specifications; and
 _____ (i) issue a rejection inspection certificate when:
 _____ (A) there are external cracks or evidence of mechanical damage; or
 _____ (B) the brake drum is worn beyond the manufacturer's specifications; and
 _____ (i) check rotors and friction surface for mechanical damage, contamination, or wear beyond manufacturer's specifications; and
 _____ (i) issue a rejection inspection certificate when:
 _____ (A) a crack extends to the edge of rotor or there is evidence of mechanical damage;
 _____ (B) the friction surface is contaminated; or
 _____ (C) the rotor is worn beyond manufacturer's specifications.

R714-161-11. Lighting.

- _____ (1) When inspecting the lighting system of a vehicle, the inspector shall:
 _____ (a) check for proper headlamp equipment and proper functioning; and
 _____ (i) issue a rejection inspection certificate when:
 _____ (A) the headlamp is not marked USDOT approved, unless it is a vintage vehicle that was manufactured prior to USDOT markings;
 _____ (B) the headlamp minimum height is less than 22 inches or more than 54 inches to the center of the low beam;
 _____ (C) the high beam indicator fails to function when equipped;
 _____ (D) the headlamp fails to light or the headlamp switch fails to function;
 _____ (E) a non-clear headlamp covering is placed on or in front of any headlamp;

- _____ (F) the headlamp is tinted, colored, or painted;
 _____ (G) the vehicle has no headlamp or more than two headlamps;
 _____ (H) lenses are patched, taped, or covered with any foreign substance, unless it is patched with another automotive lens piece, is glued on, and is permanent; or
 _____ (I) the headlamp is a pulsating headlight that is not USDOT approved;
 _____ (b) check the headlamp aiming on both the high and low beams; and
 _____ (i) issue a rejection inspection certificate when the low or high beam is out of adjustment;
 _____ (c) check the turn signal operation for proper functioning as designed by OEM, if the vehicle was originally equipped with turn signals; and
 _____ (i) issue a rejection inspection certificate when:
 _____ (A) a turn signal is missing and the motorcycle was manufactured after January 1, 1973;
 _____ (B) a turn signal fails to function properly;
 _____ (C) a turn signal lamp is not the correct color, which must be amber on the front of the vehicle and red or amber in the rear of the vehicle; or
 _____ (D) there is any cover over the lens;
 _____ (d) check the stop lamp for proper functioning; and
 _____ (i) issue a rejection inspection certificate when:
 _____ (A) a stop lamp on a vehicle manufactured after January 1, 1969 fails to operate when the front or rear brakes are applied;
 _____ (B) a stop lamp on a vehicle manufactured before January 1, 1969 fails to operate when the service, or foot brake, is applied;
 _____ (C) a stop lamp does not emit red light;
 _____ (D) a stop lamp is painted or is covered by any non-clear lens cover or material;
 _____ (E) a stop lamp has a blue dot taillight; or
 _____ (F) a stop lamp bulb or lens is tinted or covered with any material that impairs the intended original performance characteristics of the light;
 _____ (e) check to ensure the stop lamp properly operates with the front brake application and separately with the application of the rear brake, if the vehicle was manufactured after January 1, 1969;
 _____ (i) vintage vehicles that were not manufactured with handlebar actuated brake lights are exempt from the requirement in Subsection R714-161-11(1)(g);
 _____ (f) check the tail lamp for proper functioning; and
 _____ (i) issue a rejection inspection certificate when:
 _____ (A) at least one of the tail lamps, covers or lenses is not the color red;
 _____ (B) the lamp is not visible from 1,000 feet; or
 _____ (C) a tail lamp bulb or lens is tinted or covered with any material that impairs the intended original performance expectations of the light;
 _____ (g) check for a rear reflector and verify it is the color red; and
 _____ (i) issue a rejection inspection certificate when the reflectors are missing or are not the color red;
 _____ (ii) when one reflector is used, the inspector shall verify that it is mounted at the rear centerline; or
 _____ (iii) when two reflectors are used, the inspector shall verify the reflectors are evenly spaced about the rear centerline; and

_____ (h) check for driving light operation; and
_____ (i) issue a rejection inspection certificate when:
_____ (A) the headlamps or driving lamps are not properly aimed;
or
_____ (B) the headlamps are any improper color, painted, or are covered by any non-clear lens cover or material.

R714-161-12. Electrical System.

_____ (1) When inspecting the electrical system of a vehicle, the inspector shall:

_____ (a) check for proper operation of the horn, which must be audible for at least 200 feet; and

_____ (i) issue a rejection inspection certificate when:
_____ (A) the horn is missing, loose, fails to function, or is not electrical;

_____ (B) the horn button is not easily accessible; or

_____ (C) the horn is not audible for at least 200 feet.

_____ (b) check for proper functioning of switches, including the headlight high and low switch, engine kill switch, turn signal switch, and brake light; and

_____ (i) issue a rejection inspection certificate when any required switch is broken, missing, or fails to function properly;

_____ (c) check the condition of the wiring; and

_____ (i) issue a rejection inspection certificate when the insulation is worn, bare wires are exposed, or wires show evidence of short circuiting or are inadequate to operate items properly; and

_____ (d) check for loose connections and proper functioning in the vehicle's wiring connections; and

_____ (i) issue a rejection inspection certificate when connections are loose, corroded, or fail to function properly.

R714-161-13. Windshield.

_____ (1) When inspecting the windshield of a vehicle, the inspector shall:

_____ (a) check the windshield, if equipped, for cracks, scratches, discoloration, obstruction, light transmittance, and ensure it is an approved type of windshield;

_____ (b) check the tint of the wind deflector to ensure it does not interfere with the driver's vision; and

_____ (c) issue a rejection inspection certificate when:

_____ (i) the driver's vision is obscured due to cracks, scratches, or discoloration;

_____ (ii) the windshield is not an approved type;

_____ (iii) a stiffener device is mounted in the line of vision; or

_____ (iv) there is less than 70% light transmittance.

R714-161-14. Frame and Body.

_____ (1) When inspecting the body of a vehicle, the inspector shall:

_____ (a) check the frame for welds, cracks, or structural damage; and

_____ (i) issue a rejection inspection certificate when there are welds, cracks, or structural damage that constitute a hazard;

_____ (b) check the fenders for proper mounting, cracks, breaks, bends, and sharp edges; and

_____ (i) issue a rejection inspection certificate when fenders are missing, improperly mounted, cracked, bent or have sharp edges;

_____ (c) verify the front fender covers 45 degrees to the front and 45 degrees to the rear;

_____ (d) verify the rear fender covers the top half of the tire;

_____ (e) check the chain, sprocket, or belt protective guards for proper operation; and

_____ (i) advise the customer when chain or belt guard is missing, broken, or cracked; or

_____ (ii) issue a rejection inspection certificate when:

_____ (A) the chain is worn beyond manufacturer's specification;

_____ (B) the sprocket is worn beyond manufacturer's specification; or

_____ (C) the belt drive or drive belt is worn beyond the manufacturer's specifications;

_____ (f) check the seat for proper attachment;

_____ (g) check the seat's locking device and determine if it functions properly; and

_____ (i) issue a rejection inspection certificate when:

_____ (A) the seat is not properly and securely attached; or

_____ (B) the locking device fails to function properly;

_____ (h) if the seat is designed for two people, check the seat area for hand holds to ensure the hand holds are properly attached and of sufficient strength and size to adequately support 200 pounds; and

_____ (i) issue a rejection inspection certificate when a hand hold is not present, when required, or when it is not of sufficient strength and size to adequately support 200 pounds;

_____ (i) check the foot rests on a vehicle that has a seat designed for two people; and

_____ (i) issue a rejection inspection certificate when foot rests are not present, when required;

_____ (j) check the frame and mounting brackets on the engine; and

_____ (i) issue a rejection inspection certificate when the engine mounts or brackets are cracked or broken;

_____ (k) check the vehicle stand for proper operation; and

_____ (i) issue a rejection inspection certificate when:

_____ (A) the stand fails to hold the vehicle in an up-right position;

_____ (B) the stand fails to stay in the stored position or is secured by wire or other methods; or

_____ (C) the side or center stand is cracked, broken, or loose; and

_____ (l) check the left side mirror; and

_____ (i) issue a rejection inspection certificate when:

_____ (A) the left side mirror is missing; or

_____ (B) the left side mirror is broken, cracked, or otherwise damaged to the point rearward vision is obscured.

R714-161-15. Suspension.

_____ (1) When inspecting the swing arm bushing of a vehicle, the inspector shall:

_____ (a) check the swing arm bushing and suspension, which must be adjusted according to the manufacturer's tolerances; and

_____ (i) issue a rejection inspection certificate when the swing arm bushing is worn beyond the manufacturer's recommended specifications.

R714-161-16. Exhaust System.

_____ (1) When inspecting the exhaust system of a vehicle, the inspector shall:

_____ (a) check the exhaust system for proper operation; and

_____ (i) advise the customer when joints are loose, broken, or if any leakage exists; or

- (ii) issue a rejection inspection certificate when:
- (A) components are not properly mounted or supporting brackets are not secure;
- (B) the muffler has been removed or is not functioning properly;
- (C) any muffler cutout or bypass is used; or
- (D) the exhaust system has been changed or modified and is not as effective as OEM specifications.

R714-161-17. Fuel System.

- (1) When inspecting the fuel system of a vehicle, the inspector shall:
- (a) check the fuel system for any leaks and ensure it is secure;
- (b) check to ensure the gas tank meets OEM specifications;
- (c) check to ensure the gas tank is properly capped; and
- (d) issue a rejection inspection certificate when:
- (i) any part of the fuel system is not securely fastened;
- (ii) there is leakage at any point in the fuel system; or
- (iii) the gas tank is not properly capped or does not meet OEM specifications.

R714-161-18. Off-Highway Motorcycle.

- (1) An off-highway motorcycle may be inspected provided that it has been modified to be street legal.
- (2) An off-highway motorcycle that has been modified to be street legal is subject to the same vehicle standards in this Rule.

KEY: motor vehicle safety, safety inspection manual

Date of Enactment or Last Substantive Amendment: [~~February 9, 2011~~2016]

Authorizing, and Implemented or Interpreted Law: 53-8-204; 53-8-205; 41-6a-1601

Public Safety, Highway Patrol
R714-163
 Street-Legal All-Terrain Vehicles

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40542

FILED: 06/23/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to set minimum equipment standards governing all-terrain vehicle (ATV) safety inspections in accordance with Sections 53-8-204 and 41-6a-1601.

SUMMARY OF THE RULE OR CHANGE: This rule provides standards and reference to standards contained in state statute for the safety inspection of street-legal ATVs. This rule used to be part of Rule R714-161. (Editor's Note: The

proposed repeal and reenactment of Rule R714-161 is under Filing No. 40543 in this issue, July 15, 2016, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-6a-1601 and Section 53-8-204

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because the requirements for safety inspection are outlined in state statute. The rule outlines the procedures for rejection of inspection if a vehicle is not compliant with state statute.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the requirements for safety inspection are outlined in state statute. The rule outlines the procedures for rejection of inspection if a vehicle is not compliant with state statute.

◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the requirements for safety inspection are outlined in state statute. The rule outlines the procedures for rejection of inspection if a vehicle is not compliant with state statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities

because the requirements for safety inspection are outlined in state statute. The rule outlines the procedures for rejection of inspection if a vehicle is not compliant with state statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Vehicles being registered as street-legal all-terrain vehicles (ATVs) will need to pass a safety inspection the first time they are registered. After initial registration, the age of the vehicle determines how often it will need to be inspected again to renew the registration. A safety inspection station can charge no more than \$7 for inspecting an all-terrain type 1 or utility type vehicle, and no more than \$15 for a full-sized ATV.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and found that enacting the rule will not have a fiscal impact on businesses.

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

◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Steven Winward, Captain

R714. Public Safety, Highway Patrol.

R714-163. Street-Legal All-Terrain Vehicles.

R714-163-1. Authority.

This rule is authorized by Subsections 53-8-204(5) and 41-6a-1601(2).

R714-163-2. Purpose.

The purpose of this rule is to set minimum equipment standards governing ATV safety inspections in accordance with Sections 53-8-204 and 41-6a-1601.

R714-163-3. Definitions.

Terms used in this rule are found Section 41-6a-102.

R714-162-4. Applicability of Rule.

This rule applies to all street-legal ATVs.

R714-163-5. Inspection Requirements.

(1) An all-terrain type 1 vehicle, utility type vehicle, or full-sized all-terrain vehicle being operated as a street-legal ATV shall meet the inspection requirements in Section 41-6a-1509(2)(b)(iii).

(a) A full-sized all-terrain vehicle being operated as a street-legal ATV is exempt from the mudflap, fender, and bumper requirements in Section R714-160.

(2) An all-terrain type 1 vehicle or utility type vehicle being operated as a street-legal ATV shall be equipped with the items listed in Section 41-6a-1509(3)(a).

(a) The inspector shall issue a rejection certificate when any of the requirements in Section 41-6a-1509(2)(b) or Section 41-6a-1509(3)(a) are not met.

(3) A full-sized all-terrain vehicle shall be equipped with the items listed in Section 41-6a-1509(3)(b).

(a) The inspector shall issue a rejection certificate when:

(i) any of the requirements in Section 41-6a-1509(2)(b) or Section 41-6a-1509(3)(b) are not met; or

(ii) the vehicle is not designed for or capable of travel over unimproved terrain.

KEY: street-legal all-terrain vehicles, safety inspections

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: 53-8-204; 41-6a-1601

Public Safety, Peace Officer Standards
and Training

R728-101

Public Petitions for Declaratory Rulings

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40527

FILED: 06/22/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is unnecessary as there is a rule, R698-1, that addresses this topic for the entire Department of Public Safety.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety because there is a rule, R698-1, that addresses this topic for the entire Department of Public Safety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-4-301

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no costs or savings to the budget with the repeal of this rule because the purpose for repealing the rule is that there is a rule, R698-1, that addresses this topic for the entire Department of Public Safety.

♦ **LOCAL GOVERNMENTS:** Repealing this rule will not have an impact on local government budgets because the purpose for repealing the rule is that there is a rule, R698-1, that addresses this topic for the entire Department of Public Safety.

♦ **SMALL BUSINESSES:** Repealing this rule will not have a fiscal impact on small businesses because the purpose for repealing the rule is that there is a rule, R698-1, that addresses this topic for the entire Department of Public Safety.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The repealing of this rule will not impact other persons not mentioned in this section because the purpose for repealing the rule is that there is a rule, R698-1, that addresses this topic for the entire Department of Public Safety.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the repealing of this rule because the purpose for repealing the rule is that there is a rule, R698-1, that addresses this topic for the entire Department of Public Safety.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and found that repealing the rule will not have a fiscal impact on business.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov
- ◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
- ◆ Wade Breur by phone at 801-256-2329, or by Internet E-mail at wbreur@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Scott Stephenson, Director

**R728. Public Safety, Peace Officer Standards and Training.
[R728-101. Public Petitions For Declaratory Rulings.]**

R728-101-1. Authority:

The authority for this rule is authorized under 63G-4-301 which describes how interested parties may petition an agency with regard to making, amending, or repealing rules.

R728-101-2. Definitions:

A. Terms used in this rule are defined in Section 63G-4-103.

B. In addition:

1. "order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, not a class of persons;

2. "declaratory ruling" means an administrative interpretation or explanation of rights, status, and other legal relations under a statute, rule, or order; and

3. "applicability" means a determination if a statute, rule or order should be applied, and if so, how the law stated should be applied to the facts.

R728-101-3. Petition Procedure:

A. Any person or agency may petition for a declaratory ruling.

B. The petition shall be addressed and delivered to the director of POST.

C. POST shall stamp the petition with the date of receipt.

R728-101-4. Petition Form:

The petition shall:

1. be clearly designated as a request for a declaratory ruling;

2. identify the statute, rule, order to be reviewed;

3. describe the situation or circumstances in which applicability is to be reviewed;

4. describe the reason or need for the applicability review;

5. include an address and telephone where the petitioner can be reached during regular work days; and

6. be signed by the petitioner.

R728-101-5. Petition Review and Disposition:

The director or designee shall:

- 1. review and consider the petition;
- 2. prepare a declaratory ruling stating:
 - a. the applicability or non-applicability of the statute, rule, or order at issue;
 - b. the reasons for the applicability or non-applicability of the statute, rule, or order; and
 - c. any requirements imposed on the agency, the petitioner, or any person as a result of the ruling.
- 3. POST may:
 - a. interview the petitioner;
 - b. hold a public hearing on the petition;
 - c. consult with counsel or the Attorney General; or
 - d. take any action POST, in its judgement, deems necessary to provide the petition adequate review and due consideration.
- 4. POST shall prepare the declaratory ruling without unnecessary delay and shall send the petitioner a copy of the ruling by certified mail, or shall send the petitioner notice of progress in preparing the ruling, within 30 days of receipt of the petition.
- 5. POST shall retain the petition and a copy of the declaratory ruling in its records.

~~KEY: law enforcement officers, public petitions declaratory rulings~~

~~Date of Enactment or Last Substantive Amendment: 1992~~

~~Notice of Continuation: December 13, 2011~~

~~Authorizing, and Implemented or Interpreted Law: 63G-4-103; 63G-4-301]~~

**Public Safety, Peace Officer Standards
and Training
R728-401
Requirements For Approval and
Certification of Peace Officer Basic
Training Programs and Applicants**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 40534

FILED: 06/22/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In order to eliminate redundancy and clarify rules, information from Rules R728-402 and R728-406 have been added to this rule, and Rules R728-402 and R728-406 have been repealed. (Editor's Note: The proposed repeal of Rule R728-402 is under Filing No. 40528 and the proposed repeal of Rule R728-406 is under Filing No. 40529 in this issue, July 15, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The changes include changing the rule title; defining satellite academy; clarifying to the rule regarding satellite academies; adding procedures for course validation; moving information

regarding instructors and lesson plans to Rule R728-403; and adding the requirement for the division to conduct satellite audits and site visits. (Editor's Note: The proposed repeal and reenactment of Rule R728-403 is under Filing No. 40535 in this issue, July 15, 2016, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-105 and Section 53-6-202 and Section 53-6-212 and Section 53-6-310

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There are no costs or savings to the budget with the repeal of the original rule because existing information from Rules R728-402 and R728-406 has been added to this rule in order to eliminate redundancy and clarify rules, and Rules R728-402 and R728-406 have been repealed.

◆ LOCAL GOVERNMENTS: Repealing the original rule will not have an impact on local government budgets because existing information from Rules R728-402 and R728-406 has been added to this rule in order to eliminate redundancy and clarify rules, and Rules R728-402 and R728-406 have been repealed.

◆ SMALL BUSINESSES: Repealing the original rule will not have a fiscal impact on small businesses because existing information from Rules R728-402 and R728-406 has been added to this rule in order to eliminate redundancy and clarify rules, and Rules R728-402 and R728-406 have been repealed.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The repeal of the original rule will not impact other persons not mentioned in this section because existing information from Rules R728-402 and R728-406 has been added to this rule in order to eliminate redundancy and clarify rules, and Rules R728-402 and R728-406 have been repealed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the repealing of the original rule because existing information from Rules R728-402 and R728-406 has been added to this rule in order to eliminate redundancy and clarify rules, and Rules R728-402 and R728-406 have been repealed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and found that repealing and reenacting the rule will not have a fiscal impact on business.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov
◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Scott Stephenson, Director

R728. Public Safety, Peace Officer Standards and Training.

~~[R728-401. Requirements For Approval and Certification of Peace Officer Basic Training Programs and Applicants.~~

~~**R728-401-1. Authority.**~~

~~———— This rule is authorized by Section 53-6-105 (1)(a) which gives the power to the Director of Peace Officers Standards and Training to promulgate standards for the certification of peace officer training academies.~~

~~**R728-401-2. Satellite Academy Approval.**~~

~~———— A. A law enforcement agency, correctional agency or institution of higher learning that meets the conditions and requirements set forth below may conduct a basic peace officer training program which is primarily established for the training of self-sponsored students, with the approval of the POST Council.~~

~~———— B. Requests for new on-going academy programs primarily established for the training of self-sponsored students will only be approved when there is a demonstrated need for additional basic peace officer training programs in the county or region in which the new academy will operate.~~

~~———— C. In order to demonstrate a need for an additional basic peace officer training program, the applying entity must provide evidence of at least one of the following:~~

~~———— 1. There is no basic peace officer training program which is primarily established for the training of self-sponsored students within a 30 mile radius of the location where the new academy will operate.~~

~~———— 2. One or more State, County or Local law enforcement agencies in the county or region has requested, in writing, that the applying entity establish and operate an on-going basic peace officer training program which is primarily established for the training of self-sponsored students.~~

~~———— 3. An established satellite academy operating within the county or region or within 30 miles of the applying entity has confirmed that they are unable to meet the demand for basic peace officer training in the county or region.~~

~~———— 4. The applying entity has the ability to provide a unique or specialized basic peace officer training program that an established satellite academy operating within the county or region or within 30 miles of the applicant is unable to provide.~~

D. A law enforcement or correctional agency that has a temporary or specialized need to provide basic peace officer training to their own employees, that cannot reasonably be met by POST, may conduct a basic peace officer training program with the approval of the POST Council.

E. POST will review the background and qualifications of the Satellite Academy Director or Training Coordinator before any entity will be approved to conduct a basic peace officer training program.

R728-401-3. Procedures for Course Validation.

A. The course must conform to the content and standards established by POST and approved by the POST Council.

B. All applicants will pass the National Peace Officers Selection Test (NPOST). The NPOST entrance level test is a valid test used to demonstrate ability in the areas of reading comprehension, basic mathematic skills, basic grammar and writing skills. All applicants will also pass the POST physical fitness requirements as outlined in POST Policy and Procedure 2390 Physical Training Requirements.

C. All applicants will complete the POST application packet. POST must receive application packets at least four weeks prior to the start of training unless special circumstances exist and arrangements have been made with the POST Director or Deputy Director. Without exception, a medical evaluation from a medical doctor will be completed and submitted to POST before training begins.

1. Sponsored applicants – The sponsoring agency will complete the background investigation and insure that the requirements in Section 53-6-203 (applicants for admission to training programs) and R728-403 (Qualifications for Admission to Certified Peace Officer Training Academies) have been met. If the sponsoring agency has any question about an applicant's qualifications related to Section 53-6-203, or R728-403, POST shall be consulted before any training begins.

2. Self-Sponsored applicants – POST will conduct a criminal history check on all self-sponsored applicants. Programs providing training to self-sponsored students will adhere to the following guidelines when providing POST with application packets:

a. Check applications to insure completeness. POST will return any application not complete and deny training to that individual until a complete application is received and a criminal history check has been completed.

b. Provide POST with applications at least four weeks prior to the start of training unless special circumstances exist and arrangements have been made with the POST Director or Deputy Director (without exception medical release forms will be completed and submitted to POST before physical training or testing begins).

c. Bring to the attention of POST any information provided in the application warranting a close examination in light of the provisions outlined in Section 53-6-203 and R728-403.

Note: Any applicant denied by POST or by a satellite academy director may appeal the decision by following the approved POST appeal process.

D. Equipment required to perform training must be furnished by the sponsoring agency or program. Equipment must meet POST standards.

E. All instructors must be POST certified instructors, and approved to instruct in their assigned topic(s). Subject matter experts may be used as guest instructors.

F. Lesson plans for each topic must be prepared in accordance with the currently approved student performance objectives.

G. The POST approved on-line assessment system will be utilized to administer all quizzes and exams. Program coordinators must proctor all quizzes and exams. The final certification examination will be a comprehensive examination and will require a minimum score of 80% to pass. Physical fitness assessment standards are set by POST and approved by the POST Council. Program coordinators must administer the physical fitness assessment in accordance with POST approved procedures.

H. Attendance rosters are to be kept to satisfy statutory requirements and copies of these rosters will be submitted to POST. In no case will a student who has missed more than 16 hours of the basic course become certifiable, until appropriate makeup work has been completed. If, as determined by the academy staff, a student has missed a significant part of any subject or block of instruction, that student will not be certifiable until appropriate make-up work is completed.

I. Certified academies must ensure that students possess a valid driver license when involved in any training that requires the operating of a motor vehicle. POST recommends that driver license checks be made through the State Driver License Division.

J. Successful completion of the course and completion of all POST required paperwork is necessary before the student will be certifiable. All paperwork must be completed and submitted to POST within two weeks of completion of the course.

K. Final certification exams will only be administered after a student has completed all academic requirements for the block of instruction. If a student fails a final certification exam, they will be offered remediation and allowed one retake. The retake examination must be taken within one year from the date of the original exam. Anyone who fails a certification exam retake will not be permitted to take the certification exam again until they satisfactorily complete another approved basic training program. Anyone failing the Physical Fitness Assessment will have one year to meet the requirements.

L. POST will conduct audits and site visits for each certified academy to verify their conformity to POST standards.

M. When an individual has met all certification requirements, the director of the certified academy shall submit to POST a letter informing POST that all requirements have been met. Peace officer certification is granted when POST receives an application for certification signed by the chief administrator of a Utah law enforcement agency and confirms that the applicant has completed a basic peace officer training program and met all requirements.

N. No person may exercise peace officer authority until that person has satisfactorily completed an approved training program and received POST certification.

R728-401-4. Process for Requesting Certification.

Law enforcement administrators requesting certification of an employee shall submit to POST an Application for POST Certification. POST will verify that all requirements have been met and then issue the appropriate certification.]

R728-401. Training Academy Requirements.**R728-401-1. Authority.**

This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-401-2. Purpose.

The purpose of this rule is to provide procedures regarding the operation of training programs.

R728-401-3. Definitions.

(1) Terms used in this rule are defined in Section 53-6-102.

(2) In addition:

(a) "Agency-sponsored applicant" means a person seeking admission into a training program who is a full time, paid employee of a governmental entity, and who the division has responsibility to train as defined in Section 53-6-212, "agency-sponsored applicant" does not include a part-time, reserve, or contract employee;

(b) "Satellite academy" means a certified academy or training program administered by a governmental entity or institution of higher education that is established primarily for the training of its employees or self-sponsored applicants;

(c) "Self-sponsored applicant" means a person seeking admission into a training program who is responsible for paying the cost of the training program;

(d) "Training program" means the basic training courses offered by the division or one of the satellite academies, which are required to become a:

(i) special function officer;

(ii) correctional officer;

(iii) law enforcement officer; or

(iv) dispatcher.

R728-401-4. Admission into a Training Program.

(1) All applicants seeking to attend a training program must submit an application packet to the division in accordance with R728-403.

(2) The division shall pay the costs of an agency-sponsored applicant to attend the training program offered at POST.

(a) The agency-sponsored applicant's employer must verify the applicant is a full-time employee of a governmental entity who will be functioning as a peace officer.

(3) Self-sponsored applicants shall be responsible for paying all costs associated with the training program.

(a) Self-sponsored applicants may only attend a training program offered at POST if special circumstances exist and approval has been granted by the director.

R728-401-5. Approval of Satellite Academies.

(1) A law enforcement agency, correctional agency, or institution of higher learning that meets the conditions and requirements set forth below may conduct a basic peace officer training program that is primarily established for the training of self-sponsored applicants, with the approval of the council.

(2) An entity seeking to operate a satellite academy shall submit to the director, a request in writing and include documentation of:

(a) the background and qualifications of the individual who will be the director of the satellite academy; and

(b) the need to operate the satellite academy through evidence that:

(i) there are no satellite academies within a 30 mile radius of the location where the new academy will operate;

(ii) a law enforcement agency in the county or region has requested, in writing, that the entity operate a satellite academy;

(iii) a satellite academy operating within the county, region or within 30 miles of the location of the applying entity has indicated that it is unable to meet the demand for training; or

(iv) the entity will provide a unique or specialized training program that is not currently offered in the county, region, or within 30 miles of the location of the applying entity.

(3) The division, with the approval of the council, may authorize an entity to operate a satellite academy if the entity demonstrates there is a need for additional training programs:

(a) in the county or region where the proposed satellite academy is to operate; or

(b) that cannot reasonably be met by the division.

R728-401-6. Procedures for Course Validation.

(1) Courses taught at training programs shall contain the content and meet the requirements established by the division and approved by the council.

(2) A satellite academy shall provide the division with a class schedule and a list of instructors before training may begin.

(3) A satellite academy shall ensure that all equipment required to perform the training be furnished by the sponsoring agency, self-sponsored applicant, or training facility; and that such equipment meets POST standards.

(4) All instructors must be POST certified instructors, and approved to instruct in their assigned topic.

(a) Instructors teaching academic portions of the curriculum must have completed an instructor development course recognized by the division and received POST certification as outlined in R728-502-5.

(b) Instructors teaching skill portions of the curriculum must have completed the specialty instructor requirements for the specific skill area being taught and received POST certification as outlined in R728-502-9.

(c) Subject matter experts may be used as guest instructors.

(5) Lesson plans for each topic must be prepared in accordance with the currently approved student performance objectives.

(6) The POST approved on-line assessment system shall be utilized to administer all tests and examinations.

(a) Tests and examinations shall be administered as outlined in the approved curriculum.

(b) Program coordinators must proctor all tests and examinations.

(c) The final certification exam shall not be administered until the student has completed all academic requirements of the course.

(d) The final certification examination shall be a comprehensive examination and shall require a minimum score of 80% to pass.

(7) Physical fitness assessment standards are set by the division and approved by the council.

(a) Program coordinators must administer the physical fitness assessment in accordance with POST approved procedures.

(8) Attendance rosters shall be kept to satisfy statutory requirements and copies of these rosters shall be submitted to the division.

(a) A student who has missed more than 16 hours of a basic peace officer course, or four hours of a basic dispatcher course, may not become certifiable until appropriate makeup work has been completed.

(b) If, as determined by the academy staff, a student has missed a significant part of any subject or block of instruction, that student may not be certifiable until appropriate make-up work is completed.

(9) Successful completion of the course and completion of all POST required documentation is necessary before the student may be certifiable.

(a) All documentation must be completed and submitted to the division within 14 calendar days of completion of the course.

(10) The division shall conduct audits and site visits of each satellite academy to ensure compliance with all rules established herein.

KEY: ~~[law enforcement officers, peace officer basic course, training academy approval, peace officer certification]~~~~dispatchers, peace officers, satellite academies, training programs~~

Date of Enactment or Last Substantive Amendment: ~~[August 6, 2012]~~**2016**

Notice of Continuation: December 13, 2011

Authorizing, and Implemented or Interpreted Law: ~~53-6-105; 53-6-202; [53-6-203; 53-6-204; 53-6-205]~~**53-6-212; 53-6-310**

Public Safety, Peace Officer Standards and Training **R728-402**

Application Procedures to Attend a Basic Peace Officer Training Program

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40528

FILED: 06/22/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Elements of this rule are to be moved into Rules R728-401 and R728-403. (Editor's Note: The proposed repeal and reenactment of Rule R728-401 is under Filing No. 40534 and the proposed repeal and reenactment of Rule R728-403 is under Filing No. 40535 in this issue, July 15, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule outlined the application procedure to attend a basic peace officer training program. All of this information will now be contained in Rules R728-401 and R728-403. Therefore, this rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-203

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no costs or savings to the budget with the repeal of this rule because the existing application procedure information is being incorporated into Rules R728-401 and R728-403.

◆ **LOCAL GOVERNMENTS:** Repealing this rule will not have an impact on local government budgets because the existing application procedure information is being incorporated into Rules R728-401 and R728-403.

◆ **SMALL BUSINESSES:** Repealing this rule will not have a fiscal impact on small businesses because the existing application procedure information is being incorporated into Rules R728-401 and R728-403.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The repealing of this rule will not impact other persons not mentioned in this section because the existing application procedure information is being incorporated into Rules R728-401 and R728-403.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the repealing of this rule because the existing application procedure information is being incorporated into Rules R728-401 and R728-403.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and found that repealing the rule will not have a fiscal impact on business.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov
◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
◆ Wade Breur by phone at 801-256-2329, or by Internet E-mail at wbreur@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Scott Stephenson, Director

R728. Public Safety, Peace Officer Standards and Training.

~~[R728-402. Application Procedures to Attend a Basic Peace Officer Training Program:~~

~~**R728-402-1. Policy:**~~

~~_____ A. Pursuant to Sections 53-6-203 and 53-6-204 it shall be the responsibility of each law enforcement agency, upon its hiring of an employee, to submit a complete application to POST before admission is approved to a basic peace officer training program.~~

~~_____ 1. An agency sponsored applicant is defined as a full time paid employee of a state, municipal or county police or sheriff's agency.~~

~~_____ 2. Part time or reserve applicants will not be admitted as agency sponsored employees into a basic peace officer training program.~~

~~_____ B. Self-Sponsored Applicants will not be accepted at POST unless special circumstances exist and approval has been granted by the director of the division.~~

~~_____ 1. Self-Sponsored applicants must submit a complete application to POST before they will be admitted to a basic peace officer training program.~~

~~**R728-402-2. Procedure:**~~

~~_____ A. Application will be made by completing the POST approved application packet. Application packets can be obtained from the POST website.~~

~~_____ B. Application must be submitted four weeks prior to the start of the academy via website or mail in order to allow POST adequate time to process applications and schedule applicants.~~

~~_____ C. Applications must be complete when submitted to POST. POST will not accept any application that is not complete. The agency administrator must sign the completed application verifying the applicant is a full time employee of their department.~~

~~_____ D. Peace Officer Standards and Training will pay the cost of board, room and supplies for sponsored students attending the Police Academy.~~

~~_____ E. Self-Sponsored students must pay the current approved rate.~~

~~_____ F. Attendance at the Academy will be denied for failure to meet the requirements set forth in Section 53-6-203 and Rule R728-403.~~

~~**KEY: law enforcement officers, basic application procedures, police training**~~

~~**Date of Enactment or Last Substantive Amendment: February 5, 2009**~~

~~**Notice of Continuation: December 13, 2011**~~

~~**Authorizing, and Implemented or Interpreted Law: 53-6-203]**~~

Public Safety, Peace Officer Standards and Training

R728-403

Qualifications For Admission To Certified Peace Officer Training Academies

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 40535

FILED: 06/22/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To eliminate redundancy and to clarify the rules, some portions of this rule have been eliminated, and information from Rules R728-402, R728-404, R728-406, and R728-407 have been incorporated into this rule, and those rules have been repealed. (Editor's Note: The proposed repeal of Rule R728-402 is under Filing No. 40528, the proposed repeal of Rule R728-404 is under Filing No. 40531, the proposed repeal of Rule R728-406 is under Filing No. 40529, and the proposed repeal of Rule R728-407 is under Filing No. 40533 in this issue, July 15, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The changes include changing the title of the rule; defining documents acceptable as evidence of citizenship; added requirement for proof of successful completion of National Peace Officer Selection Test; clarifying that applicants who are subject of an ongoing investigation are not eligible for training or certification; clarifying the appeal process for applicants who are denied admission; clarifying the physical fitness requirements for entrance to a training program; clarifying the requirements for drug testing of applicants and cadets; clarifying the requirements of the completion of a training program; clarifying the process for waiving a basic training program; clarifying the process for reactivation of certification; and clarifying the process for denial of certification.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-203 and Section 53-6-205 and Section 53-6-206 and Section 53-6-208 and Section 53-6-302 and Section 53-6-303 and Section 53-6-304 and Section 53-6-306

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no compliance costs associated with the repealing of the original rule because, in an effort to eliminate redundancy and to clarify the rules, some portions of this rule have been eliminated, and information from Rules R728-402, R728-404, R728-406, and R728-407 have been incorporated into this rule, and those rules have been repealed.

◆ LOCAL GOVERNMENTS: Repealing the original rule will not have an impact on local government budgets because, in an effort to eliminate redundancy and to clarify the rules, some portions of this rule have been eliminated, and information from Rules R728-402, R728-404, R728-406, and R728-407 have been incorporated into this rule, and those rules have been repealed.

◆ SMALL BUSINESSES: Repealing the original rule will not have a fiscal impact on small businesses because, in an effort to eliminate redundancy and to clarify the rules, some portions of this rule have been eliminated, and information from Rules R728-402, R728-404, R728-406, and R728-407 have been incorporated into this rule, and those rules have been repealed.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The repealing of the original rule will not impact other persons not mentioned in this section because, in an effort to eliminate redundancy and to clarify the rules, some portions of this rule have been eliminated, and information from Rules R728-402, R728-404, R728-406, and R728-407 have been incorporated into this rule, and those rules have been repealed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the repealing of the original rule because, in an effort to eliminate redundancy and to clarify the rules, some portions of this rule have been eliminated, and information from Rules R728-402, R728-404, R728-406, and R728-407 have been incorporated into this rule, and those rules have been repealed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and found that repealing and reenacting the rule will not have a fiscal impact on business.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
◆ Wade Breur by phone at 801-256-2329, or by Internet E-mail at wbreur@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Scott Stephenson, Director

R728. Public Safety, Peace Officer Standards and Training.
~~[R728-403. Qualifications For Admission To Certified Peace Officer Training Academics.~~

~~R728-403-1. Authority.~~

~~———— This rule is authorized by Subsection 53-6-105(k).~~

~~R728-403-2. United States Citizenship Requirement.~~

~~———— The applicant shall be a United States citizen.~~

~~———— A. The applicant shall provide the division proof of United States citizenship by providing a copy of birth certificate, or other formal government document indicating United States citizenship.~~

~~———— B. Naturalized citizens shall provide proof of U.S. citizenship:~~

~~———— 1. Naturalized citizens may indicate their naturalization number on the application for peace officer training and certification. Naturalized citizens shall not attach a copy of their naturalization certificate, whereas copying naturalization certificates without permission is a violation of federal law or;~~

~~———— 2. Naturalized citizens may indicate the number of their United States passport on the application for peace officer training and certification. The applicant shall attach a photocopy of their United States Passport to the application.~~

~~R728-403-3. Age Requirement.~~

~~———— The applicant shall be at least 21 years old at the time of appointment as a peace officer. This provision shall be satisfied with a copy of the birth certificate, official driver license or state identification card.~~

~~R728-403-4. Criminal History Background Checks.~~

~~———— A. Criminal history background checks shall be required of every applicant for basic peace officer training and every applicant for peace officer certification or authority, or applicant for reactivation of peace officer certification or authority, as provided for in Sections 53-6-203, 53-6-205, 53-6-206, and 53-6-208.~~

~~———— B. The criminal history background check shall be completed in the following manner:~~

~~———— 1. All applicants shall be required to submit, at least two acceptable POST fingerprint cards for examination by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation.~~

~~———— 2. If the applicant is found not to have a criminal record, the supervisor or staff member making the computerized criminal history records check shall make a written note in the applicant's file indicating "no criminal record found", and the supervisor or staff member shall sign their name as the person conducting the criminal history records check.~~

~~———— 3. If the supervisor or staff member conducting the examination of the application finds that the applicant has a criminal record, the file shall be reviewed by the certification section to determine if the applicant meets the requirements to be accepted into a peace officer training program.~~

~~———— 4. Minor traffic violations shall not be considered a reason to have the applicant's criminal record reviewed by the certification section unless the applicant has more than three minor traffic violations within two years of making application for peace officer basic training and certification.~~

~~———— a. The following shall not constitute minor traffic violations, and may be considered in determining good moral character of the applicant:~~

- _____ i. driving under the influence of alcohol or drugs;
- _____ ii. automobile homicide;
- _____ iii. reckless driving;
- _____ iv. evading a police officer;
- _____ v. driving on suspension;
- _____ vi. driving on revocation;
- _____ vii. negligent homicide;
- _____ viii. failure to maintain automobile insurance.

R728-403-5. Felony Convictions.

_____ "Felony" crimes for purposes of Title 53, Chapter 6, shall be defined as any criminal conduct other than those crimes defined as misdemeanors or infractions in the statutes of this state or any similar statute of any other jurisdiction. Persons convicted of felonies will not be accepted for admission to peace officer certified training programs.

R728-403-6. Convictions or Involvement in Crimes Outlined in Section 53-6-211.

_____ A. "Crimes involving dishonesty" for purposes of Subsection 53-6-211(1)(d)(iv) means criminal conduct as set forth in R728-409-3(F) below.

_____ B. "Crimes involving unlawful sexual conduct" for purposes of Subsection 53-6-211(1)(d)(iv) means criminal conduct as set forth in R728-409-3(G) below.

_____ C. "Crimes involving physical violence" for purposes of Subsection 53-6-211(1)(d)(iv) means criminal conduct as set forth in R728-409-3(H) below.

_____ D. "Driving under the influence of alcohol or drugs" for purposes of Subsection 53-6-211(1)(d)(iv) means criminal conduct as set forth in R728-409-3(I) below.

_____ E. "Unlawful Sale, Possession, or Use of Narcotics, Drugs, or Drug Paraphernalia" for purposes of Subsection 53-6-211(1)(d)(iii) means conviction of a drug related offense as set forth in R728-409-3(C) below.

R728-403-7. Educational Requirement.

_____ A. All applicants for basic peace officer training and every applicant for peace officer certification or authority, as provided for in Sections 53-6-203, 53-6-205, and 53-6-206 shall have obtained a high school education:

- _____ 1. High school education shall be recognized by:
 - _____ a. a copy of a high school diploma;
 - _____ b. a copy of high school transcript; or
 - _____ c. a notarized letter from the high school administration indicating that the individual has graduated from the high school.
- _____ 2. Equivalency of high school education can be obtained by:
 - _____ a. successful completion of a GED program, recognized by a copy of the certificate.
- _____ 3. In cases where the high school education was completed in a foreign country, and where the high school diploma or document is written in a language other than English, the document shall be verified by an interpreter before accepting the document as an official high school education document.
- _____ 4. In cases where an applicant is unable to provide proof of a high school diploma or equivalent but has a four year or higher college degree, proof of the college degree will satisfy the high school diploma requirement.

R728-403-8. Good Moral Character Requirement.

_____ A. Good moral character for purposes of Title 53, Chapter 6 means possessing moral traits of honesty and truthfulness, integrity, respect among the community for lawful behavior, respect for the rights of others, and obedience to the lawful directives of public officers or officials, or persons charged with the enforcement of the law.

_____ B. Conduct which may not meet the standard of good moral character includes, but is not limited to:

- _____ 1. conduct which violates Section 53-6-211;
- _____ 2. a discharge from the United States military under circumstances specifically designated as:
 - _____ a. Bad Conduct Discharge (BCD);
 - _____ b. dishonorable discharge (DD);
 - _____ c. Administrative Discharge of "Other Than Honorable" (OTH); or
 - _____ d. Administrative Discharge of "General Under Honorable Conditions" (GEN);
- _____ 3. the unlawful possession, use, consumption, or distribution of a controlled substance;
- _____ 4. association in an organization which advocates the violent overthrow or has made overt attempts to violently overthrow the government of the United States or the State of Utah;
- _____ 5. suspension or revocation of peace officer certification or similar provision of another jurisdiction.

R728-403-9. Physical, Emotional, or Mental Condition Requirement.

_____ Physical, emotional, or mental conditions for purposes of Title 53, Chapter 6, includes, but is not limited to, conditions diagnosed by a medical or mental health professional, which, in the expert opinion of said professional, prohibits the employee from performing the essential functions of law enforcement.]

R728-403. Procedures for Certification.

R728-403-1. Authority.

_____ This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-403-2. Purpose.

_____ The purpose of this rule is to provide procedures for a dispatcher or peace officer to become certified or reactivate certification.

R728-403-3. Definitions.

_____ (1) Terms used in this rule are defined in Section 53-6-102.

_____ (2) In addition:

_____ (a) "Actively Engaged" means a currently certified peace officer as defined in Section 53-13-102 through 53-13-105 who works while on duty as defined in 53-13-101 for a minimum of 60 hours per reporting year and receives annual training as defined in Section 53-6-306(3)(a).

_____ (b) "Applicant" means a person seeking to become certified or reinstate certification as a dispatcher or peace officer;

_____ (c) "Certification examination" means the written test given to an applicant to become certified or to reactivate certification as a dispatcher or peace officer;

(d) "Physical fitness test" means the physical fitness standards adopted by the council on June 4, 2009, which must be met in order to become a peace officer;

(e) "Reporting year" means an annual period starting on July 1, and ending on June 30 of the following year;

(f) "Training program" means the basic training courses offered by the division or one of the certified academies, which are required to become a:

(i) special function officer;

(ii) correctional officer;

(iii) law enforcement officer; or

(iv) dispatcher; and

(g) "Training year" means the same as reporting year.

R728-403-4. Application for Training and Certification.

(1) An applicant seeking to become certified as a dispatcher or peace officer shall submit a completed application packet to the division that includes:

(a) a written or electronic application form provided by the division;

(b) a photocopy of a government-issued identification card;

(c) evidence that the applicant is a United States citizen to include a photocopy of a birth certificate or a photocopy of a United States passport, or, in the case of naturalized citizen, a naturalization number;

(d) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;

(e) one recent color photograph of passport quality with the applicant's name written on the back of the photograph;

(f) evidence that the applicant has completed high school or obtained the educational equivalent; and

(g) the application fee, unless the applicant has been hired as a dispatcher or peace officer by a governmental entity.

(2) An applicant seeking to become a certified peace officer shall also submit:

(a) proof that the applicant has achieved a passing score on the National Peace Officer Selection Test (NPOST), unless the applicant was certified as a special functions officer prior to 1997, and is applying to become a law enforcement officer or correctional officer; and

(b) a medical evaluation from a medical doctor indicating the applicant is able to participate in all aspects of the training program.

(3) The applicant must submit the application packet four weeks prior to the start of a training program to allow the division adequate time to process the application packet.

(a) The division shall not accept nor process any application that is not complete or fails to include all required attachments.

(4) An application shall be considered valid for one year from the time the application is completed by the applicant.

(5)(a) Once a completed application packet is received by the division, the packet shall be reviewed to determine if the applicant meets the requirements in Sections 53-6-203 or 53-6-302.

(b) If the division does not have sufficient information to make this determination, the division may request the applicant provide additional information.

(6)(a) In determining whether an applicant has demonstrated good moral character as required by Sections 53-6-203 or 53-6-302, the division shall conduct a criminal history background check of local, state, and national criminal history files to determine if the applicant has a criminal record.

(b) An applicant with a criminal history that contains any of the following shall be denied entrance into a training program and shall not receive certification:

(i) a conviction of a felony under state or federal law in this or any other state;

(ii) dismissal from the armed services under dishonorable conditions; or

(iii) a conviction of domestic violence, unless the conviction has been expunged or set aside.

(c) An applicant who has been convicted of, or involved in conduct which is a state or federal criminal offense, may not be allowed to attend a basic training program or receive POST certification for a period of time consistent with the POST Council disciplinary guidelines as approved by the council on June 5, 2013.

(i) The waiting period shall run from the date of the involvement, unless the applicant is still under court supervision (i.e. probation) for the violation, in which case the applicant will not be allowed to make application until the probation has been successfully completed or the applicant is no longer under court supervision.

(ii) Waiting periods shall run consecutively for applicants who have been convicted of or involved in multiple violations.

(d) Any activity involving the abuse of alcohol or drugs may be considered in determining whether an applicant will be allowed to attend a basic training program or receive POST certification.

(e) An applicant convicted of or involved in minor crimes not otherwise identified in this rule, including traffic violations that reflect a willful disregard for lawful behavior as evidenced by repetitiveness of conduct or other aggravating factors, shall not be allowed to attend a basic training program or receive POST certification prior to one year from the latest conviction or involvement.

(i) In cases where arrest warrants are issued, the one-year waiting period will begin at the time the warrant is served on the applicant.

(f) If an applicant is found to have falsified any information to gain admittance into a basic training program, a two-year waiting period shall be applied from the date the division becomes aware of the falsification.

(i) If the information falsified is covered by other sections of this rule, (i.e., state or federal criminal offense) and a specific waiting period is required, the division shall require the applicant to wait the longer of the two periods. Waiting periods will not be combined to run consecutively.

(ii) If an applicant completes the basic training program and prior to taking the certification examination the division becomes aware of a falsification, the applicant shall not be allowed to take the certification examination.

(iii) An applicant who is dismissed during the course of a basic training program for falsifying any information to obtain certification shall not be eligible for further POST training or certification until the two-year waiting period has been met.

(iv) If an applicant becomes certifiable and then is subsequently discovered to have falsified information to obtain certified status, that individual may be subject to suspension of their POST certification.

(7) If the applicant is the subject of an ongoing investigation by the division, the applicant shall not be deemed eligible to attend a training program until the investigation is completed.

(8) If the division determines that the applicant meets all of the requirements in Sections 53-6-203 or 53-6-302, the division shall notify the applicant that the applicant is eligible to attend a training program.

(9) If the division determines that the applicant does not meet the requirements in Sections 53-6-203 or 53-6-302, the applicant shall be denied admission to a training program.

(10) Applicants who are accepted into a peace officer training program shall pass the POST physical fitness requirements for entrance into the specific training program as approved by the Council and outlined in POST policy and procedure 2390-Physical Training Requirements.

(11) Applicants who are accepted into a peace officer training program shall be subject to random and "for cause" drug testing as outlined in POST policy and procedure 2400-Drug Testing for Applicants and Cadets.

(12) Applicants seeking dispatcher certification must also provide evidence of:

(a) Utah Emergency Medical Dispatcher (EMD) certification;

(b) Bureau of Criminal Identification (BCI) proficiency certificate; and

(c) documentation showing completion of:

(i) Incident Command System (ICS) 100 training;

(ii) ICS 200 training; and

(iii) National Incident Management System (NIMS) 700 training.

R728-403-5. Completion of a Training Program.

(1) An applicant successfully completes the training program by:

(a) attending all required training courses;

(b) obtaining passing scores on all intermediate and subject specific tests; and

(c) participating in all required physical fitness, practical skill training and other required activities.

(2) Applicants shall be subject to all officially published policy at the training academy they attend.

(3) An applicant who fails to complete any portion of the academic training program may not take the certification examination.

(4) An applicant may take the certification examination prior to passing the physical fitness, defensive tactics, firearms, or emergency vehicle operations tests.

(5) An applicant who is unable to pass the physical fitness, defensive tactics or firearms tests, within one year after completing the training program or within one year of taking the certification examination shall be denied certification.

(6) An applicant who is unable to pass the emergency vehicle operations tests within one year from completion of the

emergency vehicle operations training program shall be denied certification.

(7) An applicant who fails the certification examination shall have one opportunity to take a make-up examination within one year of the first examination.

(a) An applicant who fails the certification examination after two attempts shall be denied certification and shall not be permitted to take the certification examination again until the applicant satisfactorily completes another approved basic training program.

(8) An applicant who successfully completes the training program shall be certified as a peace officer in the state of Utah.

R728-403-6. Waiver of Basic Training Program.

(1) An applicant who has not attended a training program offered by the division or a satellite academy, may seek to waive a training program by submitting a completed waiver packet to the division, which includes:

(a) a completed application packet as provided in R728-403-4;

(b) documentation showing that the applicant has completed training equivalent to the training program the applicant is seeking to waive, such as:

(i) a copy of the training curriculum;

(ii) the number of hours completed; and

(iii) the date the training was completed; and

(c) evidence of any prior employment as a dispatcher or peace officer that includes:

(i) a detailed job description; and

(ii) verification from the applicant's employer of the last date the applicant worked as a dispatcher or peace officer.

(2) Once the division has received a completed waiver packet, the division shall review the packet to determine if the training completed by the applicant is the equivalent of the training program the applicant seeks to waive.

(a) If the division does not have sufficient information to make this determination, the division may request that the applicant submit additional information.

(3) If the division determines the peace officer training completed by the applicant is the equivalent of the peace officer training program the applicant seeks to waive, and the program was completed less than four years prior to the date the applicant will take the certification examination, or the applicant has been actively engaged in performing the duties of a peace officer within the past four years, and the applicant meets all of the requirements in R728-403-4 and Sections 53-6-203 and 53-6-206, the applicant may take the physical fitness test and the certification examination.

(a) If the applicant passes both the physical fitness test and the certification examination, the applicant shall be certified as a peace officer in the state of Utah.

(b) If the applicant fails to pass the certification examination, the applicant shall be given one additional opportunity to pass the certification examination, which must be completed within one year of the first examination.

(c) An applicant who fails the certification examination after two attempts shall be denied certification and shall not be permitted to take the certification examination again until the applicant satisfactorily completes an approved basic training program.

(d) If the applicant fails to pass the physical fitness test, the applicant may be given additional opportunities to pass during regularly scheduled fitness tests provided by POST.

(e) The applicant must pass the certification examination and the physical fitness test within four years from the date of completion of the original training program, or four years from the date they were last actively engaged in the duties of a peace officer.

(f) An applicant who successfully completes the waiver process for law enforcement officer certification or correctional officer certification shall be deemed to have also completed requirements for special functions officer certification.

(g) An applicant seeking to be certified as both a law enforcement officer and a correctional officer must complete the waiver process and pass the certification examinations for each of those peace officer classifications.

(4) If the division determines that the dispatcher training completed by the applicant is the equivalent of the training program the applicant seeks to waive, and the program was completed less than four years prior to the date the applicant will take the certification examination, or the applicant has been actively engaged in performing the duties of a dispatcher within the past four years, and the applicant meets all of the requirements in R728-403-4 and Sections 53-6-302 and 53-6-304, the applicant may take the certification examination.

(a) If the applicant passes the certification examination, the applicant shall be certified as a dispatcher in the state of Utah.

(b) If the applicant fails to pass the certification examination, the applicant shall be given one additional opportunity to pass the certification examination, which must be completed within one year of the first examination.

(c) An applicant who fails the certification examination after two attempts shall be denied certification and shall not be permitted to take the certification examination again until the applicant satisfactorily completes an approved basic training program.

(5) If the applicant fails to meet any of the requirements set forth in this rule, the applicant may not waive the training program.

R728-403-7. Reactivation of Certification.

(1) Pursuant to Section 53-6-208 or 53-6-306, the certification of a peace officer or dispatcher who has not been actively engaged in performing the duties of a peace officer or dispatcher for 18 months shall be designated "inactive".

(a) The certification of a peace officer or dispatcher that has been suspended for more than 18 consecutive months due to disciplinary action or failure to complete in-service training shall be considered "inactive".

(2) An applicant whose certification has become inactive may reactivate the applicant's peace officer or dispatcher certification by submitting a completed reactivation packet to the division, which includes:

(a) a completed application packet as provided in R728-403-4; and

(b) evidence of the applicant's prior employment as a dispatcher or peace officer.

(3) Once the division has received a completed reactivation packet, the division shall review the packet to

determine if the applicant meets all of the requirements in Sections 53-6-203 and 53-6-208, or 53-6-302 and 53-6-306.

(a) If the division does not have sufficient information to make this determination, the division may request the applicant submit additional information.

(4) If an applicant for reactivation of peace officer certification meets all of the requirements in Sections 53-6-203 and 53-6-208, the applicant may take the physical fitness test and the certification examination as provided in R728-403-5.

(a) If the applicant passes both the physical fitness test and the certification examination, the applicant shall be certified as a peace officer in the state of Utah.

(b) If the applicant fails to pass the certification examination, the applicant shall be given one additional opportunity to pass the certification examination, which must be completed within one year of the first examination.

(c) An applicant who fails the certification examination after two attempts shall be denied certification and shall not be permitted to take the certification examination again until the applicant satisfactorily complete an approved basic training program.

(d) If an applicant fails to pass the physical fitness test, the applicant may be given additional opportunities to pass during regularly scheduled fitness tests provided by POST.

(4) If an applicant for reactivation of dispatcher certification meets all of the requirements in Sections 53-6-302 and 53-6-306, the applicant may take the certification examination, as provided in R728-403-5.

(a) If the applicant passes the certification examination, the applicant shall be certified as a dispatcher in the state of Utah.

(b) If the applicant fails to pass the certification examination they will be given one additional opportunity to pass the certification examination which must be completed within one year of the first examination.

(c) An applicants who fails the certification examination after two attempts shall be denied certification and shall not be permitted to take the certification examination again until the applicant satisfactorily complete an approved basic training program.

(5) If the applicant for reactivation of peace officer or dispatcher certification fails to meet any of these requirements, the applicant's certification may not be reactivated.

(6) The certification of a peace officer or dispatcher that has been suspended or inactive for more than four consecutive years shall be considered "lapsed" and the peace officer or dispatcher shall comply with the requirements in Section 53-6-208 or 53-6-306 before certification may be reinstated.

R728-403-8. Denial of Certification.

(1) An applicant shall be denied certification for failing to satisfy any of the requirements under administrative rule R728-403.

(2) An applicant who is the subject of an ongoing investigation by the division, or who is under court supervision for a state or federal criminal offense, may not be certified until the investigation has been completed and/or the court supervision has been terminated.

(3) If the division denies an applicant certification, the division shall issue a letter of denial by mail.

(a) The letter of denial shall state the reasons for denial and indicate that the applicant may appeal the decision to the director by filing a written request for review within 30 days from the date of the division's decision as provided by Section 63G-4-301.

(b) Within a reasonable time after receiving the appeal, the director shall review the matter and determine whether the applicant may be certified.

(c) If upon further review the director denies the applicant's appeal, the director shall notify the applicant by letter and indicate that the applicant has the right to appeal the director's decision by filing a petition for judicial review within 30 days as provided in Section 63G-4-402.

(4) An applicant who has been denied certification shall meet all of the requirements in this rule before being certified.

(5) All adjudicative proceedings under this rule shall be informal according to the provisions in Sections 63G-4-202 through 63G-4-203.

KEY: ~~[law enforcement officers, qualifications for training*]~~ **[dispatchers, peace officers, certifications, waivers]**
Date of Enactment or Last Substantive Amendment: ~~[November 25, 2008]~~ **2016**

Notice of Continuation: December 13, 2011

Authorizing, and Implemented or Interpreted Law: 53-6-203; ~~53-6-211~~ 53-6-205; 53-6-206; 53-6-208; 53-6-302; 53-6-303; 53-6-304; 53-6-306

**Public Safety, Peace Officer Standards and Training
R728-404
Basic Training Basic Academy Rules**

**NOTICE OF PROPOSED RULE
(Repeal)**

DAR FILE NO.: 40531
FILED: 06/22/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This action is being taken to eliminate redundancy and clarify information in the rules. The majority of the information in this rule is located in state code. The remainder of the information in this rule will now be located in Rule R728-403. (Editor's Note: The proposed repeal and reenactment of Rule R728-403 is under Filing No. 40535 in this issue July 15, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety to eliminate redundancy and clarify information in the rules. The majority of the information in this rule is located in state code. The remainder of the information in this rule will now be located in Rule R728-403.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-105 and Section 53-6-106 and Section 53-6-107

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no costs or savings to the budget with the repeal of this rule because the rule is repealed in its entirety to eliminate redundancy and clarify information in the rules. The majority of the information in this rule is located in state code. The remainder of the information in this rule will now be located in Rule R728-403.

♦ **LOCAL GOVERNMENTS:** Repealing this rule will not have an impact on local government budgets because the rule is repealed in its entirety to eliminate redundancy and clarify information in the rules. The majority of the information in this rule is located in state code. The remainder of the information in this rule will now be located in Rule R728-403.

♦ **SMALL BUSINESSES:** Repealing this rule will not have a fiscal impact on small businesses because the rule is repealed in its entirety to eliminate redundancy and clarify information in the rules. The majority of the information in this rule is located in state code. The remainder of the information in this rule will now be located in Rule R728-403.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The repealing of this rule will not impact other persons not mentioned in this section because the rule is repealed in its entirety to eliminate redundancy and clarify information in the rules. The majority of the information in this rule is located in state code. The remainder of the information in this rule will now be located in Rule R728-403.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the repealing of this rule because the rule is repealed in its entirety to eliminate redundancy and clarify information in the rules. The majority of the information in this rule is located in state code. The remainder of the information in this rule will now be located in Rule R728-403.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and found that repealing the rule will not have a fiscal impact on business.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov

◆ Wade Breur by phone at 801-256-2329, or by Internet E-mail at wbreur@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Scott Stephenson, Director

R728. Public Safety, Peace Officer Standards and Training.

[R728-404. Basic Training Basic Academy Rules.

R728-404-1. Admission Requirements.

- ~~_____ A. United States Citizenship.~~
- ~~_____ B. Minimum age of 21 years at the time of appointment as a peace officer.~~
- ~~_____ C. Fingerprinting and search of local, state and national fingerprint files to determine whether applicant has a criminal record, final certification to be withheld until this search is completed.~~
- ~~_____ D. May not have been convicted of a crime for which the applicant could have been punished by imprisonment in a federal penitentiary, or for which the applicant could have been imprisoned in the penitentiary of this or another state. Conviction of any offense not serious enough to be covered under Subsection (1)(d) of 53-6-203 Utah Criminal Code, involving dishonesty, unlawful sexual conduct, physical violence, or the unlawful use, sale or possession for sale of a controlled substance is an indication that an applicant may not be of good moral character and may be grounds for denial of admission to a training program or refusal to take a certification examination. Notwithstanding the provisions of Title 77, Chapter 18, expungement of felony convictions obtained in this state and any other jurisdiction shall be considered for purposes of this subsection.~~
- ~~_____ E. Shall be a high school graduate or furnish evidence of successful completion of an examination indicating an equivalent achievement.~~
- ~~_____ F. Shall demonstrate good moral character as determined by a background investigation, which may include consideration of offenses expunged under Title 77, Chapter 18.~~
- ~~_____ G. Free of any physical, emotional or mental conditions that might affect adversely the performance of duty as a peace officer as determined through a selection process by the employing agency.~~

R728-404-2. Graduation Requirements.

- ~~_____ A. Written Examinations and Quizzes.~~
 - ~~_____ 1. Examinations and quizzes are a necessary method of testing not only the student's substantive knowledge, but also their reading, comprehension, and reasoning abilities, all of which are essential criteria for proper performance of peace officer functions. They will be given as indicated in the curriculum schedule. Examinations are given on the honor basis. Evidence of dishonor will result in dismissal from the Academy. Students must score an average of 80% on all exams except the first aid, arrest control, and certification exams where a minimum of 80% must be scored.~~
 - ~~_____ 2. The cadet is required to maintain an 80% weighted average or higher from each weekly quiz. If a cadet falls below the 80% weighted average after three weeks in the academy, they will be counseled by the training staff and may be offered remediation.~~

~~_____ 3. The cadet is required to pass each exam with 80%. If a cadet fails the exam they will be offered remediation from the training staff and allowed one retake. For purposes of academic excellence awards, the first exam will be used in the calculation.~~

~~_____ 4. A final Certification Examination will be required of each student in order to achieve peace officer/special function officer certification or become certifiable. A minimum score of 80% must be scored. If the score is less than 80%, the student will be allowed to take one make-up exam to achieve the required 80%. Make-up exams must be taken prior to one year from the date of the initial exam. If the student fails to achieve 80% on the make-up certification examination, he will be required to go through the training again to achieve certification or become certifiable (be eligible to be certified when hired in a position requiring certification.) It will be the policy of the Academy to cover the expenses of a returning sponsored student; however, if a sponsored student is twice suspended from the Academy and that student continues in his attempt to complete the Academy, it will become the responsibility of the sponsoring agency and/or the student to pay the tuition assessed by the Academy. Returning self-sponsored students will be responsible for their expenses and tuition.~~

~~_____ B. Participation.~~

~~_____ Students will actively participate in physical fitness training, practical problems, classroom work, tours, graduation exercises, and any other activities unless specifically excused by the training supervisor.~~

~~_____ C. Reports.~~

~~_____ Students may be required to complete written reports. All reports will be graded on a pass/fail basis.~~

~~_____ D. Firearms Qualification.~~

~~_____ 1. Requirements.~~

~~_____ Students attending a basic peace officer training course will:~~

- ~~_____ a. participate in firearms training and demonstrate the ability to safely handle a firearm, and~~
- ~~_____ b. pass the POST approved qualification course(s) at or above the required score.~~

~~_____ 2. Retesting.~~

~~_____ Students who fail to qualify on any qualification course will receive one opportunity to retake the course(s) and qualify. Retests will be scheduled by the POST Firearms Instructor and applicable training supervisor.~~

~~_____ Note: The POST Staff Firearms Instructor has the discretion of deciding if mitigating circumstances should be taken into consideration when a student fails any qualification or requalification course. Mitigating circumstances include:~~

- ~~_____ a. weather,~~
- ~~_____ b. quality/quantity of instructors,~~
- ~~_____ c. equipment problems,~~
- ~~_____ d. medical problems,~~
- ~~_____ e. etc.~~

~~_____ If the POST Staff Firearms Instructor decides there were one or more circumstances beyond the control of the student or the instructor and the student fails to qualify, the POST Staff Firearms Instructor may schedule a retest.~~

~~_____ E. Vehicle Operation.~~

~~_____ 1. Requirements.~~

~~_____ Students attending a basic peace officer training course will:~~

- ~~_____ a. participate in all scheduled classroom and practical vehicle operation training (any training missed must be made up before a student can graduate and be certified or become certifiable);~~

~~_____ b. demonstrate the ability to safely handle a vehicle in an emergency situation, and~~

~~_____ c. pass the POST approved qualification course(s) at or above the required score.~~

~~_____ 2. Retesting.~~

~~_____ Students who fail to qualify on any qualification course will:~~

~~_____ a. have four more opportunities to qualify on the day of the test;~~

~~_____ b. after remedial training the student will have three more opportunities to qualify at a later date which will be scheduled by the driving instructor and the training supervisor.~~

~~_____ Note: The POST Staff Vehicle Operation Instructor has the discretion of deciding if mitigating circumstances should be taken into consideration when a student fails any qualification or requalification course. Mitigating circumstances include but are not limited to:~~

~~_____ a. weather;~~

~~_____ b. quality/quantity of instructors;~~

~~_____ c. equipment problems;~~

~~_____ d. medical problems;~~

~~_____ e. etc.~~

~~_____ If the POST Staff Vehicle Operation Instructor decides there were one or more circumstances beyond the control of the student and the student fails to qualify, the POST Staff Vehicle Operation Instructor may schedule a retest.~~

~~_____ F. Physical Training.~~

~~_____ Participation in physical training is required during the basic academy program. Students will be required to take the physical assessment test at the end of the peace officer program and score at the 50th percentile in each exercise to graduate. If a student fails to pass the physical assessment test, one retest will be administered before the graduation ceremony. Should students fail to meet the physical fitness testing requirements, they will not be permitted to have their picture taken with the class or graduate with the class.~~

~~_____ G. Arrest Control/Baton.~~

~~_____ 1. Requirements.~~

~~_____ Students attending a basic peace officer training course will:~~

~~_____ a. participate in scheduled arrest control/baton training;~~

~~_____ b. demonstrate the ability to apply arrest control and baton techniques, and~~

~~_____ c. pass a POST approved practical examination.~~

~~_____ 2. Retesting.~~

~~_____ H. Failure to Qualify in a Skill Area.~~

~~_____ 1. Students who fail to qualify in any skill area during a basic training program, will have four years to meet the approved standard before they will be required to go back through an academy program.~~

~~_____ 2. Retesting during the four year period will be at the convenience of POST and a testing fee will be imposed each time a test is administered.~~

~~_____ 3. POST may refuse to administer a test at any time if POST feels it's in the best interest of the individual and/or POST.~~

~~_____ I. Counsel.~~

~~_____ Individual counseling is available to any student on request to his class training supervisor.~~

~~_____ J. Make-Up Policy.~~

~~_____ 1. All requirements must be satisfied before a student can graduate and become certifiable or certified.~~

~~_____ 2. Basic training supervisors will notify the student and his department head of any deficiencies in meeting graduation requirements.~~

~~_____ 3. The student and department head will be advised of the policy and procedures involved in the make-up of any deficiencies for graduation and certification.~~

~~_____ 4. Should a student become ill or injured to such an extent that it is impossible or unwise to participate in any part of the academy training, a doctor must be seen by the student. A written explanation must be obtained from the doctor and presented to the student's training supervisor.~~

~~_____ K. Attendance.~~

~~_____ 1. Students will be required to attend all training unless an emergency exists or a valid excuse is given.~~

~~_____ 2. More than three unexcused absences may result in suspension from the Academy. Acceptable excuses include but are not limited to illness, court, and death of an immediate family member. Whenever possible, absences will be cleared through the student's Academy supervisor before the absence occurs. It is the student's responsibility to contact the Academy supervisor when he is absent or late. Attendance information may be made available to department heads periodically.~~

~~_____ 3. Anyone who is tardy three times without an acceptable excuse may be subject to disciplinary action.~~

~~_____ 4. In no case will a student be certified or become certifiable who has missed more than 10% of the basic course until the necessary make-up work has been completed.~~

~~_____ 5. If a student has missed a significant part of any block of instruction, as determined by the POST staff, he will not be certified or become certifiable until the necessary make-up work is completed.~~

~~_____ 6. Under no circumstances will a student graduate if he misses any of the following classes until they are made-up:~~

~~_____ a. Ethics and Professionalism;~~

~~_____ b. Laws of Arrest;~~

~~_____ c. Laws of Search and Seizure;~~

~~_____ d. Use of Force;~~

~~_____ e. First Aid (CPR only);~~

~~_____ f. Emergency Vehicle Operation;~~

~~_____ g. Vehicle Operation Liability;~~

~~_____ h. Vehicle Operation Practical;~~

~~_____ i. Arrest Control Practical Examination;~~

~~_____ j. Firearms Safety;~~

~~_____ k. Firearms Range/Day Shooting (qualification only);~~

~~_____ l. Firearms Range/Night Shooting;~~

~~_____ m. Reasonable Force;~~

~~_____ n. Firearms Decision-Making; or~~

~~_____ o. Crimes In-Progress (practical only).~~

~~_____ L. Grounds for Dismissal From Basic Training:~~

~~_____ 1. failure to meet the minimum academic standard;~~

~~_____ 2. failure to meet the physical fitness standard;~~

~~_____ 3. failure to achieve 80% on the State Certification exam;~~

~~_____ 4. evidence of any health problem that would keep the student from successfully completing the basic training program;~~

~~_____ 5. failure to comply with Academy rules;~~

~~_____ 6. failure to meet the standards as stated in Section 53-6-203; or~~

~~_____ 7. failure to satisfactorily perform in any of the skill areas required during basic training.~~

R728-404-3. Health Services and Emergencies.

_____ A. Any person who becomes ill or injured while at the Academy shall notify a member of the Academy staff immediately.

_____ B. The Academy is not authorized funds to pay for prescriptions, x-rays, casts, bandages, medications or out-patient visits to hospitals. Students or their departments will be expected to pay for the above services and supplies.

_____ C. All personal calls are to be conducted on one of the phones located strategically throughout the building. Collect calls will not be accepted.

R728-404-4. Classrooms.

_____ A. Students will be responsible for keeping the classrooms neat and clean. No food, drinks or smoking will be allowed in the classroom.

_____ B. From time to time, POST will take portions of the training to locations other than the Academy. While at any of these locations, students will respect the property of others and conduct themselves accordingly. If any damage occurs, it will be reported to the training supervisor as soon as possible.

R728-404-5. Special Regulations.**A. Alcohol and Gambling.**

_____ No student will consume alcohol in any form during the course of the training day. The training day shall be interpreted to mean two hours prior to the first class of the day until the completion of the last class of the day. In circumstances where classes end at 5:00 p.m. and there is scheduled evening or night classes, the last class of the day means the last night class.

_____ 1. No alcoholic beverages of any kind shall be brought onto or consumed on the Academy site unless it's part of the training schedule.

_____ 2. Gambling will not be permitted at any time or place on the Academy site.

_____ 3. Persons found to be in violation of Section D will be suspended or dismissed from the Academy.

B. Dress Code.

_____ Students are required to wear their individual department uniform beginning the first day of class. Because almost all training requires the wearing of the department uniform it is recommended that students have at least two clean uniforms available at all times.

_____ The following dress code will be mandatory for self-sponsored students:

_____ 1. Male. Light blue long or short sleeve shirt, navy blue slacks, navy blue tie, and conservative dress shoes.

_____ 2. Female. Light blue long or short sleeve blouse, navy blue tie, navy blue dress slacks or skirt, and conservative dress shoes.

_____ The official Academy patch will be worn on both sleeves of the self-sponsored uniform.

_____ 3. Only authorized Academy gym clothing will be worn during physical fitness training and arrest control techniques. No radio/tape head sets will be allowed during physical training classes. Hard-soled shoes will not be worn on the gym floor.

4. Practical Problems.

_____ The training supervisor may allow students to wear appropriate civilian clothing for designated training:

_____ a. Appropriate civilian clothing includes: blue jeans, slacks, t-shirts, sweaters, hats, coats, jackets and athletic shoes.

_____ b. Inappropriate civilian clothing includes: cutoffs, shorts, halter tops, tank tops or any other item the training supervisor deems inappropriate.

_____ The uniform requirement is intended to help encourage basic students to look and act in a more professional manner. Any staff member at any time can instruct a student to change a uniform or any apparel when in the opinion of the staff member it does not meet the intent of the dress code.

C. Grooming.

_____ All students will be expected to maintain proper grooming habits at all times. Clothing will be clean and well cared for. Shoes

will be shined. Male students will be clean-shaven every day. Beards will not be allowed. Hair must be clean and neat. Male students will have hair trimmed so that it does not hang over the center portion of the shirt collar when the student is standing straight.

D. Conduct.

_____ 1. All students will be expected to conduct themselves in an adult and professional manner at all times.

_____ 2. No loud, abusive, or obscene language will be permitted unless necessary in a practical exercise.

_____ F. All students shall realize that while at the Academy they will be directly supervised by their training supervisor and the Academy staff. Therefore, all decisions relative to their training status will be made by the training supervisor and approved, where necessary, through the chain of command.

R728-404-6. Lost, Damaged or Destroyed Items.

_____ Students who lose or damage items beyond serviceability will be required to reimburse the Academy for the replacement value.

R728-404-7. Cost of Training.

_____ Costs of Basic Training are born by the state for sponsored students. Self-sponsored students shall be charged the currently approved rate.

R728-404-8. Disciplinary Action.

_____ A. Students do not have a protected property interest in their enrollment at the Academy. Any student who becomes the subject of an inquiry into an allegation of violation of Academy rules or standards will be dealt with following the procedures outlined in the Procedures for Dismissing Students from Peace Officer Training Programs for Cause found in the POST Policy and Procedure Manual.

_____ B. A violation of any of the Academy rules can result in anyone or more of the following actions:

_____ 1. verbal reprimand;

_____ 2. written reprimand;

_____ 3. probation;

_____ 4. referral to department for discipline;

_____ 5. suspension; or

_____ 6. dismissal.

_____ C. A student may be prohibited from participating in Academy functions during the course of an inquiry into alleged misconduct.

_____ D. In all cases, the student will be given the opportunity to speak in his behalf before any action is taken.

_____ E. Once an action is decided upon, the student and his employing agency will be immediately notified.

~~F. In all cases where a student is suspended or dismissed from the Academy, his employing agency will be immediately notified.~~

~~G. Students may appeal any decision by following the procedures outlined in the POST Policy and Procedure Manual.~~

~~**R728-404-9. Dormitory Facilities:**~~

~~All students will comply with the residency requirements for the Larry and Gail Miller Public Safety, Education and Training Center dorm facility. A copy of this policy will be provided to each student that will be using the dorm facility at the start of the academy class.~~

~~**KEY: law enforcement officers, basic academy rules**~~

~~**Date of Enactment or Last Substantive Amendment: December 1, 2007**~~

~~**Notice of Continuation: December 13, 2011**~~

~~**Authorizing, and Implemented or Interpreted Law: 53-6-105; 53-6-106; 53-6-107]**~~

**Public Safety, Peace Officer Standards
and Training
R728-405
Drug Testing Requirement**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40532

FILED: 06/22/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed to eliminate redundancy and clarify rules. The information found in this rule will now be incorporated into Rule R728-403. (Editor's Note: The proposed repeal and reenactment of Rule R728-403 is under Filing No. 40535 in this issue, July 15, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety to eliminate redundancy and clarify rules. The information found in this rule will now be incorporated into Rule R728-403.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-105 and Section 53-6-203

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There are no costs or savings to the budget with the repeal of this rule because the rule is repealed in its entirety to eliminate redundancy and clarify rules. The information found in this rule will now be incorporated into Rule R728-403.

◆ LOCAL GOVERNMENTS: Repealing this rule will not have an impact on local government budgets because the rule is

repealed in its entirety to eliminate redundancy and clarify rules. The information found in this rule will now be incorporated into Rule R728-403.

◆ SMALL BUSINESSES: Repealing this rule will not have a fiscal impact on small businesses because the rule is repealed in its entirety to eliminate redundancy and clarify rules. The information found in this rule will now be incorporated into Rule R728-403.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The repealing of this rule will not impact other persons not mentioned in this section because the rule is repealed in its entirety to eliminate redundancy and clarify rules. The information found in this rule will now be incorporated into Rule R728-403.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the repealing of this rule because the rule is repealed in its entirety to eliminate redundancy and clarify rules. The information found in this rule will now be incorporated into Rule R728-403.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and found that repealing the rule will not have a fiscal impact on business.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov
◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
◆ Wade Breur by phone at 801-256-2329, or by Internet E-mail at wbreur@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Scott Stephenson, Director

**R728. Public Safety, Peace Officer Standards and Training.
[R728-405. Drug Testing Requirement.**

R728-405-1. Authority:

~~This rule is authorized by Sections 53-6-105, 53-6-203, and 53-6-211.~~

R728-405-2. Purpose.

~~_____ A. Peace Officer Standards and Training has a compelling interest in ensuring that every student attending a basic peace officer training course, who may become certified and sworn to uphold the law, be drug free.~~

~~_____ B. When peace officers and potential peace officers participate in illegal drug use and drug activity, the integrity of the police profession is diminished and public confidence is destroyed.~~

~~_____ C. In order to protect the citizens of the State of Utah, to preserve public trust and confidence in a fit and drug free peace officer profession, and to maintain the credibility of peace officer training academies, Peace Officer Standards and Training shall implement a drug testing program.~~

R728-405-3. Procedure.

~~_____ A. Applicants accepted to a POST approved basic peace officer training program will be tested some time during the POST training curriculum.~~

~~_____ B. Testing will be done by following the POST drug testing policy. The policy outlines the specimen collection procedures, drug testing methodology, and other information and requirements pertinent to such a policy.~~

R728-405-4. Failure to Pass Drug Test.

~~_____ A. Students attending an academy will be dismissed if drug testing indicates a positive result considered by a medical review officer to be a result of intentional ingestion of an illegal drug.~~

~~_____ B. Students who are dismissed may appeal the denial or dismissal by following the procedures outlined in the POST policy and procedure manual. Appeal procedures may be obtained in written form at POST.~~

~~**KEY:** law enforcement officers, drug testing, drug testing programs~~

~~**Date of Enactment or Last Substantive Amendment:** September 27, 2002~~

~~**Notice of Continuation:** December 21, 2011~~

~~**Authorizing, and Implemented or Interpreted Law:** 53-6-105; 53-6-203]~~

Public Safety, Peace Officer Standards
and Training
R728-406

Requirements for Approval and
Certification of Basic Correctional,
Reserve and Special Function Training
Programs and Applicants

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40529

FILED: 06/22/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed to eliminate redundancy and clarify rules. The information contained in the rule will now be incorporated into Rules R728-401 and R728-403. (Editor's Note: The proposed repeal and reenactment of Rule R728-401 is under Filing No. 40534 and the proposed repeal and reenactment of Rule R728-403 is under Filing No. 40535 in this issue, July 15, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety to eliminate redundancy and clarify rules. The information contained in the rule will now be incorporated into Rules R728-401 and R728-403.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-202

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no costs or savings to the budget with the repeal of this rule because the information contained in the rule will now be incorporated into Rules R728-401 and R728-403.

◆ **LOCAL GOVERNMENTS:** Repealing this rule will not have an impact on local government budgets because the information contained in the rule will now be incorporated into Rules R728-401 and R728-403.

◆ **SMALL BUSINESSES:** Repealing this rule will not have a fiscal impact on small businesses because the information contained in the rule will now be incorporated into Rules R728-401 and R728-403.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The repealing of this rule will not impact other persons not mentioned in this section. The information contained in the rule will now be incorporated into Rules R728-401 and R728-403.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the repealing of this rule because the information contained in the rule will now be incorporated into Rules R728-401 and R728-403.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and found that repealing the rule will not have a fiscal impact on business.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov
- ◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
- ◆ Wade Breur by phone at 801-256-2329, or by Internet E-mail at wbreur@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Scott Stephenson, Director

R728. Public Safety, Peace Officer Standards and Training.
~~[R728-406. Requirements For Approval and Certification of Basic Correctional, Reserve and Special Function Training Programs and Applicants.~~

R728-406-1. Authority.

~~This rule is authorized by Section 53-6-105 which gives the power to the Director of Peace Officers Standards and Training to promulgate standards for the certification of Correctional, Reserve and Special Function Officer Training Programs and applicants.~~

R728-406-2. Academy Approval.

~~Any agency wishing to conduct a basic peace officer training program shall do so with the approval of the POST Council and by complying with the POST approved procedures.~~

R728-406-3. Policy and Procedures for Course Validation.

~~A. The course must conform to the content and standards established by POST and approved by the POST Council.~~

~~B. All applicants shall have completed the POST application packet. Without exception, medical requirements will be completed before training begins.~~

~~1. Sponsored applicants — The sponsoring agency will complete the background investigation and insure that the requirements in 53-6-203 (applicants for admission to training programs) and R728-403 (Qualifications for Admission to Certified Peace Officer Training Academies) have been met. If the sponsoring agency has any question about an applicant as he relates to 53-6-203, or R728-403, POST shall be consulted before any training begins.~~

~~2. Self-Sponsored applicants — POST will conduct a criminal history check on all self-sponsored applicants. Programs providing training to self-sponsored students such as Weber State University or Salt Lake Community College will adhere to the following guidelines when providing POST with application packets.~~

~~a. It is the policy of POST that all applications will be checked to insure completeness. POST will return any application not complete and deny training to that individual until a complete application is received and a criminal history check has been completed.~~

~~b. It is the policy of POST that applications will be provided to POST at least four weeks prior to the start of training unless special circumstances exist and arrangements have been made with POST~~

~~(without exception medical release forms will be completed and submitted to POST before physical training begins.)~~

~~e. It is the policy of POST that a class schedule and a list of instructors will be provided to POST before training begins.~~

~~C. Equipment required to perform training must be furnished by the sponsoring agency or program. Equipment must meet POST standards.~~

~~D. All instructors must be POST certified, and approved to instruct in their assigned topic(s).~~

~~E. Lesson plans for each topic must be prepared in accordance with the currently approved student performance objectives. Instructors must read and sign Form #771/89 (Performance Objectives Agreement) indicating they are aware of and are willing to teach the POST approved performance objectives.~~

~~F. Sponsoring agencies and program coordinators must administer POST approved examinations and maintain a file of examinations used. The final certification examination, which is a comprehensive examination, will be given by POST. A minimum score of 80% is required to pass the test.~~

~~G. Attendance rosters shall be kept to satisfy statutory requirements and copies of these rosters will be submitted to POST. No attendee can miss more than 10% of the course and still be certifiable. Under no circumstances will a student be certified if he misses (and fails to make-up) the following classes:~~

- ~~1. Ethics and Professionalism~~
- ~~2. Laws of Arrest~~
- ~~3. Laws of Search and Seizure~~
- ~~4. Use of Force~~
- ~~5. First Aid (CPR only)~~
- ~~6. Arrest Control Techniques (practical exam)~~

~~H. Sponsoring agencies and programs must ensure that students possess a valid drivers license when involved in any training that requires the operating of a motor vehicle. Driver license checks shall be made through the State Division of Driver License.~~

~~I. Successful completion of the course and completion of all POST required paperwork is necessary before certification will be granted.~~

~~J. Upon completion of the training program, sponsoring agencies and programs will contact POST and make arrangements for the Certification Exam to be given. Anyone failing the Certification Exam once may take it again within a one year time frame. The requirement of taking the certification test after a year, for waiver purposes, will be applied by calculating the year from the date of successfully passing the test. Anyone who fails a certification re-take will not be permitted to take it again until they satisfactorily complete another approved basic training program.~~

~~K. When all requirements have been met, the sponsoring agency administrator shall submit to POST a letter informing POST that all requirements have been met. Peace officer certification begins when POST receives an application for certification and confirms that the applicant has completed a basic peace officer training program and met all requirements.~~

~~L. The Certification Exam will not be given if all the above requirements have not been met.~~

~~M. No person shall function with any authority until he has satisfactorily completed an approved training program and received POST certification.~~

R728-406-4. Process for Requesting Certification.

~~Administrators requesting certification of an employee shall submit to POST Form #61, Application for POST Certification. POST will verify the information provided, ensure annual training is up to date and check to see if the individual seeking certification is the subject of a pending investigation. POST will certify the applicant when all requirements have been met. If there is an open investigation on the subject, or a problem with annual training hours, POST will refuse to certify the applicant and make the appropriate notifications.~~

KEY: ~~law enforcement officers, approval for reserve basic course, approval for special function course*, approval for correctional basic course~~

Date of Enactment or Last Substantive Amendment: ~~October 1, 2007~~

Notice of Continuation: ~~December 21, 2011~~

Authorizing, and Implemented or Interpreted Law: ~~53-6-202]~~

Public Safety, Peace Officer Standards and Training **R728-407** Waiver/Reactivation Process

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40533

FILED: 06/22/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed to eliminate redundancy and clarify rules. The information found in this rule will be incorporated into Rule R728-403. (Editor's Note: The proposed repeal and reenactment of Rule R728-403 is under Filing No. 40535 in this issue July 15, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety to eliminate redundancy and clarify rules. The information found in this rule will be incorporated into Rule R728-403.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-105 and Section 53-6-203 and Section 53-6-206

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no costs or savings to the budget with the repeal of this rule because the rule is repealed in its entirety to eliminate redundancy and clarify rules. The information found in this rule will be incorporated into Rule R728-403.

♦ **LOCAL GOVERNMENTS:** Repealing this rule will not have an impact on local government budgets because the rule is

repealed in its entirety to eliminate redundancy and clarify rules. The information found in this rule will be incorporated into Rule R728-403.

♦ **SMALL BUSINESSES:** Repealing this rule will not have a fiscal impact on small businesses because the rule is repealed in its entirety to eliminate redundancy and clarify rules. The information found in this rule will be incorporated into Rule R728-403.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The repealing of this rule will not impact other persons not mentioned in this section because the rule is repealed in its entirety to eliminate redundancy and clarify rules. The information found in this rule will be incorporated into Rule R728-403.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the repealing of this rule because the rule is repealed in its entirety to eliminate redundancy and clarify rules. The information found in this rule will be incorporated into Rule R728-403.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and found that repealing the rule will not have a fiscal impact on business.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Wade Breur by phone at 801-256-2329, or by Internet E-mail at wbreur@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Scott Stephenson, Director

R728. Public Safety, Peace Officer Standards and Training.

~~[R728-407. Waiver/Reactivation Process.~~

~~**R728-407-1. Purpose:**~~

~~To provide an avenue for individuals who have met prescribed training standards to become certified as Utah law enforcement officers.~~

R728-407-2. Waiver of Basic Training Program.

~~A. Before being allowed to waive basic peace officer training, each applicant shall meet the standards and requirements outlined in 53-6-203 and 53-6-206. Applicants will also be required to submit the appropriate POST waiver application form. The waiver application and other information about waiver eligibility can be obtained by contacting the In-Service Bureau of POST.~~

~~1. Note: Waiver applicants have only two opportunities to pass the certification examination. Applicants who fail the first examination may take a make-up examination. An applicant must take the second examination within a 90-day period of the first examination. Applicants who obtain two failing scores on the certification examination will be required to attend the basic training program before certification will be granted.~~

~~2. Applicants may be required to attend any phase of the approved basic training course or specified in-service training.~~

~~3. Waiver applicants must meet the established physical training requirement. The physical training requirements are outlined in the waiver packet available at POST.~~

R728-407-3. Application Procedure.

~~A. All applicants under Section 53-6-206 (waiver of training) shall be processed in the following manner:~~

- ~~1. Request from applicant for waiver packet.~~
- ~~2. Packet to be sent to applicant~~
- ~~3. Applicant returns above completed forms to POST, along with the following:

 - ~~a. photograph (applicant)~~
 - ~~b. evidence of graduation from high school or equivalent or college diploma~~
 - ~~c. evidence of successful completion of a comparable basic training course (Basic Certificate Course schedule showing subject matter and hours)~~~~

~~4. Evaluation of application and attendant documents. The staff training supervisor will determine if applicant has filed proper forms and will accomplish the following:~~

- ~~a. verification of successful completion of certified program

 - ~~i. check POST files to verify in-state training~~
 - ~~ii. out of state programs require verification from the POST agency or equivalent within that state~~~~
 - ~~b. criminal records search of local, state and federal files~~
- ~~5. Decision as to whether or not applicant qualifies~~

- ~~a. application denied

 - ~~i. applicant advised as to reason for denial~~
 - ~~b. application approved

 - ~~i. oral interview with supervisor of waiver course~~
 - ~~ii. applicant advised as to conditions for his certification as described.~~~~~~

~~6. Certificate issued when conditions are satisfied and records are complete.~~

R728-407-4. Guidelines For Acceptance of Eligibility.

~~A. Applicants who have been certified city, county, state, federal, or military law enforcement officers and who do not exceed four years from the time of their certified status and the time they can complete the waiver process may be eligible for waiver.~~

- ~~1. Waiver Procedure

 - ~~a. Completed applications form signed by applicant; and~~
 - ~~b. Proof of employment and detailed job description from police agency applicant was employed by.~~~~

~~B. Applicants who have successfully completed a state, federal, or military law enforcement basic training academy within the last four years may be eligible for waiver.~~

- ~~1. Waiver Procedure

 - ~~a. Completed application form signed by applicant;~~
 - ~~b. Applicants must furnish proof of successful completion of a training program; and~~
 - ~~c. Applicants may be required to furnish POST with a copy of their training curriculum.~~~~

R728-407-5. Restoration of Peace Officer Powers.

~~A. Peace officer powers become inactive when a certified peace officer is not actively engaged in performing peace officer duties for more than one year but less than four continuous years. Certified peace officers may have peace officer powers reactivated by filing a new application and completing the below listed requirement as specified by the director.~~

- ~~1. Completion of the POST waiver process.

 - ~~Applicants who fail the certification examination twice will be required to attend basic training.~~
 - ~~B. Lapse of certification occurs when a person has not been actively engaged in performing the duties of a peace officer for more than four continuous years.

 - ~~1. Unless waived by the Director, successful completion of the POST basic training course is necessary before a lapsed certification can be reissued.~~~~~~

~~KEY: law enforcement officers, waiver of basic training*, reactivation process*~~

~~Date of Enactment or Last Substantive Amendment: April 15, 1997~~

~~Notice of Continuation: December 21, 2011~~

~~Authorizing, and Implemented or Interpreted Law: 53-6-105; 53-6-203; 53-6-206~~

**Public Safety, Peace Officer Standards
and Training
R728-410
Guidelines Regarding Failure To Obtain
Annual Statutory Training**

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 40536
FILED: 06/23/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is outdated and requires revision and update.

SUMMARY OF THE RULE OR CHANGE: The changes include revising guidelines for annual statutory training and guidelines for reporting annual training to appropriately

outline current requirements and procedures; defining the terms "annual statutory training," "in-service training", "reporting year", and "training year" in Section R728-410-3; outlining provisions for a waiver of the required training for peace officers or dispatchers in Section R728-410-4; outlining the requirements for training record maintenance by a chief administrative officer for peace officers or dispatchers employed within their agency Section R728-410-5; outlining the requirement to report completion of required training to the division in Section R728-410-6; indicating in Section R728-410-7 that all training offered by the division is authorized for in-service credit, and that a chief administrative officer of an agency can authorize other forms of training for its peace officers and dispatchers; and outlining in Section R728-410-8 the provisions for suspension of the certification of a peace officer or dispatcher for failure to complete required training, and requirements for reinstatement of the certification.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-105 and Section 53-6-202 and Section 53-6-211

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no costs or savings to the state budget as a result of the repeal and reenactment of this rule because the rule has been updated to include current procedures regarding statutorily required annual training for peace officers and dispatchers, and to outline existing training record maintenance and reporting requirements to be fulfilled by the chief administrative officer of an agency.

♦ **LOCAL GOVERNMENTS:** Repealing and reenacting this rule will not have an impact on local government budgets because the rule has been updated to include current procedures regarding statutorily required annual training for peace officers and dispatchers, and to outline existing training record maintenance and reporting requirements to be fulfilled by the chief administrative officer of an agency.

♦ **SMALL BUSINESSES:** Repealing and reenacting this rule will not have a fiscal impact on small businesses because the rule has been updated to include current procedures regarding statutorily required annual training for peace officers and dispatchers, and to outline existing training record maintenance and reporting requirements to be fulfilled by the chief administrative officer of an agency.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The repealing and reenacting of this rule will not impact other persons not mentioned in this section because the rule has been updated to include current procedures regarding statutorily required annual training for peace officers and dispatchers, and to outline existing training record maintenance and reporting requirements to be fulfilled by the chief administrative officer of an agency.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the repealing and reenacting of this rule because the rule has been updated to include current procedures regarding statutorily required

annual training for peace officers and dispatchers, and to outline existing training record maintenance and reporting requirements to be fulfilled by the chief administrative officer of an agency.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and found that repealing and reenacting the rule will not have a fiscal impact on businesses.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ♦ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov
- ♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
- ♦ Wade Breur by phone at 801-256-2329, or by Internet E-mail at wbreur@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Scott Stephenson, Director

R728. Public Safety, Peace Officer Standards and Training.
~~[R728-410. Guidelines Regarding Failure To Obtain Annual Statutory Training:~~

~~**R728-410-1. Authority:**~~

~~———— This rule is authorized by Subsection 53-6-105(k).~~

~~**R728-410-2. Suspension for Failure to Obtain Annual Statutory Training:**~~

~~———— A. If an individual maintaining peace officer certification or authority under Title 53, Chapter 13 Utah Code Annotated, fails to obtain 40 hours of approved training as provided under Subsection 53-6-202(4), Utah Code Annotated, the peace officer's powers will be suspended until such time as the peace officer has:~~

~~———— 1. obtained the 40 hours of training required for the deficient training year; or~~

~~———— 2. if deficient more than one year, successfully complete the certification examination as indicated:~~

~~———— a. peace officers maintaining peace officer designation shall successfully complete the peace officer designation certification examination.~~

~~———— b. peace officers maintaining correctional officer certification or authority shall successfully complete the correctional officer certification examination.~~

~~c. peace officers maintaining peace officer certification or authority as a reserve officer and special function officer, shall successfully complete the reserve/special function officer certification examination.~~

~~d. peace officers maintaining more than one peace officer designation (i.e., correctional officer and peace officer designation; or special function officer and peace officer designation) shall be required to successfully complete the peace officer certification examination.~~

~~e. peace officers maintaining Reserve, Level II/Special Function Officer designation and Correctional Officer designation shall be required to successfully complete the certification examination applicable to their primary law enforcement employer.~~

~~f. peace officers maintaining Reserve Officer, Level I authority shall successfully complete the peace officer designation certification examination.~~

~~B. Any peace officer who fails to acquire 40 hours of approved annual training shall be prohibited from exercising peace officer powers until the required training is completed and reported to the division;~~

~~1. upon notification of deficient training by the employing agency, the division shall notify the peace officer and the employing agency before peace officer powers are suspended by the division. This will allow an opportunity for the deficient peace officer to explain the training deficiency or failure to report training to the division, and shall provide due process for the peace officer.~~

~~2. upon becoming aware that a peace officer is deficient in the 40-hour training requirement, the employing agency shall comply with (B) above.~~

~~3. peace officers who fail to acquire the 40 hours of annual training shall be notified by the division that their peace officer powers have been suspended. Notification by the division may be made orally or in writing. If notification is made orally, written notification shall be completed as soon as possible.~~

~~4. if the annual training requirement is completed and reported to the division after the suspension has been issued by the division, the peace officer shall be notified, in writing, that peace officer powers have been reinstated before the peace officer is allowed to resume peace officer duties and functions.~~

~~C. Any peace officer who fails to acquire 40 hours of training for two consecutive years will have his peace officer certification or authority designated "inactive" as per Utah Code Annotated, Section 53-6-202.~~

~~D. Any peace officer found to be exercising peace officer powers after notification from the division that peace officer powers have been suspended shall be subject to the provision of Rule R728-411.]~~

R728-410. Guidelines Regarding Annual Statutory Training.

R728-410-1. Authority.

~~This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.~~

R728-410-2. Purpose.

~~The purpose of this rule is to provide procedures regarding the reporting of annual statutory training.~~

R728-410-3. Definitions.

~~(1) Terms used in this rule are defined in Section 53-6-102.~~

~~(2) In addition:~~

~~(a) "Annual statutory training" means the annual training requirement for peace officers and dispatchers as established in sections 53-6-202 and 53-6-306;~~

~~(b) "In-service training" has the same meaning as annual statutory training;~~

~~(c) "Reporting year" means an annual period starting on July 1, and ending on June 30; and~~

~~(d) "Training year" means the same as reporting year.~~

R728-410-4. Annual Training Requirement.

~~(1) The director may waive a portion of the annual statutory training requirement under the following circumstances:~~

~~(a) a peace officer who is employed for only part of a year shall obtain three and one-half hours for each month employed during the reporting year;~~

~~(b) a dispatcher who is employed for only part of a year shall obtain one and three-fourth hours for each month employed during the reporting year; and~~

~~(c) a peace officer or dispatcher who terminates employment and then returns to work within 18 months shall be required to make up any annual training deficiency from the previous year.~~

~~(d) A peace officer or dispatcher who is on long term disability, medical leave, or restricted duty, may obtain a waiver of training by providing a letter from a physician stating that participation in any type of training, including watching video or computer based courses would be detrimental to the individual's health.~~

~~(e) A peace officer or dispatcher who is actively deployed in military service may obtain a waiver of training hours for active military service by submitting a copy of the active duty order to the division.~~

~~(i) The peace officer or dispatcher must obtain the prorated number of training hours for each month not actively deployed during the reporting year.~~

R728-410-5. Training Record Maintenance.

~~(1) The chief administrative officer of an agency employing peace officers or dispatchers shall be responsible for the recording of all training obtained by peace officers or dispatchers in his or her agency.~~

~~(2) The record must be accurate and available in the event of an audit or subpoena of training records.~~

~~(3) The training record shall contain the following:~~

~~(a) the subject or topic instructed;~~

~~(b) the number of classroom or field hours;~~

~~(c) the location and date of the training; and~~

~~(d) the name of the instructor.~~

R728-410-6. Reporting Training -- Agency Responsibility.

~~(1) At the conclusion of each training year, a chief administrative officer employing peace officers or certified dispatchers shall report to the division the number of training hours received by each officer or certified dispatcher employed by that agency at any time during the training year, regardless of the employee's current employment status.~~

~~(2) This report is due to the division by July 31.~~

(a) The report shall be submitted electronically and must contain the following information:

- (i) name of the officer or dispatcher;
- (ii) the POST identification number of each peace officer or dispatcher; and
- (iii) the number of training hours received by each peace officer or dispatcher during the reporting year.

(3) The chief administrative officer shall follow procedures outlined in POST policy and procedures on reporting training hours.

R728-410-7. Authorized Training.

(1) All training offered by or through the division is authorized for in-service credit.

(2) The chief administrative officer of an agency may authorize other forms of training for peace officers or dispatchers employed by that agency.

(a) The chief administrative officer shall assume responsibility and liability for course content and instructor qualification not provided by the division.

R728-410-8. Suspension for Failure to Obtain Annual Statutory Training.

(1) The division shall suspend the certification of any peace officer or dispatcher who:

(a) fails to receive the required annual training hours by July 31; or

(b) for whom the chief administrative officer of the employing agency fails to report required training hours to the division by July 31.

(2) The individual and the employing agency shall be notified of this action in writing.

(3) The suspension shall remain in effect until the deficient training hours are completed and reported to the division.

(4) The division shall notify the individual and employing agency when the certification has been reinstated.

(5) If the individual fails to make up the deficient training by October 1, the individual's name shall be reported to Utah Retirement Systems (URS) for determination by URS as to how the deficient hours may affect the individual's retirement credit.

(a) Deficient hours reported to the division after October 1, shall only be used to reinstate peace officer status and will not be reported to URS.

(6) Training received by a suspended officer or dispatcher in a new training year shall be credited to the previous deficient training year until the deficiency is satisfied.

(a) Training hours used to satisfy an old deficiency may not be credited to the new training year.

KEY: law enforcement officers, annual training

Date of Enactment or Last Substantive Amendment: [~~April 15, 1997~~]2016

Notice of Continuation: December 21, 2011

Authorizing, and Implemented or Interpreted Law: 53-6-105; 53-6-202; [~~53-6-211; 53-13~~]; 53-6-306

**Public Safety, Peace Officer Standards
and Training**

R728-411

**Guidelines Regarding Administrative
Action Taken Against Individuals
Functioning As Peace Officers Without
Peace Officer Certification Or Powers**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 40537

FILED: 06/23/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is outdated and requires revision and update.

SUMMARY OF THE RULE OR CHANGE: The changes include changing the rule title; adding language clarifying authority and purpose of the rule; and clarifying action to be taken regarding impersonating a peace officer and unauthorized exercise of authority.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-13-103 and Section 53-13-106 and Section 53-6-105 and Section 53-6-202 and Section 53-6-208

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no costs or savings to the budget with the repeal and reenactment of this rule because the rule was updated to reflect the proper format and to clarify the authority and purpose of the rule and action to be taken regarding impersonating a peace officer and unauthorized exercise of authority.

◆ **LOCAL GOVERNMENTS:** Repealing and reenacting this rule will not have an impact on local government budgets because the rule was updated to reflect the proper format and to clarify the authority and purpose of the rule and action to be taken regarding impersonating a peace officer and unauthorized exercise of authority.

◆ **SMALL BUSINESSES:** Repealing and reenacting this rule will not have a fiscal impact on small businesses because the rule was updated to reflect the proper format and to clarify the authority and purpose of the rule and action to be taken regarding impersonating a peace officer and unauthorized exercise of authority.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The repealing and reenactment of this rule will not impact persons other than small business because the rule was updated to reflect the proper format and to clarify the

authority and purpose of the rule and action to be taken regarding impersonating a peace officer and unauthorized exercise of authority.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the repealing and reenactment of this rule because the rule was updated to reflect the proper format and to clarify the authority and purpose of the rule and action to be taken regarding impersonating a peace officer and unauthorized exercise of authority.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and found that repealing and reenacting the rule will not have a fiscal impact on businesses.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov
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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Scott Stephenson, Director

R728. Public Safety, Peace Officer Standards and Training.

~~[R728-411. Guidelines Regarding Administrative Action Taken Against Individuals Functioning As Peace Officers Without Peace Officer Certification Or Powers.~~

~~**R728-411-0.**~~

~~_____ If an individual is found to be performing the duties and functions of a peace officer without certification or authority as required by Title 53, Chapter 13 Utah Code Annotated, the following procedures will be initiated by the Division of Peace Officer Standards and Training:~~

~~_____ 1. A letter will be sent to the individual and the individual's employing agency administrator indicating that the individual does not have the statutory authority to act as a peace officer in the State of Utah. The letter will state that the individual should cease any and all activities as a peace officer. The letter will indicate the appropriate option(s) for the individual and employing agency to follow in order~~

for the individual to acquire peace officer authority. Eight days will be given for the individual to respond to the notification before any of the following procedures will be taken by POST:

~~_____ 2. POST will notify those persons or agencies which could be held liable through civil action due to the individual's pretended peace officer authority, notification is to include the subject of the notification, the chief law enforcement administrator of the employing agency, the chief administrator of the jurisdiction, the city prosecutor, county attorney, and/or the Attorney General of the State of Utah, the Sheriff of the county, and any other persons deemed accessible through civil action:~~

~~_____ 3. If Subsection (a) and (b) have not been acted upon by the individual or the individual's employing agency, the issuance of a writ from the Attorney General's Office to cease and desist from acting as a peace officer in the State of Utah may be made and directed to the individual and the individual's employing agency:~~

~~_____ 4. If Subsection (a), (b), or (c) have not been acted upon by the individual or the individual's employing agency, criminal charges may be sought against the individual for a violation of Section 76-8-512 U.C.A.:~~

~~_____ 5. The procedures in this Section may also be applied towards any peace officer who has been found to be deficient in the statutory 40-hour yearly training requirement, as per Section 53-6-202 U.C.A., and who continues to perform the duties and functions of a peace officer without having said peace officer powers restored by the Division of Peace Officer Standards and Training, or to any person who attempts to avoid the statutory peace officer certification process:~~

~~_____ 6. At any time in the above procedures, the Division of Peace Officer Standards and Training may, if cause exists, seek an administrative action against the individual for a violation of Section 53-6-211, if the individual is acting as a peace officer without statutory peace officer authority.]~~

R728-411. Guidelines for Administrative Action Against Individuals Functioning As Peace Officers Without Valid Peace Officer Certification.

R728-411-1. Authority.

_____ This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-411-2. Purpose.

_____ The purpose of this rule is to provide procedures for administrative action when an individual is found to be exercising the authority of a peace officer without valid peace officer certification.

R728-411-3. Definitions.

_____ Terms used in this rule are defined in Section 53-6-102.

R728-411-4. Impersonating a Peace Officer.

_____ (1) If the division becomes aware that an individual is illegally exercising the authority of a peace officer, the division shall refer the matter to the proper law enforcement agency having jurisdiction, for the following circumstances:

_____ (a) when an individual has never been certified as a peace officer;

_____ (b) when an individual's certification has been revoked by the council; and

(c) when an individual's certification has lapsed pursuant to Section 53-6-208.

R728-411-5. Unauthorized Exercise of Authority.

(1) If the division becomes aware that an individual whose peace officer certification is not currently active is exercising the authority of a peace officer, the division shall follow the administrative process outlined in Section R728-411-6, for the following circumstances:

(a) when an individual's certification has been suspended by the council;

(b) when an individual's certification has been suspended due to an annual training deficiency pursuant to Section 53-6-202;

(c) when an individual's certification has been designated "inactive" pursuant to Section 53-6-208; and

(d) when an individual has completed a basic training program and become certified, but is not "sworn" as provided in Sections 53-13-103 to 53-13-106.

(2) In any of the above circumstances the division may also refer the matter to the proper law enforcement agency having jurisdiction.

R728-411-6. Procedures Governing Unauthorized Exercise of Authority.

(1) If an individual is found to be performing the duties and functions of a peace officer without valid certification or authority as outlined in Section R728-411-5, the following procedures will be initiated by the division:

(a) written notice will be sent by standard mail, or electronically, to the individual and the individual's employing agency administrator indicating that the individual does not have the statutory authority to act as a peace officer in the State of Utah;

(b) The written notice shall:

(i) state that the individual should cease any and all activities as a peace officer; and

(ii) indicate the appropriate procedures for the individual and employing agency to follow in order for the individual to acquire peace officer authority.

(c) The individual must respond to the written notice within ten business days.

(2) Failure to submit a response within ten business days or failure to immediately cease the unauthorized exercise of authority, shall cause the division to seek a writ from the Attorney General's Office to cease and desist from acting as a peace officer in the State of Utah.

(a) The writ will be directed to the individual and the individual's employing agency.

(3) Failure to cease the unauthorized exercise of authority after the issuance of the writ, may result in:

(a) criminal charges being sought against the individual for a violation of Section 76-8-512.; and

(b) administrative action against the individual's certification for a violation of Section 53-6-211.

KEY: ~~[professional competency, police training]~~ **peace officer certification, impersonating a peace officer**

Date of Enactment or Last Substantive Amendment: ~~[April 15, 1997]~~ **2016**

Notice of Continuation: January 6, 2012

Authorizing, and Implemented or Interpreted Law: ~~[53-13]53-6-105; 53-6-202; 53-6-208; 53-13-103; 53-13-106~~

**Public Safety, Peace Officer Standards
and Training
R728-500**

**Utah Peace Officer Standards and
Training In-Service Training
Certification Procedures**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40530

FILED: 06/22/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed to eliminate redundancy and clarify rules. The information found in this rule will now be incorporated into Rule R728-410. (Editor's Note: The proposed repeal and reenactment of Rule R728-410 is under Filing No. 40536 in this issue, July 15, 2016, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety to eliminate redundancy and clarify rules. The information found in this rule will now be incorporated into Rule R728-410.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-13-103 and Section 53-6-105

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no costs or savings to the budget with the repeal of this rule because the information found in this rule will now be incorporated into Rule R728-410.

◆ **LOCAL GOVERNMENTS:** Repealing this rule will not have an impact on local government budgets because the information found in this rule will now be incorporated into Rule R728-410.

◆ **SMALL BUSINESSES:** Repealing this rule will not have a fiscal impact on small businesses because the information found in this rule will now be incorporated into Rule R728-410.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The repealing of this rule will not impact other persons not mentioned in this section because the information found in this rule will now be incorporated into Rule R728-410.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the repealing of this rule because the information found in this rule will now be incorporated into Rule R728-410.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and found that repealing the rule will not have a fiscal impact on business.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
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DIRECT QUESTIONS REGARDING THIS RULE TO:

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016
THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Scott Stephenson, Director

R728. Public Safety, Peace Officer Standards and Training.
[R728-500. Utah Peace Officer Standards and Training In-Service Training Certification Procedures.

R728-500-1. Authority.

— This rule is authorized by Sections 53-6-105(k).

R728-500-2. Purpose.

— The purpose of in-service training is to provide Utah law enforcement officers with the opportunity to obtain the knowledge and skills necessary to perform their duties in a professional and skillful manner. To this end, and to satisfy the requirements of 53-13-103(4)(b), Utah Peace Officer Standards and Training will provide an in-service training program that addresses the needs of the Utah law enforcement community.

R728-500-3. Statutory 40 Hour Training Requirement.

— Pursuant to Subsection 53-13-103(4)(b), "A law enforcement officer shall, prior to exercising peace officer authority, satisfactorily complete annual certified training of at least 40 hours per year as directed by the director of the division, with the advice and consent of the council."

R728-500-4. Agency To Maintain Training Records.

— A. The chief administrative officer of an agency employing peace officers is responsible for the recording of all training obtained by his peace officers. This record shall contain the following:

- 1. the subject or topic instructed
- 2. the number of classroom or field hours
- 3. the location of the training
- 4. the date of the training
- 5. the name of the instructor

— B. This record shall be accurate and available in the event of an audit or subpoena of training records.

R728-500-5. Reporting Training, Agency Responsibility.

— At the conclusion of each training year (July 1 -- June 30); agencies employing peace officers are required to report to POST the number of training hours received by each officer employed by that agency. This report is to be submitted online and is due to POST by July 31 and must contain the following information:

- A. the name of the officer
- B. the officers POST ID number
- C. the number of training hours for the training year.

R728-500-6. Violation of Statutory Training Requirement, Order of Suspension.

— A. The Division of Peace Officer Standards and Training will suspend the peace officer powers of any officer who fails to receive 40 hours of approved training during the previous training year. The officer, and the officers employing agency, will be notified by letter of this action. This sanction will remain in effect until the deficient training is completed and reported to POST. The officer will have until October 1 to make up the deficiency. POST will notify the officer and employing agency when the officers peace officer powers have been reinstated.

— B. Training received by a suspended officer in a new training year will be credited to the previous (deficient) training year until the deficiency is made up. Training used to clear up an old deficiency cannot be credited to the new training year. (The same training cannot be counted twice.)

— C. Suspended officers who continue to perform the duties and functions of a peace officer will be in violation of Section 53-6-202, and will be subject to the penalties set forth in Utah Administrative Code, Rule R728-411.

— D. Officers who are deficient after October 1 will be reported to Utah Retirement System.

R728-500-7. Authorized Training for POST In-Service Credit.

— All training offered by POST (basic training, in-service training, and regional training) is authorized for POST in-service credit. The authority and responsibility for accepting other forms of training belongs to the chief administrative officer of each law enforcement agency. If the chief administrative officer approves the training, POST will accept that training for credit to satisfy the 40 hour training requirement. However, the chief administrative officer accepts the responsibility and liability for course content and instructor qualification.

~~The following guidelines detail current POST rules regarding various types of in-service training:~~

~~R728-500-8. Skills Areas Limited.~~

~~The in-service training reported shall not include any identical class or instruction repeated within a 12-month period, unless the training is of an ongoing or continuing basis. Exception to this requirement includes training in certain skill areas such as Arrest Control Techniques, Firearms Training, Martial Arts, etc.~~

~~R728-500-9. Basic Training Used For In-Service Credit.~~

~~Training received during the completion of a Basic Training Session can be credited towards the in-service training requirement.~~

~~R728-500-10. Credit For College Courses.~~

~~Hour-for-hour credit will be granted for attendance in any college course that is required to earn a degree. The officer shall include a copy of the college transcript in his/her agency training file as proof of successful completion of the course.~~

~~R728-500-11. Correspondence Courses.~~

~~Correspondence courses may be approved for in-service credit. Prior approval shall be received from the officers chief administrative officer who will determine the number of credit hours the course is worth.~~

~~R728-500-12. Video Tapes/Audiovisual Presentations.~~

~~In-service credit may be granted for viewing law enforcement or position related audiovisual presentations (i.e., films, videotapes, satellite programming, etc.), as long as the training includes a structured lecture or classroom discussion regarding the viewed materials.~~

~~R728-500-13. In-Service Credit For Instructors.~~

~~Training credit may be granted to POST-certified instructors on an hour-for-hour basis; an equivalent amount of credit may be claimed for preparation time. (example: a two-hour class is worth four hours of in-service credit: two hours of instruction plus two hours of preparation) In-service credit can be claimed by the instructor once each year for each course instructed. This is to avoid in-service credit granted for duplicate instruction.~~

~~R728-500-14. Credit For Study For Promotional Exams.~~

~~An agency chief administrative officer may grant up to five hours of in-service training credit to officers who have studied for, and passed, a promotional examination. Before awarding credit, the agency administrator shall ensure that:~~

~~A. The study material was not limited to the department's policy and procedure manual. Study aids shall consist of textbooks that deal with subjects such as Managerial Techniques, Supervisory Skills, Criminal Investigation, and other law enforcement skills.~~

~~B. The officer passed the examination. The officer need not be promoted to receive training credit.~~

~~R728-500-15. Credit for Regularly Scheduled Meetings and Conferences.~~

~~Monthly, quarterly, or other regularly scheduled meetings or conferences will not be granted in-service credit unless it can be~~

~~specifically demonstrated the session is devoted to training and not for the purpose of exchanging information (i.e. detective meetings, intelligence briefings, etc.).~~

~~R728-500-16. Credit for Physical Fitness Training.~~

~~An officer can claim up to five hours of in-service training credit for participation in an agency approved physical training program.~~

~~R728-500-17. Requirements for Officers Employed for a Portion of the Training Year.~~

~~A full 40 hours of in-service training is required only if an officer is employed for the entire training year. Officers who are employed after the start of the reporting period, (July 1), need only to obtain a prorated number of training hours. Therefore, an officer shall obtain 3.5 hours for each month employed during the reporting year. (Example: An officer hired in January shall only be required to obtain 21 hours of in-service training for that training year.)~~

~~KEY: law enforcement officers, in-service training~~

~~Date of Enactment or Last Substantive Amendment: December 3, 2007~~

~~Notice of Continuation: December 21, 2011~~

~~Authorizing, and Implemented or Interpreted Law: 53-6-105; 53-13-103(4)(b)]~~

**Public Safety, Peace Officer Standards
and Training
R728-501
Career Development Courses**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40539

FILED: 06/23/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed to eliminate redundancy and clarify rules. The information found in this rule is obsolete and no longer applicable.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety due to the fact that the information found in this rule is obsolete and no longer applicable.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-105

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no costs or savings to the budget with the repeal of this rule due to the fact that the information found in this rule is obsolete and no longer applicable.

- ◆ LOCAL GOVERNMENTS: Repealing this rule will not have an impact on local government budgets due to the fact that the information found in this rule is obsolete and no longer applicable.
- ◆ SMALL BUSINESSES: Repealing this rule will not have a fiscal impact on small businesses due to the fact that the information found in this rule is obsolete and no longer applicable.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The repealing of this rule will not impact other persons not mentioned in this section due to the fact that the information found in this rule is obsolete and no longer applicable.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the repealing of this rule due to the fact that the information found in this rule is obsolete and no longer applicable.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and found that repealing the rule will not have a fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PUBLIC SAFETY
 PEACE OFFICER STANDARDS AND TRAINING
 410 W 9800 S
 SANDY, UT 84070
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov
 ◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
 ◆ Wade Breur by phone at 801-256-2329, or by Internet E-mail at wbreur@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Scott Stephenson, Director

R728. Public Safety, Peace Officer Standards and Training.
[R728-501. Career Development Courses.
R728-501-1. Authority.

————— This rule is authorized by Section 53-6-105.

R728-501-2. Basic Training.

————— The first step on the career development ladder is the successful completion of a POST approved basic training course. The required course may be the Utah Peace Officer Standards and Training Basic course or an equivalent course completed in another state. If the

course was completed in another state, the officer will be required to successfully complete the POST waiver process and receive Utah peace officer certification.

R728-501-3. Advanced Officer.

————— A. The advanced officer certificate is the second step in the POST career development program. In order to obtain an advanced officer certificate, an application must be submitted to POST showing accomplishment of the following requirements:

- 1. The candidate must be employed as full-time peace officer with a minimum of three continuous years of peace officer experience.
- 2. All candidates must have attained a minimum firearms qualification score of 80 percent on a POST accepted firearms course during the preceding year.
- 3. Each candidate must show evidence of having a current intoxilyzer certificate and a radar operators certificate.
- 4. The candidate may waive requirement three by showing evidence of completion of at least forty hours of specialized training directly related to his present assignment.
- 5. The candidate must show evidence of having a current CPR card.
- 6. The candidate must be nominated for advance officer status by a letter from the candidates chief/sheriff.

————— B. Each candidate, upon approval of his application, will be invited to attend a thirty hour advance officer course. These courses will be conducted periodically at POST and at various regional locations.

————— C. Each candidate must pass a written examination on the subjects covered in the advanced officer course. Successful candidates will be awarded a POST advanced officer certificate and advanced officer insignia.

————— D. To receive advanced officer certification, the officer is required to achieve a score of 50 percent on each of the POST physical tests: Vertical jump, sit-ups, push-ups, 300 meter sprint, and 1.5 mile run.

————— E. The physical assessment test will be administered by POST staff during the advanced officer course.

————— F. Officers who achieve a score of 85 percent in each of the four fitness tests will earn the advanced officer superior fitness award.

R728-501-4. First-Line Supervisor.

————— A. The first-line supervisor course is intended to fill the supervisory training needs of sergeants and other law enforcement personnel. The goal of the program is to offer a course that is job-related, consistent with current supervisory needs, and one that will develop self confidence, and a positive attitude toward supervision.

————— B. The advanced officer course is not a prerequisite for this course.

————— C. Officers can register for this course by submitting a POST course request signed by their chief administrative officer or training officer.

R728-501-5. Mid-Management Certificate.

————— A. The mid-management development program is intended to fulfill the management training needs of lieutenants, captains and department heads. A law enforcement administrator can earn the mid-management certificate by successfully completing three prescribed courses offered by POST. The three courses are:

- ~~1. First-Line Supervisor~~
~~2. Instructor Development~~
~~3. Employee Discipline and Administrative procedure course~~

~~In addition to the three courses offered by POST the candidate is required to attend two management level courses, which are approved by their chief administrating officer.~~

~~B. A mid-management certificate will be awarded when a candidate can document that he has successfully completed the five prescribed courses.~~

~~R728-501-6. Executive Development Institute.~~

~~The Executive Development Institute is intended for department heads and their executive staff positions. EDI is co-sponsored by the Utah Chiefs of Police Association, the Utah Sheriff's Association, and POST. The EDI training format is a two-day seminar addressing issues germane to Utah law enforcement management. The Executive Development Institute is conducted two times each year.~~

~~KEY: law enforcement officers, career development courses, in-service training~~

~~Date of Enactment or Last Substantive Amendment: December 1, 2007~~

~~Notice of Continuation: June 28, 2013~~

~~Authorizing, and Implemented or Interpreted Law: 53-6-105]~~

Public Safety, Peace Officer Standards and Training **R728-502** Procedure for POST Instructor Certification

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 40538
FILED: 06/23/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is outdated and requires revision and update.

SUMMARY OF THE RULE OR CHANGE: The changes include clarifying the authority and purpose; adding definitions for "satellite academy", "basic training", and "applicant"; clarifying instructor authority and duties; clarifying instructor certification requirements and application procedures; and clarifying procedures for instructor recertification.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-105 and Section 53-6-306 and Section 56-6-202

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There are no costs or savings to the budget with the repeal and reenactment of this rule because the rule was updated to reflect the proper format, and to clarify the authority and purpose, add definitions, and clarify procedures for instructor recertification.

◆ LOCAL GOVERNMENTS: Repealing and reenacting this rule will not have an impact on local government budgets because the rule was updated to reflect the proper format, and to clarify the authority and purpose, add definitions, and clarify procedures for instructor recertification.

◆ SMALL BUSINESSES: Repealing and reenacting this rule will not have a fiscal impact on small businesses because the rule was updated to reflect the proper format, and to clarify the authority and purpose, add definitions, and clarify procedures for instructor recertification.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The repealing and reenactment of this rule will not impact other persons because the rule was updated to reflect the proper format, and to clarify the authority and purpose, add definitions, and clarify procedures for instructor recertification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the repealing and reenactment of this rule because the rule was updated to reflect the proper format, and to clarify the authority and purpose, add definitions, and clarify procedures for instructor recertification.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and found that repealing and reenacting the rule will not have a fiscal impact on businesses.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov
- ◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
- ◆ Wade Breur by phone at 801-256-2329, or by Internet E-mail at wbreur@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Scott Stephenson, Director

R728. Public Safety, Peace Officer Standards and Training.

[R728-502. Procedure for POST Instructor Certification.

R728-502-1. Authority.

— This rule is authorized by Section 53-6-105 which gives the director of POST the authority to establish minimum requirements for the certification of training instructors.

R728-502-2. POST Certified Instructors Authority and Duties.

— A. POST certified instructors will be authorized to teach POST sponsored classes to include Basic Training, In-Service, and Regional classes.

— B. Instructors shall be required to become familiar with POST's most up-to-date Student Performance Objectives and to insure their instruction is not in conflict with the Student Performance Objectives.

— C. Only POST certified instructors may teach in Basic Training classes, including satellite academy Basic Training programs. Exceptions must be approved by the Basic Training Bureau Chief or POST staff assigned as the satellite academy liaison.

R728-502-3. Requirements to become a POST Certified Instructor.

— Applicants must possess two years of experience as a full-time peace officer, and complete an approved instructor development course.

R728-502-4. Application For Instructor Certification.

— Applicants who have met the minimum required years of experience may apply to attend a POST approved Instructor Development Course. POST Instructor Certification will be granted upon completion of the following requirements:

— 1. The applicant will successfully complete a POST approved Instructor Development Course. This will include demonstrating to the course instructor the ability to develop a lesson plan that follows the style and format taught in the POST Instructor Development Course.

— 2. The applicant has signed the POST Contractual Agreement. This certifies the student has received, read, and understood the current POST approved performance objectives, and the student agrees to teach the approved POST performance objectives in the classroom.

R728-502-5. Lesson Plans.

— Prior to providing instruction in Basic Training, In-Service, or Regional classes sponsored by POST, an instructor shall file a lesson plan with the Basic Training Bureau Chief or In-Service Bureau Chief. Lesson plans for Basic Training and In-Service classes shall follow POST Basic Training Learning Objectives, and shall be in a form identical or substantially similar to the approved Basic Training lesson plan format. Lesson plans shall be accompanied with supporting materials, such as computer based slide shows or videos, where used in the class instruction. Lesson plans for In-Service Career Development Courses shall also include an examination or quiz. When the class material is addressed in POST Basic Training examinations or quizzes, the instructor may be required to submit test items.

R728-502-6. Guest Instructors.

— Guest instructors are not required to meet the certification requirements outlined above. Guest instructors should generally be licensed professionals, such as physicians, mental health therapists, and attorneys, or law enforcement professionals with substantial expertise and qualifications in a discrete subject matter. Guest instructor status will generally be granted only for a single class. Guest instructors shall comply with POST class room decorum and dress standards.

R728-502-7. Department In-Service Instructors.

— Departments are not required to utilize POST certified instructors in their in-service training programs. This gives departments the ability to formulate training programs designed to meet their needs utilizing the local resources. In such instances, the department sponsoring the training will be solely responsible for the content of the class and the qualifications of the instructor.

R728-502-8. Special Instructor Schools.

— A. Instructors shall complete special instructor schools before they teach technical and high liability law enforcement subjects, such as:

- 1. Firearms Instructor School
- 2. Defensive Tactics Instructor School (DT)
- 3. Emergency Vehicle Operation Instructor School (EVO)
- 4. Radar Instructor School

— B. Completion of a specialty instructor school does not automatically qualify an officer to instruct a POST sponsored class; the officer must also complete a POST approved Instructor Development Course to be qualified to teach a POST sponsored class.

R728-502-9. Special Instructor In-Service Requirements.

— A. Special instructors teaching in POST Basic Training programs, including satellite academy programs, shall be subject to the following In-Service requirements:

— 1. Basic Training Firearms Instructors must complete a minimum of 16 hours of instructor training in each training year. The instructor training requirement may be satisfied through participation as an instructor or student in POST Firearms Instructor In-Service Training (handgun and/or long gun), Law Enforcement Training Camp, International Association of Law Enforcement Firearms Instructor training conferences, Utah Department of Public Safety Firearms Instructor In-Service courses, and similar conferences and workshops, subject to approval of the In-Service Bureau Chief.

— 2. Defensive Tactics Instructors must attend no fewer than two quarterly DT instructor in-service sessions presented by the POST DT program coordinator. Defensive Tactics Instructors may also be required to attend in-service training at POST when DT program changes are effected from time to time.

— 3. Emergency Vehicle Operation Instructors must attend the annual POST EVO Instructor re-certification course.

— B. Special instructors teaching only in department in-service programs are not subject to this requirement.]

R728-502. Procedure for POST Instructor Certification.

R728-502-1. Authority.

— This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-502-2. Purpose.

The purpose of this rule is to provide guidelines for the certification of training instructors and to establish standards for the revocation of POST instructor certification pursuant to Section 53-6-105(1)(c).

R728-410-3. Definitions.

(1) Terms used in this rule are defined in Section 53-6-102.

(2) In addition:

(a) "Annual statutory training" means the annual training requirement for peace officers and dispatchers as established in Sections 53-6-202 or 53-6-306;

(b) "Applicant" means an individual who has applied to become a POST certified instructor;

(c) "Basic training" means the basic training courses offered by the division or one of the satellite academies, which are required to become a:

(i) special function officer;

(ii) correctional officer;

(iii) law enforcement officer; or

(iv) dispatcher;

(d) "DT" means defensive tactics;

(e) "EVO" means emergency vehicle operation;

(f) "IW" means impact weapon;

(g) "In-service training" has the same meaning as annual statutory training;

(h) "K9" means canine;

(i) "POST certified instructor" means an individual who has completed the requirements set forth in this rule and is authorized by the division to conduct basic training courses;

(j) "Satellite academy" means a certified academy or training program administered by a governmental entity or institution of higher education which is established primarily for the training of its employees or self-sponsored applicants; and

(k) "Specialty instructor" means an individual who has completed the requirements set forth in this rule and is authorized by the division to conduct specific practical skill training courses.

R728-502-4. POST Certified Instructors Authority and Duties.

(1) A POST certified instructor shall be authorized to teach classes sponsored by the division including basic training, in-service, and regional classes.

(2) An instructor presenting in-service training must be in harmony with the division's current basic training curriculum.

(3) An instructor presenting basic training classes must follow the basic training student performance objectives approved by the division and the council.

(a) If POST approved student performance objectives are not available for the subject matter, an instructor shall have a lesson plan approved by the division prior to teaching in a basic training class.

R728-502-5. Instructor Certification Requirements.

(1) An applicant must meet the following requirements before being certified as an instructor:

(a) have two years of experience as a full-time peace officer or dispatcher;

(b) receive a recommendation from the chief administrative officer of the agency employing the applicant; and

(c) complete an approved instructor development course or specialty instructor certification course as outlined below.

(2) The requirements in this Subsection (1) may be waived if the applicant has specialized training or expertise in an area which, in the opinion of the director, would be beneficial in the training of law enforcement officers.

(a) An individual wishing to qualify for instructor certification waiver under this Subsection (2), must submit a written request to the director providing evidence of their specialized training or experience and justification as to why this training or experience would be beneficial in the training of law enforcement officers.

R728-502-6. Instructor Recertification.

(1) Instructor recertification is not required except in specialty areas as provided in Section R728-502-9.

(2) An instructor teaching in a professional specialty area, including but not limited to, law classes, first aid, CPR, intoxilyzer, and chemical munitions, shall maintain current certification and continuing education requirements of the respective professional certification or licensing entity.

(3) An instructor teaching in other specialty areas may be subject to industry standards that establish specific recertification requirements.

R728-502-7. Application for Instructor Certification.

(1) To obtain a POST instructor certification, an applicant shall submit a completed application for POST Instructor Development School to the division and include the following:

(a) documentation of years of experience;

(b) a letter of recommendation from the applicant's chief administrative officer; and

(c) documentation of specialized training.

(2) If the application is approved, the applicant shall be invited to attend a POST instructor development course.

(3) An applicant shall receive POST instructor certification upon successfully completing the instructor development course, which includes demonstrating to the course instructor the ability to develop a lesson plan following the style and format taught in the instructor development course.

R728-502-8. Agency In-Service Instructors.

(1) An agency is not required to utilize POST certified instructors for in-service training programs presented to members of their agency which will allow the agency to formulate training programs designed to meet their needs utilizing local resources.

(2) If a POST certified instructor is not used for in-service training programs, the chief administrative officer of the agency sponsoring the training shall be solely responsible for the content of the class and the qualifications of the instructor.

R728-502-9. Specialty Instructors.

(1) An instructor who teaches practical skills and technical or high liability law enforcement subjects shall attend a specialty instructor course as provided in this Section.

(2) An instructor who completes a specialty instructor school may only instruct the specific skills covered in the specialty instructor school.

(a) An instructor who teaches other academic courses in the classroom shall complete a POST approved instructor development course as provided in Sections R728-502-4 through R728-502-7.

(3) An EVO instructor shall be trained and certified in accordance with POST policy and procedure.

(a) EVO instructor certification shall be valid for three years from the date of issue.

(b) An EVO instructor must teach EVO for a minimum of 40 hours every three years in order to maintain certification.

(c) An EVO instructor must teach at least 20 of the 40 required hours at the POST EVO range under the direction of the POST EVO training supervisor.

(d) An EVO instructor may teach the remaining 20 hours of EVO instruction at individual agencies.

(4) A firearms instructor, including handgun instructor or rifle instructor, shall be trained and certified in accordance with POST policy and procedure.

(a) Firearms instructor certification is valid for three years from the date of issue.

(b) A firearms instructor must attend an eight hour recertification class conducted by POST and pass a practical examination every three years in order to maintain certification.

(5) A DT instructor shall be trained and certified in accordance with POST policy and procedure;

(a) DT instructor certification is valid for three years from the date of issue.

(b) A DT instructor must attend a POST defensive tactics instructor training course and successfully pass a practical and written examination every three years in order to maintain certification.

(6) An IW instructor shall be trained and certified in accordance with POST policy and procedure.

(a) IW instructor certification is valid for three years from the date of issue.

(b) An IW instructor must attend an impact weapon instructor training course and successfully pass a practical and written examination every three years in order to maintain certification.

(7) A K-9 instructor shall be trained and certified in accordance with POST policy and procedure.

(a) A K-9 instructor may conduct K-9 training, but is not authorized to conduct K-9 certification evaluations.

(b) K-9 instructor certification is valid for three years from the date of issue.

(c) A K-9 instructor shall attend 40 hours of K-9 instructor training and successfully pass a practical examination every three years in order to maintain certification

(8) A K-9 judge shall be trained and certified in accordance with POST policy and procedure.

(a) A K-9 judge shall be trained and certified as a K-9 instructor prior to being certified as a K-9 judge.

(b) A K-9 judge may conduct K-9 certification evaluations and K-9 training.

(c) K-9 judge certification is valid for three years from the date of issue.

(d) A K-9 judge shall attend 40 hours of K-9 judge training and successfully pass a practical examination every three years in order to maintain certification.

(e) A K-9 judge who successfully re-certifies is automatically re-certified as a K-9 instructor.

(9) RADAR/LIDAR instructors shall be trained and certified in accordance with POST policy and procedure;

(a) RADAR/LIDAR instructor certification is valid for three years from the date of issue.

(b) A RADAR/LIDAR instructor shall participate in one RADAR/LIDAR instructor school and successfully pass a written examination every three years in order to maintain certification.

R728-502-10. Revocation of Instructor Certification.

(1) The division may revoke an individual POST instructor certification if the instructor fails to meet any of the requirements specified in this rule.

(2)(a) If the division revokes an individual's POST instructor certification, the division shall issue a letter to the individual by regular mail.

(b) The letter shall state the reasons for termination of the individual's POST instructor certification and indicate that the individual has a right to appeal the decision to the director by filing a written request for review within 30 days from the date of the division's decision.

(3) An instructor whose peace officer or dispatcher certification is suspended or revoked by the POST Council, in accordance with Section 53-6-211 or Section 53-6-309, shall also have his or her POST instructor certification revoked or suspended for the period of time his or her peace officer or dispatcher certification is suspended.

KEY: [~~law enforcement officers~~]peace officers, instructor certification, in-service training; basic training

Date of Enactment or Last Substantive Amendment: [~~December 3, 2007~~]2016

Notice of Continuation: March 19, 2014

Authorizing, and Implemented or Interpreted Law: 53-6-105; 53-6-202; 53-6-306

Public Safety, Peace Officer Standards and Training **R728-505** Service Dog Program Rules

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40540

FILED: 06/23/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed because it is no longer necessary. The information outlined in this rule is more appropriately covered as a matter of policy and should not be

included in rule. A policy has been enacted, which covers the information contained in the rule.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety because the information outlined in this rule is more appropriately covered as a matter of policy and should not be included in rule. A policy has been enacted, which covers the information contained in the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-105 and Section 53-6-106 and Section 53-6-107

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no costs or savings to the budget with the repeal of this rule because the information outlined in this rule is more appropriately covered as a matter of policy and should not be included in rule. A policy has been enacted, which covers the information contained in the rule.

◆ **LOCAL GOVERNMENTS:** Repealing this rule will not have an impact on local government budgets because the information outlined in this rule is more appropriately covered as a matter of policy and should not be included in rule. A policy has been enacted, which covers the information contained in the rule.

◆ **SMALL BUSINESSES:** Repealing this rule will not have a fiscal impact on small businesses because the information outlined in this rule is more appropriately covered as a matter of policy and should not be included in rule. A policy has been enacted, which covers the information contained in the rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The repealing of this rule will not impact other persons not mentioned in this section because the information outlined in this rule is more appropriately covered as a matter of policy and should not be included in rule. A policy has been enacted, which covers the information contained in the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the repealing of this rule because the information outlined in this rule is more appropriately covered as a matter of policy and should not be included in rule. A policy has been enacted, which covers the information contained in the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and found that repealing the rule will not have a fiscal impact on businesses.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov
- ◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
- ◆ Wade Breur by phone at 801-256-2329, or by Internet E-mail at wbreur@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Scott Stephenson, Director

R728. Public Safety, Peace Officer Standards and Training.

[R728-505. Service Dog Program Rules.

R728-505-1. Admission Requirements.

~~Persons applying for admission into the Service Dog Training Program shall be sworn personnel representing federal, state, county, municipal or other agencies. Any question or dispute regarding admissibility shall be submitted in writing to the Service Dog Training Supervisor.~~

R728-505-2. Training Requirements.

~~Training requirements in the Service Dog Program are established to provide each student with sufficient knowledge and skill to begin the respective Service Dog task. Training is intended and designed to achieve optimal efficiency in the allotted time. The content and duration of training shall be designated as the "Approved Curriculum." Each training category and skill level has its own specific approved curriculum.~~

~~A. Dogs.~~

~~Dogs participating in the Service Dog Program shall be trained according to the approved curriculum. The curriculum shall be based on at least the following concepts:~~

~~1. successful achievement according to the approved curriculum shall enable the Service Dog to perform in a state-of-the-art professional manner;~~

~~2. successful achievement according to the approved curriculum shall enable the Service Dog to perform in a discriminating and humanitarian manner;~~

~~3. the approved curriculum must be subject to constant revision and upgrading of the approved curriculum to meet the ever-changing criminal behavior and methodology and also the legal constraints associated with criminal and civil court rulings regarding service dog deployments.~~

~~B. Handlers.~~

~~Handlers participating in the Service Dog Program shall be trained according to the approved curriculum. The curriculum shall be based on at least the following concepts:~~

~~1. successful achievement according to the approved curriculum shall enable the Handler to perform in a state-of-the-art professional manner;~~

2. successful achievement according to the approved curriculum shall enable the Handler to perform in a discriminating and humanitarian manner;

3. the approved curriculum must be subject to constant revision and upgrading of the approved curriculum to meet the ever-changing criminal behavior and methodology and also the legal constraints associated with criminal and civil court rulings regarding service dog deployments.

C. Instructors:

Instructors participating in the Service Dog Program shall be trained according to the approved curriculum. The curriculum shall be based on at least the following concepts:

1. successful achievement according to the approved curriculum shall enable the Instructor to perform in a state-of-the-art professional manner;

2. successful achievement according to the approved curriculum shall enable the Instructor to perform in a discriminating and humanitarian manner;

3. the approved curriculum must be subject to constant revision and upgrading of the approved curriculum to meet the ever-changing criminal behavior and methodology and also the legal constraints associated with criminal and civil court rulings regarding service dog deployments.

D. Judges:

Judges participating in the Service Dog Program shall be trained according to the approved curriculum. The curriculum shall be based on at least the following concepts:

1. successful achievement according to the approved curriculum shall enable the Judge to perform in a state-of-the-art professional manner;

2. successful achievement according to the approved curriculum shall enable the Judge to perform in a discriminating and humanitarian manner;

3. the approved curriculum must be subject to constant revision and upgrading of the approved curriculum to meet the ever-changing criminal behavior and methodology and also the legal constraints associated with criminal and civil court rulings regarding service dog deployments.

E. Administrators:

Administrators participating in the Service Dog Program shall be trained according to the approved curriculum. The curriculum shall be based on at least the following concepts:

1. successful achievement according to the approved curriculum shall enable the Administrator to perform in a state-of-the-art professional manner;

2. successful achievement according to the approved curriculum shall enable the Administrator to perform in a discriminating and humanitarian manner;

3. the approved curriculum must be subject to constant revision and upgrading of the approved curriculum to meet the ever-changing criminal behavior and methodology and also the legal constraints associated with criminal and civil court rulings, regarding service dog deployments;

d. constant revision and upgrading of the approved curriculum to meet the ever changing personnel development concepts and employee-related laws and guidelines.

E. Waiver of Training:

1. If a student has gained prior knowledge or skill which would be duplicated in a training course, a written request for waiver may be submitted to the Service Dog Training Supervisor. The request shall include authentication of any training requested to be waived.

2. The Service Dog Training Supervisor shall evaluate the waiver request and determine to what extent a waiver may be granted.

3. No waiver shall be granted which would preclude a minimum of 40 hours observation period during any training course, with the exception of Administrator training, for which no waiver of training shall be granted.

R728-505-3. Graduation Requirements:

Graduation from the Service Dog Program shall be determined according to the knowledge and skill level exhibited. A student's knowledge shall be evaluated by administering a written examination. A student's skill shall be evaluated in the final week of any training course.

A. Scoring:

The passing score for a written examination shall be 80% or higher. Skill level shall be determined according to the following:

1. 96 - 100% = Superior;

2. 90 - 95% = Commendable;

3. 85 - 89% = Typical;

4. 80 - 84% = Suitable;

5. 60 - 79% = Needs Improvement;

6. 0 - 59% = Unsatisfactory.

B. Skills:

Skills shall be evaluated according to one of the following:

1. Superior, denoting exemplary or ideal performance;

2. Commendable, denoting noteworthy or above average performance;

3. Typical, denoting normal or average performance;

4. Suitable, denoting satisfactory or sufficient performance;

5. Needs Improvement, denoting skill exhibited that is just barely below the minimum level performance;

6. Unsatisfactory, denoting little or no skill level exhibited.

C. Reports:

Handlers, Instructors, and Judges shall submit reports according to the approved curriculum. Reports shall be rated according to the appropriate skill level.

D. Written Examinations:

Examinations and quizzes are a necessary method of testing a student's substantive knowledge, reading comprehension, and reasoning abilities, all of which are essential criteria for proper performance of peace officer functions. Handlers, Instructors, Judges and Administrators shall be given written examinations and quizzes as indicated in the curriculum schedule. Examinations are given on the honor basis. Evidence of dishonor shall result in dismissal from the Academy. Written exams are scored, with the minimum passing score to be 80%.

E. Practical Skills Examinations:

Service Dogs, Handlers, Instructors, Judges and Administrators shall be given practical skills examinations as indicated in the curriculum schedule. Examinations are given on the honor basis. Evidence of dishonor shall result in dismissal from the Academy. Students must achieve a rating of "Suitable" in each Practical Skills examination.

~~F. Failure to Qualify~~

~~1. If a student fails a Report, Written Examination or Practical Skills Examination, he/she shall be allowed to take a Make-Up Examination. Regardless of what passing rating or score earned on the Make-Up Examination, the student shall be given the rating of "Suitable" or the score of 80%, depending on which Examination it is. If the Make-Up Examination rating or score is less than passing, the student shall be invited to return at a later date and attend further training in the respective skill or topic. When the Service Dog Training Supervisor deems it reasonable to re-examine the student, another opportunity shall be afforded to challenge the respective examination.~~

~~2. If a student fails to achieve a passing rating or score within 12 months of the original examination, the student shall be required to retake the respective course in its entirety before challenging the examination again.~~

~~G. Mitigating Circumstances:~~

~~1. The Service Dog Training Supervisor shall be empowered with the discretion of deciding if mitigating circumstances should be taken into consideration when a student fails any examination. Mitigating circumstances include, but are not limited to:~~

- ~~a. weather;~~
- ~~b. quality/quantity of Instructors or Judges;~~
- ~~c. equipment problems;~~
- ~~d. medical problems.~~

~~2. If the Service Dog Training Supervisor decides there were one or more circumstances beyond the control of the student and the student fails an examination, the Service Dog Training Supervisor may schedule another examination.~~

~~H. Physical Training:~~~~1. Patrol Dog Courses:~~

~~Physical fitness is especially valuable for Patrol Dogs, Handlers, Instructors, and Judges. Students participating in Patrol Dog courses shall participate in a daily physical training program, as outlined in the approved curriculum. Physical fitness training shall be supervised by the Service Dog Training Supervisor.~~

~~2. Detector Dog Courses:~~

~~Physical fitness is valuable for Detector Dogs, Handlers, Instructors, and Judges. Students participating in Detector Dog courses may participate in a daily physical training program, as outlined in the approved curriculum. Physical fitness training shall be supervised by the Service Dog Training Supervisor.~~

~~3. Administrative Courses:~~

~~Physical fitness is valuable for Administrators of Service Dog Units. Students participating in Administrator courses may participate in a daily physical training program, as outlined in the approved curriculum. Physical fitness training shall be supervised by the Service Dog Training Supervisor.~~

~~I. Counsel:~~

~~Individual counseling is available to any student on request to the Service Dog Training Supervisor.~~

~~J. Attendance:~~

~~1. Students shall be required to attend all training unless an emergency exists or a valid excuse is given.~~

~~2. More than three unexcused absences may result in suspension from the Service Dog Program. Acceptable excuses include but are not limited to illness, court, and death of an immediate family member. Whenever possible, absences shall be cleared through the Service Dog Training Supervisor before the absence occurs. It is~~

~~the student's responsibility to report when he/she is absent or late. Attendance information may be made available to department heads periodically.~~

~~3. Anyone who is tardy three times without an acceptable excuse may be subject to disciplinary action.~~

~~K. Grounds for Dismissal From the Service Dog Program:~~~~1. Dogs:~~

~~a. The Service Dog Training Supervisor shall have the authority to evaluate Dogs participating in the Service Dog Program and dismiss any Dog which exhibits one or more of the following:~~

- ~~i. Unwarranted aggressive behavior.~~
- ~~ii. Severely deficient performance of any kind.~~
- ~~iii. Any behavior which is deemed to unsafe for any person, including the Handler.~~

~~2. Handlers, Instructors, Judges, or Administrators:~~

~~a. The Service Dog Training Supervisor shall have the authority to evaluate Handlers, Instructors, Judges, or Administrators participating in the Service Dog Program and dismiss any student who exhibits one or more of the following:~~

- ~~i. Failure to comply with Academy rules.~~
- ~~ii. Evidence of any health condition that would keep the student from successfully completing the respective training course.~~
- ~~iii. Evidence of any conduct that is deemed so inappropriate as to considerably undermine the integrity of the Service Dog Program.~~

R728-505-4. Health Services and Emergencies.

~~A. Any person who becomes ill or injured while at the Academy shall notify a member of the Academy staff immediately.~~

~~B. The Academy is not authorized funds to pay for prescriptions, x-rays, casts, bandages, medications or out-patient visits to hospitals. Students or their departments shall be expected to pay for the above services and supplies.~~

~~C. All personal calls are to be conducted on one of the phones located strategically throughout the building. Collect calls shall not be accepted.~~

R728-505-5. Classrooms.

~~A. Students shall be responsible for keeping the classrooms neat and clean. No food, drinks or smoking shall be allowed in the classroom.~~

~~B. From time to time, P.O.S.T. shall take portions of the training to locations other than the Academy. While at any of these locations, students shall respect the property of others and conduct themselves accordingly. If any damage occurs, it shall be reported to the Service Dog Training Supervisor as soon as possible.~~

R728-505-6. Special Regulations.~~A. Alcohol and Gambling:~~

~~No student shall consume alcohol in any form during the course of the training day. The training day shall be interpreted to mean two hours prior to the first class of the day until the completion of the last class of the day. In circumstances where classes end at 5:00 p.m. and there is scheduled evening or night classes, the last class of the day means the last night class.~~

~~1. No alcoholic beverages of any kind shall be brought onto or consumed on the Academy site unless it's part of the training schedule.~~

2. Gambling shall not be permitted at any time or place on the Academy site.

3. Persons found to be in violation of R728-505-6 shall be dismissed from the Academy.

B. Dress Code.

Students shall maintain a professional appearance at all times. Accordingly, the following dress code shall be adhered to.

1. Classroom.

Students shall wear neat, unsoiled clothing when training in a classroom. Uniforms are suitable but not mandatory.

2. Field.

Students shall wear neat, unsoiled clothing when training in the field. Uniforms are suitable but not mandatory.

3. Demonstrations.

Occasionally, a public demonstration of the Service Dog Training Program occurs. Students shall wear uniforms or official clothing so as to present the optimal professional image.

4. Physical Training.

Physical training shall be administered according to the approved curriculum.

5. Practical Problems.

The training supervisor may allow students to wear appropriate civilian clothing for designated training.

C. Grooming.

All students shall be expected to maintain proper grooming habits at all times. Clothing shall be clean and well cared for. Hair must be clean and neat.

D. Conduct.

1. All students shall be expected to conduct themselves in a professional manner at all times.

2. No loud, abusive, or obscene language shall be permitted unless necessary in a practical exercise.

F. All students shall realize that while at the Academy they shall be directly supervised by their training supervisor and the Academy staff. Therefore, all decisions relative to their training status shall be made by the Service Dog Training Supervisor and approved, where necessary, through the chain of command.

R728-505-7. Lost, Damaged or Destroyed Items.

Students who lose or damage items beyond serviceability shall be required to reimburse the Academy for the replacement value.

R728-505-8. Cost of Training.

Costs of training are borne by the state for In-State students. Out-of-State students shall be charged the currently approved rate.

R728-505-9. Disciplinary Action.

A. Any student who becomes the subject of an inquiry into an allegation of violation of Academy rules or standards shall be dealt with following the procedures outlined in the Procedures for Dismissing Students from Peace Officer Training Programs for Cause found in the P.O.S.T. Policy and Procedure Manual.

B. A violation of any of the Academy rules can result in anyone or more of the following actions:

1. Verbal Reprimand.

2. Written Reprimand.

3. Probation.

4. Referral to department for discipline.

5. Suspension.

6. Dismissal.

C. A student may be prohibited from participating in Academy functions during the course of an inquiry into alleged misconduct.

D. In all cases, the student shall be given the opportunity to speak in his/her behalf before any action is taken.

E. Once an action is decided upon, the student and his/her employing agency shall be immediately notified.

F. In all cases where a student is suspended or dismissed from the Academy, his/her employing agency shall be immediately notified.

G. Students may appeal any decision by following the procedures outlined in the P.O.S.T. Policy and Procedure Manual.

R728-505-10. Dormitory Facilities.

A. Each student occupying the Academy dormitory is required to keep the room clean and orderly and to make the bed daily. Random inspections may be held to insure compliance. When noncompliance is found, the student in violation may be subject to disciplinary action.

B. Damage incurred through neglect or intentional abuse to Academy property shall result in the student or department head being billed for all repairs and replacements.

C. Visitors are not allowed in dormitory rooms. They are invited to visit with students in the lounges.

D. Persons of the opposite sex are strictly forbidden in the dormitory room unless such person has been instructed to be there by the Academy staff. Persons found to be in violation shall be suspended from the Academy.

E. The academy shall not be responsible for personal items left unsecured.

F. Housekeeping Information.

Because of the obvious importance of cleanliness in a group living environment, anyone who demonstrates an unwillingness to follow the Academy's housekeeping guidelines may be required to leave the dormitory facility and provide his/her own housing.

KEY: police dog training rules, K-9 training

Date of Enactment or Last Substantive Amendment: April 10, 2002

Notice of Continuation: May 17, 2012

Authorizing, and Implemented or Interpreted Law: 53-6-105; 53-6-106; 53-6-107]

Public Service Commission,
Administration
R746-360-4
Application of Fund Surcharges to
Customer Billings

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 40553

FILED: 06/28/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During 2016, revenues into the Utah Universal Service Fund have declined to a point where they are no longer sufficient to cover the current monthly distributions from the fund. The Public Service Commission solicited written comments on options to address the funding deficiency and held a technical conference on the topic. In addition, the Public Utilities, Energy, and Technology Interim Committee of the Utah Legislature has held a hearing on the topic. Following all of the feedback received in written comments and at the technical conference, and noting that the legislative committee has expressed interest in more fundamental changes to the Utah Universal Service Fund, this rule change is intended to function as an interim solution to address the current funding deficiency in the least disruptive way possible, and to allow time for the Utah Legislature to consider other changes to the fund.

SUMMARY OF THE RULE OR CHANGE: The surcharge is currently 1% of billed intrastate retail rates. As of 10/01/2016, the surcharge will be 1.65% of billed intrastate retail rates. This increased surcharge is intended as an interim solution to keep the Utah Universal Service Fund solvent, while pending legislative review of the funding mechanism.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-3-1 and Section 54-4-1 and Section 54-7-25 and Section 54-7-26 and Section 54-8b-15

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Increasing the surcharge will increase the balance of the Utah Universal Service Fund, which is created by statute. The revenues to which the surcharge applies are in constant flux; therefore, the exact dollar amount of the increase cannot be calculated. The increase is necessary in order to keep the fund solvent.

◆ **LOCAL GOVERNMENTS:** Local governments are not required to pay, collect, or administer the surcharge. Therefore, no fiscal impact will accrue to local governments.

◆ **SMALL BUSINESSES:** Small businesses that are required to pay the surcharge as part of a telecommunications bill will be required to increase that payment by 65%. The Public Service Commission of Utah does not have data from which to calculate the dollar amount of the increase for each affected small businesses. As an example, a company that pays \$100 per month for telephone service currently pays \$1 per month into the fund. When this rule change becomes effective, such company will pay \$1.65 per month. In addition, small businesses that provide intrastate retail telephone service will be required to change their billing in order to charge an increased amount each month. Some computer programming will be required with attendant costs. Those costs will vary and, therefore, cannot be estimated by the Commission. It is anticipated that the costs will be minimal and well within each company's budgeted overhead for regulatory compliance and information technology.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:**

Persons that are required to pay the surcharge as part of a telecommunications bill will be required to increase that payment by 65%. The Public Service Commission of Utah does not have data from which to calculate the dollar amount of the increase for each person. As an example, a person that pays \$100 per month for telephone service currently pays \$1 per month into the fund. When this rule change becomes effective, such person will pay \$1.65 per month.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To comply, persons that are required to pay the surcharge will increase the monthly payment by 65%. The actual dollar amount paid by each affected person will vary and cannot be estimated. In addition, telecommunications providers will change their billing to charge an increased amount. The costs for the associated computer programming will vary and cannot be estimated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As described in the rule summary, this surcharge change is necessary to maintain current distribution levels from the Utah Universal Service Fund and will function as an interim solution to allow the Utah Legislature to give a more comprehensive evaluation to broader issues related to the fund.

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 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Jennie Jonsson, Administrative Law Judge

**R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.**

R746-360-4. Application of Fund Surcharges to Customer Billings.

A. Commencement of Surcharge Assessments -- Commencing June 1, 1998, end-user surcharges shall be the source of

revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.

B. Surcharge Based on a Uniform Percentage of Retail Rates -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.

C. Surcharge -- The surcharge to be assessed [~~shall equal~~] is as follows:

1. ~~through September 30, 2016,~~ 1 percent of billed intrastate retail rates; ~~and~~
2. ~~beginning October 1, 2016,~~ 1.65 percent of billed intrastate retail rates.

KEY: public utilities, telecommunications, universal service fund
Date of Enactment or Last Substantive Amendment: [~~July 8, 2015]~~2016
Notice of Continuation: November 13, 2013
Authorizing, and Implemented or Interpreted Law: 54-3-1; 54-4-1; 54-7-25; 54-7-26; [~~54-8b-12;~~]54-8b-15

Transportation, Administration
R907-63
Structure Repair and Loss Recovery
Procedure
NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 40558
 FILED: 06/30/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the amendment is to make grammatical corrections to clarify the substance of the rule and the Department's purpose for having the rule. The Department also adds text to increase the breadth of the kinds of costs the Department may recover from persons who cause damage to the Department's structures and highway systems, and to affirm the Department's policies regarding compromise and settlement of such matters.

SUMMARY OF THE RULE OR CHANGE: This amendment makes grammatical corrections to clarify the substance of the rule and the Department's purpose for having the rule. It also adds text to increase the breadth of the kinds of costs the Department may recover from persons who cause damage to the Department's structures and highway systems, and affirm the Department's policies regarding compromise and settlement of such matters.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-7-301

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** This amendment may add savings to the state's budget if it enables the Department to recover

all its costs for repairing damage caused to the Department's structures and highway systems by motorists. However, it is not possible to assert with any certainty that the amendment will result in any change in the state's budget.

♦ **LOCAL GOVERNMENTS:** The Department does not anticipate this amendment will result in any changes to the budgets of local governments because it does not change anything that might affect the revenues of local governments.

♦ **SMALL BUSINESSES:** The Department does not anticipate this amendment will result in any changes to the budgets of small businesses because it does not change anything that might affect the revenues of small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate this amendment will result in any changes to the budgets of persons other than small businesses, businesses, or local government entities because it does not change anything that might affect the revenues of persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons affected by Rule R907-63 are those who cause damage to the Department's structures and highway systems. This amendment does not change who is affected by the rule or how they are affected. The Department's intent is not to alter compliance costs for affected persons with this amendment. The Department's intent with this amendment to add clarity to Rule R907-63 and eliminate possible confusion. Compliance costs for affected persons are determined by the amount of damage they cause to the Department's structures and highway systems. This amendment does not change that.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment should not cause fiscal impact to businesses. The rule itself already requires a business that damages the Department's structures and highway systems to reimburse the Department for the cost of repairing the damage. This amendment should make the rule easier to understand.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 TRANSPORTATION
 ADMINISTRATION
 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 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Carlos Braceras, Executive Director

R907. Transportation, Administration.

R907-63. Structure Repair and Loss Recovery Procedure.

R907-63-1. Authority and Purpose.

This rule establishes a procedure for loss recovery for damages to ~~[bridge-]~~structures, appurtenances, thereto and the roadway as provided in Section 72-7-301.

R907-63-2. Procedure to Collect for Damage to Structures and Highways.

(1) Upon notification of damage to ~~[UDOT]the~~ Department's property, the ~~[Utah-]Department [of Transportation-]~~shall repair or replace ~~[it]damaged structures and highway elements.~~

(2) All costs associated with the repair or replacement of the damaged property shall then be ~~[billed]invoiced~~ to the owner of the vehicle causing the damage, or to the person directly responsible for the damage.

(3) If the damage is caused by a vehicle, the person responsible shall ~~[pay-]reimburse the Department for the full cost of repairing the damage[the bill].~~

(4) If payment is not received by ~~[UDOT]the Department~~ within 60 days of ~~[billing]the date of the invoice,~~ the Department ~~[UDOT-]may~~ pursue payment by one of the following means:

(a) UDOT may pursue collection of a delinquent account in accordance with Sections 63A-3-301 through 63A-3-310, Accounts Receivable Collection.

(b) The account may be ~~[turned-over]tendered~~ to a collection agency for immediate collection.

(5) In cases where undue financial pressure would be caused by full payment of an ~~invoice[bill]~~, the owner of the vehicle or person responsible for ~~the~~ damage may arrange to make installment payments on the debt.

R907-63-3. Eligible Region Recovery Costs.

The appropriate ~~R[er]egion~~ may seek recovery of all costs associated with an incident, ~~[for]including~~ traffic control, maintenance and repair when such work is performed by ~~R[er]egion~~ work forces to maintain the integrity of the highway system, structure, or to restore the ~~damaged~~ system and facilities to ~~their~~ preexisting condition.

R907-63-4. Eligible Division Recovery Costs.

When damage ~~occurs[is]~~ to a bridge structure:

(1) The Structures Division shall accumulate all costs for preparing ~~design calculations, design plans, specifications and engineering estimates, [design plans,]including professional engineering services and construction engineering with associated overhead costs, along with all costs related to [and costs associated with-]publication, preparation, and advertising the bid package[for bids, plus engineering overhead costs].~~

(2) The Structures Division shall award the project to the lowest responsive and ~~[qualified]responsible bidder.~~ The Structures Division shall submit the final accumulated project costs, including ~~[and include-]all~~ eligible ~~R[er]egion~~ charges ~~[and submit-]to~~ UDOT Risk Management for ~~the~~ cost recovery process.

R907-63-5. Department Settlement Policy.

(1) ~~[It shall be-]The~~ Department's intent ~~is~~ to secure full recovery from the responsible party(s) based on the full actual cost of such repairs to the structure or highway system damaged including all indirect costs associated with or resulting from an occurrence.

(2) The Department may at its discretion elect to accept settlement based on detailed engineering estimates and any direct or indirect costs associated with or resulting from an occurrence when ~~[it]the Department [deems]determines that~~ it is in the best interest of the motoring public and tax payers to delay or forgo repairs to the ~~damaged structures or highway system.~~

~~(3) Settlements shall conform to the requirements of the State Settlement Agreements Act, Sections 63G-10-101 through 503.~~

~~(3)4~~ The Department may submit to the Attorney General any claim for recovery, which is in dispute, requesting legal action be taken to recover the State's losses and settle such claims based on the laws of liability or as directed by the courts.

KEY: bridges, damages, loss recovery[*], structures

Date of Enactment or Last Substantive Amendment: ~~[April 1, 1997]2016~~

Notice of Continuation: August 11, 2011

Authorizing, and Implemented or Interpreted Law: 72-7-301; 63A-3-301 through 63A-3-310

**Transportation, Program Development
R926-14**

**Utah Scenic Byway Program
Administration; Scenic Byways
Designation, De-designation, and
Segmentation Processes**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40525

FILED: 06/17/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Legislature passed H.B. 232 during the 2016 General Session. H.B. 232 amended Section 72-4-303, which governs how the Utah State Scenic Byway Committee designates state highways as scenic byways, and the requirements for segmenting non-scenic property from a scenic byway designation. H.B. 232 requires the Department to amend this rule to conform to the requirements of the legislation. H.B. 232 has been in effect since the Governor signed the bill on 05/10/2016.

SUMMARY OF THE RULE OR CHANGE: This amendment provides a protocol that owners of property situated adjacent to a state scenic byway, National Scenic Byway, or All-American Road to follow for submitting requests to the Utah

State Scenic Byway Committee to segment their property from the designated scenic byway, National Scenic Byway, or All-American Road. The amendment also establishes the process for the Scenic Byway Committee to follow when determining if segmentation requests should be granted and an appeal proceed for property owners to follow when their requests are denied.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-4-303

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The department anticipates this amendment will likely increase costs to the state's budget. The fiscal note that accompanied H.B. 232 (2016) stated: "To the extent that requests for segmentation are denied by the Utah State Scenic Byway Committee and the owner of real property appeals, this bill could cost approximately \$5,000 per instance from the General Fund for the committee to hire an administrative law judge." The Department has no reason to believe this statement is incorrect.

◆ **LOCAL GOVERNMENTS:** The Department does not anticipate any change in costs for local governments affected by this amendment. The fiscal note that accompanied H.B. 232 (2016) stated: "Enactment of this legislation likely will not result in direct, measurable costs for local governments." The Department has no reason to believe this statement is incorrect.

◆ **SMALL BUSINESSES:** The Department does not anticipate any change in costs for small businesses affected by this amendment. The fiscal note that accompanied H.B. 232 (2016) stated: "Enactment of this legislation likely will not result in direct, measurable expenditures by Utah residents or businesses." The Department has no reason to believe this statement is incorrect.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any change in costs for persons other than small businesses, businesses, or local government entities affected by this amendment. The fiscal note that accompanied H.B. 232 (2016) stated: "Enactment of this legislation likely will not result in direct, measurable expenditures by Utah residents or businesses." The Department has no reason to believe this statement is incorrect.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any change in costs for persons affected by this amendment. The fiscal note that accompanied H.B. 232 (2016) stated: "Enactment of this legislation likely will not result in direct, measurable expenditures by Utah residents or businesses." The Department has no reason to believe this statement is incorrect.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Based upon statements included in the fiscal note that accompanied H.B. 232 (2016), which is the basis for this

amendment, I do not believe the amendment will cause any fiscal impact on businesses.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Carlos Braceras, Executive Director

R926. Transportation, Program Development.

R926-14. Utah Scenic Byway Program Administration; Scenic Byways Designation, De-designation, and Segmentation Processes.

R926-14-3. Definitions.

Terms used in this rule are defined in Title 72, Chapter 4. The following additional terms are defined for this rule:

(1) "All-American Road" means a scenic byway designation made at the national level for state scenic byways that significantly meet criteria for multiple qualities out of the six defined intrinsic qualities.

(2) "America's Byways" means the brand utilized by the National Scenic Byways Program for promotion of the National Scenic Byways and All American Roads.

(3) "Committee" or "State Committee" means the Utah State Scenic Byway Committee as defined in Title 74, Chapter 4 and does not refer to any local scenic byway committee herein defined.

(4) "Corridor management plan" means a written document prepared by the local scenic byway committee in accordance with federal policies that specifies the actions, procedures, controls, operational practices, and administrative strategies necessary to maintain the intrinsic qualities of a scenic byway.

(5) "De-designation" means removing a current state scenic byway designation by the committee from an entire existing scenic byway.

(6) "Department" means the Utah Department of Transportation.

(7) "Designation" means selection of a roadway by the committee as a state scenic byway or selection of an existing state scenic byway by the U.S. Secretary of Transportation as one of America's Byways.

(8) "Federal policies" means those rules outlining the National Scenic Byway Program and that set forth the criteria for designating roadways as National Scenic Byways or All-American Roads, specifically the FHWA Interim Policy.

(9) "Local legislative body" means the elected governing board of a political subdivision, such as a town, city, county, or tribal government.

(10) "GOED" means the Utah Governor's Office of Economic Development.

~~(11)~~ "Grant" means discretionary funding available on a competitive basis to designated scenic byways from the Federal Highway Administration through the National Scenic Byways Program.

(12) "Intrinsic quality" means scenic, historic, recreational, cultural, archaeological, or natural features that are considered representative, unique, irreplaceable, or distinctly characteristic of an area. The National Scenic Byways Program further defines each of these qualities.

(13) "Local Scenic Byway Committee" means the committee consisting of the local byway coordinator and representatives from nearby local legislative bodies, agencies, tourism related groups and interested individuals that recommends and prioritizes various projects and applications relating to a scenic byway. The local scenic byway committee promotes and preserves intrinsic values along the byway.

(14) "Local Byway Coordinator" means an individual recognized by the local scenic byway committee as chair. If a local scenic byway committee does not exist for a scenic byway, the local byway coordinator is an individual recognized by the state committee chair as the person to contact for applications and other administrative business for the state scenic byway.

(15) "National Scenic Byway" means a scenic byway designation made at the national level for byways that significantly meet criteria for at least one quality out of the six defined intrinsic qualities.

(16) "National Scenic Byways Program" or "NSBP" means a program provided by the Federal Highway Administration to promote the recognition and enjoyment of America's memorable roads.

(17) "State Scenic Byway" means a Utah roadway corridor that has been duly designated by the committee for its intrinsic qualities.

(18) "Status" refers to the current designation of a scenic byway, i.e., state scenic byway, National Scenic Byway, All-American Road, undesignated roadway, segmented scenic byway or de-designated scenic byway.

R926-14-4. Utah State Scenic Byway Committee Organization and Administration.

(1) The authorization of the committee, its membership, administration, powers, and duties are defined in Title 72, Chapter 4.

(2) The committee shall conduct business to administer the State Scenic Byway program within the State of Utah. This business shall include, but not be limited to:

(a) designating, de-designating, ~~and~~ hearing appeals of segmentation denials of state scenic byways, and consideration of segmentation under a Request for Agency Action;

(b) recommending considerations for National and All-American Road recognition to the Legislature;

(c) recommending applications to the NSBP;

(d) prioritizing applications for Scenic Byway Discretionary funding and other funding that may be available; and

(e) other business as may be needed to administer the scenic byway program.

(3) The committee shall meet to conduct business necessary to administer the state scenic byway program.

(a) The meeting is intended to be an in-person gathering of the full committee at a single anchor location. Where the need arises, and as authorized by Title 52, Chapter 4, individual members may request to be connected to the meeting via teleconference, video conference, web conference, or other emerging electronic technology, if they make the request at least three days prior to the committee meeting to allow for arrangements to be made for the connection.

(b) All additional meetings called by the chair, including committee meetings to consider factors associated with a Request for Agency Action to segment property adjacent to a scenic byway, may be held as either in-person or electronic meetings, at the discretion of the chair, as authorized by Title 52, Chapter 4.

(i) Electronic meetings may be fully electronic, i.e. each member may join on an individual remote connection (depending on the technology used), but an anchor location must be provided for the public at one or more connections, preferably at a conference room available to either the department or the Utah Office of Tourism, that is large enough to accommodate anticipated demand.

(ii) Electronic meetings may be via teleconference, video conference, web conference, or other emerging electronic technology, at the discretion of the chair, as long as adequate time is provided to set up the required electronic connections for all participants and the technology used is generally publicly available.

(iii) All meetings, whether in-person or electronic, must be advertised and accessible to the public for both hearing and comment, which in the case of electronic meetings will require publication of connection details and anchor locations.

(iv) The published agenda for electronic meetings needs to include details on the format of how and when public comment will be received and addressed by the committee. For example, comment during a web conference may be taken continuously via a chat window, then read by the moderator during the time set aside for public input, with committee responding. In a teleconference, public participants may be requested to hold their comments until a designated period is opened by the chair.

R926-14-8. Process and Criteria for Removing the Designation of a Highway as a Scenic Byway or Segmentation of a Portion Thereof.

(1) The committee may de-designate a scenic byway if the intrinsic values for which the corridor was designated have become significantly degraded and no longer meet the requirements for which it was originally designated.

(2) The local legislative body may remove designation on a localized segment of a designated byway if the intrinsic values within the segment have become degraded or if the segment being considered was included primarily for continuity of travel along the designated corridor, does not in and of itself contain the intrinsic

values for which the corridor was designated, and the segmentation has strong community-based support.

(3) Highways that are part of the National Highway System (NHS) are still subject to certain federal outdoor advertising regulations, regardless of their scenic byway status. When considering a de-designation or segmentation on an NHS route, either the committee or the local legislative body should become familiar with the regulatory differences between scenic byway status and NHS status, since de-designation or segmentation would not affect the ongoing applicability of NHS regulations and may not always produce the desired effect.

(4) De-designated corridors and communities or parcels segmented out of the scenic byway designation are no longer subject to byways-related regulations and are no longer eligible for byways-related grants and promotional considerations.

(5) Committee processes for de-designation may be initiated by the committee itself or by request from a local legislative body.

(6) ~~[Alternatively,]~~ ~~[S]segmentation~~ of specific parcels or portions of a scenic byway may be considered directly by the local legislative body of a county, city, or town where the segmentation is proposed, as provided in Title 72, Chapter 4. The same public hearing requirements are followed for local legislative actions as are provided herein for committee actions.

(7) Alternately, segmentation of specific parcels of property adjacent to a scenic byway may be requested by the property owner by submitting a written Request for Agency Action, as provided in the Administrative Procedures Act, Title 63G, Chapter 4, Part 2.

(a) The Request for Agency Action shall contain the information required by 63G-4-201(3)(a), and shall include a statement why the owner considers the property to be non-scenic as defined in 72-4-301.

(b) The written Request for Agency Action shall be mailed to the Office of Tourism, Film and Global Branding within the GOED, with a copy of the request mailed to the Program Development Group within the Utah Department of Transportation to the attention of Program Development:

(c) Segmentation of property under a Request for Agency Action shall take effect 60 days after receipt of the written request by the Office of Tourism within GOED, unless the committee demonstrates to an administrative law judge within 60 days, with subsequent action by the administrative law judge, that the property fails to meet the definition of "non-scenic" as defined in 72-4-301;

(i) Pursuant to Section 72-4-303(3)(d), "receipt" of the request for Agency Action shall be the date on which the mailed copy of the request is received by GOED's Office of Tourism.

(ii) Requests for Agency Action shall be mailed to:

GOED OFFICE OF TOURISM
Attention: Scenic Byway Committee
300 North State Street

Council Hall/ Capitol Hill
Salt Lake City Utah 84114

(iii) A copy of the Request for Agency Action shall be mailed to:

Program Development Group of the
Utah Department of Transportation
P.O. Box 143600
4501 South 2700 West

Salt Lake City Utah 84114

(d) a request for agency action segmentation is classified as an informal adjudicative proceeding.

~~([7]8)~~ Requests to the committee for de-designation of state scenic byways shall be submitted by a local legislative body along or adjacent to the scenic byway corridor. Each request shall include discussion of the specific reasons for de-designation. Reasons may include, but are not limited to:

(a) segment or corridor is no longer consistent with the state's criteria for selection as a scenic byway;

(b) failure to have maintained or enhanced intrinsic values for which the scenic byway was designated;

(c) degradation of the intrinsic values for which the scenic byway was selected;

(d) segment of byway is not representative of the intrinsic values for which the scenic byway was designated and was included primarily for connectivity; or

(e) state scenic byway designation has become a liability to the corridor.

~~([8]9)~~ Local legislative bodies shall inform the committee and UDOT Program Development of their action to segment within 30 days of the date of the action to segment. The local legislative body shall include the discussion of the specific reasons for segmenting. Reasons may include, but are not limited to those identified in R926-14-8(7)(a) through (e).

~~([9]10)~~ Parcels on existing byways may not be segmented out of a byway solely for the purpose of evading state and federal regulations pertaining to byway designation, but must also be considered non-scenic or otherwise meet the criteria listed in Paragraph (7). However, towns, cities, and counties may remove themselves entirely for any purpose, as provided in Title 72, Chapter 4.

~~([10]11)~~ State and federal highway regulations require that no regulated outdoor advertising be located within 500 feet of a designated scenic area. Therefore, the size of any parcel or parcels being considered for segmentation would need to be large enough to meet that offset requirement.

~~([11]12)~~ Upon receipt of the local legislative body's action to segment, the committee chair will add the action to the agenda of the next committee meeting.

~~([12]13)~~ The local legislative body shall provide the committee the following information at the next committee meeting:

(a) the date of segmentation, being the day the local legislative body took action on the request to segment;

(b) the defined limits of the segmented portion of the scenic byway, including route and milepost details and definitions;

(c) the approved meeting minutes from the public meeting(s); and

(d) a copy of the signed resolution from the local legislative body.

~~([13]14)~~ After the responsible legislative body has heard and denied a request to segment a state scenic byway, the denial can be appealed to the committee. The appeal must include information regarding the public hearings, minutes of the hearings, including names and addresses of people making comments, a detailed summary of comments made, and proof of public notification.

~~[(14)]15~~) Following discussion of the request or appeal, the committee will vote on the request for de-designation or appeal of the denial of segmentation. The committee will then forward the result of the vote to the requesting local legislative body or appealing party. For segmentation denial appeals heard by the committee and for de-designation actions, the date of approval by the committee is considered the official date of the segmentation or de-designation, for the intent and purpose of how it affects byway program eligibility and subjection to byway regulations.

~~[(15)]16~~) Upon approval or disapproval of a de-designation or segmentation request or decision on appeal, the acting body, whether the committee or the local legislative body, shall notify the Utah Office of Tourism, the department and other interested agencies of the action taken.

(a) In the case of approval of a de-designation or segmentation, the acting body will make a request to these agencies that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(b) In the case where the committee approves the de-designation of a scenic byway that had also been designated as a National Scenic Byway, the committee will inform the National Scenic Byway Program of the decision and make a request to the NSBP that they modify reference of the segment, to reflect the change in scenic byway status, on maps and in materials and website applications identifying scenic byways.

(c) In the case of a local legislative action on a segmentation request, the local legislative body shall also notify the committee and the local byway coordinator of the action taken. For segmentation requests heard by a local legislative body, the date of approval by the local legislative body is considered the official date of the segmentation, for the intent and purpose of how it affects byway program eligibility and subjection to byway regulations.

~~[(16)]17~~) Appeals to the committee concerning local legislative actions are handled as provided in Title 72[-], Chapter 4.

~~[(17)]18~~) ~~[On—]~~Upon receiving notification of segmentation or de-designation, the department shall amend Rule 926-13 to update the description of the byway to reflect the approved changes. The department shall forward to the NSBP any changes that would have a substantive effect on online maps, brochures, or other publications of the NSBP. The department will also show substantive changes on the official highway map at its next printing.

R926-14-9. Local Government Consent.

Consent of affected local governments along the byway corridor is required by Title 72, Chapter 4 for any change in scenic byway status.

R926-14-10. Requirements for Public Hearings to Be Conducted Regarding Changes to Status of a State Scenic Byway and Related Notifications.

(1) Whenever changes to the scenic byway status of a corridor or of a segment thereof are considered, one or more public hearings must be held for the purpose of receiving the public's views and to respond to questions and concerns expressed before action is taken.

(2) Upon the receipt of a Request for Agency Action from a property owner to segment property adjacent to a scenic byway,

the Chair of the committee shall call a meeting for the committee to consider factors associated with the request, including consideration of information listed in paragraph (4).

(3) For all other changes to scenic byway status:

(a) The organization initiating the request for change in status is responsible for arrangement, notification, and execution of the hearing(s). The responsible organization may be:

(i) an organization (local scenic byway committee, community, county or association of governments) submitting an application or request to the committee;

(ii) the committee, in the case of a process initiated by the committee itself; or

(iii) a local legislative body considering a segmentation request.

(b) The hearing(s) shall be held in the area affected by the proposed status changes.

(c) Multiple hearings in varied locations may be appropriate, based on the length of the corridor or the affected area within the corridor. The committee chair will review and approve the number and locations of hearings as proposed by the nominating organization to ensure collection of a broad base of public comments throughout the length of the corridor where the scenic byway status changes are proposed.

(d) The responsible organization shall invite the state committee and the local scenic byway committee to attend the public hearing(s).

(2) The required public hearing(s) may be held separately, or as an identifiable agenda item of a regular meeting of a local legislative body.

(3) Notification of all public hearings shall be made as required by the laws governing the responsible organization.

(4) At a minimum, the following information related to the proposed change in status is to be addressed at each public hearing:

(a) the impact on outdoor advertising;

(b) the potential impact of traffic volumes;

(c) the potential impact of land use along the byway;

(d) the potential impact on grant eligibility; and

(e) the potential impact on the local tourist industry.

(5) The responsible organization shall keep minutes of the hearing, including a detailed summary of comments and the names and addresses of those making comments and shall make these available to the committee, along with proof of required notifications.

R926-14-11. Requirements for Consideration of Adjudicative Proceedings Associated with a Segmentation Request Submitted by a Property Owner Under a Request for Agency Action.

(1) If the committee determines at a public hearing that property associated with a property owner's request for agency action to segment property does not meet the definition of non-scenic as defined in 72-4-301, the Chair of the committee shall notify the property owner that its Request for Agency Action is denied pending administrative hearing.

(2) The Chair of the committee shall notify the property owner in writing of:

(a) The committee's denial of the Request for Agency Action;

(b) the Committee's intent to have the matter considered by an administrative law judge:

(c) A list of available administrative law judges, if known.

(3) No more than 10 days after the written notice is sent advising the property owner of the committee's denial of the request for agency action and intent to have the matter considered by an administrative law judge, the property owner shall notify the committee in writing of their agreement on selection of the administrative law judge named by the committee, or advise the committee of an alternate judge agreed upon by the committee.

(4) Administrative Hearings initiated under this provision shall be designated as informal hearings under the Utah Administrative Procedures Act and conducted as set forth in Utah Code Section 63G-4-203.

KEY: transportation, scenic byways, highways
Date of Enactment or Last Substantive Amendment:
[December 9, 2013]2016
Notice of Continuation: June 16, 2015
Authorizing, and Implemented or Interpreted Law: 52-4-207;
63G-3-201; 72-4-301; 72-4-301.5; 72-4-302; 72-4-303; 72-4-304

**Workforce Services, Employment
Development
R986-100
Employment Support Programs**

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 40557
FILED: 06/29/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify when changes must be reported.

SUMMARY OF THE RULE OR CHANGE: The change clarifies which changes must be reported to the Department within 10 days.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-3-101 and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This applies to federally-funded programs, so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This applies to federally-funded programs, so there are no costs or savings to local governments.

◆ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs to persons other than small businesses, businesses, or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for this change to anyone, including persons affected by this change. There is no cost for reporting changes. This proposed amendment simply changes the time frame for reporting certain changes. Clients do not incur any costs by complying with this proposed amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Jon Pierpont, Executive Director

**R986. Workforce Services, Employment Development.
R986-100. Employment Support Programs.
R986-100-103. Acronyms.**

- The following acronyms are used throughout these rules:
- (1) "AA" Adoption Assistance Program
 - (2) "ALJ" Administrative Law Judge
 - (3) "CC" Child Care Assistance
 - (4) "CFR" Code of Federal Regulations
 - (5) "DCFS" Division of Children and Family Services
 - (6) "DWS" Department of Workforce Services
 - (7) "EA" Emergency Assistance Program

- (8) "FEP" Family Employment Program
- (9) "FEPTP" Family Employment Program Two Parent
- (10) "GA" General Assistance
- (11) "INA" Immigration and Nationality Act
- (12) "IPV" intentional program violation
- (13) "ORS" Office of Recovery Service, Utah State

Department of Human Services

(14) "PRWORA" the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

- (15) "RRP" Refugee Resettlement Program
- (16) "SNB" Standard Needs Budget
- (17) "SSA" Social Security Administration
- (18) "SSDI" Social Security Disability Insurance
- (19) "SSI" Supplemental Security Insurance
- (20) "SSN" Social Security Number
- (21) "TANF" Temporary Assistance for Needy Families
- (22) "TCA" Transitional Cash Assistance

(~~22~~)23) "UCA" Utah Code Annotated

(~~23~~)24) "UI" Unemployment Compensation Insurance

(~~24~~)25) "USCIS" United States Citizenship and Immigration Services.

(~~25~~)26) "VA" US Department of Veteran Affairs

(~~26~~)27) "WTE" Working Toward Employment Program

(~~27~~)28) "WIA" Workforce Investment Act

(~~28~~)29) "WSL" Work Site Learning

R986-100-113. A Client Must Inform the Department of All Material Changes.

(1) A material change is any change which might affect eligibility.

(2) Households receiving assistance must report all material changes to the Department as follows:

(a) households receiving food stamps must report a change in the household's gross income if the income exceeds 130% of the federal poverty level. The change must be reported within ten days from the end of the calendar month in which the change occurred. Changes reported by the tenth of the month following the month when the change occurred are considered timely; and

(b) households receiving GA, WTE, FEP, FEPTP, AA and RRP that do not meet the requirements of paragraph (2)(a) must report the following changes within ten days of the change occurring:

(i) if the household's gross income exceeds 185% of the adjusted standard needs budget;

(ii) a change of address;~~and~~

(iii) if ~~the only~~any eligible child leaves the household and the household receives FEP, FEPTP or AA[-];

(iv) if a parent, step-parent, spouse, or former spouse moves into the household or if a marriage or adoption occurs with or between the already reported household members;

(v) if a child becomes eligible for foster care or subsidized adoption financial assistance;

(vi) a change in student status of a child in the household;

(vii) if a client receiving TCA is not longer employed or is working less than an average of 30 hours per week;

(viii) if there is a change in disability status of a GA client; and/or

(ix) if a GA client becomes employed.

(3) Households that do not meet the requirements of paragraph (2)(a) of this section will be assigned a review month. In addition to the ten-day reporting requirements listed in paragraph[s] (2)(b) [~~and (e)~~]of this section, the household must report, by the last day of the review month, all material changes that have occurred since the last review, or the date of application if it is the first review. The household is also required to accurately complete all review forms and reports as requested by the Department.

(4) Most changes which result in an increase of assistance will become effective the month following the month in which the report of the change was made. If verification is necessary, verification and changes will be made in the month following the month in which verification was received. If the change is to add a person to the household, the person will be added effective on the date reported, provided necessary verification is received within 30 days of the change. If verification is received after 30 days, the increase will be made effective the date verification was received.

KEY: employment support procedures

Date of Enactment or Last Substantive Amendment: [~~July 1, 2015~~]2016

Notice of Continuation: September 2, 2015

Authorizing, and Implemented or Interpreted Law: 35A-3-101 et seq.; 35A-3-301 et seq.; 35A-3-401 et seq.

Workforce Services, Employment Development **R986-200-221** Drug Testing Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40556

FILED: 06/29/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to comply with the requirements of H.B. 172 passed in the 2016 General Session.

SUMMARY OF THE RULE OR CHANGE: H.B. 172 (2016) changed the drug testing requirement from an initial eligibility requirement to an ongoing eligibility requirement. The impact will be the same; it will simply be easier to administer under these changes as testing will not be needed during the application process but immediately thereafter.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-3-301 and Section 35A-3-304 and Section 35A-3-304.5 and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This applies to federally-funded programs, so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This applies to federally-funded programs, so there are no costs or savings to local governments.
- ◆ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs to persons other than small businesses, businesses, or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for this change to anyone, including persons affected by this change. The Department pays the cost of testing within its current budget.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 WORKFORCE SERVICES
 EMPLOYMENT DEVELOPMENT
 140 E 300 S
 SALT LAKE CITY, UT 84111-2333
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Jon Pierpont, Executive Director

R986. Workforce Services, Employment Development.**R986-200. Family Employment Program.****R986-200-221. Drug Testing Requirements.**

(1) A parent client or specified relative who is counted in the household assistance unit under R986-200-205 must complete a substance abuse questionnaire. A substance abuse questionnaire is defined as a written screening questionnaire designed to accurately

determine the reasonable likelihood of the client having a substance use disorder involving the misuse of a controlled substance. Individuals in the household who have been disqualified from the receipt of assistance because of an IPV are also required to complete a substance abuse questionnaire and otherwise comply with this section.

(2) If the results of the substance abuse questionnaire indicate a reasonable likelihood of a substance use disorder involving the misuse of a controlled substance, a drug test is required within a period of time as specified by the Department. The test will be administered with due regard to the privacy and dignity of the person being tested. ~~[performed in accordance with the requirements of Utah Code Ann. Section 34-38-6.]~~ Before or after taking the drug test, the client may advise the person administering the test of any prescription or any over the counter medication the client is taking.

(3) If the client tests positive for the unlawful use of a controlled substance on the drug test required under subsection (2), benefits may continue but only if the client agrees to receive treatment from a Department approved provider. The treatment will be for a minimum of 60 days and the client must also submit to drug tests during, and at the conclusion of, treatment. Each test must be negative. The length of treatment, if over 60 days, will be determined by the treatment provider and the Department. The client cannot change treatment providers unless the treatment provider and the Department agree to the change.

(4) The entire household unit will be denied financial assistance for a period of three months for the first occurrence and 12 months for any subsequent occurrence within a 12 month period if a client identified in subsection (1):

- (a) refuses to complete a substance abuse questionnaire;
- (b) refuses to meet with a licensed clinical therapist if required by the Department;

~~(a)~~ refuses to take a drug test as required in subsection (2) or (3) of this section,

~~(b)~~ fails to enter and successfully complete treatment as required in subsection (3) of this section, or

~~(e)~~ tests positive for the unlawful use of a controlled substance, on any subsequent drug test required by the Department, while in treatment or at the completion of treatment.

(5) A client can be excused from complying with the requirements of this section if the necessary resources are not available through no fault of the client.

(6) A client can be excused from complying with the requirements of this section in a timely manner if the client can show reasonable cause. Reasonable cause under this section means the client was prevented from complying in a timely manner through no fault of his or her own or failed to comply in a timely manner for reasons that are reasonable and compelling.

(7) If a client disagrees with the results of a drug test performed under subsections (2) or (3) of this section, the client can provide the Department with the results of a second drug test. This second drug test will be performed:

- (i) at the client's expense,
- (ii) at a testing facility approved by the Department,
- (iii) in accordance with requirements of Utah Code Ann. Section 34-38-6, and

(iv) within seven days of the Department sending notice of the results of the original drug test.

(c) If the results of the second drug test are negative, the Department will reimburse the client the actual and reasonable verified costs incurred in obtaining the second test.

KEY: family employment program

Date of Enactment or Last Substantive Amendment: ~~May 3~~, 2016

Notice of Continuation: September 2, 2015

Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.

**Workforce Services, Employment
Development
R986-700
Child Care Assistance**

**NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40554
FILED: 06/29/2016**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Legislature passed S.B. 101 in the 2016 General Session, which provided funding for an Intergenerational Poverty (IGP) School Readiness Program.

SUMMARY OF THE RULE OR CHANGE: These changes outline eligibility requirements for IGP scholarships, how to apply for a scholarship, and how the Department will award scholarships to ensure it stays within funding limits.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-3-310 and Section 35A-9-401 and Section 53A-1b-110 and Section 53A-1b-207 and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will be no costs or savings to the state budget as services and scholarships will be provided within the amount allocated in S.B. 101 (2016).

◆ **LOCAL GOVERNMENTS:** There will be no costs or savings to any local government as this is a state-funded program.

◆ **SMALL BUSINESSES:** There will be no costs or savings to any small businesses as these changes will be paid for from allocated state funds. Small businesses will not be affected by these changes.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs to persons other than small businesses, businesses, or local government entities to

comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for this change to anyone, including persons affected by this change. This is a program to provide scholarships, and there are no fees or compliance costs to apply for or receive the scholarship. All expenses will be paid by the Department within the budget allotted by the Legislature.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

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THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Jon Pierpont, Executive Director

R986. Workforce Services, Employment Development.

R986-700. Child Care Assistance.

R986-700-775. High Quality School Readiness Grant Program.

(1) The Office of Child Care (OCC) administers this program pursuant to the authority granted in Utah Code Section 53A-1b-106.

(2) The OCC will solicit proposals from eligible private providers and eligible home-based educational technology providers and make recommendations to the School Readiness Board (SRB) as provided in 53A-1b-106(3).

(3) Eligible private providers and eligible home-based educational technology providers must submit an application, together with a proposal to the OCC by the date provided in the application.

(4) The proposal must contain the components outlined in 53A-1b-105(1) or (2) and details as required in 53A-1b-106(7).

(5) A grant recipient must report annually to the OCC the information required in 53A-1b-106(12) in addition to other information as required by the OCC.

~~_____ (6) The OCC will monitor each grant recipient to ensure compliance with the High Quality School Readiness Grant Program and share information received from grant recipients annually with the SRB.~~

~~_____ (7) Grant recipients must cooperate with the OCC to satisfy the monitoring and reporting requirements of the grant. Cooperation will include allowing onsite visits, providing information, including documentary evidence and written statements, when requested by the OCC, returning telephone calls from an OCC representative when requested to do so, and reporting, at a designated time and place, for an in-person interview with an OCC representative if so requested.]~~

R986-700-776. Intergenerational Poverty School Readiness Scholarship Program.

_____ (1) Scholarships are available, as funding permits, for a child who

_____ (a) will be four years of age on or before September 2 of the school year in which the individual intends to participate in a school readiness program;

_____ (b) has not entered kindergarten; and

_____ (c) is experiencing intergenerational poverty, as determined by the Department.

_____ (2) The Department will mail scholarship applications to individuals who the Department has identified as potentially eligible and who live in an area where one or more high quality preschool programs is available. Individuals who do not receive an application from the Department may still apply by contacting the OCC and requesting an application. The Department will notify potential applicants of the due date for filing a completed application.

_____ (3) An applicant may be required to show that transportation to a high quality preschool program is available if the child does not live within a reasonable commuting distance from the high quality preschool.

_____ (4) An applicant may be required to provide verification and supporting documentation if necessary to determine eligibility.

_____ (5) The value of the scholarship will be determined by which program the parent chooses.

_____ (6) Scholarships are transferable however funds cannot be prorated during a given month. So if a child attends one day or more during a given month at one program, and wishes to transfer to a second program at any time during that month, the full scholarship payment will be made to the first program.

_____ (7) Payment will be made directly to the high quality preschool provider. The provider must send the OCC an invoice at the end of the month, or as soon thereafter as feasible, when services were provided.

R986-700-777. Prioritizing Criteria.

_____ If the Department does not receive sufficient funding to award scholarships to all eligible individuals, the Department will award scholarships by ranking eligible children who are considered at the highest risk according to Department policy. A list of the criteria for determining highest risk is available from the Department.

R986-700-778. Training and Scholarships for Early Childhood Teachers.

_____ The Department may contract without outside entities, as funding permits, to provide training, scholarships and consulting services to assist individuals who intend to receive a Child Development Associate Credential (CDA).

KEY: child care

Date of Enactment or Last Substantive Amendment: [April 1], 2016

Notice of Continuation: September 3, 2015

Authorizing, and Implemented or Interpreted Law: 35A-3-310; 53A-1b-110

**Workforce Services, Employment
Development
R986-700
Child Care Assistance**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 40555

FILED: 06/29/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to change reporting requirements, to meet federal regulations, and to clarify the payment to provider programs.

SUMMARY OF THE RULE OR CHANGE: Clients must be citizens or qualified aliens authorized to work in the U.S. to receive assistance. The review period has been changed to 12 months to streamline cases where there are no changes. This amendment provides for benefits during periods of temporary change. If a parent will be on a temporary break, this allows the parent to keep the child care provider and ensure continuity of care. The amendment does not allow a sponsor of a qualified alien to receive assistance for care of the alien or his or her children. The amendment prohibits a provider from keeping an overpayment and using it for non-eligible costs or other months. The amendment also requires providers to provide tax identification numbers for Form 1099; allows for minimal work requirements for parents who are medically unable to meet requirements; allows a parent to use child care assistance during a break in school schedule; clarifies when children with special needs will be approved for additional expenses; and allows the Department to request background checks when needed but not every five years.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-3-310(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This applies to federally-funded programs, so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This applies to federally-funded programs, so there are no costs or savings to local governments.
- ◆ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs to persons other than small businesses, businesses, or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for this change to anyone, including persons affected by this change. This proposed rule change does not require the payment of any compliance costs by clients or to providers. There are no compliance costs to participate in child care assistance. Some parents have a co-pay, but this is not a compliance cost and is not changed by this proposed amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY, UT 84111-2333
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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2016

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2016

AUTHORIZED BY: Jon Pierpont, Executive Director

**R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-702. General Provisions.**

- (1) CC is provided to support employment for U.S. citizens and qualified aliens authorized to work in the U.S. ~~and job~~

~~search activities.]~~ Child care for approved education and training activities and job search may be authorized in accordance with rule.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

- (a) parents;
- (b) specified relatives; or
- (c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

- (a) children under the age of 13; and
- (b) children up to the age of 18 years if the child;
- (i) meets the requirements of rule R986-700-717, and/or
- (ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) Payments are issued monthly based on a client's eligibility for services in that month. The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided by an eligible provider approved by the Department and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) when the client is working in a residential setting. CC may be approved where the client is working for an approved child care center, regularly watches children other than her own, and does not have an ownership interest in the child care center. CC will not be paid to a client for the care of his or her own child(ren) if the client is a stockholder, officer, director, partner, manager or member of a corporation, partnership, limited liability partnership or company or similar legal entity providing the CC.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed ~~[at least]~~ once every ~~[six]~~ twelve months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department ~~[will]~~ may reduce or terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Care About Child Care agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) that the client is no longer in an approved training or educational program;

(c) if the client's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;

(d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;

(e) the client is separated from his or her employment;

(f) a change of address;

(g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or

(h) a change in the child care provider, including when care is provided at no cost.

(6) A client is not required to report certain allowable temporary changes, as defined in Department policy, when the circumstances are expected to last three months or less. However, temporary changes will be acted upon when they are known to the Department. Temporary changes lasting more than three months must be reported to the Department following general reporting requirement time frames. A client must have received an ESCC payment and met the work requirement for a minimum of 30 days before receiving a temporary change payment or a subsequent temporary change payment.

~~[(6)7]~~ If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month

and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

~~[(7)8]~~ If an overpayment is established and it is determined that the client was at fault in the creation of the overpayment, the client must repay the overpayment to the Department. In some situations, the client and provider may be jointly liable. In the case of joint liability, both parties can be held liable for the entire overpayment.

~~[(8)9]~~ The Department is authorized to release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) the date the child care subsidy was issued;

(c) the subsidy amount for that provider;

(d) the copayment amount;

(e) information available in the Department Provider Portal. The Provider Portal provides a provider with computer access to limited, secure information;

(f) the month the client is scheduled for review;

(g) the date the client's application was received; and

(h) general information about what additional information and/or verification is needed to approve CC such as the client's work schedule and income.

~~[(9)10]~~ If a client uses a child care provider at least eight hours by the 15th of the calendar month, and that provider has been paid for that month, the Department will not pay another provider for child care for the rest of that month even if the client changed providers. However, if it is the provider that decided not to provide care and the client is required to change providers, the Department may pay that second provider for a portion of that same month.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. All eligible providers, including providers who receive CC grants from the Department, must meet all Child Care Development Fund (CCDF) requirements. The only eligible providers are:

(a) providers regulated through Department of Health Child Care Licensing (CCL):

(i) licensed homes;

(ii) licensed child care centers; and

(iii) homes with a residential certificate.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers as defined in R430-8-3. Programs or centers must have a current letter of exempt status from CCL; or

(ii) DWS Family, Friend and Neighbor providers (FFN) as approved by CCL. The requirements for FFN approval are provided in subsection (3) of this section and in Department policy.

(2) The following providers are not eligible for receipt of a CC payment:

(a) a provider living in the same home as the parent client unless the provider is caring for a child who has special needs who cannot be otherwise accommodated;

(b) a sibling of the child living in the home can never be approved, even for a special needs child;

(c) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(d) undocumented aliens;

(e) persons under age 18;

(f) a provider providing care for the child in another state;

(g) a sponsor of a qualified alien client applying for child care assistance;

([g]h) a provider who has committed an IPV as a provider, or as a recipient of any funds from the Office of Child Care including subsidy and grant payments, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run, any resulting overpayment has been satisfied, and the provider is otherwise eligible;

([h]i) any provider disqualified under R986-700-718;

([i]j) a provider who does not provide necessary information or cooperate with a Department investigation or audit or is not an approved provider; or

([j]k) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment.

(3) FFN providers must comply with all CCDF and Department requirements and will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed and verification has been provided to CCL:

(a) complete, sign and submit an application to CCL;

(b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy, including ongoing training, as explained in the orientation;

(c) pass a home inspection as provided in Department policy;

(d) complete an infant/child CPR training;

(e) complete first aid training; and,

(f) the provider and all individuals 12 years old or older living in the home where care is provided must submit to and pass a background check as provided in R986-700-751 et seq.

(4) A FFN provider must also comply with all Department policy including abiding by the ratio requirements.

(5) FFN approval must be renewed annually. Renewal information is found in Department or CCL policy. The FFN CC Provider must complete an announced inspection and show compliance with all regulations at least 30 calendar days before the expiration date of the current approval.

(6) FFN CCL provider approval is for the provider and the location(s) and is not assignable or transferable.

(7) A FFN provider or applicant has a right to file an appeal when an adverse action has been taken against him or her in regards to FFN approval status or health and safety compliance. Prior to filing an appeal, the provider or applicant must request a review with the CCL manager. If unresolved after that review, the provider may file an appeal by requesting a fair hearing with DWS in accordance with R986-100-123 et seq.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect copayments and any other fees for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers may retain the full monthly subsidy payment so long as at least eight hours of care were provided by the 15th of the month. The subsidy payment is to support an eligible client's monthly employment and training activities and allows for temporary absences and unforeseen circumstances. Having a child only attend one day per month or sporadically to receive a child care payment is a misuse of funds and will result in an overpayment and possible child care disqualification. Additionally, the subsidy payment is intended to be used to cover the provider's business expenses during the month for reserving the slot(s) and shall not be used to cover the client's out of pocket expenses, copayments, or carried forward for future months of service. Providers who choose not to apply the funds as required will be subject to an overpayment and possible child care disqualification.

([3]4) Providers must keep accurate records of subsidized child care payments, and time and attendance. The Department has the right to investigate child care providers and audit their records. Time and attendance records for all subsidized clients must be kept for at least three years.

([4]5) Providers must provide initial verification information to determine eligibility. Providers must also cooperate with an investigation or audit to determine ongoing eligibility or if eligibility was correctly determined. Cooperation includes providing information and verification and returning telephone calls or responding to emails from Department employees or other persons authorized by the Department to obtain information such as an employee of ORS in a timely manner. "A timely manner" is usually considered to be ten business days to return a phone call or email request. Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the eligibility. Failure to disclose a material fact that might affect the eligibility determination can also lead to criminal prosecution. If a provider fails to cooperate with an investigation or audit, provide any and all information or verification requested, or fails to keep records for one year without good cause, the provider will no longer be an approved provider. Good cause is limited to circumstances where the provider can show that the reasons for the delay in filing were due to circumstances beyond the provider's control or were compelling and reasonable. The period the provider will not be an approved provider will be from the date the information or verification was due until when it is received by the Department.

([5]6) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider is responsible for repayment of the resulting overpayment and there may be a disqualification period and/or criminal prosecution.

([6]Z) CCL will keep a list of all providers that have been disqualified as a provider or against whom a referral or complaint is received.

([7]8) All providers, except FFN providers as defined in R986-700-705(1)(b)(ii), are required to report their monthly, full-time child care rates to the local Care About Child Care agency. All providers must also report the rate for each individual child to the Department if the amount is less than the rate reported to Care About Child Care. Failure to report reduced rates may result in an overpayment.

([8]9) Providers are required to access the Provider Portal at jobs.utah.gov/childcare and:

(a) submit and manage bank account information;
(b) read and agree to the terms and conditions contained in the Provider Guide and in the Portal;

(c) view child care payment information;

(d) manage Provider Portal user access to ensure only those users with authority to make changes can do so. The provider is liable for all changes made and information provided through the Provider Portal;

(e) report the following changes within 10 days, or by the 25th of the month, whichever is sooner:

(i) a reduced or part-time rate for an individual child in care, as applicable. This includes reporting any rate changes or updates that occur for each child once a rate has been submitted in the portal;

(ii) a child is no longer in child care;

(iii) a child was not in child care during that month;

(iv) the provider [decided not to charge the full subsidy amount for one month]received a greater subsidy payment amount than what was charged to the client for the month of service. Excess subsidy funds cannot be used to cover outstanding balances, copayments, or future services. The provider should notify the Department and the difference will either be deducted from the next month's subsidy payment or the funds must be returned to the Department;

(v) that a child attended for less than eight hours by the 15th of the month, payment for the month was received and the child is not expected to return; or

(vi) a change in financial institution account information for direct deposit.

([9]10) Providers must submit a W-9 Form, Federal Employee Identification Number or Social Security Number via the DWS Provider Portal, if required by the Department, and a 1099 will be issued annually.

([10]11) A provider who provides services for any part of a month and then terminates services with the client/child during the month, must reimburse the Department for the days when care was not provided. However, if it was necessary to remove the child from care because the child or others were endangered, and the incident was reported to CCL or local authorities, the Department may waive repayment.

R986-700-707. Copayment ~~and Transitional Child Care~~.

(1) "Copayment" means a dollar amount which is deducted by the Department from the standard CC subsidy for Employment Support CC. The copayment is determined on a

sliding scale and the amount of the copayment is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the copayment directly to the child care provider.

(3) If the copayment exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The Department will deduct the full monthly copayment from the subsidy even if the client receives CC for only part of the month.

(5) The following clients are not subject to the copayment requirement:

(a) clients at or below 100% of the poverty level ~~including families receiving Homeless Families CC under rule 986-700-712~~;

(b) clients receiving transitional child care~~;~~ and ~~[~~

~~clients receiving] FEP CC as provided in rule R986-700-708.~~

~~[(6) Transitional child care is available during the six months immediately following a FEP or FEPTP termination if the termination was due to increased income and the parent is otherwise eligible for ESCC. The copayment will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not. A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.]~~

R986-700-708. FEP CC Transitional Child Care.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan.

(2) Transitional child care is available during the six months immediately following a FEP or FEPTP termination if the termination was due to increased earned income and the household meets the work requirement and income rules for ESCC. Clients receiving transitional child care are not subject to the copayment requirement. The copayment will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the

same regardless of whether the client receives TCA or not. A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). An exception may be made to the minimum work requirements with Department approval when both parents are employed at their full capacity and provide requested documentation and/or verification. CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning \$500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity except if approved by the Department. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify ~~[that incapacity]~~ the incapacity and why the incapacity prohibits them from providing care for their children in ~~[one of]~~ the following ways:

(i) receipt of disability benefits from SSA if it proves the incapacity prohibits the client from providing care for their children;

(ii) 100% disabled by VA if it proves the incapacity prohibits the client from providing care for their children; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24- month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) A client may choose to receive continued child care coverage of training participation hours for up to three months during a break in semesters to allow for continuity of care and to reserve the child care slot(s).

([5]6) Any child care assistance payment to cover training participation hours made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

([6]7) There are no exceptions to the 24-month time limit, and no extensions can be granted.

([7]8) CC is not allowed to support education or training if the parent already has a bachelor's degree.

([8]9) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

R986-700-714. CC Payment Method.

(1) The provider must provide a valid financial account and routing number to allow for payment by direct deposit. For open, ongoing cases, payment will be issued on the first day of the month for services to be provided during that month. The provider is not an employee of the Department, the Office of Child Care, or the state of Utah even if the provider is only providing care for one client.

(2) Under unusual or extraordinary circumstances, the Department can issue payment by check. If a provider cannot obtain a financial account for direct deposit, the provider must contact the Department and explain why direct deposit is not possible.

(3) In the event that a check is reported as lost or stolen, the provider is required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form. If the original check has been redeemed, the Department will conduct an investigation and the provider~~], or the parent and provider in the case of a two party check,~~ may be required to provide a sworn, notarized statement

that the signature on the endorsed check is a forgery. If the Department determines the redeemed check was a forgery, the Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice if:

(a) the Department has determined that the client or the provider was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the provider; or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible including when a provider accepts payment but does not provide care. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) Even if CC funds are authorized by the Department, a CC provider cannot receive and retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds received and retained by a provider but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and may be disqualified from receipt of further CC subsidy funds as provided in R986-700-718. A provider is considered to have retained subsidy funds if the provider knew or should have known the child would not receive services that month and fails to notify the Department within ten days or the provider does not notify the Department within ten days of the end of the month when the child was not in care at least eight hours that month. If the client does not use at least eight hours of child care by the 15th of the month but uses at least eight hours of child care after the 15th of the month, it may result in a partial overpayment for that month.

(3) In the event that excess funds were issued for the month of service, the payment cannot be used to cover the client's out of pocket expenses, copayments, or carried forward for future months of service with a provider. The payment must be returned to the Department or, if possible, the payment for the following month may be reduced to offset the over-issuance. An overpayment may also occur when a provider receives a greater subsidy payment amount than the client was charged for the month of service.

([3]4) All CC overpayments must be repaid to the Department.

(a) Client overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct \$10 from each month's CC payment unless the client requests a larger amount.

(b) Provider overpayments. If a provider does not repay any outstanding overpayment within 30 days of notice of the overpayment, the Department will commence collection procedures which may include recouping the overpayment by deducting a portion of the overpayment from ongoing child care subsidies from the Department. This is true even if the child or client no longer receives child care from the provider. The decision whether to recoup the overpayment from ongoing child care payments or to commence collection procedures lies with the Department and not the provider or client/s.

(i) If the Department elects to recoup the overpayment from ongoing child care payments, and the overpayment is less than \$1,000, the Department will recoup the full amount within 90 days. If the overpayment is more than \$1,000 the Department will recoup the amount within six months. If the recoupment presents a hardship because it is more than 50% of the provider's ongoing monthly subsidy amount, the provider can contact the Department to discuss alternative arrangements for repayment.

(ii) If a provider stops providing care and has a balance due on an overpayment, and seeks approval to become a provider at a later date, approval cannot be granted until the overpayment is paid in full even if any disqualification period has expired.

[(4]5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

[(5]6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

[(6]7) A CC provider may appeal an overpayment as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment.

~~[(7) If a provider receives and retains three overpayments in a rolling 12 month period, the provider will be taken off the approved provider list until all outstanding overpayments are paid in full, even if the time frames outlined in subsection (3)(b)(i) of this section have not expired.]~~

(8) If a provider or individual facility fails to enter into a payment plan to repay the overpayment or abide by the terms of the payment plan for 12 consecutive months, the provider will be taken off the approved provider list until all overpayments are paid in full or the arrearage on the payment plan is brought current. This is true even if there is only one overpayment.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m. These additional hours may be supported with child care.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in

this setting than hours for which the client is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

~~[(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.]~~

[(4)3] CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. A maximum of seven hours per day will be approved for sleep time.

[(5)4] CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following agencies—documenting the child's disability ~~[or]and~~ special child care needs;

(a) Social Security Administration showing that the child is a SSI recipient,

(b) Division of Services for People with Disabilities,

(c) Division of Mental Health,

(d) State Office of Education, ~~[or]~~

(e) Baby Watch, Early Intervention Program~~[-], or~~

~~(f) by submitting a written statement from:~~

~~(i) a licensed medical doctor;~~

~~(ii) a licensed Advanced Practice Registered Nurse;~~

~~(iii) a licensed Physician's Assistant;~~

~~(iv) a licensed or certified Psychologist.~~

(3) Verification to support that the child is disabled ~~[or]and~~ has a special need must be dated and signed by the preparer and include the following;

(a) the child's name,

(b) a description of the child's disability, and

(c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

R986-700-719. Job Search Child Care (JS CC).

(1) JS CC is available to a client who is otherwise eligible for child care but is separated from his or her job and meets the eligibility criteria.

(2) JS CC is available for a maximum of ~~[two]three~~ additional months provided the client:

(a) was employed at least ~~[32]15~~ hours per week and was permanently separated from his or her job or was receiving child care for an allowable temporary change that did not exceed three months when separated from his or her job;

(b) was receiving ES CC ~~[or Transitional Child Care (TR CC)]~~ in the month of the job separation and;

(c) reports the job loss within 10 days and requests continued child care payments while searching for a job. In that case, the client will be eligible for one additional month of child care. The month of the job loss does not count.

(3) If the client verifies the job loss in a timely manner, as directed by the Department, a second and third month of CC will be paid while the client looks for a job.

(4) The JS CC extension is only available once in a rolling 12 month period even if the client received only one month of JS CC assistance.

(5) A client is not eligible for JS CC if the client has two or more jobs and is separated from one or more of them but still has one job.

~~[(6) Two parent households are not eligible for JS CC.]~~

~~[(7)6] The JS CC copayment will be at the lowest copayment amount required by the Department for the lowest income group, disregarding all earned income.~~

~~[(8) A client who is receiving TR CC when the job separation occurs, and meets the requirements of this section, can be eligible for a maximum of two months of JS CC but those two months will count against the six month maximum under TR CC as provided in R986-700-707. If the job separation occurs in the last month of TR CC, the client can be eligible for JS CC which would be in addition to the TR CC.]~~

R986-700-753. Criminal Background Screening.

(1) The Department will contract with the CCL to perform a criminal background screening, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, CCL will submit the fingerprint card and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(2) Each client requesting approval of a covered child care provider must submit to CCL a form, which will include a waiver and certification, completed and signed by the child care provider as part of the DWS FFN approved provider process. Additional household members must give permission to run the background check. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted.

(3) The provider must state in writing, based upon the provider's best information and belief, that no covered person,

including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, CCL will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to CCL regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(4) All providers, including caregivers and covered individuals ~~[and other persons]~~ are required to submit ~~[a fingerprint card]~~ fingerprints under these rules ~~as requested~~ ~~[must submit a new fingerprint card and fee every five years]~~. In addition, the Department may conduct background screening annually.

(5) If CCL takes an action adverse to any covered individual based upon the background screening, CCL will send a denial letter to the provider and the covered individual.

KEY: child care

Date of Enactment or Last Substantive Amendment: ~~[April 1], 2016~~

Notice of Continuation: September 3, 2015

Authorizing, and Implemented or Interpreted Law: 35A-3-310; 53A-1b-110

End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the 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.

Administrative Services, Finance **R25-7**

Travel-Related Reimbursements for State Employees

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 40548

FILED: 06/24/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Because of an increase in food and hotel prices for in-state travel, the Division has determined that reimbursement rates should also increase. Also, Tier I and Tier II premium locations have changed and the meal per diem rates per day have increased.

SUMMARY OF THE RULE OR CHANGE: The rule increases reimbursement rates for in-state food reimbursements and increases some in-state hotel rates. (Editor's Note: A corresponding proposed amendment is under DAR No. 40547 in this issue, July 15, 2016, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-3-106 and Section 63A-3-107

EMERGENCY RULE REASON AND JUSTIFICATION:

REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

JUSTIFICATION: The Division of Finance is required by Section 63A-3-107 to make rules governing in-state and out-of-state travel expenses and to set travel rates. This is done on a fiscal-year basis. Any changes in travel rates need to be in place by 07/01/2016, for fiscal year 2017. Travel reimbursements for employees and board members will be inaccurate if the rule is not changed.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will potentially be an increased cost to the state as in-state food per diem rates have increased, and some in-state hotel rates have increased. There will also be an increased cost to the state if travel is to a Tier I or Tier II premium city because meal per diems have increased for these cities.

◆ **LOCAL GOVERNMENTS:** There will not be costs to local governments because the rule only governs reimbursements by the state to individuals traveling on state business.

◆ **SMALL BUSINESSES:** Small businesses may see an increase in revenue. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals eligible for reimbursement will see a slight

increase in their per diem reimbursement amounts for in-state travel and travel to premium cities.

COMPLIANCE COSTS FOR AFFECTED PERSONS:
Because the amendment only changes reimbursement rates and does not require any new action on the part of persons applying for reimbursements, there are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
I have reviewed these changes with the Division of Finance Director and believe these changes are reasonable and warranted. Small business may see an increase in revenue. However, the agency cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FINANCE
ROOM 2110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

EFFECTIVE: 07/01/2016

AUTHORIZED BY: John Reidhead, Director

R25. Administrative Services, Finance.
R25-7. Travel-Related Reimbursements for State Employees.
R25-7-1. Purpose.

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

R25-7-2. Authority and Exemptions.
This rule is established pursuant to:
(1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and
(2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing meeting per diem and travel expenses for board members attending official meetings.

R25-7-3. Definitions.
(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.
(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

(3) "Department" means all executive departments of state government.
(4) "Finance" means the Division of Finance.
(5) "Home-Base" means the location the employee leaves from and/or returns to.
(6) "Per diem" means an allowance paid daily.
(7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."
(8) "Rate" means an amount of money.
(9) "Reimbursement" means money paid to compensate an employee for money spent.
(10) "State employee" means any person who is paid on the state payroll system.

R25-7-4. Eligible Expenses.
(1) Reimbursements are intended to cover all normal areas of expense.
(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

R25-7-5. Approvals.
(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.
(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form F15 - "Request for Out-of-State Travel Authorization".

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.
(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.
(1) State employees who travel on state business may be eligible for a meal reimbursement.
(2) The reimbursement will include tax, tips, and other expenses associated with the meal.
(3) Allowances for in-state travel differ from those for out-of-state travel.
(a) The daily travel meal allowance for in-state travel is [~~\$40.00~~]\$41.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances	
Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00

Dinner	[\$16.00] \$17.00
Total	[\$40.00] \$41.00

(b) The daily travel meal allowance for out-of-state travel is \$46.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00
Dinner	\$22.00
Total	\$46.00

(4) When traveling to a Tier I premium location (~~[Atlanta, Anchorage, Baltimore, Boston, Chicago, Hawaii, New York City, San Francisco, and Seattle, and Washington, DC]~~), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to ~~[\$65]~~ \$66 per day.

When traveling to a Tier II premium location (~~Atlanta, Austin, Baltimore, Boston, Dallas, Houston, Los Angeles, Orlando, and San Diego, and Washington, DC~~), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to ~~[\$56]~~ \$57 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the premium location allowance as follows:

Tier I Location

(i) If breakfast is provided deduct \$15, leaving a premium allowance for lunch and dinner of actual up to ~~[\$50]~~ \$51.

(ii) If lunch is provided deduct \$20, leaving a premium allowance for breakfast and dinner of actual up to ~~[\$45]~~ \$46.

(iii) If dinner is provided deduct ~~[\$30]~~ \$31, leaving a premium allowance for breakfast and lunch of actual up to \$35.

Tier II Location

(i) If breakfast is provided deduct \$13, leaving a premium allowance for lunch and dinner of actual up to ~~[\$43]~~ \$44.

(ii) If lunch is provided deduct \$17, leaving a premium allowance for breakfast and dinner of actual up to ~~[\$39]~~ \$40.

(iii) If dinner is provided deduct ~~[\$26]~~ \$27, leaving a premium allowance for breakfast and lunch of actual up to \$30.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed the actual meal cost, with original receipts, not to exceed the United States Department of State Meal and Incidental Expenses (M and IE) rate for their location.

(a) The traveler may combine the reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day the traveler leaves their home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter a.m. 12:00-5:59 *B, L, D	2nd Quarter a.m. 6:00-11:59 *L, D	3rd Quarter p.m. 12:00-5:59 *D	4th Quarter p.m. 6:00-11:59 *no meals
In-State \$4 [0] 1.00	\$3 [0] 1.00	\$1 [6] 7.00	\$0
Out-of-State \$46.00	\$36.00	\$22.00	\$0

*B = Breakfast, L = Lunch, D = Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the hotel/conference facility. The meal is considered a "continental breakfast" if no hot food items are offered.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day the traveler returns to their home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter a.m. 12:00-5:59 *no meals	2nd Quarter a.m. 6:00-11:59 *B	3rd Quarter p.m. 12:00-5:59 *B, L	4th Quarter p.m. 6:00-11:59 *B, L, D
In-State \$0	\$10.00	\$24.00	\$4 [0] 1.00
Out-of-State \$0	\$10.00	\$24.00	\$46.00

*B = Breakfast, L = Lunch, D = Dinner

(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's destination is at least 100 miles from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves their home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves their home base and returns at 6 p.m. or later.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

R25-7-7. Meals for Statutory Non-Salaried State Boards.

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

R25-7-8. Reimbursement for Lodging.

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) For stays at a conference hotel, the state will reimburse the actual cost plus tax and any mandatory fees charged by the hotel for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to \$70 per night for single occupancy plus tax and any mandatory fees charged by the hotel except as noted in the table below:

TABLE 5

Cities with Differing Rates

Beaver	\$75.00 plus tax and mandatory fees
Blanding	\$75.00 plus tax and mandatory fees
Bluff	[\$80.00] \$90.00 plus tax and mandatory fees
Brigham City	[\$75.00] \$80.00 plus tax and mandatory fees
Bryce Canyon City	\$75.00 plus tax and mandatory fees
Cedar City	[\$75.00] \$80.00 plus tax and mandatory fees
Duchesne	\$80.00 plus tax and mandatory fees
Ephraim	\$75.00 plus tax and mandatory fees
Farmington	\$85.00 plus tax and mandatory fees
Fillmore	\$75.00 plus tax and mandatory fees
Garden City	\$80.00 plus tax and mandatory fees
Green River	\$85.00 plus tax and mandatory fees
Heber	\$85.00 plus tax and mandatory fees
Kanab	[\$80.00] \$85.00 plus tax and mandatory fees
Layton	[\$80.00] \$85.00 plus tax and mandatory fees
Logan	[\$80.00] \$85.00 plus tax and mandatory fees

Moab	\$100.00 plus tax and mandatory fees
Monticello	\$80.00 plus tax and mandatory fees
Ogden	[\$80.00] \$85.00 plus tax and mandatory fees
Park City[/ Heber City]/Midway	[\$90.00] \$100.00 plus tax and mandatory fees
Price	\$75.00 plus tax and mandatory fees
Provo/Orem/Lehi/American Fork/ Springville	\$85.00 plus tax and mandatory fees
Roosevelt/Ballard	\$90.00 plus tax and mandatory fees
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	\$100.00 plus tax and mandatory fees
St. George/Washington/Springdale/ Hurricane	[\$80.00] \$85.00 plus tax and mandatory fees
Torrey	[\$80.00] \$85.00 plus tax and mandatory fees
Tremonton	\$90.00 plus tax and mandatory fees
Vernal[/ Roosevelt/Ballard/Naples]	\$95.00 plus tax and mandatory fees
All Other Utah Cities	\$70.00 plus tax and mandatory fees

(3) State employees traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence. If the traveler returns to where they normally work (ie. Cannon Health Building), then the home-base for arrival calculations is the Cannon Health Building.

(a) In some cases, agencies must use judgement to determine a traveler's home-base. The following are some things to consider when determining a traveler's home-base.

(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50 miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

(ii) Is there a valid business reason for the traveler to go to the office (or to some other location) before driving to the destination?

(iii) Is the traveler required to work at the destination the next day?

(iv) Is the traveler going directly home after the trip, or is there a valid business reason for the traveler to first go to the office (or to some other location)?

(iv) Even if "it is not specifically against policy", would the lodging be considered necessary, reasonable and in the best interest of the State?

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel, not to exceed the federal lodging rate for the location. These reservations must be made through the State Travel Office.

(6) The state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel for in-state or out-of-

state travel stays where the department/traveler makes reservations through the State Travel Office.

If lodging is not available at the allowable per diem rate in the area the employee needs to stay, the State Travel Office will book a hotel with the best available rate. In this circumstance, the employee will be reimbursed at the actual rate booked.

If an employee chooses to stay at a hotel that costs more than the allowable per diem rate, the employee will only be reimbursed for the allowable per diem rate plus tax and any mandatory fees charged by the hotel. These instances will be audited 100% by the State Finance Post-Auditors.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add \$20, for triple state employee occupancy, add \$40, for quadruple state employee occupancy, add \$60.

(8) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.

(9) A proper receipt for lodging accommodations must accompany each request for reimbursement.

~~[(a) The tissue copy of the charge receipt is not acceptable.]~~

~~[(b)—]~~A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date(s) of occupancy, amount and date paid, signature of agent, number in the party, and (single, double, triple, or quadruple occupancy).

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to minimize transportation costs.

(11) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) \$25 per night with no receipts required or

(ii) Actual cost up to \$40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(12) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - \$46 per day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidentals.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, transportation costs, maid service, and bellman. Gratuities/tips for various services such as

assistance with baggage, maid service, and bellman, may be reimbursed up to a combined maximum of \$5.00 per day.

(a) Tips for doormen and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above \$19.99.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of \$20 or more.

(3) Registration should be paid in advance on a state warrant,~~[-or]~~ with a state purchase card~~[-]~~, or with a state travel card.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.

(5) Allowances for personal telephone calls made while out of town on state business overnight may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.

(a) Four nights or less - actual amount up to \$2.50 per night.

(b) Five to eleven nights - actual amount up to \$20.00

(c) Twelve nights to thirty nights - actual amount up to \$30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to \$18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of \$5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return

home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

~~[(d) In order to preserve insurance coverage and because of federal security regulations, travelers must fly on tickets in their names only.]~~

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the ~~lowest~~ long term parking rate at the airport they are flying out of.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B for amounts of \$20 or more.

(c) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 38 cents per mile or 54 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 54 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 38 cents per mile.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Any [E]xceptions to this mileage reimbursement rate guidance must be approved in writing by the employees Executive Director [of Finance] or designee.

(e) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest

official state road map and will be limited to the most economical, usually traveled routes.

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if preapproved by the Department Director or designee.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 38 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) A ~~traveler's~~ comparison printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(iii) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director or designee.

(b) Detailed explanation is required if a rental vehicle is requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Office, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director or designee that the pilot is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, the pilot must certify the existence of at least \$500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that the insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least \$500,000 for liability coverage.

(d) Reimbursement will be made at 54 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Executive Director of the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowances, state employees, transportation

Date of Enactment or Last Substantive Amendment: July 1, 2016

Notice of Continuation: April 15, 2013

Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106

Health, Disease Control and Prevention, Health Promotion

R384-205

Opiate Overdose Outreach Pilot Program

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 40549

FILED: 06/27/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide procedures for distribution of funds from the Opioid Overdose Outreach Pilot Program established by Title 26, Chapter 55.

SUMMARY OF THE RULE OR CHANGE: This rule establishes procedures and application processes pursuant to Title 26, Chapter 55, for the Utah Department of Health to provide funds to pay for the purchase of an opiate antagonist

or to pay for the cost of providing training on the proper administration of an opiate antagonist in response to an opiate-related drug overdose event.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-55-107

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

JUSTIFICATION: During the 2016 General Session, H.B. 192, Opiate Overdose Response Act – Pilot Program and Other Amendments, was passed and created the Opiate Overdose Outreach Pilot Program. The bill states that rulemaking, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, must be completed no later than 07/01/2016.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule contains procedures for distribution of funds from the Opioid Overdose Outreach Pilot Program established by Title 26, Chapter 55. There may be savings in preventing individuals from requiring treatment in an emergency department or in hospitalization, but those costs are hard to measure. The pilot program will make approximately \$150,000 in one time funding available through a grant application process to organizations implementing opioid overdose prevention strategies. The funds allocated for the pilot project grants is \$150,000. There will be an increase in workload at the Department to administer this program, but these costs will be covered by existing funding.

◆ **LOCAL GOVERNMENTS:** The only costs would be if some local governments choose to apply for the grants. The agency has no way of determining the salary of staff or time involved in applying and administering the program. Costs associated with completing the grant application will be incurred by the organizations applying. Costs incurred by the organizations for the administering of the program cannot be covered by the grant per Subsection 26-55-107(5)(b). There may be savings in preventing individuals from requiring treatment in an emergency department or in hospitalization, but those costs would be hard to measure.

◆ **SMALL BUSINESSES:** Some small pharmacies could lose sales of naloxone kits due to the pilot program although the agency's experience has been that small pharmacies do not carry naloxone kits because they are too expensive. Some small non-profit business involved with those at high risk for misusing and abusing opioids will qualify and may choose to apply for the grants. The agency has no way of determining the salary of staff or time involved in applying and administering the program. Costs associated with completing the grant application will be incurred by the organizations applying. Costs incurred by the organizations for the administering the program cannot be covered by the grant per Section 26-55-107(5)(b).

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule will not result in direct, measurable costs for other persons. There may be savings in preventing individuals

from requiring treatment in an emergency department or in hospitalization costs, but those costs would be difficult to measure. Some pharmacies could lose sales of naloxone kits due to the pilot program, but that would be difficult to anticipate or measure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule provides procedures for distribution of funds from the Opioid Overdose Outreach Pilot Program established by Title 26, Chapter 55, which 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: This rule is adopted as an emergency rule in order to comply with H.B. 192 (2016), which required that the Department adopt a rule to establish procedures to distribute funds from the Opioid Overdose Outreach Pilot Program by July 1, 2016. There may be slight fiscal impact on the few small pharmacies that sell naloxone kits since program funds may be used for such kits.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
HEALTH PROMOTION
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:
♦ Trisha Keller by phone at 801-538-6865, by FAX at 801-538-9134, or by Internet E-mail at trishakeller@utah.gov

EFFECTIVE: 07/01/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R384. Health, Disease Control and Prevention, Health Promotion.

R384-205. Opiate Overdose Outreach Pilot Program.

R384-205-1. Authority and Purpose.

This rule establishes procedures and application processes pursuant to Title 26 Chapter 55 Opiate Overdose Response Act for the Utah Department of Health. Funding will provide for the purchase of an opiate antagonist; and/or for the cost of training on the proper administration of an opiate antagonist, in response to an opiate-related drug overdose event.

R384-205-2. Definitions.

(1) The following definitions apply to this rule:

(a) "Department" means the Utah Department of Health Violence and Injury Prevention Program.

(b) "Harm Reduction" means services that are aimed at reducing negative consequences associated with drug use.

(c) "High risk populations" means tribal communities, rural communities, geographic areas and/or populations with significantly high rates of opioid abuse, misuse, or overdose.

(d) "Opiate antagonist" is as defined in Subsection 26-55-102(8).

R384-205-3. Application Process.

(1) The Department will establish an Opioid Overdose Outreach grant application process and packet on an annual basis, as funding is available. The packet will include the review schedule, submission details, review criteria and eligibility details. The application packet with all details will be posted at least one month prior to the application closing date on the Utah Department of Administrative Services Division of Purchasing and General Services website.

R384-205-4. Criteria for Application for the Opioid Overdose Outreach Pilot Program.

(1) Eligible applicants may include organizations as defined in Subsection 26-55-107(1) which includes organizations that provide harm reduction services, and an overdose outreach provider as defined in Subsection 26-55-102(10)(e),(f)and(g).

(2) Additional weight for awarding a grant will be given based on applicant's ability to demonstrate:

(a) how they will serve high risk populations and

(b) size of population served.

R384-205-5. Criteria for Funding Allocation.

(1) The Department shall select a grant allocation committee. The committee will include a health care provider, a pharmacist, two state public health professionals, and an emergency medical responder. The committee will review the applications and assign a score to each section of the application.

(2) Allocation of funding for each application will be based upon the criteria outlined in the proposal requirements section of the grant application.

(3) Applicant's funding request shall meet the criteria stated in Subsection 26-55-107(7)(b)(ii) as it relates to training costs.

(4) Funding will be allocated according to applicant scores.

R384-205-6. Report Requirements.

The grantee shall submit an annual report to the Department in accordance to Subsection 26-55-107(7)(d). The format shall be included in the grant application.

R384-205-7. Audit Provisions.

The grantee shall record, preserve, and make data available for audit by the Department. The retention schedule shall be according to that specified in the application packet when applying for funding.

KEY: opioids, naloxone, overdose, prescription drugs

Date of Enactment or Last Substantive Amendment: July 1, 2016

Authorizing, Implemented, or Interpreted Law: 26-55-107

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.

Commerce, Occupational and Professional Licensing

R156-15A

State Construction Code Administration and Adoption of Approved State Construction Code Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40526

FILED: 06/20/2016

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 15A, Chapter 1, provides a number of duties to be performed by the Division in conjunction with the Uniform Building Code Commission, which includes establishing rules for the following: Subsection 15A-1-203(12)(b) establishing the Unified Code Council; Subsection 15A-1-204(6)(b) adopting approved codes; Subsection 15A-1-209(3)(a) adopting a code amendment review process; Subsection 15A-1-209(3)(a) adopting a standardized building permit form; and Subsection 15A-1-306(1)(f) adopting continuing education requirements for manufactured housing installers.

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 September 2011, it has been amended six times. The only

written comment received was an 08/30/2011 email from Hunter Finch from the Governor's Office of Planning and Budget in which he notified the Division of an incorrect statutory citation. The Division filed a nonsubstantive rule change on 09/12/2011 in Filing No. 35231, which corrected the statutory citation error.

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 for the Division and the Uniform Building Code Commission to perform duties assigned to them as provided by Title 15A. This rule should also be continued as it provides information to persons participating in the construction industry about approved codes, methods of presenting code amendments for consideration, information about the appeal process for challenges to code enforcement, and information about standardized building permits forms.

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:

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

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 06/20/2016

**Environmental Quality, Waste
Management and Radiation Control,
Radiation
R313-12
General Provisions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 40572
FILED: 07/01/2016

**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 19-1-106 establishes the Waste Management and Radiation Control Board. The Board is authorized to make rules under Section 19-3-104 that are necessary for protecting the environment and controlling human exposure to sources of radiation that constitute a significant health hazard. Additionally, under Section 19-6-104, the Board is authorized to make rules necessary to maintain program primacy from the federal government for the Radiation Control Program. As part of state primacy of the Radiation Control Program, the definitions and other general provisions in Rule R313-12 have been reviewed by the U.S. Nuclear Regulatory Commission (NRC) and have been determined to be compatible with the corresponding federal radiation protection regulations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments specifically supporting or opposing the rule. However, since the last five-year review in 2011, three substantive amendments have been made to the rule (Utah State Bulletin, No. 2015-9 (DAR No. 39277), 2014-17 (DAR No. 38752), and 2013-3 (DAR No. 37189)). During the rulemaking action for DAR No. 37189, one comment was received that noted an incorrect statutory citation in the definition for "Board" in Section R313-12-3. A nonsubstantive rule change was filed to make the necessary correction.

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 necessary because it lays the foundation for establishing radiation safety and protection and, as an Agreement State, maintains the appropriate regulatory compatibility with the NRC. There have been no opposing comments to the rule since the last five-year review in 2011. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, RADIATION
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director

EFFECTIVE: 07/01/2016

**Environmental Quality, Waste
Management and Radiation Control,
Radiation
R313-14
Violations and Escalated Enforcement**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 40573
FILED: 07/01/2016

**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 19-1-106 establishes the Waste Management and Radiation Control Board. The Board is authorized to make rules under Section 19-3-104 that are necessary for protecting the environment and controlling human exposure to sources of radiation that constitute a significant health hazard. Additionally, under Section 19-6-104, the Board is authorized to make rules necessary to maintain program primacy from the federal government for the Radiation Control Program. As part of state primacy of the Radiation Control Program, the requirements in Rule R313-14 have been reviewed by the U.S. Nuclear Regulatory Commission (NRC) and have been determined to be compatible with the corresponding federal radiation protection regulations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments

specifically supporting or opposing the rule. However, since the last five-year review in 2011, two substantive amendments have been made to the rule (Utah State Bulletin, No. 2013-22 (DAR No. 38076) and 2013-3 (DAR No. 37190)). During the rulemaking action for DAR No. 38076, comments were submitted addressing the proposed changes to the civil penalty amounts for the different severity categories, as well as the civil penalty amount associated with repeat violations and the time associated with correcting violations. The increase in the severity category penalty amounts were made by the Radiation Control Board to incorporate changes enacted during the 2013 General Session of the Legislature to increase the maximum civil penalty authorized by the Utah Radiation Control Act (Section 19-3-109). The comments suggested the Radiation Control Board revise the rule by 1) designating the severity categories as a range rather than retain a single penalty amount for each category, 2) retaining the existing multiplier for repeated violation, and 3) further clarifying the time period for correcting violations. No comments were received for the rule changes made under DAR No. 37190.

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 necessary because it establishes actions that may be taken for noncompliance with existing radiation control laws and rules and, as an Agreement State, maintains the appropriate regulatory compatibility with the NRC. This includes setting violation severity levels, enforcement sanctions, and assessment of civil penalties. There have been no comments opposing the rule since the last five-year review in 2011. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 WASTE MANAGEMENT AND RADIATION
 CONTROL, RADIATION
 THIRD FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director

EFFECTIVE: 07/01/2016

**Environmental Quality, Waste
 Management and Radiation Control,
 Radiation
 R313-16
 General Requirements Applicable to
 the Installation, Registration,
 Inspection, and Use of Radiation
 Machines**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 40574
 FILED: 07/01/2016

**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 19-1-106 establishes the Waste Management and Radiation Control Board. The Board is authorized to make rules under Section 19-3-104 that are necessary for protecting the environment and controlling human exposure to sources of radiation that constitute a significant health hazard. Additionally, under Section 19-6-104, the Board is authorized to make rules necessary to maintain program primacy from the federal government for the Radiation Control Program. As part of state primacy of the Radiation Control Program, the appropriate requirements in Rule R313-16 have been reviewed by the U.S. Nuclear Regulatory Commission (NRC) and have been determined to be compatible with the corresponding federal radiation protection regulations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments specifically supporting or opposing the rule. No substantive changes have been made to the rule since the last five-year review in 2011.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary because it prescribes requirements governing the installation, registration, inspection, and use of sources of electronically produced ionizing radiation as a means to protect human health and the environment. The prolific use of such machines is not only very common among the healing arts professions for critical diagnostic and therapeutic applications. They also provide key functions in veterinarian, academic, industrial, and other professional applications.

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

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, RADIATION
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director

EFFECTIVE: 07/01/2016

**Environmental Quality, Waste
Management and Radiation Control,
Radiation
R313-17
Administrative Procedures**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 40575
FILED: 07/01/2016

**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 19-1-106 establishes the Waste Management and Radiation Control Board. The Board is authorized to make rules under Section 19-3-104 that are necessary for protecting the environment and controlling human exposure to sources of radiation that constitute a significant health hazard. Additionally, under Section 19-6-104, the Board is authorized to make rules necessary to maintain program primacy from the federal government for the Radiation Control Program. As part of state primacy of the Radiation Control Program, the applicable requirements in Rule R313-17 have been reviewed by the U.S. Nuclear Regulatory Commission (NRC) and have been determined to be compatible with the corresponding federal radiation protection regulations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments

specifically supporting or opposing the rule. However, since the last five-year review in 2011, four substantive amendments have been made to the rule (Utah State Bulletin, No. 2014-17, including 2014-24 as a change in a proposed rule (both under DAR No. 38770), 2013-3 (DAR No. 37192), and 2011-23 (DAR No. 35416)). During the rulemaking action for DAR No. 38770, comments were submitted addressing the proposed changes to incorporate public hearing procedures required by federal law for 11e.(2) radioactive byproduct material licensing actions. The majority of the comments suggested the Radiation Control Board revise the rule to 1) be more specific about a citation to federal law, 2) eliminate some confusing and duplicative language, 3) specify that the director of the Division of Radiation Control shall not be the hearing officer for the question and answer hearings established in the rule, and 4) clarify that administrative remedies through the question and answer hearing process must be exhausted in order to obtain review on appeal. During the rulemaking for DAR No. 35146, ten comments were received. The majority of the comments addressed clarifying, refining, and expanding the list of examples of major radioactive materials licensing actions. No comments were received for the rule changes made under DAR No. 37192.

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 necessary because it establishes the requirements for conducting public hearings for various radioactive materials licensing actions, including those that are required by federal law for 11e.(2) byproduct material licensing actions. As an Agreement State, the rule also is necessary for maintaining the appropriate regulatory compatibility with the NRC. There have been no comments opposing the rule since the last five-year review in 2011. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, RADIATION
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director

EFFECTIVE: 07/01/2016

**Environmental Quality, Waste
Management and Radiation Control,
Radiation
R313-18**

**Notices, Instructions and Reports to
Workers by Licensees or Registrants--
Inspections**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40576
FILED: 07/01/2016

**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 19-1-106 establishes the Waste Management and Radiation Control Board. The Board is authorized to make rules under Section 19-3-104 that are necessary for protecting the environment and controlling human exposure to sources of radiation that constitute a significant health hazard. Additionally, under Section 19-6-104, the Board is authorized to make rules necessary to maintain program primacy from the federal government for the Radiation Control Program. As part of state primacy of the Radiation Control Program, the appropriate requirements in Rule R313-18 have been reviewed by the U.S. Nuclear Regulatory Commission (NRC) and have been determined to be compatible with the corresponding federal radiation protection regulations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments specifically supporting or opposing the rule. However, since the last five-year review in 2011, one substantive amendment has been made to the rule (Utah State Bulletin, No. 2013-3 (DAR No. 37193)). No comments were received for this rule change.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary because it specifies the training and notification requirements by employers for workers that use radioactive materials. The rule also provides the basis for worker protection and safety requirements and, as an Agreement State, maintains the appropriate regulatory compatibility with the NRC.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, RADIATION
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director

EFFECTIVE: 07/01/2016

**Environmental Quality, Waste
Management and Radiation Control,
Radiation
R313-19**

**Requirements of General Applicability
to Licensing of Radioactive Material**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40577
FILED: 07/01/2016

**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 19-1-106 establishes the Waste Management and Radiation Control Board within the Department of Environmental Quality. In accordance with Section 19-3-104, the Board is authorized to make rules that are necessary for controlling exposures to sources of radiation that constitute a significant health hazard.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the period from the previous five-year review, six substantive modifications to Rule R313-19 were made. Comments were made that related to the specific language proposed in some of the modifications. No comments were received expressing support or opposition to the Rule R313-19 since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule because it prescribes requirements governing the licensing of radioactive material. This rule also needs to be continued to ensure that the state's rules are adequate to protect public health and safety, and meet compatibility requirements of the U. S. Nuclear Regulatory Commission's program. The rule identifies certain concentrations or quantities of radioactive material which are exempt from licensing. The rule also establishes the conditions for safe transportation of radioactive material, provides for reciprocal recognition of out-of-state licenses, and identifies terms and conditions of licenses. No opposing comments have been received.

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

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, RADIATION
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the 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
♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director

EFFECTIVE: 07/01/2016

**Environmental Quality, Waste
Management and Radiation Control,
Radiation
R313-22
Specific Licenses**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 40578
FILED: 07/01/2016

**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 19-1-106 establishes the Waste Management and Radiation Control Board within the Department of Environmental Quality. In accordance with Section 19-3-104, the Board is authorized to make rules that are necessary for controlling exposures to sources of radiation that constitute a significant health hazard.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the period from the previous five-year review, eight substantive modifications to Rule R313-22 were made. The comments related to the specific language proposed in the modifications. No comments were received expressing support or opposition to the Rule R313-22 since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule because it prescribes requirements for the issuance of "specific licenses" for control of radioactive material. This rule also needs to be continued to ensure that the state's rules are adequate to protect public health and safety, and meet compatibility requirements of the U. S. Nuclear Regulatory Commission's program. The rule prescribes procedures for filing an application to assure financial surety for decommissioning facilities where radioactive materials are used and requirements for "specific licenses" of broad scope. The requirements for issuance of "specific licenses" help ensure protection of public health and safety or property. No opposing comments have been received.

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

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, RADIATION
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the 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
♦ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director

EFFECTIVE: 07/01/2016

Environmental Quality, Waste
Management and Radiation Control,

Radiation
R313-25

License Requirements for Land
Disposal of Radioactive Waste -
General Provisions

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40579
FILED: 07/01/2016

**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 19-1-106 establishes the Waste Management and Radiation Control Board within the Department of Environmental Quality. In accordance with Section 19-3-104, the Board is authorized to make rules that are necessary for controlling exposures to sources of radiation that constitute a significant health hazard.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the period from the previous five-year review, two substantive modifications to Rule R313-25 were made. The comments related to the specific language proposed in the modifications. No comments were received expressing support or opposition to the Rule R313-25 since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the procedures, criteria, and terms and conditions upon which a license may be issued for the land disposal of radioactive wastes. It is necessary to continue this rule because of the presence of an active low-level radioactive waste disposal facility in the State of Utah. This rule also needs to be continued to ensure that the state's rules are adequate to protect public health and safety, and meet compatibility requirements of the U. S. Nuclear Regulatory Commission's program.

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

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, RADIATION
THIRD FLOOR
195 N 1950 W

SALT LAKE CITY, UT 84116-3085
or at the 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
- ◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director

EFFECTIVE: 07/01/2016

Environmental Quality, Waste
Management and Radiation Control,
Radiation
R313-28

Use of X-Rays in the Healing Arts

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40580
FILED: 07/01/2016

**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 19-1-106 establishes the Waste Management and Radiation Control Board within the Department of Environmental Quality. In accordance with Section 19-3-104, the Board is authorized to make rules that are necessary for controlling exposures to sources of radiation that constitute a significant health hazard.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the period from the previous five-year review, two substantive modifications to Rule R313-28 were made. The comments related to the specific language proposed in the modifications. No comments were received expressing support or opposition to the Rule R313-28 since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule because it prescribes the requirements for the use of x-rays in the healing arts. The rule establishes x-ray machine parameters for limiting the size of the x-ray beam, controlling radiation exposure, maintaining accuracy and linearity, and defining

performance of mammography x-ray systems. No opposing comments have been received.

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

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, RADIATION
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the 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
- ◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director

EFFECTIVE: 07/01/2016

**Environmental Quality, Waste
Management and Radiation Control,
Radiation
R313-32
Medical Use of Radioactive Material**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40581
FILED: 07/01/2016

**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 19-1-106 establishes the Waste Management and Radiation Control Board within the Department of Environmental Quality. In accordance with Section 19-3-104, the Board is authorized to make rules that are necessary for controlling exposures to sources of radiation that constitute a significant health hazard.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the period from the previous five-year review, no substantive modifications to Rule R313-32 were made. No comments were received expressing support or opposition to the Rule R313-32 since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule because it establishes the requirements for the medical use of radiation and radioactive material. This rule also needs to be continued to ensure that the state's rules are adequate to protect public health and safety, and meet compatibility requirements of the U. S. Nuclear Regulatory Commission's program. The rule provides for protection of the public health and safety by controlling the internal or external administration of radioactive material to humans. The rule also establishes training requirements for individuals who are authorized to use radioactive material in the practice of medicine.

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

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, RADIATION
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the 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
- ◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director

EFFECTIVE: 07/01/2016

**Environmental Quality, Waste
Management and Radiation Control,
Radiation
R313-36
Special Requirements for Industrial
Radiographic Operations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40582
FILED: 07/01/2016

**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 19-1-106 establishes the Waste Management and Radiation Control Board within the Department of Environmental Quality. In accordance with Section 19-3-104, the Board is authorized to make rules that are necessary for controlling exposures to sources of radiation that constitute a significant health hazard.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the period from the previous five-year review, two substantive modifications to Rule R313-36 were made. No comments were received on these modifications. No comments were received expressing support or opposition to the Rule R313-36 since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule because it establishes the radiation safety requirements for persons who use radioactive material to examine the macroscopic structure of materials. This rule also needs to be continued to ensure that the state's rules are adequate to protect public health and safety, and meet compatibility requirements of the U. S. Nuclear Regulatory Commission's program. The rule establishes the training criteria a person must meet to utilize a radiographic exposure device in the industrial setting. The rule is also needed to meet the requirements of federal law relating to radiation control. No opposing comments have been received.

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

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, RADIATION
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the 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
◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director

EFFECTIVE: 07/01/2016

Environmental Quality, Waste Management and Radiation Control, Radiation **R313-70** Payments, Categories and Types of Fees

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40583

FILED: 07/01/2016

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 19-1-106 establishes the Waste Management and Radiation Control Board within the Department of Environmental Quality. In accordance with Section 19-3-104, the Board is authorized to make rules and the Division may require licensing of radiation sources. Under Section 19-3-104, a fee may be required for licensure and registration.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the period from the previous five-year review, two substantive modifications to Rule R313-70 were made. No comments were received on these modifications. No comments were received expressing support or opposition to the Rule R313-70.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule because it establishes the requirements for payment of fees for the registration or licensing of sources of radiation. The rule identifies registration or license categories, the time period that a license is valid, and the types of fees the Division has established pursuant to the Legislative Appropriation Act.

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

ENVIRONMENTAL QUALITY
WASTE MANAGEMENT AND RADIATION
CONTROL, RADIATION
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the 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
 ◆ Rusty Lundberg by phone at 801-536-4257, by FAX at 801-533-4097, or by Internet E-mail at rlundberg@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director

EFFECTIVE: 07/01/2016

Insurance, Administration

R590-261

Health Benefit Plan Adverse Benefit Determinations

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40545
 FILED: 06/23/2016

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-2-201(3)(4) empowers the commissioner to make rules to implement the provisions of Title 31A. Subsection 31A-2-212(5)(b) requires the commissioner to require compliance with the Patient Protection and Affordable Care Act and administrative rules adopted by the commissioner related to regulation of health benefit plans. Subsection 31A-22-629(4) requires the

commissioner to adopt rules that establish standards for independent reviews.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments during the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it implements standards that are required by the Patient Protection and Affordable Care Act. It provides a uniform standard for the establishment and maintenance of an independent review procedure to assure that a claimant has the opportunity for an independent review of a final adverse benefit determination.

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: 06/23/2016

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the 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

Agriculture and Food

Horse Racing Commission (Utah)

No. 40366 (AMD): R52-7-5. Occupation Licensing and Registration

Published: 05/15/2016

Effective: 06/23/2016

Marketing and Development

No. 40367 (REP): R65-2. Utah Cherry Marketing Order

Published: 05/15/2016

Effective: 06/23/2016

No. 40369 (AMD): R65-8-2. Establishment of a Forum

Published: 05/15/2016

Effective: 06/23/2016

Plant Industry

No. 40365 (REP): R68-12. Quarantine Pertaining to Mint Wilt

Published: 05/15/2016

Effective: 06/23/2016

Regulatory Services

No. 40361 (AMD): R70-370. Butter

Published: 05/15/2016

Effective: 06/23/2016

No. 40368 (AMD): R70-380. Grade A Condensed and Dry Milk Products and Condensed and Dry Whey

Published: 05/15/2016

Effective: 06/23/2016

No. 40360 (AMD): R70-550. Utah Inland Shellfish Safety Program

Published: 05/15/2016

Effective: 06/23/2016

Commerce

Occupational and Professional Licensing

No. 40351 (AMD): R156-55a-301. License Classifications - Scope of Practice

Published: 05/15/2016

Effective: 06/21/2016

Education

Administration

No. 40363 (AMD): R277-700. The Elementary and Secondary School General Core

Published: 05/15/2016

Effective: 06/21/2016

Health

Children's Health Insurance Program

No. 40374 (AMD): R382-10-6. Citizenship and Alienage

Published: 05/15/2016

Effective: 07/01/2016

No. 40295 (AMD): R382-10-17. Effective Date of Enrollment and Renewal

Published: 05/01/2016

Effective: 06/28/2016

Health Care Financing, Coverage and Reimbursement Policy
No. 40320 (AMD): R414-1-5. Incorporations by Reference

Published: 05/01/2016

Effective: 06/27/2016

No. 40375 (AMD): R414-302-3. Citizenship and Alienage
 Published: 05/15/2016
 Effective: 07/01/2016

No. 40377 (AMD): R414-303. Coverage Groups
 Published: 05/15/2016
 Effective: 07/01/2016

No. 40380 (AMD): R414-304. Income and Budgeting
 Published: 05/15/2016
 Effective: 07/01/2016

No. 40373 (AMD): R414-305-3. Aged, Blind and Disabled
 Non-Institutional and Institutional Medicaid Resource
 Provisions
 Published: 05/15/2016
 Effective: 07/01/2016

No. 40296 (AMD): R414-310-6. Creditable Health Coverage
 Published: 05/01/2016
 Effective: 06/28/2016

No. 40297 (AMD): R414-320-6. Creditable Health Coverage
 Published: 05/01/2016
 Effective: 06/28/2016

No. 40372 (AMD): R414-401-3. Assessment
 Published: 05/15/2016
 Effective: 07/01/2016

Family Health and Preparedness, Emergency Medical
 Services
 No. 40324 (AMD): R426-8. Emergency Medical Services
 Ambulance Rates and Charges
 Published: 05/01/2016
 Effective: 07/01/2016

Human Resource Management

Administration
 No. 40398 (AMD): R477-1. Definitions
 Published: 05/15/2016
 Effective: 07/01/2016

No. 40389 (AMD): R477-4-5. Transfer and Reassignment
 Published: 05/15/2016
 Effective: 07/01/2016

No. 40390 (AMD): R477-6. Compensation
 Published: 05/15/2016
 Effective: 07/01/2016

No. 40399 (AMD): R477-7. Leave
 Published: 05/15/2016
 Effective: 07/01/2016

No. 40391 (AMD): R477-8. Working Conditions
 Published: 05/15/2016
 Effective: 07/01/2016

No. 40392 (AMD): R477-9. Employee Conduct
 Published: 05/15/2016
 Effective: 07/01/2016

No. 40393 (AMD): R477-10-1. Performance Evaluation
 Published: 05/15/2016
 Effective: 07/01/2016

No. 40394 (AMD): R477-11. Discipline
 Published: 05/15/2016
 Effective: 07/01/2016

No. 40395 (AMD): R477-12. Separations
 Published: 05/15/2016
 Effective: 07/01/2016

No. 40396 (AMD): R477-15-1. Policy
 Published: 05/15/2016
 Effective: 07/01/2016

Labor Commission

Boiler and Elevator Safety
 No. 40357 (AMD): R616-2-3. Safety Codes and Rules for
 Boilers and Pressure Vessels
 Published: 05/15/2016
 Effective: 07/01/2016

No. 40358 (AMD): R616-3-3. Safety Codes for Elevators
 Published: 05/15/2016
 Effective: 07/01/2016

Navajo Trust Fund

Trustees
 No. 40347 (NEW): R661-9. Utah Navajo Trust Fund Public
 Facility Projects
 Published: 05/15/2016
 Effective: 06/23/2016

No. 40348 (NEW): R661-10. Utah Navajo Trust Fund Short-
 Term Training Program
 Published: 05/15/2016
 Effective: 06/23/2016

No. 40349 (NEW): R661-11. Utah Navajo Trust Fund Water
 Development Projects Culinary and Septic Systems
 Published: 05/15/2016
 Effective: 06/23/2016

No. 40350 (NEW): R661-12. Utah Navajo Trust Fund
 Homesite Lease Assistance Program
 Published: 05/15/2016
 Effective: 06/23/2016

Workforce Services

Employment Development
 No. 40315 (AMD): R986-400-402. General Provisions
 Published: 05/01/2016
 Effective: 07/01/2016

**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 July 01, 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)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Facilities Construction and Management</u>					
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	2016-13/159
R23-31	Executive Residence Commission	40481	5YR	06/09/2016	2016-13/159
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	40548	EMR	07/01/2016	Not Printed
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
<u>Purchasing and General Services</u>					
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
<u>Risk Management</u>					
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	40282	AMD	06/01/2016	2016-8/6
AGRICULTURE AND FOOD					
<u>Administration</u>					
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
<u>Animal Industry</u>					
R58-2	Diseases, Inspections and Quarantines	40476	5YR	06/09/2016	2016-13/160
R58-4	Use of Animal Drugs and Biologicals in the State of Utah	40478	5YR	06/09/2016	2016-13/160
R58-14	Holding Live Raccoons or Coyotes in Captivity	40477	5YR	06/09/2016	2016-13/161
<u>Horse Racing Commission (Utah)</u>					
R52-7	Horse Racing	39951	AMD	02/02/2016	2015-24/4
R52-7-5	Occupation Licensing and Registration	40366	AMD	06/23/2016	2016-10/8

Marketing and Development

R65-2	Utah Cherry Marketing Order	40367	REP	06/23/2016	2016-10/11
R65-8	Management of the Junior Livestock Show Appropriation	40233	5YR	02/29/2016	2016-6/28
R65-8-2	Establishment of a Forum	40369	AMD	06/23/2016	2016-10/13

Plant Industry

R68-4	Standardization, Marketing, and Phytosanitary 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
R68-12	Quarantine Pertaining to Mint Wilt	40365	REP	06/23/2016	2016-10/14
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
R70-370	Butter	40361	AMD	06/23/2016	2016-10/15
R70-380	Grade A Condensed and Dry Milk Products and Condensed and Dry Whey	40269	5YR	03/16/2016	2016-8/92
R70-380	Grade A Condensed and Dry Milk Products and Condensed and Dry Whey	40368	AMD	06/23/2016	2016-10/16
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
R70-550	Utah Inland Shellfish Safety Program	40360	AMD	06/23/2016	2016-10/18

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
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RULES INDEX

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
R156-15A	State Construction Code Administration and Adoption of Approved State Construction Code Rule	40526	5YR	06/20/2016	Not Printed
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	2016-13/162
R156-55a	Utah Construction Trades Licensing Act Rule	40219	AMD	04/21/2016	2016-6/16
R156-55a-301	License Classifications - Scope of Practice	40351	AMD	06/21/2016	2016-10/19
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

Securities

R164-15-3	Notice Filings for Offerings Made Under Tier 2 of Federal Regulation A	40206	AMD	06/29/2016	2016-5/2
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COMMUNICATIONS AUTHORITY BOARD (UTAH)

Administration

R174-1	Utah 911 Advisory Committee	40397	5YR	05/02/2016	2016-10/84
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CORRECTIONS

Administration

R251-109	Sex Offender Treatment Providers	40039	AMD	05/04/2016	2016-2/16
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CRIME VICTIM REPARATIONS

Administration

R270-1	Award and Reparation Standards	40495	5YR	06/15/2016	2016-13/162
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	2016-13/163

R270-5	Electronic Meetings	40148	NEW	04/06/2016	2016-4/14
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<u>Administration</u>					
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
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AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
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	40175	R655-11	AMD	03/24/2016	2016-4/68	
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	40176	R655-12	AMD	03/24/2016	2016-4/71	
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Health, Disease Control and Prevention, Environmental Services	40443	R392-110	NSC	06/13/2016	Not Printed	
<u>decommissioning</u>						
Environmental Quality, Waste Management and Radiation Control, Radiation	39991	R313-22	AMD	05/09/2016	2016-1/33	
	40009	R313-22	NSC	01/15/2016	Not Printed	
	39991	R313-22	CPR	05/09/2016	2016-7/44	
	40323	R313-22	AMD	06/10/2016	2016-9/63	
	40578	R313-22	5YR	07/01/2016	Not Printed	
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Environmental Quality, Drinking Water	40032	R309-110-4	AMD	05/01/2016	2016-2/20
Environmental Quality, Waste Management and Radiation Control, Radiation	40572	R313-12	5YR	07/01/2016	Not Printed
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	40451	R313-25-26	NSC	06/13/2016	Not Printed
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	40278	R315-261	NSC	04/15/2016	Not Printed
	40308	R315-261	AMD	06/10/2016	2016-9/84
	40109	R315-262	NEW	04/15/2016	2016-3/170
	40279	R315-262	NSC	04/15/2016	Not Printed
	40309	R315-262-10	AMD	06/10/2016	2016-9/95
	40110	R315-263	NEW	04/15/2016	2016-3/196
	40280	R315-263	NSC	04/15/2016	Not Printed
	40115	R315-264	NEW	04/15/2016	2016-3/201
	40281	R315-264	NSC	04/15/2016	Not Printed
	40310	R315-264-1	AMD	06/10/2016	2016-9/96
	40475	R315-264-56	NSC	06/27/2016	Not Printed
	40111	R315-265	NEW	04/15/2016	2016-3/346
	40112	R315-266	NEW	04/15/2016	2016-3/347
	40113	R315-268	NEW	04/15/2016	2016-3/380
	40114	R315-270	NEW	04/15/2016	2016-3/418
	40116	R315-273	NEW	04/15/2016	2016-3/468
	40311	R315-273	AMD	06/10/2016	2016-9/99
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	40171	R428-2	AMD	03/25/2016	2016-4/38
	40172	R428-10	R&R	03/25/2016	2016-4/43
	40173	R428-11	REP	03/25/2016	2016-4/45
	40174	R428-13	AMD	03/25/2016	2016-4/47
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	39966	R432-270	AMD	01/28/2016	2015-24/41
	40243	R432-550	AMD	05/16/2016	2016-7/9
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Insurance, Administration	40154	R590-259	5YR	01/25/2016	2016-4/80
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	40171	R428-2	AMD	03/25/2016	2016-4/38

	40172	R428-10	R&R	03/25/2016	2016-4/43
	40173	R428-11	REP	03/25/2016	2016-4/45
	40174	R428-13	AMD	03/25/2016	2016-4/47
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	40100	R277-510	AMD	03/09/2016	2016-3/8
	40362	R277-510-5	NSC	05/11/2016	Not Printed
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	40466	R926-9	5YR	06/02/2016	2016-13/170
	40057	R926-13-4	AMD	04/08/2016	2016-3/493
	40409	R926-14	EMR	05/10/2016	2016-11/55
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	40410	R455-8	5YR	05/10/2016	2016-11/65
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	40173	R428-11	REP	03/25/2016	2016-4/45	
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	40163	R381-60	AMD	03/30/2016	2016-4/15	
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	40014	R460-4	NSC	01/15/2016	Not Printed	
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