

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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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 September 02, 2016, 12:00 a.m., and September 15, 2016, 11:59 p.m. are included in this, the October 01, 2016, issue of the *Utah State Bulletin*.

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

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 Rules being repealed are completely struck out.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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least October 31, 2016. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through January 29, 2017, 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

**Commerce, Occupational and
Professional Licensing
R156-3a
Architect Licensing Act Rule**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40763

FILED: 09/13/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Architects Licensing Board are proposing amendments due to the fact that, on 06/29/2016, the National Council of Architectural Registration Boards (NCARB) made changes to reflect areas of current architectural practice. These changes include renaming the Intern Development Program (IDP) to the now recognized Architectural Experience Program or AXP. Additionally, reference to the previously used IDP Committee and IDP Coordinator are now recognized as an Architect Licensing Advisory. In order to align with NCARB's recently adopted nomenclature, the language in this rule must also be codified. Additional minor technical changes include replacing outdated references to the 2009 International Building Code with Title 15A, State Construction and Fire Codes Act and updating the referenced edition of NCARB Rules of Conduct to the 2014-2015 edition.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-3a-102(2), changes are made replacing the term "IDP (Intern Development Program) Committee" with "Architect Licensing Advisory". Changes are also made to Subsections R156-3a-102(6)(d) and (f) to modify the code reference to Title 15A, State Construction and Fire Codes Act. Subsection R156-3a-102(7) replaces the term "Intern Development Program" with "Architect Experience Program" and replaces the acronym "IDP" with "AXP". Subsection R156-3a-102(10)(b) replaces "Intern Development Program" with "Architect Experience Program". In Section R156-3a-201, changes made include replacing the terms "IDP Committee" and "IDP Coordinator" with "Architect Licensing Advisor" and replacing "IDP" with "AXP" where appropriate. In Section R156-3a-302, changes are made to replace the "IDP" reference with "AXP". In Section R156-3a-502, changes in this section update the NCARB Rules of Conduct to the 2014-2015 edition.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-3a-101 and Section 58-3a-303.5 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates National Council of Architectural Registration Boards (NCARB) Rules of Conduct, published by NCARB, 2014-2015

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Once the proposed amendments are made effective, the Division will incur minimal costs of approximately \$75 to reprint the rule. Otherwise, the proposed amendments will have no additional impact on the budget. Any costs incurred will be absorbed in the Division's current budget.

◆ **LOCAL GOVERNMENTS:** Although it is unknown by the Division how many licensed architects are employed by local governments, the proposed amendments in terminology is expected to have a negligible impact on local government budgets as all proposed changes made to the rule will only require minor formatting changes to existing media. These will vary depending on each local government, and as a result, any costs or savings to a local government cannot be estimated by the Division.

◆ **SMALL BUSINESSES:** While it is unknown by the Division how many licensed architects are employed by or operate small businesses, it is anticipated the proposed amendments will have a negligible impact on small business budgets as all proposed changes made to the rule will only require minor formatting changes to existing media. These will vary from business to business, so any cost or savings cannot be estimated by the Division.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments solely apply to licensed architects and those seeking licensure as an architect. As such, the proposed amendments are expected to have a negligible impact, if any. The incorporation of change nomenclature to identify the required program will only require minor formatting changes to existing media which will vary from person to person and any potential cost or savings associated with the proposed amendments cannot be estimated by the Division. It is noted that the updated NCARB Rules of Conduct can be found for free on the NCARB website.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments do not modify any of the current requirements necessary for licensure. The proposed amendments merely update the nomenclature used to identify the required program of diversified practical experience. Therefore, the Division anticipates that there will be no added compliance costs for affected persons beyond the current requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments merely exchange new titles and terminology for titles and terminology that have been made

out of date by the National Council of Architectural Registration Boards (NCARB). A negligible fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Duncombe by phone at 801-530-6235, by FAX at 801-530-6511, or by Internet E-mail at sduncombe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 10/12/2016 01:30 PM, Heber Wells Bldg, 160 East 300 South, Conference Room 475, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-3a. Architect Licensing Act Rule.

R156-3a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 3a, as used in Title 58, Chapters 1, 3a, and 22 or this rule:

(1) "ARE" means the NCARB Architectural Registration Examination.

(2) "Committee" means the ~~[HDP Committee]~~ Architect Licensing Advisor created in Section R156-3a-201.

(3) "Complete and final" as used in Subsection 58-3a-603(1) means "complete construction plans" as defined in Subsection 58-3a-102(4).

(4) "EESA" means the Education Evaluation Services for Architects.

(5) "Employee, subordinate, associate, or drafter of an architect" as used in Subsections 58-3a-102(8), 58-3a-603(1)(b) and this rule means one or more individuals not licensed as an architect who are working for, with, or providing architectural services directly to the licensed architect under the supervision of the licensed architect.

(6) "Incidental practice" means "architecture work as is incidental to the practice of engineering" as used in Subsection 58-22-102(9) and "engineering work as is incidental to the practice of architecture" as used in Subsection 58-3a-102(6) which:

(a) can be safely and competently performed by the licensee without jeopardizing the life, health, property and welfare of the public;

(b) is secondary and substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession;

(c) is work in which the licensee is fully responsible for the incidental practice performed as provided in Subsection 58-3a-603(1) or Subsection 58-22-603(1);

(d) unless exempt from licensure as provided in Subsection 58-3a-304(1)(e), is work that affects not greater than 49 occupants as determined in ~~[Section 1004 of the 2009 International Building Code]~~ Title 15A, State Construction and Fire Codes Act;

(e) unless exempt from licensure as provided in Subsection 58-3a-304(1)(e), is work included on a project with a construction value not greater than 15 percent of the overall construction value for the project including all changes or additions to the contracted or agreed upon work; and

(f) shall not include work on a building or related structure in an occupancy risk category of III or IV as defined in ~~[Section 1604.5 of the 2009 International Building Code]~~ Title 15A, State Construction and Fire Codes Act.

(7) "~~[Intern Development Program]~~ Architect Experience Program" or "~~[HDP]AXP~~" as used in Subsection R156-3a-302(1) means an NCARB approved training program.

(8) "NAAB" means the National Architectural Accrediting Board.

(9) "NCARB" means the National Council of Architectural Registration Boards.

(10) "Program of diversified practical experience" as used in Subsection 58-3a-302(1)(e) means:

(a) current licensure in a recognized jurisdiction; or

(b) the training standards and requirements set forth in the ~~[Intern Development Program]~~ Architect Experience Program.

(11) "Recognized jurisdiction" as used in Subsections 58-3a-302(2)(d)(i) and (iii), for licensure by endorsement, means any jurisdiction that is a member of NCARB.

(12) "Responsible charge" by a principal, as used in Subsection 58-3a-102(7), means direct control and management by a principal over the practice of architecture by an organization.

(13) "Technical submissions", as used in Section R156-3a-601, means documents which are:

(a) required by public authorities for building permits or regulatory approvals; or

(b) intended for construction purposes, including all addenda and other changes to submissions.

(14) "Under the direction of the architect" as used in Subsection 58-3a-102(8), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of an architect" means that the unlicensed employee, subordinate, associate, or drafter of the architect engages in the practice of architecture only on work initiated by the architect, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of the architect.

(15) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 3a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-3a-502.

R156-3a-201. Advisory Peer Committee Created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(1)(f), the ~~[HDP Committee]~~ Architect Licensing Advisor as an advisory peer committee to the Architect Licensing Board consisting of one or more members as follows:

(a) a State ~~[HDP Coordinator]~~ Architect Licensing Advisor; or

(b) an Education Coordinator ~~[or~~

~~(c) an Intern IDP Coordinator]~~.

(2) The committee shall be appointed and serve in accordance with Section R156-1-205.

(3) The duties and responsibilities of the committee shall include assisting the Board in its duties, functions, and responsibilities defined in Subsection 58-1-202(1)(e) as follows:

(a) promote an awareness of ~~[HDP]~~ the AXP by holding meetings and seminars on ~~[HDP]~~ the AXP;

(b) establish a network of sponsors and advisors for ~~[HDP]~~ AXP interns;

(c) encourage firms to support ~~[HDP]~~ the AXP;

(d) act as a resource to respond to questions on ~~[HDP]~~ the AXP received from advisors, sponsors, and interns; and

(e) report to the Board as directed.

R156-3a-302. Qualifications for Licensure - Program of Diversified Practical Experience.

In accordance with Subsection 58-3a-302(1)(e), an applicant shall establish completion of a program of diversified practical experience requirement by submitting documentation of:

(1) ~~[HDP]~~ AXP;

(2) current licensure in a recognized jurisdiction; or

(3) current NCARB Certification.

R156-3a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report, or set of construction plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider, the plan, specification, report, or set of construction plans to be complete and final; or

(b) a building official for the purpose of obtaining a building permit;

(2) failing as a principal to exercise reasonable charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter;

(4) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the ~~[July 2011]~~ 2014-2015 edition of the NCARB "Rules of Conduct", which is hereby incorporated by reference; or

(5) failing as a supervising architect to verify actual work experience when requested by a subordinate, associate or drafter of an architect who is or has been an employee.

KEY: architects, licensing

Date of Enactment or Last Substantive Amendment: [January 24, 2013] 2016

Notice of Continuation: January 7, 2016

Authorizing, and Implemented or Interpreted Law: 58-3a-101; 58-3a-303.5; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Occupational and Professional Licensing

R156-55b-302c

Qualifications for Licensure - Examination Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40762

FILED: 09/13/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This filing is recommended by the Electricians Licensing Board and the Construction Services Commission to promote the progression of licensure and protect public health, safety, and welfare. This change will benefit the apprentice who has completed the required education to sit for the respective journeyman exams while the course material is most germane, and they are actively completing the remaining hours needed to fulfill the experience requirement.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-55b-302c(2), language is added allowing apprentice electricians who have completed the apprentice education program set forth in Section R156-55b-302a, and not less than 6,000 hours of the experience required under Section R156-55b-302b, to sit for the journeyman examinations. Likewise, this change will allow apprentice electricians who have completed the apprentice education program set forth in Section R156-55b-302a, and not less than 3,000 hours of the experience required under Section R156-55b-302b, to sit for the residential journeyman examinations.

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

ANTICIPATED COST OR SAVINGS TO:

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

♦ **LOCAL GOVERNMENTS:** The proposed amendments do not apply to local governments. The proposed amendments only apply to applicants seeking licensure as a journeyman electrician or residential journeyman electrician.

♦ **SMALL BUSINESSES:** The proposed amendments may apply to small business. The apprentice electrician that previously had to wait until all of the education and experience requirements were met in order to sit for the appropriate exams will now have the ability to sit for the exams after completing the education requirement and a majority of the required experience hours. It is anticipated

that allowing applicants to sit for the examinations as proposed will improve the opportunity for licensure progression, promote industry growth, and encourage corresponding wage increases as the licensee becomes more serviceable to current and potential employers. The aggregate impact cannot be estimated as it will vary depending on the experience and aptitude of the apprentice electrician.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments will only affect apprentice electricians who have completed the apprentice education program set forth in Section R156-55b-302a. It is expected that allowing applicants to sit for the examinations as proposed should have a similar impact for applicable large business. The aggregate impact cannot be estimated as it will vary depending on the experience and aptitude of the apprentice electrician.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division anticipates the amendment will impact apprentice electricians who have met the education and experience requirements of this proposal and seek licensure as a journeyman electrician or residential journeyman electrician. In addition to promoting the timely progression of licensure, it is expected that this amendment will assist adequately prepared applicants with passing the required licensure examinations. Similarly, an applicant should experience a cost savings, from fewer failed attempts and subsequent, necessary retakes. However, the Division is not able to estimate the individual impact as it will vary depending on the experience and aptitude of the apprentice electrician.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amended rule permits apprentice electricians to sit for the journeyman examination and the residential journeyman examination at an earlier date. The amended rule will likely result in a cost savings to apprentice electricians. An indeterminate cost increase could be experienced by small business if the earlier taking of the examinations results in wage increases for apprentices who demonstrate that they are more serviceable to current and potential employers.

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:

◆ Steve Duncombe by phone at 801-530-6235, by FAX at 801-530-6511, or by Internet E-mail at sduncombe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 10/20/2016 09:00 AM, Heber Wells Bldg, 160 East 300 South, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-55b. Electricians Licensing Act Rule.**

R156-55b-302c. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-55-302(1)(c)(i), an applicant for licensure under this rule shall pass the appropriate examinations that are approved by the Board, each of which shall consist of a theory part, a code part and a practical part as follows:

(a) Utah Electrical Licensing Examination for Master Electricians;

(b) Utah Electrical Licensing Examination for Master Residential Electricians;

(c) Utah Electrical Licensing Examination for Journeyman Electricians; and

(d) Utah Electrical Licensing Examination for Residential Journeyman Electricians.

(2) Admission to the examinations is permitted after:

(a) the applicant has completed all requirements for licensure set forth in Sections R156-55b-302a and R156-55b-302b;
or

(b) the journeyman applicant has completed:

(i) the apprentice education program set forth in Subsection R156-55b-302a; and

(ii) not less than 6,000 hours of the experience required under Subsection R156-55b-302b;

(c) the residential journeyman applicant has completed:

(i) the apprentice education program set forth in Subsection R156-55b-302a; and

(ii) not less than 3,000 hours of the experience required under Subsection R156-55b-302b.

(3) The applicant shall obtain a "pass" grade on the practical part of the examination, a score of at least 75% on the theory part and a score of at least 75% on the code part of the examination.

(4)(a) If an applicant fails one or more parts of the examination, the applicant shall retake any part of the examination failed.

(b) An applicant shall wait at least 25 days between the first two retakes and thereafter shall wait 120 days between retakes.

(5) If an applicant passes any part of the examination but does not pass the entire examination, the passing score on any part of the examination shall be valid for one year from the date the part of the examination was passed. Thereafter, the applicant shall retake any previously passed part of the examination.

KEY: occupational licensing, licensing, contractors, electricians
Date of Enactment or Last Substantive Amendment: [August 21, 2014]2016

Notice of Continuation: August 8, 2016

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

**Commerce, Occupational and
Professional Licensing
R156-76-502
Unprofessional Conduct**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 40764
FILED: 09/13/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This filing is recommended by the Professional Geologist Licensing Board in order to more accurately encapsulate and convey the recognized standards and ethics of the profession.

SUMMARY OF THE RULE OR CHANGE: In Section R156-76-502, reference to the "American Geological Institute's Guidelines for Ethical Professional Conduct", 04/02/1999, is removed in Subsection R156-76-502(4) and replaced with Section R156-76-16, Code of Ethics, as contained in the 2011 edition of the "National Association of State Boards of Geology (ASBOG) Model Rules and Regulations", which is incorporated by reference.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-76-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Adds Code of Ethics of the National Association of State Boards of Geology (ASBOG) Model Rules and Regulations, Section 16, published by National Association of State Boards of Geology, 2011
- ◆ Removes American Geological Institute's Guidelines for Ethical Professional Conduct, published by American Geological Institute, April 2, 1999

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$75 to reprint and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ◆ **LOCAL GOVERNMENTS:** As it is unknown how many licensed, professional geologists are employed by local government, the proposed amendment may have an impact.

This update in ethical standards is expected to have a negligible impact on local government budgets as it will only require small formatting changes to existing media. These will vary depending on local government, so the cost or savings cannot be estimated by the Division.

◆ **SMALL BUSINESSES:** Though it is unknown how many licensed, professional geologists are employed by small business, the update in ethical standards is expected to have a negligible impact on budgets as it will only require small formatting changes to existing media. These will vary from business to business, so any cost or savings cannot be estimated by the Division.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendment solely applies to licensed professional geologists. The costs or savings associated with this amendment cannot be estimated as the formatting changes, if any, will vary from person to person. There will be no cost to obtain the updated code of ethics document as it is available for free on the ASBOG website.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Licensed professional geologists are required to conform to nationally recognized standards and ethics of the profession. Therefore, the Division anticipates that any associated costs will be negligible. Also, there will be no cost to obtain the updated code of ethics document as it is available for free on the ASBOG website.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amended rule merely substitutes the name of the 2011 edition of the "Model Rules and Regulations" for the former 1999 edition. A negligible fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Steve Duncombe by phone at 801-530-6235, by FAX at 801-530-6511, or by Internet E-mail at sduncombe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 10/13/2016 10:00 AM, Heber Wells Bldg, 160 East 300 South, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-76. Professional Geologist Licensing Act Rule.
R156-76-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report or set of plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of plans to be complete and final; or

(b) to a government official for the purpose of obtaining a permit;

(2) failing as a principal to exercise responsible charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or

(4) failing to conform to the accepted and recognized standards and ethics of the profession including those stated in [~~the "American Geological Institute's Guidelines for Ethical Professional Conduct", April 2, 1999]~~Section 16 Code of Ethics of the 2011 edition of the "National Association of State Boards of Geology (ASBOG) Model Rules and Regulations", which is hereby incorporated by reference.

KEY: licensing, professional geologists, geology

Date of Enactment or Last Substantive Amendment: [~~January 8, 2008~~]**2016**

Notice of Continuation: February 21, 2012

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-76-101

Education, Administration
R277-109
Legislative Reporting and
Accountability

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40788

FILED: 09/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-109 is amended to provide technical and conforming changes consistent with the Utah Administrative Rulemaking Act and the Rulewriting Manual for Utah.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-109 provide technical and conforming changes, which includes renumbering.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The amendments provide technical and conforming changes, which likely will not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: The amendments provide technical and conforming changes, which likely will not result in a cost or savings to local government.

◆ SMALL BUSINESSES: The amendments provide technical and conforming changes, which likely will not result in a cost or savings to small businesses.

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

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

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

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

**R277. Education, Administration.
R277-109. Legislative Reporting and Accountability.
R277-109-[2]1. Authority and Purpose.**

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

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

~~(b) Subsection 53A-1-402(1), which directs the Board to establish rules and minimum standards for the public schools[.by];~~

~~(c) Subsection 53A-1-401(1)(a), which gives the Board general control and supervision of the state's public education system for adoption and enforcement of rules[.by];~~

~~(d) Section 53A-1-401[~~(3)~~], which allows the Board to [adopt]make rules [in accordance with its]to execute the Boards duties and responsibilities under the Utah [e]Constitution and state law[s], and allows the Board to interrupt disbursements of state aid to any district which fails to comply with rules adopted in accordance with Section 53A-1-401[~~(3)~~].~~

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

~~(a) require the Superintendent to create data collection plans necessary as determined by the Superintendent to fulfill statutory or Board reporting requirements; and~~

~~(b) [to]require LEAs to submit data upon request to the Superintendent.~~

~~(3) The rule provides that LEA participation in Minimum School Program funding is conditioned upon LEAs providing complete and accurate data and information to the Superintendent and the Board.~~

R277-109-~~1~~2. Definitions.

~~[A. "Board" means the Utah State Board of Education.~~

~~B. "LEA" means school districts, charter schools and other public education entities over which the Board has state constitutional authority.]~~

~~[D.](1) "Minimum school program funds" or [("MSP funds")] means the [total of] state and local funds appropriated for the Minimum School Program to support educational activities in all grades Kindergarten through 12th grade, including the Basic State-Supported School Program, Related to Basic Program, the State-Supported Voted and Board Leeway Levy Programs, and other programs or allocations appropriated by the Legislature in [53A-17a, the]Title 53A, Chapter 17a, Minimum School Program Act.~~

~~[C.](2) "[Legislative statute or directive]Statutory or Board reporting requirement" means a [statute]reporting requirement as described in:~~

~~(a) the Utah Code or legislative intent as documented by legislative records[.]; or~~

~~(b) Board rule.~~

~~[E. "Superintendent" means the State Superintendent of Public Instruction who is directed to administer all programs assigned to the Board under Section 53A-1-301(1)(e).]~~

R277-109-3. [State]Board [of Education]-Direction to[State] Superintendent and LEA Appeal Process.

~~[A.](1) The [Board expects the]Superintendent shall, in consultation with LEAs,[to] collect data [or]and prepare data collection reports or plans, as the Board directs or as the Superintendent deems necessary, to fulfill statutory or Board reporting requirements.~~

~~[B.](2) The Superintendent is authorized by the Board to assist LEAs to fulfill reporting requests and to complete accountability or reporting plans.~~

~~(3) The Superintendent[is authority extends to] may sanction[ing]an LEA[s], if necessary, [for failure]if the LEA fails to provide required data or reports[.up to and including.] by withholding MSP funds [for an]due to the LEA's failure to provide complete and accurate data or reports as requested.~~

~~[C.](4) The Superintendent[or USOE staff, as authorized by the Superintendent,] shall provide adequate notice to LEAs of reporting requirements and procedures for providing data in requested formats.~~

~~[D.](5) If an LEA does not comply with a data program request or requirement, the Superintendent shall provide adequate and timely notice to the LEA that data was not submitted accurately and completely and LEA has 30 days to respond to the Superintendent's request for data or a required data report.~~

~~[E.](6) The Superintendent may impose sanctions for noncompliance up to and including the withholding of MSP funds directly related to the data collection or reporting requirement.~~

~~(7) The Superintendent may withhold the program funds related to the requested data report or reporting requirement beginning with the next MSP transfer or beginning with subsequent MSP transfers including MSP funding for a subsequent fiscal year.~~

~~[F.](8) An LEA may appeal to the Board in writing the [s]Superintendent's decision to withhold program funds within 10 calendar days.~~

~~[G.](9) The Board shall respond to the LEA within 30 calendar days.~~

~~[H.](10) The Board's response is the final administrative action.~~

KEY: reporting, accountability

Date of Enactment or Last Substantive Amendment: [October 11, 2011]2016

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

Education, Administration R277-116 Audit Procedure

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40789

FILED: 09/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-116 is amended to incorporate authority and procedures resulting from S.B. 91 from the 2016 General Session. Minor terminology and technical changes are also provided, and unnecessary procedures are removed from the rule.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-116 provide two new authorizing statutes that: 1) give the Board authority to audit the use of state funds; and 2) allow the Board to contract with a local education agency

(LEA) or other education entity to provide internal audit services to the LEA if approved by the audit committee. Minor technical and conforming changes are also provided, including renumbering as appropriate.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-1-401 and Subsection 53A-1-402(1)(e) and Subsection 63I-5-201(4)

ANTICIPATED COST OR SAVINGS TO:

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

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

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

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

R277. Education, Administration.

R277-116. Audit Procedure.

R277-116-1. Authority and Purpose.

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board;
 - (b) Subsection 63I-5-201(4) which requires the Board to direct the establishment of an internal audit department for programs administered by the entities it governs;
 - (c) ~~S[ub]section 53A-1-401[(3)],~~ which allows the Board to [adopt]make rules [in accordance with its responsibilities]to execute the Boards duties and responsibilities under the Utah Constitution and state law;
 - (d) Subsection 53A-1-402(1)(e) which directs the Board to develop rules and minimum standards regarding school productivity and cost effectiveness measures, school budget formats, and financial, statistical, and student accounting requirements for the local school districts;
 - (e) Section 53A-1-404 which allows the Board to approve auditing standards for school boards;
 - (f) Section 53A-1-405 which makes the Board responsible for verifying audits of local school districts;~~and]~~
 - (g) Subsection 53A-17a-147(2) which directs the Board to assess the progress and effectiveness of all programs funded under the State System of Public Education~~[-]; and~~
 - (h) Section 53A-1-401, which gives the Board authority to audit the use of state funds by an education entity that receives state funds as a distribution from the Board.
- (2) The purpose of this rule is to:
 - (a) outline the role of the Audit Director, Superintendent, and agency in the audit process; and
 - (b) outline the Board's procedures for audits of agencies.

R277-116-2. Definitions.

- (1) "Agency" means:
 - (a) an entity governed by the Board;
 - (b) an LEA; or
 - (c) a sub-recipient.
- (2) "Audit committee" means a standing committee of members appointed by the Board.
- (3) "Audit Director" means the person who:
 - (a) directs the audit program of the Board;
 - (b) is appointed by and reports to the audit committee;
 and
 - (c) is independent of the agencies subject to Board audit.
- (4) "Audit plan" means a prioritized list of audits to be performed in the audit program within a specified period of time that is reviewed, approved, and adopted at least annually.
- (5) "Audit program" means a department that provides internal audit services for the Board that is directed by the Audit Director.
- (6) "An entity governed by the Board" means the Board, SC SB, or USDB~~[-USOE, or USOR].~~

(7) "Draft audit report" means a draft audit report compiled by the Audit Director that is classified as protected under Title 63G, Chapter 2, Part 3, Section 305, Protected records.

(8) "Education entity" means the same as that term is defined in Section 53A-1-401.

([8]9) "Final audit report" means a draft audit report that is approved by the audit committee and the Board as a final audit report that is classified as public under Title 63G, Chapter 2, Part 3, Section 301, Public records.

([9]10) "Sub-recipient" means any entity that receives funds from an entity governed by the Board.

R277-116-3. Audit Director Authority and Responsibilities.

(1) The Audit Director shall:

([1]a) direct the audit program:

([a]i) as approved by the Board and audit committee by objectively evaluating the effectiveness and efficiency of the operations of the agency being audited;

([b]ii) in accordance with the current International Standards for the Professional Practice of Internal Auditing; and

([e]iii) as otherwise required by the Board;

([2]b) ensure that collectively the audit department possesses the knowledge, skills, and experience essential to the practices of the profession and are proficient in applying internal auditing standards, procedures, and techniques;

([3]c) employ:

([a]i) a sufficient number of professional and support staff to implement an effective internal audit program; and

([b]ii) audit staff who are qualified in disciplines that include:

([i]A) accounting;

([ii]B) business management;

([iii]C) public administration;

([iv]D) human resource management;

([v]E) economics;

([vi]F) finance;

([vii]G) statistics;

([viii]H) electronic data processing; or

([ix]I) engineering;

([4]d) inform the audit committee if additional professional and support staff are necessary to implement an effective internal audit program;

([5]e) base compensation, training, job tenure, and advancement of internal auditing staff on job performance;

([6]f) propose audit rules, policies, and amendments, for approval and adoption by the Board that maintain staff independence from operational and management responsibilities that would impair staff's ability to make independent audits of an agency;

([7]g) develop and recommend an audit plan to the Board and the audit committee based on the findings of periodic risk assessments, audits, and budget;

([8]h) perform an audit of a special program, activity, function, or organizational unit of an agency at the direction of the Board or the audit committee with one or more objectives, including:

([a]i) to verify the accuracy and reliability of agency records;

([b]ii) to assess compliance with management policies, plans, procedures, and regulations;

([e]iii) to assess compliance with applicable laws, rules, and regulations;

([d]iv) to evaluate the efficient and effective use of agency resources;

([e]v) to verify the appropriate protection of agency assets; and

([f]vi) review and evaluate internal controls over the agency's accounting systems, administrative systems, electronic data processing systems, and all other major systems necessary to ensure the fiscal and administrative accountability of the state agency;

([9]i) determine the assignment and scope of the audits;

([10]j) periodically discuss relevant matters with the audit committee including whether there are any restrictions on the scope of the audits;

([11]k) submit draft audit reports directly to the Board and to the audit committee;

([12]l) receive comments from the Board and responses from the Superintendent on the draft audit report;

([13]m) edit draft audit report based upon the comments and responses received;

([14]n) resubmit a draft audit report to the Board and audit committee:

([a]i) after receipt of comments from the Board and responses from the Superintendent; and

([b]ii) until a draft audit report is approved and adopted as a final audit report by the Board;

([15]o) report monthly to the audit committee, or as otherwise directed by the audit committee, including:

([a]i) reviewing current audits being performed both internally and externally;

([b]ii) the scope of the internal and external audits;

([e]iii) status of internal and external audits;

([d]iv) follow up draft audit reports; and

([e]v) draft audit reports for final review and recommendation;

([16]p) conduct an annual quality assurance review of the audit program with the audit committee;

([17]q) personally or through a designee, report quarterly to the Board, or as otherwise directed by the Board;

([18]r) personally or through a designee, attend all Board meetings;

([19]s) report to the Board, within a reasonable time of discovering, issues that have the potential of exposing the Board, Superintendent, or an agency to liability or litigation;

([20]t) maintain the classification of any public record consistent with GRAMA;

([21]u) be subject to the same penalties under GRAMA as the custodian of a public record; and

([22]v) ensure that significant audit matters that cannot be appropriately addressed by the audit program are referred to either the Office of Legislative Auditor General or the Office of the State Auditor.

(2) The Audit Director may contract with an LEA or other education entity to provide internal audit services to the LEA or other education entity if the contract is approved by the audit committee in accordance with Board contract policies.

R277-116-4. Superintendent Authority and Responsibilities.

The Superintendent shall ~~establish the audit program by~~:

- (1) provide ~~ing~~ resources necessary to conduct the audit program including adequate funds, staff, tools, and space to support the audit program;
- (2) facilitate ~~ing~~ communications with those charged with governance, management, and staff as requested by the Audit Director or the audit committee to ensure the access necessary to perform an audit;
- (3) ensure ~~ing~~ access to all personnel, records, data, and other agency information that the Audit Director or staff consider necessary to carry out their assigned duties;
- (4) notify ~~ing~~ the Audit Director of external audits of entities governed by the Board;
- (5) notify ~~ing~~ the agency that the Audit Director shall be the liaison for an external audit; and
- (6) support ~~ing~~ the audit program as otherwise requested by the audit committee or Audit Director.

R277-116-5. Agency Authority and Responsibilities.

The agency shall wholly cooperate and provide the Audit Director and the internal audit staff all:

- (1) necessary access to those charged with governance, management, and staff; and
- (2) personnel, records, data, and other agency information that the Audit Director or staff consider necessary to carry out their assigned duties.

R277-116-6. Audit Plans.

(1) The audit plan prepared by the Audit Director shall:

- (a) identify the individual audits to be conducted during each year;
- (b) identify the related resources to be devoted to each of the respective audits;
- (c) ensure that internal controls are reviewed periodically as determined by the Board or by the audit committee; and
- (d) ensure that audits that evaluate the efficient and effective use of agency resources are adequately represented in the audit plan.

(2) Upon request, the Audit Director shall make a copy of the approved and adopted audit plan available to the state auditor, legislative auditor, or other appropriate external auditors to assist in planning and coordination of any external financial, compliance, electronic data processing, or performance audit.

R277-116-7. Audit Process.

(1) The Audit Director shall develop and recommend an audit plan to the Board and the audit committee based on the findings of periodic risk assessments and audits.

(2) Once approved and adopted by the Board, the Audit Director shall implement the audit plan.

(3) As requested by the audit committee or Audit Director, the Superintendent shall establish the audit program.

(4) The agency shall provide all information to the Audit Director and audit staff for the audit to be timely conducted.

(5) After conducting an audit, the Audit Director shall submit a draft audit report to:

- (a) the audit committee;
- (b) the Board; and

(c) the Superintendent for response or comment.

(6) Within fourteen days of the Audit Director's submission of the draft audit report to the Board and audit committee, the Superintendent shall either:

(a) provide a written response or comment to the Board, audit committee, and Audit Director to the draft audit report; or

(b) file a written request for an extension to the audit committee setting forth:

(i) the steps necessary to investigate and prepare a response to the draft audit report;

(ii) the time necessary to perform each step; and

(iii) the latest date that the Superintendent's written response or comment will be given to the Board, audit committee and Audit Director.

(7) Upon receiving written response and comment from the Superintendent, the Audit Director shall:

(a) incorporate into the draft audit report the written responses and comments, if any, received from the Board, the audit committee, and the Superintendent; and

(b) submit the amended draft audit report to the audit committee for recommendation.

(8) The audit committee may:

(a) recommend an amended draft audit report for approval and adoption; or

(b) send the amended draft audit report back to the Audit Director with instructions for additional review.

(9) Upon recommendation from the audit committee on the amended draft audit report, the Board may:

(a) approve and adopt an amended draft audit report as the final audit report; or

(b) send the amended draft audit report back to the audit committee with instructions for additional review.

R277-116-8. Audit Reports.

(1) An audit report prepared by the Audit Director and staff shall be based upon audits of agency programs, activities, and functions that include:

(a) findings based upon the audit scope; and

(b) one or more of the following objectives:

(i) verification of the accuracy and reliability of agency records;

(ii) assessment of an agency's compliance with management policies, plans, procedures, and regulations;

(iii) assessment of an agency's compliance with applicable laws, rules, and regulations;

(iv) evaluation of the efficient and effective use of agency resources;

(v) verification of the appropriate protection of agency assets;

(vi) furnishing independent analyses, appraisals, and recommendations that may, depending upon the audit scope, identify:

(A) the adequacy of an agency's systems of internal control;

(B) the efficiency and effectiveness of agency management in carrying out assigned responsibilities; and

(C) the agency's compliance with applicable laws, rules, and regulations;

(vii) review and evaluation of internal controls over the agency's accounting systems, administrative systems, electronic data processing systems, and all other major systems necessary to ensure the fiscal and administrative accountability of the agency; and

(viii) identification of abuse, illegal acts, errors, omissions, or conflicts of interest.

(2) An audit report prepared by the Audit Director and staff shall include a statement that the audit was conducted according to International Standards for the Professional Practice of Internal Auditing.

(3) The Audit Director shall provide, upon written request, a copy of an audit report to the Office of Legislative Auditor General or the Office of the State Auditor.

(4) The Audit Director shall ensure that public release of a final audit report complies with the conditions specified by the state laws and rules governing the audited agency.

KEY: educational administration

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

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-405; 53A-1-402(1)(e); 53A-1-405; 53A-17a-147(2); 63I-5-101 through 401

Education, Administration **R277-513** Teacher Leader

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40790

FILED: 09/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-513 is provided in response to S.B. 51 from the 2016 General Session, which requires the Utah State Board of Education (Board) to make rules establishing minimum criteria for a teacher to qualify as a teacher leader.

SUMMARY OF THE RULE OR CHANGE: The new rule provides: 1) minimum criteria for a teacher leader; 2) the roles of a teacher leader; and 3) teacher leader compensation and accommodations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-6-115

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This new Rule R277-513 provides minimum criteria and standards for a teacher leader, which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** There could be some costs to a local education agency (LEA) if an LEA chooses to provide compensation and accommodations to a teacher leader. Costs are speculative and would likely be absorbed within existing budgets.

◆ **SMALL BUSINESSES:** This new Rule R277-513 provides minimum criteria and standards for a teacher leader, which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** A teacher leader may realize a salary increase if an LEA chooses to provide compensation to a teacher leader. Compensation costs are speculative as LEA pay scales vary widely, and some LEAs may choose not to provide compensation to its teacher leaders.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This new Rule R277-513 provides minimum criteria and standards for a teacher leader, which likely will not result in any compliance costs for affected persons.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

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

R277. Education, Administration.

R277-513. Teacher Leader.

R277-513-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53A-6-115, which requires the Board to:

(i) define the role of a teacher leader; and

(ii) establish the minimum criteria for a teacher to qualify as a teacher leader; and

(c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) define the role of a teacher leader; and

(b) establish the minimum criteria for a teacher to qualify as a teacher leader.

R277-513-2. Definitions.

As used in this section, "teacher" has the same meaning as that term is defined in Section 53A-6-115.

R277-513-3. Minimum Criteria for a Teacher Leader.

An LEA may designate a teacher as a teacher leader if the teacher:

(1) is a level 2 or level 3 licensed teacher;

(2) has an educator evaluation effectiveness rating of effective or highly effective for at least two years prior to being designated as a teacher leader;

(3) demonstrates competence in working with adult learners and peers;

(4) demonstrates consistent leadership, focused collaboration, distinguished teaching, and continued professional growth; and

(5) is recommended by the building administrator to be designated as a teacher leader.

R277-513-4. Roles of a Teacher Leader.

A teacher leader's role may include:

(1) generally supporting school-based professional learning;

(2) training, supervising, and mentoring student teachers and new teachers;

(3) modeling effective instructional strategies for other teachers;

(4) serving as an instructional coach to develop effective instruction;

(5) guiding other educators in collecting, understanding, analyzing, and interpreting student-achievement data and using those findings to improve instruction;

(6) leading specific school improvement initiatives;

(7) leading efforts to modify or improve curriculum;

(8) acting as a liaison for community projects;

(9) serving as a learning facilitator for professional learning activities; and

(10) facilitating and coordinating professional learning communities.

R277-513-5. LEA Teacher Leader Compensation and Accommodations.

An LEA should:

(1) provide a bonus, pay increase, or other monetary incentive to compensate a teacher leader for the teacher leader's time performing duties described in Section R277-513-4; and

(2) reduce a teacher leader's classroom workload to provide the teacher leader time to perform the duties described in Section R277-513-4.

KEY: teachers, leaders, qualifications

Date of Enactment of Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-115; 53A-1-401

**Education, Administration
R277-600
Student Transportation Standards and
Procedures**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40791

FILED: 09/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-600 is amended in response to H.B. 301 from the 2016 General Session, which creates a grant program to provide transportation funding for routes that are unsafe for a student to walk, and provides that the Pupil Transportation Advisory Committee recommend a grant application to the Utah State Board of Education.

SUMMARY OF THE RULE OR CHANGE: A new Section R277-600-12, Grants for Unsafe Routes, provides processes for a school district to apply for and receive a grant for identifying and reducing unsafe routes. Numerous technical and conforming changes are also made throughout the rule, including renumbering.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-17a-126.5 and Subsection 53A-1-402(1)(d)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The amendments to this rule will result in some costs to the state budget for administration of the new grant program. Any costs will be absorbed within existing budgets.

♦ **LOCAL GOVERNMENTS:** The amendments to this rule will likely not result in a cost or savings to local government. The new grant program is funded by the Legislature.

♦ **SMALL BUSINESSES:** The amendments to this rule will likely not result in a cost or savings to small businesses. The new grant program is funded by the Legislature and applies to public education.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to this rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. The new grant program is funded by the Legislature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule will likely not result in any compliance costs for affected persons. The new grant program is funded by the Legislature.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

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

R277. Education, Administration.

R277-600. Student Transportation Standards and Procedures.

R277-600-1. Authority and Purpose.

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

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

~~(b)~~ Subsection 53A-1-402(1)(d), which directs the Board to establish rules for bus routes, bus safety and other transportation needs~~[and by]~~;

~~(c)~~ Sections 53A-17a-126 and 127, which provide[s] for distribution of funds for transportation of public school students and disability standards for student bus riders~~[-]~~;

~~(d)~~ Section 53A-17a-126.5, which directs the Board to make rules to implement unsafe route grants; and

~~(e)~~ Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

~~[B-](2)~~ The purpose of this rule is to specify the standards under which school districts may qualify for and receive state transportation funds.

R277-600-1.2. Definitions.

~~[A-](1)~~ "ADA" means average daily attendance.

~~[B-](2)~~ "ADM" means average daily membership.

~~[C-](3)~~ "AFR" means a school district's annual financial report, one component of which is the AFR for all pupil transportation costs.

~~[D-](4)(a)~~ "Approved costs" means the Board approved costs of transporting eligible students from home to school to home once each day, after-school routes, approved routes for students with disabilities and vocational students attending school outside their regularly assigned attendance boundary, and a portion of the bus purchase prices.

~~(b)~~ All approved costs are adjusted by the ~~[USOE]Superintendent~~ consistent with a Board-approved formula per the annual legislative transportation appropriation.

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

~~[F-]~~ "Bus route miles" means operating a bus with passengers~~[-]~~.

~~[G-](5)~~ "Deadhead miles" means miles traveled while operating a bus ~~[when]with~~ no passengers~~[are]~~ on board.

~~[H-](6)~~ "Extended school year" or "~~[E]SY~~" means an extension of the school district or charter school traditional school year to provide special education and related services to a student with a disability, in accordance with the student's IEP, and at no cost to the student's parents. ~~[ESY services shall meet the standards of Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3) and the State Board of Education Special Education Rules.]~~

~~[I-](7)~~ "Hazardous" means in a state of danger or potential danger, which may result in injury or death.

~~[J-]~~ "IDEA" means the Individuals with Disabilities Education Act, Title I, Part A, Section 602.

~~[K-]~~ "IEP" (individualized education program) means a written statement for a student with a disability that is developed and implemented under CFR Sections 300.340 through 300.347.

~~[L-](8)~~ "Local school board" means a ~~[the]~~ local school district board of education.

~~[M-](9)~~ "~~[M.P.V.]~~" means ~~[M]~~ multipurpose passenger vehicle" or "MPV" means ~~[a]~~ any motor vehicle with less than 10 passenger positions, including the driver's position, which cannot be certified as a bus.

~~(10)~~ "Pupil Transportation Advisory Committee" means the committee described in Subsection 53A-17a-127(5).

~~[N-](11)~~ "Out-of-pocket expense" means gasoline, oil, and tire expenses.

~~(12)~~ "Unsafe route" has the same meaning as defined in Subsection 53A-17a-126.5(1).

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

R277-600-3. General Provisions.

~~[A-](1)(a)~~ The Superintendent shall use ~~[S]~~ state transportation funds ~~[are used]~~ to reimburse school districts for the costs reasonably related to transporting students to and from school.

~~(b)~~ The Board shall define[s] the limits of a school district's transportation costs reimbursable by state funds in a manner that encourages safety, economy, and efficiency.

~~[B-](2)~~ Allowable transportation costs are divided into two categories~~[-]~~:

~~(a)~~ A Category costs include ~~[E]~~ expenditures for regular bus routes established by the school district, and approved by the state~~[-are A category costs]~~.

~~(b) B Category costs include other methods of transporting students to and from school [are B category costs].~~

~~(3) [The Board devises a formula to determine the reimbursement rate for A category costs consistent with Section 53A-17a-127(3)]The Superintendent shall develop a formula to allocate A Category costs based on a calculated rate.~~

~~(4) The Superintendent shall approve B [e]Category costs [are approved] on a line-by-line basis [by the USOE] after:~~

~~(a) comparing the costs submitted by a school district with the costs of alternative methods of performing the designated function[{}]; and~~

~~(b) [subject to adjustment per]accounting for legislative appropriation variations.~~

~~(5) The [USOE]Superintendent shall develop a uniform accounting procedure for the financial reporting of transportation costs [The procedure], which shall specify the methods used to calculate allowable transportation costs.~~

~~(6) The [USOE]Superintendent shall [also] develop uniform forms for the administration of the transportation program.~~

~~(7)(a) An LEA shall record [A]all student transportation costs [shall be recorded], including [A]accurate mileage, minute, and trip records [shall be maintained].~~

~~(b) An LEA may maintain [R]records and financial worksheets [shall be maintained] during the fiscal year for audit purposes.~~

R277-600-4. Eligibility.

~~(1) The Superintendent shall only disburse [S]state transportation funds [shall be used only] for transporting eligible students.~~

~~(2) The Superintendent shall determine [F]transportation eligibility for elementary students ([K]k-6) and secondary students (7-12) [is determined] in accordance with the mileage from home, specified in Subsections 53A-17a-127(1) and (2), to the school attended by assignment of the local school board.~~

~~(3) A student whose IEP identifies transportation as a necessary related service is eligible for transportation regardless of distance from the school attended by assignment of the local school board.~~

~~(4) A [S]student[s] who attends school for at least one-half day at a location other than the local school board designated school [are expected to walk]is not eligible for transportation for distances up to [+]one and one[-]half miles.~~

~~(5) A school district that implements double sessions as an alternative to new building construction may transport, one-way to or from school, with Board approval, affected elementary students residing less than one and one-half miles from school, if the local school board determines the transportation would improve safety affected by darkness or other hazardous conditions.~~

~~(6) The distance from home to school is determined as follows: From the center of the public route (road, thoroughfare, walkway, or highway) open to public use, opposite the regular entrance of the one where the pupil is living, over the nearest public route (thoroughfare, road, walkway, or highway) open regularly for use by the public, to the center of the public route (thoroughfare, road, walkway, or highway) open to public use, opposite the nearest public entrance to the school grounds which the student is attending.~~

R277-600-5. Student with Disabilities Transportation.

~~(1)(a) A [S]student[s] with a disability[ies]y [are]shall be transported on regular buses and regular routes whenever possible, unless the IEP team determines otherwise.~~

~~(b) A [S]school district[s] may request approval, prior to providing transportation, for reimbursement for transporting students with disabilities who cannot be safely transported on regular school bus runs.~~

~~(2) A [S]school district[s] may be reimbursed for the costs of transporting or for alternative transportation for students with disabilities whose severity of disability, or combination of disabilities, necessitates special transportation.~~

~~(3) During the regular school year, an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of fifteen days with primarily the same group of students.~~

~~(4) During the [extended school year ([ESY])], an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of ten days with primarily the same group of students.~~

~~(5) ESY services shall meet the standards of Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3) and Board Special Education Rules.~~

~~(6) The Utah Schools for the Deaf and the Blind shall provide [F]transportation [is provided by the Utah Schools for the Deaf and the Blind] for students who are transported to its self-contained classes, unless an exception is approved by the Superintendent. [Exceptions may be approved by the USOE.]~~

R277-600-6. Bus Route Approval.

~~A. Transportation is over routes proposed by local boards and approved by the USOE.]~~

~~(1)(a) A local school board shall propose bus routes subject to approval by the Superintendent.~~

~~(b) A local school board shall provide [F]information requested by the [USOE shall be provided]Superintendent prior to approval of a route.~~

~~(c) During the regular school year, an eligible route from the assigned school site to an alternative program location shall be for a minimum of fifteen days with primarily the same group of students.~~

~~(d) The [USOE]Superintendent [shall]may not approve a route for reimbursement if an equitable student transportation allowance or a subsistence allowance for the necessary transportation is more cost-effective.~~

~~(2) The [USOE]Superintendent may approve exceptions for good cause shown.~~

~~(3) A bus route shall:~~

- ~~(1)a) traverse the most direct public route;~~
- ~~(2)b) be reasonably cost-effective in comparison[related] to other feasible alternatives;~~
- ~~(3)c) provide adequate safety for students;~~
- ~~(4)d) traverse roads that are constructed and maintained in a manner that does not cause property damage; and~~
- ~~(5)e) include an economically appropriate number of students.~~

~~(4)(a) The minimum number of general education students required to establish a bus route is ten[;].~~

~~(b) [†]~~The minimum number of students with disabilities required to establish a bus route is five.

~~(c)~~ A bus route may be established for fewer students upon special permission of the ~~[State]~~ Superintendent.

~~[E-](5)~~ ~~[The]~~A school district shall designate[s] safe areas for bus stops.

~~(1)~~ To promote efficiency, the USOE approved minimum distance between bus stops is 3/10 of a mile. The USOE may make exceptions for shorter distances between bus stops for student safety.

~~(2)~~ Bus routes shall avoid, whenever possible, bus stops on dead-end roads.

~~(3)(a)~~ A [S]student[s] [are]is responsible for the[ir] student's own transportation to bus stops up to one and one-half miles from home.

~~(4)b)~~ A [S]student[s] with a disabilit[ies]y [are]is responsible for the[ir] student's own transportation to bus stops unless the IEP team determines otherwise.

~~[D-](7)(a)~~ A school district shall report ~~[E]changes made[by school districts]~~ in existing routes or the addition of new routes ~~[shall be reported]~~ to the [USOE]Superintendent as they occur.

~~(b)~~ The [USOE]Superintendent shall review and may refuse to fund route changes.

~~[E-](8)~~ The [USOE]Superintendent may reimburse a school district for transporting another district's students across school district boundaries so long as:

~~(1)a)~~ the route promotes efficient transportation for both districts;

~~(2)b)~~ the route serves a group or community of students and families rather than a single student or a single family;

~~(3)c)~~ the local school boards of both participating districts vote in an open meeting that students who reside in one district can be better and more economically served by another district; and

~~(4)d)~~ both districts and the [USOE]Superintendent maintain documentation annually of the boards' votes and the map of the approved route.

~~[F-](9)~~ A [S]school[s] district may transport eligible students home after school activities held at the students' school of regular attendance and within a reasonable time period after the close of the regular school day and receive approved route mileage.

~~[G-](10)(a)~~ The [USOE]Superintendent may approve atypical routes as alternatives to building construction if routes are needed to allow more efficient school district use of school facilities.

~~(b)~~ Building construction alternatives include;

~~(i)~~ elementary double sessions[;];

~~(ii)~~ year-round school[;]; and

~~(iii)~~ attendance across school district boundaries.

~~[H-+](11)(a)~~ A [S]school district[s] may use the State Guarantee Transportation Levy or local transportation funds to transport students across state lines or out-of-state for school sponsored activities or required field trips if:

~~(a)i)~~ the local school board has a policy that includes approval of trips at the appropriate administrative level;

~~(b)ii)~~ the school or school district has considered the purpose of the trip or activity and any competing risk or liability;

~~(e)iii)~~ given the distance, purpose and length of the trip, the school district has determined that the use of a publicly owned school bus is ~~[most-]~~appropriate for the trip or activity; and

~~(f)iv)~~ the local school board has consulted with State Risk Management.

~~(2)b)~~ If school bus routes transport students across Utah state lines or outside of Utah for required to and from routes, routes are reimbursable providing a school district[s] maintains documentation that:

~~(i)~~ the routes are necessary[; or];

~~(ii)~~ the routes are more cost-effective[;]; or

~~(iii)~~ the routes provide greater safety for students than in-state routes.

R277-600-7. Alternative Transportation.

~~(1)~~ The Superintendent shall analyze ~~[B]~~bus routes that involve a large number of deadhead miles ~~[will be analyzed by the USOE for reduction or]~~ to determine if an alternative method of transporting students is more efficient.

~~(2)~~ Approved alternatives include the ~~[following]alternatives described in Subsections (3) through (9)[;].~~

~~[A-](3)(a)~~ The costs incurred in transporting eligible pupils in a school district ~~[multipurpose passenger vehicle (M.P.V.)]MPV~~ are approved costs as long as the costs demonstrate efficiency[;]; or

~~[B+](b)~~ The costs incurred in paying eligible students an allowance in lieu of school district-supplied transportation are approved costs.

~~(4)(a)~~ A student [is]may be reimbursed for the mileage to the bus stop or school, whichever is closer[;] to the student's home.

~~(b)~~ The allowance under this Subsection (4)(a) ~~[shall]may~~ not be less than ~~[the standard mileage rate deduction permitted by the United States Internal Revenue Service for charitable contributions;]~~\$0.35 per mile, nor greater than the reimbursement allowance permitted by the Utah Department of Administrative Services for use of privately owned vehicles set forth in the Utah Travel Regulations.[;]

~~(5)~~ A district shall annually perform a cost-benefit analysis as part of its determination of the LEA specific reimbursement rate and make this analysis available to the public.

~~(2)(a)~~ A district shall make a student mileage allowance ~~[is made]under this Section R277-600-7~~ to only one student per family for each trip that is necessary for all the students within a family to attend school.

~~(b)~~ If siblings are on different school schedules or ride buses that are on significantly different schedules, multiple students within a family may claim and be paid for student mileage allowances[;].

~~(3)Z)~~ ~~[†]~~If a student eligible for reimbursement under this Section R277-600-7 or the student's parent is unable to provide private transportation, with prior~~[-state]~~ approval from the Superintendent, an amount equivalent to the student allowance may be paid to the school district to help pay the costs of school district transportation[;].

~~(4)8)(a)~~ ~~[the]~~A district shall measure and certify a student's mileage~~[shall be measured and certified]~~ in school district records.

~~(b)~~ ~~[The]~~A student's ADA, as entered in school records, is used to determine the student's attendance.

~~[(+)9(a)]~~ The cost incurred in providing a subsistence allowance is an approved cost ~~[-]~~ under the following conditions:

~~(i)~~ ~~[F-]a~~ student lives more than 60 miles (one way) on well-maintained roads from the student's assigned school, a parent may be reimbursed for the student's room and board if the student relocates temporarily to reside in close proximity to the student's assigned school~~[-];~~

~~(ii)~~ ~~[P]~~ payment ~~[shall]may~~ not exceed the Substitute Care Rate for Family Services for the current fiscal year~~[-];~~

~~(iii)~~ ~~[A]~~ adjustments for changes made in the rate during the year ~~[are]shall be~~ included in the allowance~~[-]; and~~

~~(iv)~~ ~~[H]~~ in addition to the reimbursement for room and board, the subsistence allowance may include[s] the costs of up to 18 round trips per year.

~~(2)b(i)~~ A subsistence allowance is not ~~[applicable]available~~ to a parent who maintains a separate home during the school year for the convenience of the family.

~~(ii)~~ A parent's primary residence during the school year is the residence of the child.

~~[D-](10)~~ ~~[Contracting or leasing]A school district may contract or lease with a third party provider for pupil transportation services.~~

~~(11)(a)~~ The cost incurred in engaging in a contract or leasing for transportation is an approved cost at the prorated amount available to school districts.

~~(2)b~~ The Superintendent shall determine ~~[R]reimbursements~~ for school districts using a leasing arrangement ~~[are determined]~~ in accordance with the comparable cost for the school district to operate its own transportation.

~~(3)c~~ Under a contract or lease, ~~[the]a~~ school district's transportation administrator's time ~~[shall]may~~ not exceed one percent of the commercial contract cost.

~~(4)12)~~ If a school district contracts or leases with a third party provider or other LEA for pupil transportation services, it shall maintain and provide to the Superintendent upon request the following items as if it operated its own transportation:

~~(a)~~ ~~[E]eligible student counts[-];~~

~~(b)~~ bus route mileage~~[-];~~

~~(c)~~ bus route minutes~~[-]; and~~

~~(d)~~ service to students with disabilities and bus inventory data ~~[-are required as if the school district operated its own transportation].~~

R277-600-8. Other Reimbursable Expenses.

~~[State transportation funds at the USOE determined prorated amount may reimburse a school district for the following costs:]~~ The Superintendent may reimburse a school district for the following costs with state transportation funds:

~~[A-](1)~~ ~~[S]~~ salaries of clerks, secretaries, trainers, drivers, a supervisor, mechanics, and other personnel necessary to operate the transportation program, subject to the following limitations:

~~(1)a)~~ a full time supervisor may be paid at the same rate as other professional directors in the school district~~[-]; and~~

~~(b)~~ ~~[The]a~~ school district shall ensure that a supervisor's salary ~~[shall be]is~~ commensurate with the number of buses, number of eligible students transported, and total responsibility relative to other school district supervisory functions~~[-];~~

~~(2)~~ ~~[A]~~ a school district may claim a percentage of the school district superintendent's or other supervisor's salary for

reimbursement if the school district's eligibility count is less than 600 and a verifiable record of administrative time spent in the transportation operation is maintained; and

~~(2)3)~~ ~~[F]~~ the wage time for bus drivers may include[s] to and from school time consisting of:

~~(i)~~ ~~[ten]10~~ minute pre-trip inspection~~[-];~~

~~(ii)~~ actual driving time~~[-];~~

~~(iii)~~ ~~[ten]10~~ minute post-trip inspection and bus cleanup~~[-]; and~~

~~(iv)~~ 10 minute bus servicing and fueling;

~~[B-](4)~~ ~~[Only a]a~~ proportionate amount of a superintendent's or supervisor's employee benefits (health, accident, life insurance) ~~[-may be paid from the school district's transportation fund];~~

~~[C-](5)~~ ~~[P]~~ purchased property services;

~~[D-](6)~~ ~~[P]~~ property, comprehensive, and liability insurance;

~~[E-](7)~~ ~~[C]~~ communication expenses and travel for supervisors to workshops or ~~[the] national conventions;~~

~~[F-](8)~~ ~~[S]~~ supplies and materials for vehicles, the school district transportation office and the garage;

~~[G-] Depreciation: The USOE shall provide an annual formula for school bus depreciation;~~

~~[H-](9)~~ ~~[F]~~ training expenses to complete bus driver instruction and certification required by the Board; and

~~[I-](10)~~ ~~[O]~~ other related costs approved by the ~~[USOE]Superintendent~~, which may include additional bus driver training.

R277-600-9. Non-reimbursable Expenses.

~~[A-](1)~~ AFR for all pupil transportation costs ~~[shall]may~~ only include pupil transportation costs and other school district expenditures directly related to pupil transportation.

~~[B-](2)~~ In determining expenditures for eligible to and from school transportation, all related costs shall be reduced on a pro rata basis for the miles not connected with approved costs.

~~[C-](3)~~ Expenses determined by the ~~[USOE]Superintendent~~ as not directly related to transportation of eligible students to and from school ~~[shall]may~~ not be reimbursable~~ed~~.

~~[D-](4)(a)~~ A ~~[E]local school~~ board[s] may determine appropriate non-school uses of school buses.

~~(b)~~ A ~~[E]local school~~ board[s] may lease~~[f]~~ or rent public school buses to:

~~(i)~~ federal, state, county, or municipal entities~~[- and those]~~

~~(ii)~~ entities insured by State Risk Management~~[- or to];~~

~~(iii)~~ non-government entities; or ~~[- to those]~~

~~(iv)~~ entities not insured through State Risk Management.

~~(c)~~ ~~[In making these determinations, local boards] As part of any agreement to allow non-school use of a school bus, a local school board shall:~~

~~(1)i)~~ require full cost reimbursement for any non-public school use including:

~~(a)A)~~ cost per mile;

~~(b)B)~~ cost per minute; and

~~(e)C)~~ bus depreciation~~[-];~~

~~(2)ii)~~ require ~~[documentation from the]a~~ non-school user to provide:

_____ (A) proof of insurance through State Risk Management or private insurance coverage; and

_____ (B) a fully executed agreement for full release of indemnification;

_____ (3)iii) require that any non-school use is revenue neutral; and

_____ (4)iv) consult with State Risk Management to determine adequacy of documentation of insurance and indemnity for any entity requesting use or rental of publicly owned school buses.

_____ (E-)(5) [~~F-a~~]A local school board shall approve[s] the use of school buses by a non-governmental entity or an entity not insured through State Risk Management[~~, that use shall be approved~~] in an open[~~board~~] meeting.

_____ (F-)(6)(a) In the event of an emergency, local, regional, state or federal authorities may request the use of school buses or school bus drivers or both for the period of the emergency.

_____ (b) [~~The~~]A local school board shall grant [~~the~~]a request under Subsection (a) so long as the use can be accommodated consistent with continuing student transportation and student safety requirements.

R277-600-10. Board Local Levy.

_____ (A-)(1) Costs for school district transportation of students which are not reimbursable may be paid for from general school district funds or from the proceeds of the Board Local Levy authorized under Section 53A-17a-164.

_____ (B-)(2) The revenue from the Board Local Levy may be used for transporting students and for [~~the~~]school bus replacement[~~of school buses~~].

_____ (C-)(3)(a) A local school board may approve the transportation of students in areas where walking constitutes a hazardous condition from general local school board funds or from the Board Local Levy.

_____ (F+)b) A local school board shall determine h[~~H~~]azardous walking conditions[~~shall be determined~~] by an analysis[~~by the local board~~] of the following factors:

_____ (a)i) volume, type, and speed of vehicular traffic;

_____ (b)ii) age and condition of students traversing the area;

_____ (e)iii) condition of the roadway, sidewalks and applicable means of access in the area; and

_____ (d)iv) environmental conditions.

_____ (2)c) A local school board may designate hazardous conditions.

_____ (D-)(4) Guarantee Transportation Levy

_____ (F+)a) The Superintendent shall distribute [~~Appropriated~~] funds appropriated under Subsection 53A-17a-127(7)[~~shall be distributed~~] according to each school district's proportional share of its qualifying state contribution.

_____ (2)b) The qualifying state contribution for school districts shall be the difference between 85 percent of the average state cost per qualifying mile multiplied by the number of qualifying miles and the current funds raised per school district by an amount of revenue equal to at least .0002 per dollar of taxable value of the school district's Board Local Levy under Section 53A-17a-164.

R277-600-11. Exceptions.

_____ (A-)(1)(a) When undue hardships and inequities are created through exact application of these standards, a school

district[s] may request an exception to these rules from the[~~State~~] Superintendent [~~on~~]for individual cases.

_____ (b) [~~Such h~~]Hardships or inequities under Subsection (1) (a) may include written evidence demonstrating that no significant increased costs (less than one percent of a school district's transportation budget) is incurred due to a waiver or that students cannot be provided services consistent with the law due to transportation exigencies.

_____ (c) The[~~State~~] Superintendent may consult with the Pupil Transportation Advisory Committee[~~, designated in Section 53A-17a-127(5);~~] in considering the exemption.

_____ (B+)(2) [a]A school district shall not be penalized in the computation of its state allocation for the presence on an approved to and from school route of an ineligible student who does not create an appreciable increase in the cost of the route.[~~;~~]

_____ (2)3) [t]There is an appreciable increase in cost under Subsection (2) if, because of the presence of ineligible students, any of the following occurs:

_____ (a) another route is required;

_____ (b) a larger or additional bus is required;

_____ (c) a route's mileage is increased;

_____ (d) the number of pick-up points below the mileage limits for eligible students exceeds one; and

_____ (e) significant additional time is required to complete a route.

_____ (3)4)(a) An ineligible student[s] may ride a school bus[e] on a space available basis.

_____ (b) An eligible student may not be displaced or required to stand in order to make room for an ineligible student.

R277-600-12. Grants for Unsafe Routes.

_____ (1) The Board shall solicit proposals and award grants for unsafe routes as provided in Section 53A-17a-126.5.

_____ (2) Subject to Board approval, the Pupil Transportation Advisory Committee shall:

_____ (a) develop an application and instructions regarding the process for applying for a grant and make the application available to all school districts in the state; and

_____ (b) develop a scoring rubric to be used in ranking applications received for purposes of funding prioritization and distribute the rubric to all school districts in the state.

_____ (3) The Pupil Transportation Advisory Committee may recommend modifications to the application and rubric developed under Subsection (2) as needed to address evolving risks and appropriations.

_____ (4) The Superintendent shall use the following process to calculate grant awards:

_____ (a)(i) multiply the miles traveled for the unsafe route or sub-route by the allowance per mile;

_____ (ii) multiply the minutes required for the unsafe route or sub-route by the allowance per minute;

_____ (iii) the allowances per mile and minute used shall be the same allowances described in Subsection 53A-17a-127(3) for the respective fiscal year for each district; or

_____ (b) Follow an alternative funding method recommended by the Pupil Transportation Advisory Committee and approved by the Board based on grant applications received from school districts.

(5) A school district may identify an alternative solution that addresses unsafe routes or other health or safety conditions and is more cost-effective than creating a new route or sub-route.

(6) A school district may use grant funds under this Section R277-600-12 to pay the costs of transporting students or for other related expenditures intended to reduce the hazards that exist along the unsafe route, as approved by the Board.

(7) A recipient of grant funds under this Section R277-600-12 shall maintain sufficient records to substantiate expenditure of grant funds and provide documentation to the Board upon request.

KEY: school buses, school transportation

Date of Enactment or Last Substantive Amendment: ~~May 16, 2013~~ **2016**

Notice of Continuation: March 12, 2013

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(d); 53A-17a-126, ~~126.5~~, and 127; ~~53A-1-401~~

Education, Administration

R277-603

Autism Awareness Restricted Account Distribution

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40792

FILED: 09/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-603 is amended to provide technical and conforming changes consistent with the Utah Administrative Rulemaking Act and the Rulewriting Manual for Utah.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-603 provide technical and conforming changes, which includes renumbering.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-304 and Section 53A-1-401

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The amendments provide technical and conforming changes, which likely will not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: The amendments provide technical and conforming changes, which likely will not result in a cost or savings to local government.

◆ SMALL BUSINESSES: The amendments provide technical and conforming changes, which likely will not result in a cost or savings to small businesses.

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

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

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

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

R277. Education, Administration.

R277-603. Autism Awareness Restricted Account Distribution.

R277-603-[2]1. Authority and Purpose.

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

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

~~(b)~~ Section 53A-1-304, which authorizes the Superintendent to distribute autism awareness funds appropriated by the Legislature~~[-]~~; and

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

~~[B-]~~(2) The purpose of this rule is to provide procedures, timelines and accountability for distribution of funds received in the Autism Awareness Restricted Account and subsequently appropriated by the Legislature to eligible organizations.

R277-603-1.2. Definitions.

~~[A-](1) "Autism Awareness Restricted Account" means the account established under Section 53A-1-304[and funded under Section 41-1a-418(1)(c)(xvii)].~~

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

~~C- "Distribute funds," for purposes of this rule, means a process, including timelines and a standard application, to eligible organizations.~~

~~D- "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee;~~

~~E- "USOE" means the Utah State Office of Education.]~~

R277-603-3. Procedures.

~~[A-](1) The Superintendent shall provide an application for an organization[s] that meets the qualifications of Subsection 53A-1-304([4]2), to apply for available Autism Awareness Restricted Account funds to the extent of the legislative appropriation.~~

~~[B-](2) The Superintendent shall[provide for] review[of] applications and select[ion of] qualified recipients.~~

~~[C-](3) An [A]application[s] shall include a budget section, a plan for use of the funds by eligible charitable organizations consistent with Subsection 53A-1-304([5]2)(b), and other information as requested.~~

~~[D-](4) The Superintendent shall[provide for] distribut[ion]e [of] funds to eligible charitable organizations, to the extent of funds appropriated[by the Legislature, beginning, July 1, 2011], annually.~~

R277-603-4. Timelines.

~~[A-](1) The Superintendent shall announce the availability of funds [at least] annually[;] by March 15[of each year].~~

~~[B-](2) Applicants may apply for funds on forms available from the [USOE]Superintendent.~~

~~[C-](3) Applications shall be due June 5 annually.~~

~~[D-](4) Applicants identified for funding shall be notified no later than July 1 annually.~~

~~[E-](5) The [USOE]Superintendent shall distribute funds annually in July.~~

~~[F-] For FY 2012, following the Board's approval of R277-603, applications shall be available, reviewed, and funds distributed as soon as possible.]~~

R277-603-5. Accountability.

~~[A-](1) The Superintendent shall require[~~funded~~] organizations that receive funding to complete a year-end report [explaining]describing and documenting the use of funds consistent with the law and this rule.~~

~~[B-](2) The year-end report may require an independent audit or review of a funded program.~~

KEY: autism awareness, restricted account

Date of Enactment or Last Substantive Amendment:
[November 8, 2011]2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-304; 53A-1-401(3)

Education, Administration
R277-611
Certified Volunteer Instructors and
Material Approval Requirements and
Process for Firearm Safety in the
Public Schools

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40793

FILED: 09/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-611 is amended in response to S.B. 43 from the 2016 General Session, which creates a pilot program to provide instruction to public school students in grades 5 through 12 on firearm safety and violence prevention.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-611 provide procedures for a local school board or charter school governing board that chooses to participate in the Firearm Safety and Violence Prevention Pilot Program, and removes unnecessary language from the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-13-106.5

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments provide procedures that allow for participation in a pilot program, which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The amendments provide procedures that allow for participation in a pilot program, which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The amendments provide procedures that allow for participation in a pilot program, which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments provide procedures that allow for participation in a pilot program, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments provide procedures that allow for participation in a pilot program, which likely will not result in any compliance costs for affected persons.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

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

R277. Education, Administration.
R277-611. Certified Volunteer Instructors and Material Approval Requirements and Process for Firearm Safety in the Public Schools.

- R277-611-1. Authority and Purpose.**
- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; ~~[(b) Subsection 53A-13-106(5), which directs the Board to make rules specific to limited areas of firearm safety instruction in the public schools; and]~~
 - (~~b~~) ~~S[ub]section 53A-1-401[~~(3)~~], which allows the Board to [adopt]make rules [in accordance with its]to execute the Board's duties and responsibilities under the Utah Constitution and state law;[-] and~~
 - (c) Section 53A-13-106.5, which creates a Firearms Safety and Violence Prevention Pilot Program for implementation in the public schools.
 - (2) The purpose of this rule is to:
 - (a) provide a definition of certified volunteer for purposes of providing firearm safety training in a public school;
 - (b) direct LEAs to designate public school areas that may be used for firearm safety training for adults or students or both;
 - ~~[(c) direct a local board to review materials that may be used under the LEA's authority to teach firearm safety;] and~~
 - (~~d~~) ~~c~~ provide for voluntary firearm safety training of public school district employees or school community members or both on public school property at times determined by the local school board or local governing board.

- R277-611-2. Definitions.**
- (1) "Certified volunteer" means an individual who:
 - (a) volunteers to teach an LEA employee or student in a public school about firearm safety; and
 - (b) is certified as required by Section R277-611-3.
 - (2) "Public school classroom or auditorium" means a classroom or auditorium in a public school:
 - (a) identified as available and appropriate; and
 - (b) designated by an LEA, superintendent, or director as available for firearm safety instruction.

R277-611-3. ~~[Certified Volunteers and Proof of Certification of Instructors]~~Firearm Safety and Violence Prevention Pilot Program.

- ~~(1) A local school board or charter school governing board may choose to participate in a pilot program established in accordance with the standards and limitations set forth in Section 53A-13-106.5.~~
- ~~(2) An LEA may designate anyone identified in Subsection 53A-13-106.5(5)(b)(ii) to provide instruction under a pilot program approved in accordance with Subsection (1).~~
- ~~[(1)(a) An LEA may allow]~~(3)(a) A "certified firearms safety instructor" as identified in Subsection 53A-13-106.5(5)(b)(ii) (D) means a volunteer who is certified by the Utah Bureau of Criminal Identification to teach firearm safety on public school property consistent with LEA policy and direction.
 - (b) A list of certified firearms instructors by county is available through the Utah Department of Public Safety.
 - (~~2~~)4 A certified volunteer shall provide documentation of required training to the designated school administrator prior to the advertisement or notice of available training.
 - (~~3~~)5 ~~[An individual who provides or participates in training to a public school age child on public school property]~~In addition to obtaining certification through the Bureau of Criminal Identification, prior to volunteering in the pilot program identified in Section 53A-13-106.5, a certified firearms safety instructor shall:
 - (a) complete a fingerprint background check and submit to ongoing monitoring consistent with the requirements of Title 53A, Chapter 15, Part 15, Background Checks; and
 - (b) have the background check reviewed by an LEA administrator prior to instructing a public school age student.
- ~~[(4) A volunteer is not certified under Subsection 53A-13-106(5)(d) by the LEA until the background check process is completed.]~~

~~[R277-611-4. School District Review of Firearm Safety Materials Used in Public Schools.~~

- ~~(1) A certified volunteer who is approved to provide instruction to a public school age student or a public school employee shall submit material that the certified volunteer proposes to use in the instruction or training for review by the local school board or local governing board prior to the training.~~
- ~~(2) An LEA shall have adequate time to review the submitted material and approve or disapprove the material in a timely manner.~~
- ~~(3) An LEA shall use standards for review of materials that include:~~

- ~~(a) age appropriateness of material for the LEA's audience;~~
~~(b) neither a bias against firearms nor a bias in favor of firearms;~~
~~(c) the selection and approval of material that would not personally enrich or benefit the certified volunteer; and~~
~~(d) other reasonable and objective standards that apply to the review of similar instructional material.]~~

R277-611-[5]4. Voluntary Training of Adults and Public Education Employees on Public School Property.

(1) An LEA may allow a community group to use public school property for voluntary firearm safety training for a public school employee or interested community member under conditions used to approve public school buildings for non-curriculum uses.

(2) An LEA shall give the greatest consideration to availability of space and the safety of school age children and school employees in the approval of a request to use public education property for voluntary firearm safety training and instruction.

~~(3) Live ammunition may not be brought on public school property as a part of firearm safety instruction under this R277-611-4.~~

R277-611-[6]5. Use of Public School Property for Firearm Safety Instruction.

(1) An LEA may designate which classroom or auditorium or other appropriate public school area may be used for firearm safety ~~training or~~ instruction ~~or both~~.

(2) An LEA shall give first priority to curriculum-related groups in allowing firearm safety instruction to be held on public school property.

(3) An LEA shall give the safety of all students and community patrons the greatest consideration in allowing for firearm safety instruction or training on public school property.

(4) If appropriate or necessary, at the LEA's discretion, the LEA may post notice in and around a public school area designated for firearm instruction and training.

~~(5) Live ammunition may not be brought on public school property as a part of firearm safety instruction.]~~

KEY: firearms, instruction

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

Notice of Continuation: October 15, 2015

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-13-106, ~~[(5)]~~; 53A-1-401 ~~[(3)]~~

Education, Administration
R277-708
 Enhancement for At-Risk Students
 Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40794

FILED: 09/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-708 is amended to include strengthened program enforcement and auditing provisions and provide technical and conforming changes consistent with the Utah Administrative Rulemaking Act and the Rulewriting Manual for Utah.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-708 provide strengthened program enforcement and auditing provisions and technical and conforming changes, which includes renumbering.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-17a-166

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments provide strengthened program enforcement and auditing provisions and technical and conforming changes, which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The amendments provide strengthened program enforcement and auditing provisions and technical and conforming changes, which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The amendments provide strengthened program enforcement and auditing provisions and technical and conforming changes, which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments provide strengthened program enforcement and auditing provisions and technical and conforming changes, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments provide strengthened program enforcement and auditing provisions and technical and conforming changes, which likely will not result in any compliance costs for affected persons.

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

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

EDUCATION
 ADMINISTRATION

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

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

R277. Education, Administration.

R277-708. Enhancement for At-Risk Students[Program].

R277-708-[2]1. Authority and Purpose.

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

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

(b) Section 53A-17a-166, which directs the Board to manage the Enhancement for At-Risk Students interventions by:

- (i) developing a funding formula[;];
- (ii) developing performance criteria[;];
- (iii) administering the [program,]intervention;
- (iv) distribut[e]ing the appropriation[;]; and
- (v) monitor[;]ing and reporting the effectiveness of the [Enhancement for At-Risk Students program,]; and

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

[B-](2)(a) The purpose of this rule is to establish criteria and procedures for distributing Enhancement for [a]At-[F]Risk [s]Students [program-]funds to LEAs.

(b) The intent of the rule and the legislative appropriation is to improve academic achievement of students who are at risk of academic failure.

R277-708-[4]2. Definitions.

[A-](1) "At-risk of academic failure" [for purposes of this rule,]means a k-12 public school student[s in public schools grades K-12] who [have one or more]meets any of the following risk factors[- as defined under R277-708-1]:

- (1)a) [E-]low performance on [U-PASS tests]a Board approved assessment;
- (2)b) [P]poverty;
- (3)c) Limited English Proficiency; [and]or
- (4)d) [M]mobility.

[B-](2) "Available funds" [for purposes of this rule-] means the total funds appropriated for the Enhancement for At[-]Risk Students [Program]interventions, less funding designated for [G]gang [P]prevention under Subsection 53A-17a-166(1)(b)(i).

[-----C. "Board" means the Utah State Board of Education.]

[D-](3) "Data Clearinghouse" means the electronic data collection system used by the [USOE]Superintendent to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

[E-](4) "LEA share" [for purposes of determining funding under this rule,]means the percentage of k-12 students from an LEA who [qualify under the classifications of: low performing on U-PASS, poverty, mobility, and Limited English Proficiency]are at risk of academic failure compared to the total count for the state of Utah from the previous school year.

[F-](5) "Limited English Proficiency" or ([L]EP[})" means the total number of English [language -(]learner or "EL[})" students in an LEA from the October 1 count from the previous school year.[- This count] includ[es]ing:

- (1)a) the number of EL students receiving a score of 1-3]4 on the English language proficiency assessment; and
- (2)b) the number of students previously classified as[- previously EL who are monitored for two years once classified as English Proficient] based on a score of [4 or-]5 or 6 on the English language proficiency assessment.

[-----G. "Local Education Agency (LEA)" means a public school district or charter school primarily intended to serve students grades K through 12.]

[H-](6) "Low performance on [U-PASS tests]a Board approved assessment" means the unduplicated count of k-12 students from an LEA scoring below proficient in Reading/Language, Math, and Science on one of the following exams from the previous school year:

- (a) the Student Assessment of Growth and Excellence (SAGE)[-or];
- (b) the Special Education adaptive testing [for Reading/Language Arts from the previous school year.]Dynamic Learning Maps or "DLM"; or
- (c) other Board approved assessment.

[I-](7) "Mobility" means the number of k-12 students enrolled less than 160 days or its equivalent in one school within [one]a school year, as determined by the prior year's year-end average daily membership submission.

[J-](8) "Poverty" means the total number of k-12 students in an LEA reported as economically disadvantaged using federal child nutrition income eligibility guidelines for free or reduced-priced under the federal school lunch program from the official October 1 enrollment count from the previous school year.

[-----K. "Utah Consolidated Application (UCA)" means the web-based grants management tool employed by the Utah State Office of Education by which local education agencies submit plans and budgets for approval of the Utah State Office of Education.

[-----L. "USOE" means the Utah State Office of Education.]

R277-708-3. Applications and Distribution of Funds.

[-----A. Awards shall be made to local education agencies.]

[B-](1) An LEA[s] shall submit its application[s] to the Superintendent annually by November 1 [to the USOE-]through the [UCA]Board's grant management system.

(2) The Superintendent shall distribute available funds to LEAs with an approved application monthly based on a one-twelfth distribution beginning on July 1.

~~(3) An LEA shall spend all allocated funds annually by June 30.~~

~~(4) An LEA that accepts funds for Enhancement for At-Risk Students intervention services shall be subject to Board accounting, auditing, and budgeting rules and policies.~~

~~(5)(a) With written approval from the Superintendent, an LEA may carry over and spend ten percent or \$50,000, whichever is less, of state Enhancement for At-Risk Student funds in the next fiscal year.~~

~~(b) An LEA shall submit a request to carry over funds under Subsection (5)(a) by August 1 annually.~~

~~(c) An LEA shall detail approved carry over amounts in a revised budget submitted through the Board's grant management system.~~

~~(d) The Superintendent shall review and approve a revised budget submitted under Subsection (5)(c) no later than October 1 in the year submitted.~~

R277-708-4. Allocation of Enhancement for At-Risk Student Funds.

~~[C-](1) The Superintendent shall award available funds to an LEA[s shall receive funding] based on an equal weighting of:~~

~~(1)a] low performance on [U-PASS tests]a Board approved assessment;~~

~~(2)b] poverty;~~

~~(3)c] mobility; and~~

~~(4)d] limited English proficiency[as outlined in 53A-17a-166].~~

~~[D-](2) The Superintendent shall base an LEA's allocation[s shall be based] on the certified data from the Data Clearinghouse [from]using the most recent school year for which data is complete and available.~~

~~[E-](3) The Superintendent shall use the following [F]funding formula to determine an[~~

~~(1) LEA base to distribute to LEAs:~~

~~(a) the [USOE]Superintendent shall annually calculate [four percent]4% of the state appropriation of the Enhancement for At-Risk Students funding available for LEA grants to provide a base amount to LEAs.~~

~~(b) [This]The Superintendent shall divide the base amount [shall be]described in Subsection (3)(a) equally[divided] among all eligible LEAs.~~

~~(2)4] [LEAs with high poverty schools: t]The [USOE]Superintendent shall annually calculate [twenty percent]20% of the state appropriation of the Enhancement for At-Risk Students [funding for LEA grants]on a per school basis to provide a targeted amount to LEAs with traditional elementary [and]schools, secondary schools, and alternative high schools with at least [75 percent]75% poverty.[This targeted amount shall be divided among eligible LEAs based on the number of traditional schools with at least 75 percent poverty within the LEA.]~~

~~(3)5] Of the funds remaining after the distributions described in Subsections (3) and (4), the [USOE]Superintendent shall determine [the]an LEA's share based on the LEA's percentage of students with at-risk factors for the state.~~

~~(4)6] [For each LEA, the USOE]The Superintendent shall use data from the [USOE]Board's Data Warehouse for each LEA from the previous school year to determine the students who qualify under the following definitions:~~

~~(a) [L]low performance on [U-PASS tests]a Board approved assessment;~~

~~(b) [P]poverty;~~

~~(c) [M]mobility; and~~

~~(d) Limited English Proficiency.~~

~~[(5) The LEA share shall equal the LEA's statewide proportionate share of qualifying students with at-risk factors times the amount of funds available for distribution.~~

~~(6) 2011-2012 funding transition: for the 2011-2012 school year, the USOE shall implement formula adjustments to ensure that no LEA receives less than 65 percent of the funds under the Enhancement for At-Risk Students Program than the LEA received during the 2010-2011 school year under the funds available from the state program that were repealed as part of the enactment of the new Enhancement for At-Risk Students Program.]~~

~~(7) The Superintendent shall allocate funds appropriated for at-risk factors to each LEA based on the LEA's proportion of at-risk factors in comparison to the statewide total.~~

~~[F-](8) The Superintendent shall notify an LEA[s] that qualify[ies] for funding[and the level] of the LEA's level of funding[shall be notified] annually by [June 30]May 1.~~

~~[G-](9) An LEA[s] may use funds for activities that support academic achievement of students who are at risk of academic failure[; the LEA shall provide:].~~

~~(10) An LEA shall provide the following information as part of the [UCA]application process:~~

~~(a) specific goals related to increased academic achievement of students at-risk of academic failure;[and]~~

~~(b) proposed activities that are directly tied to the LEA's plan to increase student achievement;~~

~~(2)c] an annual report of the use of funds through the annual financial reporting process; and~~

~~(3)d] an annual report of [program]intervention effectiveness based on [USOE defined]performance criteria defined by the Superintendent.~~

R277-708-4. Oversight: Monitoring, Evaluation and Reports.

~~[A-](1) The [Board]Superintendent may recommend that the Board designate no more than one percent of the total appropriation from the Enhancement for At-Risk Students[program] to be used specifically by the [USOE]Superintendent for oversight, monitoring and evaluation of:~~

~~(a) LEA[s'] implementation of the [program]intervention; and~~

~~(b) [their]compliance with [the]state law and this rule.~~

~~[B-](2)(a) [Performance Criteria: Each]An LEA that receives funding shall submit an annual evaluation report to the [USOE]Superintendent consistent with Section 53A-17a-166.~~

~~(b) The report shall include the following performance criteria for students at-risk of academic failure:~~

~~(1)i] student attendance information, as defined by the [USOE]Superintendent;~~

~~(2)ii] graduation rates;~~

~~(3)iii] gains in language proficiency as measured by the English language proficiency assessment;~~

~~(4)iv] gains in reading/language [A]arts proficiency as measured by [SAGE]a Board approved assessment; and~~

~~(5)v] gains in mathematics and science proficiency as measured by [SAGE]a Board approved assessment.~~

~~C. The Utah State Office of Education shall submit an annual report on program effectiveness to the Public Education Appropriations Subcommittee of the Utah State Legislature.~~

(3)(a) The Superintendent shall conduct tri-annual intervention reviews of each LEA receiving Enhancement for At-Risk Students funding to ensure intervention compliance.

(b) In the Superintendent's discretion or for good cause, the Superintendent may conduct additional formal or informal:

- (i) monitoring;
- (ii) reviews; or
- (iii) site visits.

(4) If the Superintendent identifies violations as a result of a review described in Subsection (4), an LEA shall prepare and submit to the Superintendent a written corrective action plan for each finding made by the Superintendent.

(5) If an LEA fails to resolve findings identified by the Superintendent under Subsection (5), the Superintendent may withhold funds as provided in R277-114.

R277-708-5. Gang Prevention and Intervention Funds.

~~A.](1) Consistent with Subsection 53A-17a-166(1)(b), the [Board]Superintendent shall distribute funding to LEAs for gang prevention and intervention.~~

~~B.](2) An LEA[s] desiring to receive gang prevention and intervention funds shall submit a proposal[s] consistent with Rule R277-436.~~

KEY: students at risk

Date of Enactment or Last Substantive Amendment: [~~October 11, 2014~~]2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-17a-166; 53A-1-401[(3)]

Education, Administration

R277-715

Out-of-School Time Program Standards

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40795

FILED: 09/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-715 is established in response to S.B. 125 from the 2016 General Session, which requires the Board to make rules that describe the standards for high quality programs operating outside of the regular school day.

SUMMARY OF THE RULE OR CHANGE: This new Rule R277-715 provides terms, standards, procedures, and requirements for high-quality out-of-school time programs offered by a school district, charter school, private provider (including a non-profit provider), or municipality.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-15-107

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This new Rule R277-715 provides standards and procedures for high-quality out-of-school time programs, which likely will not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: This new Rule R277-715 provides standards and procedures for high-quality out-of-school time programs, which likely will not result in a cost or savings to local government.

◆ SMALL BUSINESSES: This new Rule R277-715 provides standards and procedures for high-quality out-of-school time programs, which likely will not result in a cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This new Rule R277-715 provides standards and procedures for high-quality out-of-school time programs, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This new Rule R277-715 provides standards and procedures for high-quality out-of-school time programs, which likely will not result in any compliance costs for affected persons.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

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

R277. Education, Administration.**R277-715. Out-of-School Time Program Standards.****R277-715-1. Authority and Purpose.**

(1) This rule is authorized by:

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

(b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53A-15-107, which requires the Board to adopt rules to set standards for high quality out-of-school time programs.

(2) The purpose of this rule is to set standards for high quality out-of-school time programs, and establish the programs required to adopt those standards.

R277-715-2. Definitions.

(1) "Assessment tool" means the Utah After-school Program Quality Assessment and Improvement Tool developed by a statewide multi-agency stakeholder group, and administered by the Utah After-school Network.

(2) "Out-of-school time" means time that a student at a participating program is engaged in a learning environment that is not during regular school hours, including before school, after school, and during the summer.

(3) "Participating program" means a program that receives funds from the Board or from the Department of Workforce Services to support the program's out-of-school time programming.

R277-715-3. Requirements and Standards for High Quality Out-of-School Time Programs.

(1) A participating program shall:

(a) use the assessment tool to determine the extent to which the program is meeting the standards described in this Section;

(b) ensure that it is working toward achieving the standards described in this Section; and

(c) collect and submit student attendance data to the Superintendent in a format prescribed by the Superintendent.

(2) The Superintendent shall provide for a flag in a student's data file to indicate the student's attendance in a participating program.

(3) The safety standard includes the following components in order to provide a safe, healthy, and nurturing environment for all participants, including that:

(a) staff are professionally qualified to work with program participants;

(b) policies and procedures are established and implemented to ensure the health and safety of all program participants;

(c) program participants are carefully supervised to maintain safety;

(d) a transportation policy is established and communicated to staff and families of participants; and

(e) a consistent and responsive behavior management plan is established and implemented.

(4) The relationships standard includes the following components in order to develop and maintain positive relationships

among staff, participants, families, schools, and communities, including that:

(a) staff and participants know, respect, and support each other;

(b) the program communicates and collaborates with the school and the community; and

(c) the program fosters family involvement to support program goals.

(5) The skills standard includes the following components in order to encourage participants to learn new skills, including that:

(a) participants are actively engaged in learning activities that promote critical thinking, creative thinking, and that build on the individual's interests and strengths;

(b) the program aligns academic support and interventions to the school-day curricula to address student learning needs; and

(c) the program offers a variety of life skill activities and needs-based support to promote leadership skills, personal growth, and responsible behaviors toward self and others.

(6) The administration standard includes the following components in order to ensure that the program is effectively administered, including that the program:

(a) has established a plan for increasing capacity, ensuring program quality, and promoting sustainability, including sound fiscal management;

(b) establishes and consistently implements clearly-defined policies and procedures;

(c) recruits, hires, and trains diverse and qualified staff members who value and nurture all participants; and

(d) provides professional development and training opportunities to enhance staff job performance.

KEY: out-of-school time, programs, standards, students

Date of Enactment of Last Substantive Amendment: 2016

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53A-15-107

Education, Administration
R277-914
Career and Technical Student
Organizations

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40796

FILED: 09/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-914 is amended to provide technical and conforming changes consistent with the Utah Administrative Rulemaking Act and the Rulewriting Manual for Utah.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-914 provide technical and conforming changes, which includes renumbering.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Subsection 53A-15-202(1) and Subsection 53A-15-202(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The amendments provide technical and conforming changes, which likely will not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** The amendments provide technical and conforming changes, which likely will not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** The amendments provide technical and conforming changes, which likely will not result in a cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments provide technical and conforming changes, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

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

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

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

R277. Education, Administration.

R277-914. Career and Technical Student Organizations.

R277-914-[2]1. Authority and Purpose.

- ~~[A-]~~(1) This rule is authorized by:
 - ~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;~~
 - ~~(b) Subsection 53A-15-202(1), which directs the Board to establish minimum standards for career and technical programs in the public education system;~~
 - ~~(c) Subsection 53A-15-202(3), which directs the Board to cooperate with federal and state governments to administer programs which promote and maintain career and technical education[-]; and~~
 - ~~(d) Section 53A-1-401[~~(3)~~], which allows the Board to [adopt]make rules [in accordance with its responsibilities]to execute the Board's duties and responsibilities under the Utah Constitution and state law.~~

~~[B-]~~(2) The purpose of this rule is to:

- ~~(a) make [CTSOs]Career and technical student organizations fiscally accountable to the Board; and~~
- ~~(b) [to-]provide procedures and supervision toward that end.~~

R277-914-[1]2. Definitions.

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

~~[B-]~~(1) "Career and technical education" or [{"CTE"}]" means organized educational programs [which prepare individuals for college and careers in occupations where entry requirements generally do not require an advanced degree. These programs provide all students access to high school college and career Pathways, driven by a student education occupation plan (SEOP), through rigorous technical, academic, and employability instruction, culminating in essential life skills, certified occupational skills, employment and continued post-secondary education.]that:

- ~~(a) prepare individuals for a wide range of high-skill, high-demand careers;~~
 - ~~(b) provide students with a seamless education system from public education to post-secondary education, driven by a Plan for College and Career Readiness; and~~
 - ~~(c) provide students competency-based instruction, hands-on experiences, or certified occupational skills, culminating in further education and meaningful employment.~~
- ~~(2) [A-]"CTE areas of study" include:~~
- ~~(a) agriculture;~~
 - ~~(b) business;~~
 - ~~(c) family and consumer sciences;~~
 - ~~(d) health science;~~
 - ~~(e) information technology;~~
 - ~~(f) marketing;~~
 - ~~(g) skilled and technical sciences; and~~
 - ~~(h) technology and engineering education.~~

~~[C-]~~(3) "Career and technical student organization" or [{"CTSO"}]" means a designated student organization that:

- ~~(a) plac[ing]es emphasis on leadership and skill development;~~
- ~~(b) [these organizations are]is integral to the career and technical programs at the secondary[~~/~~] and postsecondary levels of instruction[-]; and~~

~~_____ (c) [Organizations have]has~~ local, state and national affiliation.

~~[D-](4)(a)~~ "CTSO advisor[s]" means a professional[s] in identified program areas designated by ~~[USOE CTE staff]the Superintendent~~ to direct a career and technical student leadership organization[s] statewide.

~~_____ (b) [The]A~~ CTSO advisor is most commonly a teacher in the program area and is paid a stipend by the ~~[USOE]Superintendent~~ to administer and advise in a specific program area.

~~_____ E. "One percent (1%) fiscal accounts" means one percent (1%) of the CTE add-on fund designated to be used for the management and operation of CTSOs at the state and local level. The funds designated for management of student organizations at the state level are dispersed by the designated state fiscal agent for CTSOs through separate accounts for salaries, operating expenses and national conference travel.]~~

~~_____ (5) "Funds designated for management of student organizations at the state level" means up to one percent (1%) of the CTE add-on fund allowed to be used for the management and operation of CTSOs at the state and local level as described in Subsection 53A-17a-113(2)(d).~~

~~_____ F. "Program specialist" means a CTE specialist, typically a licensed educator, who has been assigned to work with a particular curriculum area. Examples are agriculture, business education, and health science.]~~

~~_____ G. "USOE" means the Utah State Office of Education.]~~

R277-914-3. Student Organization Advisory Boards.

~~[A-](1)~~ Each student organization designated by the ~~[USOE State Director for CTE]Superintendent~~ shall establish a statewide advisory board of not less than three members, one of which must be the ~~[USOE program specialist]Superintendent~~.

~~[B-](2)~~ Each program area CTSO shall develop and follow organization by-laws.

~~[C-](3)~~ Each CTSO advisory board shall have advisory fiscal oversight for the organization.

~~[D-](4)~~ Each CTSO advisory board shall conduct an annual performance evaluation of the work performed by the respective CTSO advisor.

R277-914-4. Fiscal Oversight of Student Organizations.

~~[A-](1)~~ ~~[The]A~~ CTSO advisory board[s] shall act consistent with fiscal procedures provided by the ~~[USOE State Director for CTE or the State Director's designee]Superintendent~~.

~~[B-](2)~~ ~~[Each]A~~ CTSO advisory board shall submit all required financial records for auditing on a schedule established by the ~~[State Director for CTE]Superintendent~~.

~~[C-](3)~~ ~~If requested by the Superintendent or the Board,~~ ~~[Individual]a~~ CTSO's financial records shall be submitted for auditing whenever there is a change in the CTSO advisor~~[- if requested by the State Director for CTE].~~

~~[D-](4)(a)~~ The ~~[State Director for CTE]Superintendent~~ shall designate a school district or institution to act as the fiscal agent for ~~[the]a~~ CTSO's fiscal account[s].

~~[E-](b)~~ The ~~[State Director for CTE or designee]Superintendent~~ shall work with the designated fiscal agent to provide oversight and accounting procedures for the CTSO fiscal account[s].

~~_____ (5) The funds designated for management of student organizations at the state level shall be dispersed by the designated state fiscal agent for CTSOs through separate accounts for salaries, operating expenses and national conference travel.~~

**KEY: secondary education, career and technical education[*]
Date of Enactment or Last Substantive Amendment:
[December 8, 2011]2016
Notice of Continuation: October 27, 2011
Authorizing, and Implemented or Interpreted Law: 53A-15-202(1); 53A-15-202 (3); 53A-1-401[(3)]**

Education, Rehabilitation **R280-150** Adjudicative Proceedings Under the Vocational Rehabilitation Act

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40797

FILED: 09/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Repealing Rule R280-150 is in response to H.B. 325, Office of Rehabilitation Services Amendments, from the 2016 General Session. Effective 10/01/2016, state law provides for the Utah State Office of Rehabilitation (USOR) to move from under the direction of the Utah State Board of Education (Board) and Superintendent to under the direction of the Department of Workforce Services and its executive director, at which time the Board will no longer have statutory and rulemaking authority over the USOR.

SUMMARY OF THE RULE OR CHANGE: Rule R280-150 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-1-401 and Section 53A-24-103

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Rule R280-150 is repealed in its entirety, which likely will not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** Rule R280-150 is repealed in its entirety, which likely will not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** Rule R280-150 is repealed in its entirety, which likely will not result in a cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Rule R280-150 is repealed in its entirety, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Rule R280-150 is repealed in its entirety, which likely will not result in any compliance costs for affected persons.

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

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

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

R280. Education, Rehabilitation.

~~[R280-150. Adjudicative Proceedings Under the Vocational Rehabilitation Act.~~

R280-150-1. Definitions.

~~"Board" means the Utah State Board of Education.~~

R280-150-2. Authority and Purpose.

~~A. This rule is authorized by 53A-24-103 which places the Utah State Office of Rehabilitation under the policy direction of the Board and under the direction and general supervision of the Superintendent of Public Instruction, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.~~

~~B. The purpose of this rule is to specify standards and procedures for adjudication of disputes under the Vocational Rehabilitation Act.~~

R280-150-3. Standards and Procedures.

~~A. As its rules for adjudicative proceedings under the Vocational Rehabilitation Act, the Board adopts and hereby incorporates by reference: 34 C.F.R. 361.57, 2001 edition, which adopts, defines, and publishes procedures for review of state rehabilitation service decisions, including alternative dispute resolution through mediation; and~~

~~B. The Board shall act in accordance with:~~

~~(1) Subsection V of the Rehabilitation Act of 1973, 29 U.S.C.A. 794; and~~

~~(2) The Utah State Office of Rehabilitation Case Service Manual, Chapter 21, approved on May 1, 2012.~~

~~KEY: administrative procedures, rules and procedures
Date of Enactment or Last Substantive Amendment: July 8, 2014~~

~~Notice of Continuation: May 15, 2014~~

~~Authorizing, and Implemented or Interpreted Law: 53A-24-103; 53A-1-401(3)]~~

Education, Rehabilitation
R280-200
Rehabilitation

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40798

FILED: 09/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Repealing Rule R280-200 is in response to H.B. 325, Office of Rehabilitation Services Amendments, from the 2016 General Session. Effective 10/01/2016, state law provides for the Utah State Office of Rehabilitation (USOR) to move from under the direction of the Utah State Board of Education (Board) and Superintendent to under the direction of the Department of Workforce Services and its executive director, at which time the Board will no longer have statutory and rulemaking authority over the USOR.

SUMMARY OF THE RULE OR CHANGE: Rule R280-200 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-1-401 and Section 53A-24-105

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: Rule R280-200 is repealed in its entirety, which likely will not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: Rule R280-200 is repealed in its entirety, which likely will not result in a cost or savings to local government.

♦ SMALL BUSINESSES: Rule R280-200 is repealed in its entirety, which likely will not result in a cost or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Rule R280-200 is repealed in its entirety, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Rule R280-200 is repealed in its entirety, which likely will not result in any compliance costs for affected persons.

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

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

EDUCATION
REHABILITATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
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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 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

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

R280. Education, Rehabilitation.

[R280-200. Rehabilitation:

R280-200-1. Authority and Purpose.

~~_____ A. This rule is authorized by Section 53A-24-105 which permits the Utah State Board of Education to administer funds made available for vocational rehabilitation and independent living.~~

~~_____ B. The purpose of this rule is to establish the standards and procedures for the Utah State Office of Rehabilitation.~~

R280-200-2. Standards and Procedures for Vocational Rehabilitation.

~~_____ A. The Utah State Office of Rehabilitation shall adopt and incorporate by reference within this rule the standards and procedures of: the Rehabilitation Act of 1973, P.L. 102-569 (amended in 1998).~~

~~_____ B. In addition, the Utah State Office of Rehabilitation shall conduct the Rehabilitation Program consistent with:~~

~~_____ (1) All state plans which are required and submitted under P.L. 102-569, including those for Vocational Rehabilitation, Title VI-C, and Independent Living Rehabilitation Services and~~

~~_____ (2) The Case Service Manual for the Vocational Rehabilitation Program, developed by the Utah State Office of Rehabilitation, 2012, available from the Utah State Office of Rehabilitation and from vocational rehabilitation counselors employed by the Utah State Office of Rehabilitation.~~

R280-200-3. Board Approval for Federal Funding Requests.

~~_____ A. The Utah State Office of Rehabilitation shall not make application for new federal grants or reallocation funding without prior approval of the Utah State Board of Education. As part of the approval process, the Utah State Office of Rehabilitation shall~~

~~sufficiently inform the Utah State Board of Education about the implications of all match and maintenance of effort (MOE) requirements:~~

~~_____ B. The Utah State Office of Rehabilitation may not borrow ahead from future federal or state years without approval from the Utah State Board of Education.~~

KEY: vocational education, rehabilitation

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

Notice of Continuation: April 8, 2013

Authorizing, and Implemented or Interpreted Law: 53A-24-105]

Education, Rehabilitation **R280-202** USOR Procedure for Individuals with the Most Significant Disabilities

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40799

FILED: 09/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Repealing Rule R280-202 is in response to H.B. 325, Office of Rehabilitation Services Amendments, from the 2016 General Session. Effective 10/01/2016, state law provides for the Utah State Office of Rehabilitation (USOR) to move from under the direction of the Utah State Board of Education (Board) and Superintendent to under the direction of the Department of Workforce Services and its executive director, at which time the Board will no longer have statutory and rulemaking authority over the USOR.

SUMMARY OF THE RULE OR CHANGE: Rule R280-202 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-1-401 and Section 53A-24-103

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: Rule R280-202 is repealed in its entirety, which likely will not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: Rule R280-202 is repealed in its entirety, which likely will not result in a cost or savings to local government.

♦ SMALL BUSINESSES: Rule R280-202 is repealed in its entirety, which likely will not result in a cost or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Rule R280-202 is repealed in its entirety, which likely will not

result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Rule R280-202 is repealed in its entirety, which likely will not result in any compliance costs for affected persons.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

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

R280. Education, Rehabilitation.

[R280-202. USOR Procedures for Individuals with the Most Significant Disabilities.

R280-202-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Executive Director" means the Executive Director of the Utah State Office of Rehabilitation.
- C. "Individual with a disability" (hereinafter individual) means a person who has a disability which limits one or more of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the USOR or the State Board of Education.
- D. "Major life activities" means functions such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.
- E. "Social Security Disability Insurance (SSDI)" means payments to disabled workers under 65 and their families, or people who become disabled before age 22, or disabled widows or widowers 50 or over who are found to be eligible under Social Security Administration criteria.
- F. "Supplemental Security Income (SSI)" means payments to adults and children who are determined to be severely

~~disabled or blind and whose assets and income are below the limits set by the Social Security Administration.~~

~~G. "USOR" means the Utah State Office of Rehabilitation.~~

R280-202-2. Authority and Purpose.

~~A. This rule is authorized pursuant to PL 102-569, Title VI-C, October, 1992, which directs state agencies to define for themselves individuals with the most significant disabilities and Section 53A-24-103 which directs that the USOR shall be under the policy direction of the Board.~~

~~B. The purpose of this rule is to define "persons with the most significant disabilities" for purposes of providing services and determining order of selection for services according to federal and state law.~~

R280-202-3. Eligibility Criteria.

~~In order to be classified as an individual with the most significant disabilities an individual shall meet one of the criteria under Subsection A below or the criteria under Subsection B below:~~

~~A. A state licensed USOR Vocational Rehabilitation Counselor (LVRC) shall make the determination based on medical, psychological, and other diagnostic documentation and a clinical assessment by the LVRC or may make the determination using the following documentation:~~

- ~~(1) individual is eligible for services from Division of Services for People with Disabilities, (DSPD); or~~
- ~~(2) individual is determined severely and persistently mentally ill (SPMI) by the State Division of Mental Health or any one of the private, non-profit mental health programs certified by the State Division of Mental Health; or~~
- ~~(3) individual is found to be permanently and totally disabled by the State Labor Commission;~~

~~B. Individuals who are allowed SSI/SSDI blind or disabled benefits may or may not be considered most significant under R280-202-3.~~

- ~~(1) To be considered most significant there shall be two or more functional limitations; and~~
- ~~(2) The individual will require multiple vocational rehabilitation services over an extended period of time.~~
- ~~C. If an appropriate determination has not been made by an LVRC, the individual shall exhibit functional deficits in two or more of the following areas as determined by the USOR to be considered an individual with the most significant disabilities. The seven categories:~~

- ~~(1) Mobility:~~
 - ~~(a) Requires assistive device(s) (cane, crutches, prosthesis, walker, wheelchair) to be mobile;~~
 - ~~(b) Is unable to climb one flight of stairs without pause;~~
 - ~~(c) Is unable to walk 100 meters without pause;~~
 - ~~(d) Cannot leave a building independently in less than three minutes; or~~
 - ~~(e) Other mobility deficits as defined or approved by the USOR.~~

~~(2) Communication:~~

- ~~(a) Expressive and receptive primary mode of communication is unintelligible to non-family members;~~
- ~~(b) Does not demonstrate understanding of simple requests or is unable to understand one or two step instructions; or~~

~~_____ (c) Other communication deficits as defined or approved by the USOR.~~

~~_____ (3) Self-care: Is unable to perform normal activities of daily living without assistance.~~

~~_____ (4) Self direction: Is unable to provide informed consent for life issues without the assistance of a court-appointed legal representative or guardian, or has been declared legally incompetent.~~

~~_____ (5) Learning ability and inter-personal deficits:~~

~~_____ (a) Valid psychological assessment of conceptual intelligence reflects performance approximately two standard deviations or more below the mean observed in a population of persons of a comparable background; commonly defined as an IQ of 70 or below on a standardized measure of intelligence;~~

~~_____ (b) Disfigurement or deformity so pronounced as to cause social rejection;~~

~~_____ (c) Demonstrated behavior such that the individual is a danger to self and others without supervision; or~~

~~_____ (d) Other learning or interpersonal deficits as defined or approved by the USOR.~~

~~_____ (6) Capacity for Independence:~~

~~_____ (a) Unable to perform tasks such as locate and use telephone;~~

~~_____ (b) Unable to access public transportation without assistance;~~

~~_____ (c) Unable to understand money or change making;~~

~~_____ (d) Unable to tell time; or~~

~~_____ (e) Other deficits in independence as defined or approved by the USOR.~~

~~_____ (7) Work skills and work tolerance:~~

~~_____ (a) Unable to perform sustained work for more than four hours per day;~~

~~_____ (b) Unable to perform work outside sheltered environment;~~

~~_____ (c) Unable to perform work in an integrated setting without support;~~

~~_____ (d) Other work-related deficits as defined or approved by the USOR; or~~

~~_____ (e) The individual will require multiple vocational rehabilitation services over an extended period of time.~~

~~_____ D. When the determination of individuals with the most significant disabilities is made under Subsection B above, the counselor shall document the functional deficits.~~

~~**KEY: disabled persons, rehabilitation**~~

~~**Date of Enactment or Last Substantive Amendment: May 8, 2014**~~

~~**Notice of Continuation: March 14, 2014**~~

~~**Authorizing, and Implemented or Interpreted Law: Pub. L. 102-569; 53A-24-103]**~~

Education, Rehabilitation **R280-203** Certification Requirements for Interpreters and Transliterators for the Hearing Impaired

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40800

FILED: 09/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Repealing Rule R280-203 is in response to H.B. 325, Office of Rehabilitation Services Amendments, from the 2016 General Session. Effective 10/01/2016, state law provides for the Utah State Office of Rehabilitation (USOR) to move from under the direction of the Utah State Board of Education (Board) and Superintendent to under the direction of the Department of Workforce Services and its executive director, at which time the Board will no longer have statutory and rulemaking authority over the USOR.

SUMMARY OF THE RULE OR CHANGE: Rule R280-203 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-1-401 and Section 53A-24-103 and Section 53A-26a-202 and Sections 53A-26a-303 through 53A-26a-305

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Rule R280-203 is repealed in its entirety, which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Rule R280-203 is repealed in its entirety, which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** Rule R280-203 is repealed in its entirety, which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Rule R280-203 is repealed in its entirety, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Rule R280-203 is repealed in its entirety, which likely will not result in any compliance costs for affected persons.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

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

R280. Education, Rehabilitation.

~~**[R280-203. Certification Requirements for Interpreters and Transliterators for the Hearing Impaired.**~~

~~**R280-203-1. Authority and Purpose.**~~

- ~~(1) This rule is authorized by:~~
 - ~~(a) Section 53A-24-103, which places the USOR under the policy direction of the Board;~~
 - ~~(b) Sections 53A-26a-202 and 53A-26a-303 through 305, which authorize the Board to make rules to implement the Interpreter Services for the Hearing Impaired Act; and~~
 - ~~(c) Subsection 53A-1-401(3), which authorizes the Board to adopt rules in accordance with its responsibilities.~~
- ~~(2) The purpose of this rule is to satisfy the directives of Subsection 53A-26a-202(2), including:~~
 - ~~(a) certification qualifications provided in the manual;~~
 - ~~(b) procedures governing an application for certification;~~
 - ~~(c) provisions for a fair and impartial method of examination of applicants;~~
 - ~~(d) a definition of unprofessional conduct by interpreters and transliterators; and~~
 - ~~(e) conditions for reinstatement and renewal of certification.~~

~~**R280-203-2. Definitions.**~~

- ~~(1) "Advisory board" means the Interpreters Certification Board:~~
 - ~~(a) created to assist the Board; and~~
 - ~~(b) with the responsibilities established by Sections 53A-26a-201 and 202.~~

- ~~(2) "Certified interpreter or transliterator" means a person who:~~
 - ~~(a) provides an interpreter or transliterator service; and~~
 - ~~(b) is certified or qualified as required by state or federal law.~~
- ~~(3) "Hearing impaired or deaf" means a hearing loss that:~~
 - ~~(a) necessitates the visual acquisition of the language; or~~
 - ~~(b) adversely affects the acquisition of language and communication but that does not preclude the auditory acquisition of language.~~
- ~~(4) "Interpreter or transliterator service" means a service that facilitates effective communication:~~
 - ~~(a) between a hearing person and a person who is hearing impaired or deaf, including:~~
 - ~~(i) a student to teacher;~~
 - ~~(ii) a student to staff; or~~
 - ~~(iii) a student to peer; and~~
 - ~~(b) through:~~
 - ~~(i) American Sign Language (ASL) or a language system or code that is modeled after or derived from ASL, in whole or in part; or~~
 - ~~(ii) cued language.~~
- ~~(5) "Local education agency" or "LEA" means:~~
 - ~~(a) a school district;~~
 - ~~(b) a charter school; or~~
 - ~~(c) the Utah Schools for the Deaf and the Blind.~~
- ~~(6) "Manual" means the Policy and Procedures Governing the Certification of Interpreters and Transliterators manual incorporated by reference in Section R280-203-3.~~
- ~~(7) "USOR" means the Utah State Office of Rehabilitation.~~

~~**R280-203-3. Incorporation of Policy and Procedure Manual by Reference.**~~

- ~~(1) This rule incorporates by reference the Policy and Procedures Governing the Certification of Interpreters and Transliterators manual dated September 2015, which establishes:~~
 - ~~(a) the procedure and requirements for certification and certification renewal and exemption;~~
 - ~~(b) the length and level of certification;~~
 - ~~(c) the definition of unprofessional conduct;~~
 - ~~(d) the requirement for continued education; and~~
 - ~~(e) the disciplinary process.~~
- ~~(2) A copy of the manual is located at:~~
 - ~~(a) http://uip.herokuapp.com/pages/laws_and_policies; and~~
 - ~~(b) the Division of Services to the Deaf and Hard of Hearing.~~

~~**R280-203-4. Certification Qualifications and Report to the Superintendent.**~~

- ~~(1) A candidate for certification shall be at least 18 years old.~~
- ~~(2) A candidate shall pass written and performance evaluations provided by the Division of Services to the Deaf and Hard of Hearing, Utah Interpreter Program.~~

~~(3) A candidate shall meet the criteria of Section 53A-26a-302 and the manual.~~

~~(4) A person who provides an interpreter or transliterator service to an LEA shall complete a background check and submit to ongoing monitoring, prior to working in an LEA with a student:~~

~~(a) through the person's employer whether the employer is an LEA or an agency that contracts with an LEA; and~~

~~(b) in accordance with the requirements of Title 53A, Chapter 15, Part 15, Background Checks.~~

~~(5) An LEA shall identify and report to the Superintendent a person, including a contractor, who provides an interpreter or transliterator service to a student for the LEA, annually upon request.~~

~~(6) An LEA shall identify and report to the Superintendent a student who receives an interpreter or transliterator service and the provider of the service, annually upon request.~~

R280-203-5. Examination of Applicants for Certification.

~~The Division of Services for the Deaf and Hard of Hearing, Utah Interpreter Program staff shall test and rate a candidate applying for interpreter or transliterator certification consistent with the manual.~~

R280-203-6. Temporary Exemptions from Certification.

~~(1) A person may provide an interpreter or transliterator service without being certified subject to the following circumstances and limitations, and as outlined in the manual:~~

~~(a)(i) a candidate is engaged in providing an interpreters or transliterator service while in a training program approved by the Board to the extent the candidate's activities are supervised by qualified staff, or designee;~~

~~(ii) the service is a defined part of the training program; and~~

~~(iii) if the candidate is providing a service in a public school, the training program has a record that:~~

~~(A) the candidate has had a successful fingerprint background check within one year prior to the date of the interpreting or transliterating service being provided; or~~

~~(B) the candidate is subject to ongoing monitoring as described in Title 53A, Chapter 15, Part 15, Background Checks;~~

~~(b)(i) a candidate is engaged in an internship, residency, apprenticeship, or an on-the-job training program approved by the Board while under the supervision of qualified persons; and~~

~~(ii) the supervisor has a record of a successful fingerprint background check if the candidate is providing the service in a public school, consistent with Title 53A, Chapter 15, Part 15, Background Checks and Rule R277-516; or~~

~~(c) a candidate meets the criteria consistent with Subsections 53A-26a-305(1)(d) through(f).~~

~~(2) Violation of any limitation identified in this section is grounds for rescission of exemption, denial of certification, or other discipline as determined by the Board.~~

R280-203-7. Unprofessional Conduct.

~~(1) The manual supplements the definition of unprofessional conduct provided in 53A-26a-502.~~

~~(2) The Board designates the procedure in this section as an informal adjudicative proceeding under Section 63G-4-203.~~

~~(3) A complaint alleging unprofessional conduct by a certified interpreter or transliterator may be filed consistent with the procedure in the manual.~~

~~(4) A member of the advisory board shall assist the Board in reviewing the recommendation of the Ethical Standards subcommittee of the advisory board, as provided in Subsection 53A-26a-202(3) and upon request by the Board.~~

~~(5) The Board shall make the final disciplinary decision consistent with the manual.~~

R280-203-8. Renewal and Reinstatement.

~~(1) A person holding an interpreter or transliterator certificate may have that certificate renewed as provided in the manual.~~

~~(2)(a) a person whose interpreter or transliterator certificate has been suspended or revoked for unlawful or unprofessional conduct may apply for reinstatement to the Board.~~

~~(b) The Board may:~~

~~(i) require the applicant for reinstatement to complete the procedure for certification; or~~

~~(ii) upon consultation with the advisory board, designate the areas of the application process in which the applicant will be reviewed.~~

KEY: certification, interpreters, transliterators

Date of Enactment or Last Substantive Amendment: November 23, 2015

Notice of Continuation: September 9, 2014

Authorizing, and Implemented or Interpreted Law: 53A-24-103; 53A-1-401(3); 53A-26a-201; 53A-26a-202; 53A-26a-303 through 53A-26a-305]

Education, Rehabilitation
R280-204
 Utah State Office of Rehabilitation
 Employee Background Check
 Requirement

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 40801

FILED: 09/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Repealing Rule R280-204 is in response to H.B. 325, Office of Rehabilitation Services Amendments, from the 2016 General Session. Effective 10/01/2016, state law provides for the Utah State Office of Rehabilitation (USOR) to move from under the direction of the Utah State Board of Education (Board) and Superintendent to under the direction of the Department of Workforce Services and its executive director, at which time the Board will no longer have statutory and rulemaking authority over the USOR.

SUMMARY OF THE RULE OR CHANGE: Rule R280-204 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-1-401 and Section 53A-24-103

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Rule R280-204 is repealed in its entirety, which likely will not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: Rule R280-204 is repealed in its entirety, which likely will not result in a cost or savings to local government.

◆ SMALL BUSINESSES: Rule R280-204 is repealed in its entirety, which likely will not result in a cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Rule R280-204 is repealed in its entirety, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Rule R280-204 is repealed in its entirety, which likely will not result in any compliance costs for affected persons.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

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

R280. Education, Rehabilitation.

~~**R280-204. Utah State Office of Rehabilitation Employee Background Check Requirement.**~~

R280-204.1. Authority and Purpose.

(1) This rule is authorized by:

~~(a) Section 53A-24-103, which places the USOR under the policy direction of the Board; and~~

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

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

~~(a) under which a criminal background check may be required of a designated USOR employee or volunteer; and~~

~~(b) under which an employee, prospective employee, or volunteer may receive notice of required criminal background check requirements and review.~~

R280-204.2. Definitions.

~~(1) "BCI" means the Utah Bureau of Criminal Identification.~~

~~(2) "Criminal background check" means:~~

~~(a) the submission by an employee of fingerprints:~~

~~(i) through a law enforcement unit;~~

~~(ii) through the paper or card fingerprinting process established by the Superintendent; or~~

~~(iii) by means of an electronic fingerprinting scanning machine;~~

~~(b) the review by BCI for comparison with recorded arrests and convictions; and~~

~~(c) the discussion or explanation of resulting criminal arrest or conviction information as determined by this rule and USOR procedures.~~

~~(3) "Significant unsupervised access" means a period of time that an employee, volunteer, or intern, covered by this rule:~~

~~(a) may spend with a USOR client during which the employee or volunteer is alone with the client for more than a brief time;~~

~~(b) provides services for a USOR client protected under this rule on a regular basis by assignment; or~~

~~(c) who generally works with USOR clients protected under this rule.~~

~~(4) "Superintendent" mean the State Superintendent of Public Instruction or the Superintendent's designee.~~

~~(5) "USOR" means the Utah State Office of Rehabilitation.~~

~~(6) "USOR employee" means an employee, including a consultant, temporary employee, intern and traditional employee of the USOR or an agency or subdivision of the USOR.~~

R280-204.3. Criminal Background Check Requirement for Designated USOR Employees.

~~(1) The USOR Executive Director shall ensure that a criminal background check is completed by a USOR employee hired, transferred, or assigned to the USOR who has significant unsupervised access to a client.~~

~~(2) A criminal background check shall be completed on a designated USOR employee hired before March 2, 2006.~~

~~(3) The USOR Executive Director shall review a supervisor's recommendations of a USOR employee position identified for a criminal background check under Subsection (1) and designate employee and volunteer positions for which a criminal background check is necessary.~~

~~(4) A designated USOR employee or volunteer shall receive adequate notice of the required criminal background check from the employee's or volunteer's supervisors.~~

~~(5) A USOR volunteer may be required, following reasonable notice, to complete a criminal background check.~~

~~R280-204-4. Criminal Background Check Requirement for USOR Employees.~~

~~(1) Except as provided in Subsection (2), the USOR shall require a criminal background check for the following:~~

~~(a) an employee hired for a USOR position after March 1, 2006 in a position designated by the USOR Executive Director prior to final and official hiring by the USOR;~~

~~(b) a prospective transfer from outside the USOR after March 1, 2006 for a designated position; and~~

~~(c) at the discretion of the USOR Executive Director, for a USOR employee reassigned or promoted to a designated position.~~

~~(2) A new USOR employee, transfer employee from another state government position, or volunteer may provide information from a criminal background check that was completed by the BCI or by the applicant at a live scan site no more than 12 months prior to the date of employment by the USOR instead of completing a new background check.~~

~~(3) The USOR shall provide a prospective transferee or employee notice of the criminal background check requirement in the job or employment notice.~~

~~R280-204-5. USOR Procedures for Review of Criminal Background Check Information.~~

~~(1) The USOR shall direct a designated USOR employee hired between February 28, 2003 and March 1, 2006 to complete a criminal background check using one of the following methods:~~

~~(a) fingerprint cards submitted to the BCI; or~~

~~(b) live scan process at any Utah live scan location.~~

~~(2) USOR staff shall review all criminal background checks that identify arrests or convictions.~~

~~(3) USOR staff shall notify the criminal background check applicant in a timely manner that an arrest, conviction, or both, were reported as a result of the criminal background check.~~

~~(4) Designated USOR staff shall review an arrest, conviction, or both, and determine if the arrest or conviction poses a risk to a USOR client.~~

~~(5) A USOR current or prospective employee whose background check reveals an arrest or conviction shall have an opportunity to provide an explanation or additional information to USOR staff.~~

~~(6) The review of criminal background check information may result in a prospective USOR employee not being hired, in disciplinary action for a current USOR employee, or termination of a volunteer's participation with the USOR.~~

~~(7) A current USOR employee shall have adequate due process, consistent with USOR policies, prior to discipline resulting from a background check review.~~

~~R280-204-6. Criminal Background Check Costs and Fees.~~

~~(1) The USOR shall pay the costs and fees associated with a criminal background check of a USOR employee hired before March 2, 2006.~~

~~(2)(a) A USOR employee or prospective employee hired after March 1, 2006 shall pay the costs and fees associated with a criminal background check.~~

~~(b) At the discretion of the USOR Executive Director, the USOR may contribute to the costs and fees of a criminal background check described in Subsection (2)(a) if funds are available.~~

~~(3) The responsibility for costs and fees for a criminal background check of an employee transferred within the USOR or from another government agency shall be determined on a case-by-case basis.~~

~~(4) The responsibility for costs and fees for a criminal background check of a USOR volunteer shall be determined on a case-by-case basis.~~

~~(5)(a) The USOR shall provide a criminal background check fee schedule to a prospective USOR employee.~~

~~(b) Costs may include a fee for review of a fingerprint card to the BCI, a fee for use of live scan equipment, or a fee for review of fingerprint results by the USOR.~~

~~R280-204-7. Miscellaneous Provisions.~~

~~(1) All criminal background information received by the USOR shall be secured by the Superintendent.~~

~~(2) All criminal background check records maintained by the USOR and the Superintendent are protected under Section 63G-2-305 with the exception of public employee information under Section 63G-2-201.~~

~~(3) The USOR or the Superintendent has no liability for any errors or misinformation received from the BCI as a result of a criminal fingerprint background check.~~

~~(4) Correction of any misinformation in a criminal background check is the responsibility of the fingerprint background check applicant.~~

~~KEY: criminal background checks~~

~~Date of Enactment or Last Substantive Amendment: March 9, 2016~~

~~Notice of Continuation: January 14, 2016~~

~~Authorizing, and Implemented or Interpreted Law: 53A-24-103; 53A-1-401(3)]~~

Environmental Quality, Air Quality
R307-110-17
Section IX, Control Measures for Area
and Point Sources, Part H, Emissions
Limits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40766

FILED: 09/13/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to incorporate the recently amended Part H of the PM10 and PM2.5 State Implementation Plan (SIP) into the Utah Air Quality Rules.

The amendments to Part H were made in response to comments submitted by the Environmental Protection Agency (EPA) on Utah's 2014 submission of the PM2.5 SIP. The changes are necessary for EPA to approve the PM2.5 SIP and the PM10 Maintenance Plan.

SUMMARY OF THE RULE OR CHANGE: The amendments to the text of Section R307-110-17 change the title of the rule to match the title that is found in the SIP. The date has also been changed to reflect the most recent incorporation of Part H. Part H has been amended to include the following: 1) more frequent monitoring; 2) emission limits that match the 24-hour averaging period of the PM2.5 National Ambient Air Quality Standard; 3) condensable PM2.5 limits where appropriate; 4) corrections to the emission limits at Chemical Lime Company; 5) revisions to the compliance schedule for Compass Minerals; 6) elimination of the conditions for Hill Air Force Base and Vulcraft/Nucor Building Systems; 7) elimination of the provisions intended to facilitate the production of gasoline meeting the sulfur requirements of Tier 3; and 8) a requirement for Kennecott to operate its existing wet scrubber at the Copperton Concentrator.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits. , published by Utah Division of Air Quality, 12/07/2016

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This rule will not have an impact on the state budget because the state does not own any of the sources that are found in Part H of the SIP.
- ◆ **LOCAL GOVERNMENTS:** This rule will not impact local governments because local governments do not own any of the sources that are found in Part H of the SIP.
- ◆ **SMALL BUSINESSES:** The businesses listed in Part H that employ less than 50 people will have to comply with the requirements of the SIP. The costs associated with Part H will mostly be made up of the costs associated with more frequent monitoring. The monitoring is required by federal law due to the state's obligation to impose Reasonably Available Control Technology (RACT) on the sources listed in Part H. In order to determine RACT, cost is taken into consideration. Most of the costs required by Part H were imposed in 2014 when the SIP was last amended for PM2.5. The costs associated with additional monitoring will be around \$1,000 all the way up to \$100,000 for larger sources that are required to use continuous emission monitoring systems.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Other persons will not be directly impacted by this rule because the rule is regulating businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for the affected persons will mostly come from the costs associated with more frequent monitoring requirements. For some sources, this will be the cost of switching to continuous emission monitoring systems (CEMS). The cost may also be the price of more stack testing and parametric monitoring. This cost will vary depending on the size of the source and what equipment is needed. Cost was taken into account, as is required by the Clean Air Act, when the requirements of Part H were drafted. The costs associated with additional monitoring will be around \$1,000 all the way up to \$100,000 for larger sources that are required to use continuous emission monitoring systems.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The businesses listed in Part H will have to comply with the requirements of the SIP. The costs associated with Part H will mostly be made up of the costs associated with more frequent monitoring. For some sources, this will be the cost of switching to continuous emission monitoring systems (CEMS). The price of more stack testing and parametric monitoring will also have a fiscal impact on the sources in Part H. These costs will vary depending on the size of the source and what equipment is needed. The requirements in Part H need to be enforceable and meet the standard of RACT. In order to determine RACT, cost is taken into consideration. Most of the costs required by Part H were imposed in 2014 when the SIP was last amended for PM2.5.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 10/26/2016 11:00 AM, Utah Division of Air Quality, 195 N 1950 W, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.**R307-110. General Requirements: State Implementation Plan.****R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emission[s] Limits.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emission[s] Limits and Operating Practices, as most recently amended by the Utah Air Quality Board on ~~December 2~~ December 7, 201~~5~~6, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone

Date of Enactment or Last Substantive Amendment: ~~February 4,~~ 2016

Notice of Continuation: February 1, 2012

Authorizing, and Implemented or Interpreted Law: 19-2-104

Environmental Quality, Air Quality

R307-302

Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber Counties

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40773

FILED: 09/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change is being proposed for the purpose of developing a PM2.5 State Implementation Plan approvable by the Environmental Protection Agency (EPA). The amendment is being proposed in response to a request from the EPA that the rule should provide controls during start-up and refueling processes.

SUMMARY OF THE RULE OR CHANGE: The rule has been amended to include the following changes: 1) a definition for "seasoned wood" was added; 2) the word "fireplace" was removed because it was redundant; 3) Subsection R307-302-5(3) was amended to clarify that a person burning wood in a solid fuel burning device may only burn seasoned wood; 4) the term "facilities" was removed because "facility" is defined in Section R307-101-2; 5) "Phase 2" was removed from Section R307-302-6 to be consistent with the terminology used in the 2015 New Source Performance Standard; 6) the option to register a solid fuel burning device with the local health district was removed because Utah Code Section 19-2-107.5 requires registration with the Division; and 7) a list of continuous controls in the form of prohibited burning materials was added.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There will be minimal impact on the state budget. If the state owns a regulated heating appliance as described in the rule, then the state may have a small cost associated with switching to non-prohibited materials. The cost will likely be \$0 since approved fuels should not be more expensive than non-approved fuels. If there is a cost difference, it will likely be less than \$100 per unit using prohibited fuels. It is hard to determine exact numbers because there are too many variables. To estimate the cost, a person would have to know the cost of the prohibited fuel and the cost of the approved fuel.

♦ **LOCAL GOVERNMENTS:** There will be minimal impact on local governments. If a government owns a regulated heating appliance as described in the rule, then the government may have a small cost associated with switching to non-prohibited materials. The cost will likely be \$0 since approved fuels should not be more expensive than non-approved fuels. If there is a cost difference, it will likely be less than \$100 per unit using prohibited fuels. It is hard to determine exact numbers because there are too many variables. To estimate the cost, a person would have to know the cost of the prohibited fuel and the cost of the approved fuel.

♦ **SMALL BUSINESSES:** There will be minimal impact on small businesses. If a small business owns a regulated heating appliance as described in the rule, then the small business may have a cost associated with switching to non-prohibited materials. The cost will likely be \$0 since approved fuels should not be more expensive than non-approved fuels. If there is a cost difference, it will likely be less than \$100. It is hard to determine exact numbers because there are too many variables. To estimate the cost, a person would have to know the cost of the prohibited fuel and the cost of the approved fuel.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities will be impacted in a small way. "Other persons" will not be able to burn materials on the prohibited burn list in regulated devices. They will have to purchase an approved solid fuel as described in the rule in order to use their device. The cost will likely be \$0 since approved fuels should not be more expensive than non-approved fuels. If there is a cost difference, it will likely be less than \$100 per unit. It is hard to determine exact numbers because there are too many variables. To estimate the cost, a person would have to know the cost of the prohibited fuel and the cost of the approved fuel.

COMPLIANCE COSTS FOR AFFECTED PERSONS: People who use solid fuel burning devices will have to take on the cost of switching fuels, if their fuel is on the prohibited list. It is unlikely that this cost will be significant. Most people are already using approved fuels. The cost will likely be \$0 since

approved fuels should not be more expensive than non-approved fuels. If there is a cost difference, it will likely be less than \$100. It is hard to determine exact numbers because there are too many variables. To estimate the cost, a person would have to know the cost of the prohibited fuel and the cost of the approved fuel.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment will have a minimal fiscal impact on businesses. Businesses will only be impacted by the rule if they are burning prohibited items in a solid fuel burning device used for comfort heating. The fiscal impact to these businesses will be the cost of switching to an approved fuel.

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ENVIRONMENTAL QUALITY
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FOURTH FLOOR
195 N 1950 W
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DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.

R307-302. Solid Fuel Burning Devices~~[-in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber Counties].~~

R307-302-1. Purpose and Definitions.

(1) R307-302 establishes emission standards for ~~[fireplaces and]~~all solid fuel burning devices ~~[used in residential, commercial, institutional and industrial facilities and associated outbuildings]~~ used to provide comfort heating.

(2) The following additional definitions apply to R307-302:

"Seasoned wood" means wood that has a moisture content of less than or equal to 25%.

"Sole source of heat" means the solid fuel burning device is the only available source of heat for the entire residence, except for small portable heaters.

"Solid fuel burning device" means fireplaces, wood stoves and boilers used for burning wood, coal, or any other nongaseous and non-liquid fuel, both indoors and outdoors, but excluding outdoor wood boilers, which are regulated under R307-208.

R307-302-2. Applicability.

(1) R307-302-3 and R307-302-6 shall apply to any solid fuel burning device used to provide comfort heating in PM10 [and]or

PM2.5 nonattainment ~~[and]or~~ maintenance areas as defined in 40 CFR 81.345 (July 1, 2011), ~~[and geographically described as all regions of Salt Lake and Davis counties; all portions of the Cache Valley; all regions in Weber and Utah counties west of the Wasatch mountain range;]~~ Collectively, The PM10 and PM2.5 nonattainment and maintenance plan areas are geographically defined as all regions of Salt Lake and Davis counties; all portions of the Cache Valley; all regions in Weber County west of the Wasatch mountain range; all regions of Utah County; in Box Elder County, from the Wasatch mountain range west to the Promontory mountain range and south of Portage; and in Tooele County, from the northernmost part of the Oquirrh mountain range to the northern most part of the Stansbury mountain range and north of Route 199.

(2) R307-302-4 shall apply only within the city limits of Provo in Utah County.

(3) R307-302-5 shall apply in all portions of Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(4) The following exemptions apply to R307-302:

(a) R307-302 does not apply to restaurant and institutional food preparation.

(b) R307-302 does not apply to commercial and industrial boilers subject to an approval order issued under R307-401.

(c) R307-302-3 does not apply to sources located above 7,000 feet in elevation within Box Elder, Davis, Salt Lake, Tooele, Utah and Weber counties.

(d) R307-302 does not apply to firefighting training devices that meet the definition of a solid fuel burning device.

R307-302-3. No-Burn Periods for ~~[Fine-]Particulates.~~

(1) ~~[By June 1, 2015,]~~A person using a solid fuel burning device as a sole source[s] of [residential-]heat[ing using solid fuel burning devices] must ~~[be-]register[ed]~~ with the director in order to be exempt during mandatory no-burn periods.

(2) When the ambient concentration of PM10 measured by the monitors in Salt Lake, Davis, Weber, or Utah counties reaches the level of 120 micrograms per cubic meter and the forecasted weather for the specific area includes a temperature inversion which is predicted to continue for at least 24 hours, the director will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for solid fuel burning devices ~~[and fireplaces-]~~is in effect. The mandatory no-burn periods will only apply to those areas or counties impacting the real-time monitoring site registering the 120 micrograms per cubic meter concentration. ~~[Residents, commercial, institutional and industrial facilities of]~~ A person in the affected areas shall not use a solid fuel burning device~~[s or fireplaces except those that are]~~ unless it is the sole source of heat for ~~[the]an~~ entire residence and registered with the director.

(3) PM10 Contingency Plan. If the PM10 Contingency Plan described in Section IX, Part A, of the State Implementation Plan has been implemented, the trigger level for no-burn periods as specified in R307-302-3(2) will be 110 micrograms per cubic meter for that area where the PM10 Contingency Plan has been implemented.

(4) When the ambient concentration of PM2.5 measured by monitors in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah or Weber counties are forecasted to reach or exceed 25 micrograms per cubic meter, the director will issue a public announcement to provide broad notification that a mandatory no-burn period for solid fuel

burning devices ~~[and fireplaces]~~ is in effect. The mandatory no-burn periods will only apply to those counties identified by the director. ~~[Residents, commercial, institutional and industrial facilities]~~ A person within the geographical boundaries described in R307-302-2(1) shall not use a solid fuel burning device ~~[s or fireplaces except those that are]~~ unless it is the sole source of heat for ~~[the]~~ an entire residence and registered with the director.

(5) PM2.5 Contingency Plan. If the PM2.5 contingency plan of the State Implementation Plan has been implemented, the trigger level for no-burn periods as specified in R307-302-3(4) shall be 15 micrograms per cubic meter for the area where the PM2.5 contingency plan has been implemented.

R307-302-4. No-Burn Periods for Carbon Monoxide.

(1) Beginning on November 1 and through March 1, the director will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for solid fuel burning devices ~~[and fireplaces]~~ is in effect when the running eight-hour average carbon monoxide concentration as monitored by the state at 4:00 PM reaches a value of 6.0 ppm or more.

(2) In addition to the conditions contained in R307-302-4(1), the director may use meteorological conditions to initiate a no-burn period. These conditions are:

(a) A national weather service forecasted clearing index value of 250 or less;

(b) Forecasted wind speeds of three miles per hour or less;

(c) Passage of a vigorous cold front through the Wasatch Front; or

(d) Arrival of a strong high pressure system into the area.

(3) During the no-burn periods specified in R307-302-4(1) and (2), ~~[residents, commercial, institutional and industrial facilities]~~ a person in Provo City shall not use a solid fuel burning device ~~[s or fireplaces except those that are]~~ unless it is the sole source of heat for ~~[the]~~ an entire residence and ~~[are]~~ is registered with the director ~~[or the local health district office].~~

R307-302-5. Opacity and Prohibited Fuels for Heating Appliances.

(1) Except during no-burn periods as required by R307-302-3 and 4, visible emissions from solid fuel burning devices ~~[and fireplaces]~~ shall be limited to a shade or density no darker than 20% opacity as measured by EPA Method 9, except for the following:

(1) a An initial fifteen minute start-up period, and

(2) b A period of fifteen minutes in any three-hour period in which emissions may exceed the 20% opacity limitation for refueling.

(2) Prohibited Fuels: A person shall not cause or allow any of the following materials to be burned in a solid fuel burning device at any time:

(a) asphaltic products;

(b) books and magazines;

(c) garbage;

(d) paints;

(e) colored/wrapping paper;

(f) plastic;

(g) rubber products;

(h) treated wood;

~~(i) waste petroleum products; or~~

~~(j) any other material not intended by a manufacturer for use as a fuel in a solid fuel burning device.~~

(3) A person burning wood in a solid fuel burning device shall only burn seasoned wood.

R307-302-6. Prohibition.

(1) ~~[Beginning September 1, 2013, n]~~ No person shall sell, offer for sale, supply, install, or transfer a wood burning stove that is not EPA ~~[Phase 2]~~ certified or a fireplace that is not EPA qualified.

(2) Ownership of a non EPA ~~[Phase 2]~~ certified stove within a residential dwelling installed prior to March 6, 2014 may be transferred as part of a real estate transaction, so long as the unit remains intact within the real property of sale.

KEY: air pollution, fireplaces, stoves, solid fuel burning

Date of Enactment or Last Substantive Amendment: [February 4, 2015] 2016

Notice of Continuation: May 6, 2015

Authorizing, and Implemented or Interpreted Law: 19-2-101; 19-2-104

Environmental Quality, Drinking Water **R309-105-15** Annual Reports

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 40770
FILED: 09/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Legislature enacted H.B. 305 during the 2016 General Session, which was signed by the governor on 03/18/2016 and became effective on 05/10/2016. H.B. 305 amends Subsection 19-4-104(1)(c)(iv) of the Utah Code by directing the Drinking Water Board to require a certified operator of a public water supplier to verify by signature and certification number or a professional engineer performing the duties of a certified water operator to verify by signature and stamp the accuracy of any data on water use and water supply submitted by the public water supplier to the division. Therefore, the Division proposes to amend Section R309-105-15, Annual Reports, to implement the new requirement.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment to Section R309-105-15 requires a public water system to submit water-use data if required by the state, and to verify the accuracy of that data. The amendment requires a public water system to comply with all report submittal requirements of the Title R309 drinking water rules. It also changes the title of Section R309-105-15.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-4-104(1)(c)(iv)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The proposed amendment should entail no costs or savings to the state budget. It should not require additional resources to manage the drinking water program nor should it result in a reduction of resources needed.

◆ **LOCAL GOVERNMENTS:** The proposed amendment should entail no costs or savings to local governments. It places no substantial, new requirements on local governments nor relieves them of any existing requirements related to public water systems.

◆ **SMALL BUSINESSES:** The proposed amendment should entail no costs or savings to small businesses. It places no substantial, new requirements on small businesses nor relieves them of any existing requirements related to public water systems.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendment should entail no costs or savings to persons other than small businesses, businesses, or local government entities. It places no substantial, new requirements on persons other than small businesses, businesses, or local governments nor relieves them of any existing requirements related to public water systems.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons affected by the proposed amendment to Section R309-105-15 would be owners and operators of Public Water Systems. The proposed amendment imposes no new compliance costs on these affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendment is expected to have no fiscal impact on businesses. The rule itself only applies to public water systems and would, therefore, only affect businesses as customers or operators of public water systems. Since the proposed amendment imposes no new costs upon public water systems, there are no new fiscal impacts associated with the amendment.

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

ENVIRONMENTAL QUALITY
DRINKING WATER
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:

◆ Bernie Clark by phone at 801-536-0092, or by Internet E-mail at bernieclark@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

AUTHORIZED BY: Ken Bousfield, Director

R309. Environmental Quality, Drinking Water.

R309-105. Administration: General Responsibilities of Public Water Systems.

R309-105-15. [Annual]Report[s] Submittal.

[~~_____ All community water systems shall be required to complete annual report forms furnished by the Division of Drinking Water. The information to be provided shall include: the status of all water system projects started during the previous year; water demands met by the system; problems experienced; and anticipated projects.~~]

(1) A public water system shall submit water use data if required by a state agency and shall verify the accuracy of the data by including a certification by a certified operator or a professional engineer performing the duties of a certified operator.

(2) A public water system shall comply with the report submittal requirements of the R309 rules.

KEY: drinking water, watershed management

Date of Enactment or Last Substantive Amendment: [~~May 1, 2016~~November 7, 2016]

Notice of Continuation: March 13, 2015

Authorizing, and Implemented or Interpreted Law: 19-4-104

Environmental Quality, Drinking Water **R309-400-12** Reporting and Record Maintenance Issues

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 40771

FILED: 09/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Legislature enacted H.B. 305 during the 2016 General Session, which was signed by the governor on 03/18/2016 and became effective on 05/10/2016. H.B. 305 amends Subsection 19-4-104(1)(c)(iv) of the Utah Code by directing the Drinking Water Board to require a certified operator of a public water supplier to verify by signature and certification number or a professional engineer performing the duties of a certified water operator to verify by signature and stamp the accuracy of any data on water use

and water supply submitted by the public water supplier to the division. To enforce the new requirement, the Division has amended Section R309-400-12, Reporting and Record Maintenance Issues, which establishes deficiency points to be assessed to a water system that violates the new reporting requirement.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment to Section R309-400-12 assesses 50 points to a water system that fails to submit water-use data required by the state or fails to verify the accuracy of the data as required by Section R309-105-15. It also assesses 20 points to a public water system that fails to submit operational or other reports required by the Division.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-4-104(1)(a)(i)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The proposed amendment should entail no costs or savings to the state budget. It should not require additional resources to manage the drinking water program nor should it result in a reduction of resources needed.

◆ **LOCAL GOVERNMENTS:** The proposed amendment should entail no costs or savings to local governments. It places no substantial, new requirements on local governments nor relieves them of any existing requirements related to public water systems.

◆ **SMALL BUSINESSES:** The proposed amendment should entail no costs or savings to small businesses. It places no substantial, new requirements on small businesses nor relieves them of any existing requirements related to public water systems.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendment should entail no costs or savings to persons other than small businesses, businesses, or local government entities. It places no substantial, new requirements on persons other than small businesses, businesses, or local governments nor relieves them of any existing requirements related to public water systems.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons affected by the proposed amendment to Section R309-400-12 would be owners and operators of Public Water Systems. The proposed amendment imposes no new compliance costs on these affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendment is expected to have no fiscal impact on businesses. The rule itself only applies to public water systems and would, therefore, only affect businesses as customers or operators of public water systems. Since the proposed amendment imposes no new costs upon public water systems, there are no new fiscal impacts associated with the amendment.

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THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

AUTHORIZED BY: Ken Bousfield, Director

R309. Environmental Quality, Drinking Water.

R309-400. Water System Rating Criteria.

R309-400-12. Reporting and Record Maintenance Issues.

Points may be assessed for failure to provide required reports to the Director by the reporting deadline. The points shall be assigned as the failure occurs and shall remain on record for a period of one year.

(1) Monthly Reports:

(a) For each failure to report the monthly water treatment plant report, 100 points shall be assessed.

(2) Quarterly Reports:

(a) For each failure to report the quarterly disinfection report, 50 points shall be assessed.

(3) Annual and Other Reports:

(a) ~~For failure to provide the annual report, 2 points shall be assessed.~~ A public water system that fails to submit water use data required by a state agency or fails to verify the accuracy of the data by including a certification by a certified operator or a professional engineer performing the duties of a certified operator shall be assessed 50 points.

(b) Community water systems that fail to send a certification to the Division stating how the consumer confidence report was distributed to its customers as required in R309-225-7(3), 10 points shall be assessed.

(c) Community water systems that fail to mail a copy of the consumer confidence report to the Division as required in R309-225-7(3), 10 points shall be assessed.

(d) A public water system that fails to submit operational reports or other reports required by the Division shall be assessed 20 points.

KEY: drinking water, environmental protection, water system rating, penalties

Date of Enactment or Last Substantive Amendment: ~~November 17, 2014~~ **November 7, 2016**

Notice of Continuation: March 13, 2015

Authorizing, and Implemented or Interpreted Law: 19-4-104

Environmental Quality, Drinking Water R309-535-5 Fluoridation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40769

FILED: 09/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division of Drinking Water was directed by the Drinking Water Board to review the Title R309-500 series of rules and propose changes to clarify, correct, and update the rules. The Division has reviewed Section R309-535-5, Fluoridation, and proposes to update and clarify the design and construction requirements for fluoridation facilities.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment to Section R309-535-5 updates requirements for chemical storage, fluoride injection, fluoride solution tank venting, and personal protective equipment. It adds new requirements for secondary containment of fluoride solutions, housing for fluoridation facilities (heating, lighting, and ventilation), and acid spill neutralization. The proposed amendment is organized differently than the current rule and includes a General Requirements section that applies to all fluoridation facilities and three additional requirements sections each of which applies to a specific type of fluoridation: fluorosilicic acid, fluoride saturators, and fluoride dry feed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-4-104(1)(a)(ii)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The proposed amendment should entail no costs or savings to the state budget. It should not require additional resources to manage the drinking water program nor should it result in a reduction of resources needed.

◆ **LOCAL GOVERNMENTS:** The proposed amendment will result in no savings to local governments but may result in increased costs to local governments that own or operate public water systems that fluoridate their drinking water and intend to design and construct new fluoridation facilities. Because the increased costs are related to project-specific variables--such as facility size, amount of water to be treated, type of fluoridation to be installed, and quantity of fluoride to be added--an estimate of increased costs, in aggregate or per project, cannot be made.

◆ **SMALL BUSINESSES:** The proposed amendment will result in no savings to small businesses but may result in increased costs to small businesses that own or operate public water systems that fluoridate their drinking water and intend to design and construct new fluoridation facilities.

Because the increased costs are related to project-specific variables--such as facility size, amount of water to be treated, type of fluoridation to be installed, and quantity of fluoride to be added--an estimate of increased costs, in aggregate or per project, cannot be made.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendment will result in no savings to persons other than small businesses, businesses, or local government entities but may result in increased costs to such persons that own or operate public water systems that fluoridate their drinking water and intend to design and construct new fluoridation facilities. Because the increased costs are related to project-specific variables--such as facility size, amount of water to be treated, type of fluoridation to be installed, and quantity of fluoride to be added--an estimate of increased costs, in aggregate or per project, cannot be made.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons affected by the proposed amendment to Section R309-535-5 would be owners and operators of Public Water Systems. The proposed amendment may result in increased costs to such persons that own or operate public water systems that fluoridate their drinking water and intend to design and construct new fluoridation facilities. Because the increased costs are related to project-specific variables--such as facility size, amount of water to be treated, type of fluoridation to be installed, and quantity of fluoride to be added--an estimate of increased costs, in aggregate or per project, cannot be made.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendment only applies to public water systems that fluoridate their drinking water, which is a small subset of public water systems in Utah and would, therefore, only affect businesses as customers or operators of these systems. The fiscal impact of the proposed amendment on businesses as customers of public water systems that fluoridate would be negligible because any increase in the cost of design and construction of fluoridation facilities due to the proposed amendment would be small when compared to the overall project cost and would be shared by all water system customers. The fiscal impact of the proposed amendment on businesses that operate public water systems that intend to design and construct new fluoridation facilities would also be small when compared to the overall project cost of fluoridation.

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

ENVIRONMENTAL QUALITY
DRINKING WATER
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:

◆ Bernie Clark by phone at 801-536-0092, or by Internet E-mail at bernieclark@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

AUTHORIZED BY: Ken Bousfield, Director

R309. Environmental Quality, Drinking Water.**R309-535. Facility Design and Operation: Miscellaneous Treatment Methods.****R309-535-5. Fluoridation.**

~~[Sodium fluoride, sodium silicofluoride and fluorosilicic acid shall conform to the applicable AWWA standards and/or ANSI/NSF Standard 60. Other fluoride compounds which may be available must be approved by the Director.~~

~~(1) Fluoride compound storage.~~

~~Fluoride chemicals shall be isolated from other chemicals to prevent contamination. Compounds shall be stored in covered or unopened shipping containers and shall be stored inside a building. Unsealed storage units for fluorosilicic acid shall be vented to the atmosphere at a point outside any building. Bags, fiber drums and steel drums shall be stored on pallets.~~

~~(2) Chemical feed equipment and methods.~~

~~In addition to the requirements in R309-525-11 "Chemical Addition", fluoride feed equipment shall meet the following requirements:~~

~~(a) scales, loss of weight recorders or liquid level indicators, as appropriate, accurate to within five percent of the average daily change in reading shall be provided for chemical feeds;~~

~~(b) feeders shall be accurate to within five percent of any desired feed rate;~~

~~(c) fluoride compound shall not be added before lime-soda softening or ion exchange softening;~~

~~(d) the point of application of fluorosilicic acid, if into a horizontal pipe, shall be in the lower half of the pipe;~~

~~(e) a fluoride solution shall be applied by a positive displacement pump having a stroke rate not less than 20 strokes per minute;~~

~~(f) a spring opposed diaphragm type anti-siphon device shall be provided for all fluoride feed lines and dilution water lines;~~

~~(g) a device to measure the flow of water to be treated is required;~~

~~(h) the dilution water pipe shall terminate at least two pipe diameters above the solution tank;~~

~~(i) water used for sodium fluoride dissolution shall be softened if hardness exceeds 75 mg/l as calcium carbonate;~~

~~(j) fluoride solutions shall be injected at a point of continuous positive pressure or a suitable air gap provided;~~

~~(k) the electrical outlet used for the fluoride feed pump shall have a nonstandard receptacle and shall be interconnected with the well or service pump;~~

~~(l) saturators shall be of the upflow type and be provided with a meter and backflow protection on the makeup water line.~~

~~(m) lead weights shall not be used in fluoride chemical solutions to keep pump suction lines at the bottom of a day or bulk storage tank.~~

~~(3) Secondary controls.~~

~~Secondary control systems for fluoride chemical feed devices shall be provided as a means of reducing the possibility for overfeed; these may include flow or pressure switches or other devices.~~

~~(4) Protective equipment.~~

~~Personal protective equipment as outlined in R309-525-11(10) shall be provided for operators handling fluoride compounds. Deluge showers and eye wash devices shall be provided at all fluorosilicic acid installations.~~

~~(5) Dust control.~~

~~(a) Provision must be made for the transfer of dry fluoride compounds from shipping containers to storage bins or hoppers in such a way as to minimize the quantity of fluoride dust which may enter the room in which the equipment is installed. The enclosure shall be provided with an exhaust fan and dust filter which place the hopper under a negative pressure. Air exhausted from fluoride handling equipment shall discharge through a dust filter to the outside atmosphere of the building.~~

~~(b) Provision shall be made for disposing of empty bags, drums or barrels in a manner which will minimize exposure to fluoride dusts. A floor drain shall be provided to facilitate the hosing of floors.~~

~~(6) Testing equipment.~~

~~Equipment shall be provided for measuring the quantity of fluoride in the water. Such equipment shall be subject to the approval of the Director.](1) This section does not require the addition of fluoride to drinking water by a public water system. However, a public water system that adds fluoride to drinking water shall comply with the fluoridation facility design and construction requirements of this section.~~

(2) General Requirements for all Fluoridation Installations.

The following requirements apply to all types of fluoridation.

(a) Chemicals and Materials.

(i) All chemicals used for fluoridation shall be certified to comply with ANSI/NSF Standard 60.

(ii) Materials used for fluoridation equipment shall be compatible with chemicals used in the fluoridation process.

(iii) Metal parts used in fluoridation equipment and present in the fluoridation room shall be corrosion resistant.

(iv) Lead weights shall not be used in fluoride chemical solutions to keep pump suction lines at the bottom of a day or bulk storage tank.

(b) Chemical Storage.

(i) Fluoride chemicals shall be stored in covered or sealed containers, inside a building, and away from heat.

(ii) Fluoride chemicals shall not be stored with incompatible chemicals.

(iii) Bags or other containers for dry materials shall be stored on pallets.

(iv) Fiber drums for storing dry materials shall be kept closed to keep out moisture.

_____ (v) A solution tank shall be labeled to identify the contents of the tank.

_____ (c) Secondary Containment.

_____ (i) Secondary containment shall be provided for tanks containing corrosive fluoride solutions.

_____ (ii) Secondary containment shall be sized to contain the quantity of solution handled.

_____ (iii) Secondary containment shall be designed to be acid resistant.

_____ (d) Means to Measure.

_____ (i) A means to measure the flow of treated water shall be provided.

_____ (ii) A means shall be provided to measure the solution level in a tank and the quantity of the chemical used.

_____ (iii) A sampling point shall be provided downstream of the fluoridation facility for measuring the fluoride level of treated water.

_____ (e) Fluoride Feed Pump.

_____ (i) Sizing of fluoride feed pumps shall consider prevention of fluoride overfeed and operation efficiency.

_____ (ii) A fluoride feed pump shall have an anti-siphon device.

_____ (f) Electrical Outlet for Fluoride Feed Pump.

_____ (i) The electrical outlet used for a fluoride feed pump shall have interlock protection by being wired electrically in series with the well or service pump, such that the feed pump is only activated when the well or service pump is on.

_____ (ii) The fluoride feed pump shall not be plugged into a continuously active ("hot") electrical outlet.

_____ (g) Fluoride Injection.

_____ (i) The fluoride injection line shall enter at a point in the lower one-third of the water pipe, and the end of the injection line shall be in the lower half of the water pipe.

_____ (ii) The fluoride injection point shall allow adequate mixing.

_____ (iii) The fluoride injection point shall not be located upstream of lime softening, ion exchange, or other processes that affect the fluoride level.

_____ (iv) Each injector shall be selected based on the quantity of fluoride to be added, water flow, back pressure, and injector operating pressure.

_____ (v) If injecting fluoride under pressure, a corporation stop and a safety chain shall be used at the fluoride injection point to secure the injection line.

_____ (vi) An anti-siphon device shall be provided for all fluoride feed lines at the injection point.

_____ (h) Minimize Fluoride Overfeed.

_____ (i) In addition to the feed pump control, a secondary control mechanism shall be provided to minimize the possibility of fluoride overfeed. It may be a day tank, liquid level sensor, SCADA control, a flow switch, etc.

_____ (ii) For fluoridation facilities that do not have operators on site, a day tank is required to minimize fluoride overfeed, unless two alternative secondary controls are provided.

_____ (i) Housing. Fluoridation equipment shall be housed in a secure building that is adequately sized for handling and storing fluoride chemicals.

_____ (j) Heating, Lighting, Ventilation.

_____ (i) The fluoridation building shall be heated, lighted and ventilated to assure proper operation of the equipment and safety of operator.

_____ (ii) The ventilation in the fluoride operating area shall provide at least six complete room-air changes per hour.

_____ (iii) The fluoride operating area shall be vented to outside atmosphere and away from air intakes.

_____ (iv) Separate switches for fans and lights in the fluoride operating area shall be provided. The switches shall be located outside of, or near, the entrance to the fluoride operating area, and shall be protected from vandalism.

_____ (k) Cross Connection Control. Cross connections shall be eliminated by physical separation, an air gap, or an approved and properly operating backflow prevention assembly.

_____ (3) Additional Requirements for Fluorosilicic Acid Installations.

_____ (a) Fluorosilicic acid shall not be diluted manually on site before injection.

_____ (b) Solution Tank Vents.

_____ (i) A solution tank shall be adequately vented to the outside atmosphere away from air intakes, above grade, and where least susceptible to contamination.

_____ (ii) A bulk tank shall not share a vent with a day tank if there is a risk of solution overflow from the bulk tank to the day tank.

_____ (iii) A non-corrodible fine mesh (No. 14 or finer) screen shall be placed over the discharge end of a vent.

_____ (c) If separate rooms are provided in a fluoride building constructed after January 1, 2017, the design shall include a view window between the control room and the fluorosilicic acid operating area.

_____ (d) Emergency eyewash stations and showers shall be provided.

_____ (e) A neutralizing chemical shall be available on site to handle small quantity accidental acid spills.

_____ (f) The use of personal protective equipment (PPE) is required when handling fluorosilicic acid, and shall include the following:

_____ (i) Full-face shield and splash-proof safety goggles

_____ (ii) Long gauntlet acid-resistant rubber or neoprene gloves with cuffs

_____ (iii) Acid-resistant rubber or neoprene aprons

_____ (iv) Rubber boots

_____ (4) Additional Requirements for Fluoride Saturator Installations.

_____ (a) A water meter shall be provided on the make-up water line for a saturator so that calculations can be made to confirm that the proper amounts of fluoride solution are being fed. This meter and the master meter shall be read daily and the results recorded.

_____ (b) The minimum depth of undissolved fluoride chemical required to maintain a saturated solution shall be marked on the outside of the saturator tank.

_____ (c) The saturator shall not be operated in a manner that undissolved chemical is drawn into the pump suction line.

_____ (d) The make-up water supply line shall, at a minimum, either terminate at least two pipe diameters above the solution tank or have backflow protection.

_____ (e) Make-up Water Softening.

_____ (i) The make-up water used for sodium fluoride saturators shall be softened whenever the hardness exceeds 75 mg/L.

_____ (ii) A sediment filter (20 mesh) shall be installed in the make-up water line going to the saturator. The filter shall be placed between the softener and the water meter.

(f) Dust Control. Provisions shall be made to minimize the creation of fluoride dust during the transfer of dry fluoride compounds.

(i) Air exhausted from fluoride handling equipment shall discharge through a dust filter to the atmosphere outside of the building.

(ii) Provisions shall be made to minimize dust when disposing of empty bags, drums or barrels.

(iii) A floor drain shall be provided to facilitate floor cleaning.

(g) Emergency eyewash shall be provided.

(h) The use of personal protective equipment (PPE) is required when handling dry chemicals and shall include the following:

(i) National Institute for Occupational Safety and Health (NIOSH) approved particulate respirator with a soft rubber face-to-mask seal and replaceable cartridges

(ii) Chemical dust-resistant safety goggles

(iii) Acid-resistant gloves

(iv) Acid-resistant rubber or neoprene aprons

(v) Rubber boots

(5) Additional Requirements for Fluoride Dry Feed Installations.

(a) Volumetric and gravimetric dry feeders shall include a solution tank.

(b) A mechanical mixer shall be installed in the solution tank.

(c) Dust Control. Provisions shall be made to minimize the creation of fluoride dust during the transfer of dry fluoride compounds.

(i) If a hopper is provided, it shall be equipped with a dust filter and an exhaust fan that places the hopper under negative pressure.

(ii) Air exhausted from fluoride handling equipment shall discharge through a dust filter to the atmosphere outside of the building.

(iii) Provisions shall be made to minimize dust when disposing of empty bags, drums or barrels.

(iv) A floor drain shall be provided to facilitate floor cleaning.

(d) Emergency eyewash shall be provided.

(e) The use of personal protective equipment (PPE) is required when handling dry chemicals and shall include the following:

(i) National Institute for Occupational Safety and Health (NIOSH) approved particulate respirator with a soft rubber face-to-mask seal and replaceable cartridges

(ii) Chemical dust-resistant safety goggles

(iii) Acid-resistant gloves

(iv) Acid-resistant rubber or neoprene aprons

(v) Rubber boots

KEY: drinking water, miscellaneous treatment, stabilization, iron and manganese control

Date of Enactment or Last Substantive Amendment: [~~August 28, 2013~~ November 7, 2016]

Notice of Continuation: March 13, 2015

Authorizing, and Implemented or Interpreted Law: 19-4-104

Environmental Quality, Environmental Response and Remediation **R311-200** Underground Storage Tanks: Definitions

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 40752
FILED: 09/09/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Several definitions in the rule are no longer necessary due to changes in the federal underground storage tank (UST) regulations or the Utah UST rules or are redundant because they are now part of the federal UST regulations. The definition of UST testing is modified because new types of testing will be required by the federal UST regulations, and these tests may be performed by certified UST testers.

SUMMARY OF THE RULE OR CHANGE: This amendment removes several definitions that are no longer needed, modifies the definition of UST testing to include new types of testing that are now part of the federal UST regulations or the Utah UST rules.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-403

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to state budget. The rule change only removes or modifies definitions found in the rule.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local governments. The rule change only removes or modifies definitions found in the rule.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. The rule change only removes or modifies definitions found in the rule.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to other persons. The rule change only removes or modifies definitions found in the rule. Defining the tank and piping interstitial tests under Subsections R311-206-11(c)(2)(C) and R311-206-11(d)(d)(2)(B) may increase costs somewhat because now they will have to be done by a certified UST tester. The testers are the only ones who have the equipment to perform the tests successfully, so tests will continue to be done by certified testers as they have in the past. Non-fiscal impacts include

new types of testing in the definition of UST testing; therefore, requiring that the tests be done by certified UST testers will help ensure that tests are done by capable, trained individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs. If certified testers choose to perform some of the new types of testing, it may be necessary to purchase new test equipment and receive manufacturer training on that equipment. Defining the tank and piping interstitial tests under Subsections R311-206-11(c)(2)(C) and R311-206-11(d)(2)(B) as UST testing may increase costs somewhat because now these tests must be done by a certified UST tester. In practice, the UST testers are the only ones who have the equipment to perform the tests successfully, so the tests will continue to be done by certified testers as they have in the past.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impacts on businesses are expected. Any impact would be found in the other rules to which the definitions apply.

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

ENVIRONMENTAL QUALITY
ENVIRONMENTAL RESPONSE AND
REMEDATION
FIRST FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 10/17/2016 02:00 PM, Department of Environmental Quality, 195 North 1950 West, Room 1015, Salt Lake City, Utah

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2017

AUTHORIZED BY: Brent Everett, Director

R311. Environmental Quality, Environmental Response and Remediation.

R311-200. Underground Storage Tanks: Definitions.

R311-200-1. Definitions.

(a) Refer to Section 19-6-402 for definitions not found in this rule.

(b) For purposes of underground storage tank rules:

(1) "Actively participated" for the purpose of the certification programs means that the individual applying for certification must have had operative experience for the entire project from start to finish, whether it be an installation or a removal.

~~[(2) "Alternative Fuel" means a petroleum-based fuel containing:~~

~~(A) more than ten percent ethanol, or~~

~~(B) more than twenty percent biodiesel.]~~

~~[(3)2] "As-built drawing" for purpose of notification means a drawing to scale of newly constructed USTs. The USTs shall be referenced to buildings, streets and limits of the excavation. The drawing shall show the locations of tanks, product lines, dispensers, vent lines, cathodic protection systems, and monitoring wells. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17".~~

~~[(4) "Automatic line leak detector test" means a test that simulates a leak, and causes the leak detector to restrict or shut off the flow of regulated substance through the piping or trigger an audible or visual alarm.]~~

~~[(5)3] "Backfill" means any foreign material, usually pea gravel or sand, which usually differs from the native soil and is used to support or cover the underground storage tank system.~~

~~[(6) "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100.]~~

~~[(7)4] "Burden" means the addition of the percentage of indirect costs which are added to raw labor costs.~~

~~[(8)5] "Certificate" means a document that evidences certification.~~

~~[(9)6] "Certification" means approval by the Director or the Board to engage in the activity applied for by the individual.~~

~~[(10)7] "Certified Environmental Laboratory" means a laboratory certified by the Utah Department of Health as outlined in Rule R444-14 to perform analyses according to the laboratory methods identified for UST sampling in Subsection R311-205-2(d).~~

~~[(11)8] "Change-in-service" means the continued use of an UST to store a non-regulated substance.~~

~~[(12)9] "Community Water System" means a public water system that serves at least fifteen service connections used by year-round residents or regularly serves at least 25 year-round residents.~~

~~[(13)10] "Confirmation sample" means an environmental sample taken, excluding closure samples as outlined in Section R311-205-2, during soil over-excavation or any other remedial or investigation activities conducted for the purpose of determining the extent and degree of contamination.~~

~~[(14)11] "Consultant" is a person who is a certified underground storage tank consultant according to Subsection 19-6-402(6).~~

(1[5]2) "Customary, reasonable and legitimate expenses" means costs incurred during the investigation, abatement and corrective actions that address a release which are normally charged according to accepted industry standards, and which must be justified in an audit as an appropriate cost. The costs must be directly related to the tasks performed.

(1[6]3) "Customary, reasonable and legitimate work" means work for investigation, abatement and corrective action that is required to reduce contamination at a site to levels that are protective of human health and the environment. Acceptable levels may be established by risk-based analysis and taking into account current or probable land use as determined by the Director following the criteria in R311-211.

(1[7]4) "Department" means the Utah Department of Environmental Quality.

(1[8]5) "Eligible exempt underground storage tank" for the purpose of eligibility for the Utah Petroleum Storage Tank Trust Fund means a tank specified in 19-6-415(1).

(1[9]6) "Environmental sample" is a groundwater, surface water, air, or soil sample collected, using appropriate methods, for the purpose of evaluating environmental contamination.

(2[0]17) "EPA" means the United States Environmental Protection Agency.

(2[1]18) "Expediently disposed of" means disposed of as soon as practical so as not to become a potential threat to human health or safety or the environment, whether foreseen or unforeseen as determined by the Director.

(2[2]19) "Fiscal year" means a period beginning July 1 and ending June 30 of the following year.

(2[3]20) "Full installation" for the purposes of 19-6-411(2) means the installation of an underground storage tank.

(2[4]1) "Groundwater sample" is a sample of water from below the surface of the ground collected according to protocol established in Rule R311-205.

(2[5]2) "Groundwater and soil sampler" is the person who performs environmental sampling for compliance with Utah underground storage tank rules.

(2[6]3) "Injury or Damages from a Release" means, for the purposes of Subsection 19-6-409(2)(e), any petroleum contamination that has migrated from the release onto or under a third party's property at concentrations exceeding Initial Screening Levels specified in R311-211-6(a).

(2[7]4) "In use" means that an operational, inactive or abandoned underground storage tank contains a regulated substance, sludge, dissolved fractions, or vapor which may pose a threat to human health, safety or the environment as determined by the Director.

(2[8]5) "Lapse" in reference to the Certificate of Compliance and coverage under the Petroleum Storage Tank Trust Fund, means to terminate automatically.

(2[9]6) "Native soil" means any soil that is not backfill material, which is naturally occurring and is most representative of the localized subsurface lithology and geology.

(3[0]27) "No Further Action determination" means that the Director has evaluated information provided by responsible parties or others about the site and determined detectable petroleum contamination from a particular release does not present an unacceptable risk to public health or the environment based upon Board established criteria in R311. If future evidence indicates contamination from that release may cause a threat, further corrective action may be required.

(3[1]28) "Notice of agency action" means any enforcement notice, notice of violation, notice of non-compliance, order, or letter issued to an individual for the purpose of obtaining compliance with underground storage tank rules and regulations.

(3[2]29) "Occurrence" in reference to Subsection R311-208-4 means a separate petroleum fuel delivery to a single tank.

(3[3]30) "Owners and operators" means either an owner or operator, or both owner and operator.

(3[4]1) "Over-excavation" means any soil removed in an effort to investigate or remediate in addition to the minimum amount required to remove the UST or take environmental samples during UST closure activities as outlined in Section R311-205-2.

(3[5]2) "Permanently closed" means underground storage tanks that are removed from service following guidelines in 40 CFR Part 280 Subpart G adopted by [Section] Rule R311-202.

(3[6]3) "Petroleum storage tank" means a storage tank that contains petroleum as defined by Section 19-6-402(20).

(3[7]4) "Petroleum storage tank fee" means the fee which capitalizes the Petroleum Storage Tank Trust Fund as established in Section 19-6-409.

(3[8]5) "Petroleum storage tank trust fund" means the fund created by Section 19-6-409.

(3[9]6) "Potable Drinking Water Well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which supplies water for a non-community public water system, or otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such well may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

(4[0]37) "Public Water System" means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. It includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

(4[1]38) "Registration fee" means underground storage tank registration fee.

(4[2]39) "Regulated substance" means any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act "CERCLA" of 1980, but not including any substance regulated as a hazardous waste under subtitle C, and petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure, 60 degrees Fahrenheit and 14.7 pounds per square inch absolute. The term "regulated substance" includes petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(4[3]0) "Secondary Containment", for the purposes of R311-203-6, means a release prevention and detection system for a tank or piping that has an inner and outer barrier with an interstitial space between them for monitoring. The monitoring of the interstitial space shall meet the requirements of 40 CFR 280.43(g).

(~~44~~41) "Site assessment" or "site check" is an evaluation of the level of contamination at a site which contains or has contained an UST.

(~~45~~42) "Site assessment report" is a summary of relevant information describing the surface and subsurface conditions at a facility following any abatement, investigation or assessment, monitoring, remediation or corrective action activities as outlined in Rule R311-202, Subparts E and F.

(~~46~~43) "Site investigation" is work performed by the owner or operator, or his designee, when gathering information for reports required for Utah underground storage tank rules.

(~~47~~4) "Site plat" for purpose of notification, or reporting, refers to a drawing to scale of USTs in reference to the facility. The scale should be dimensioned appropriately. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17". The site plat should include the following: property boundaries; streets and orientation; buildings or adjacent structures surrounding the facility; present or former UST(s); extent of any excavation(s) and known contamination and location and volume of any stockpiled soil; locations and depths of all environmental samples collected; locations and total depths of monitoring wells, soil borings or other measurement or data points; type of ground-cover; utility conduits; local land use; surface water drainage; and other relevant features.

(~~48~~5) "Site under control" means that the site of a release has been actively addressed by the owner or operator who has taken the following measures:

(A) Fire and explosion hazards have been abated.

(B) Free flow of the product out of the tank has been stopped.

(C) Free product is being removed from the soil, groundwater or surface water according to a work plan or corrective action plan approved by the Director.

(D) Alternative water supplies have been provided to affected parties whose original water supply has been contaminated by the release.

(E) A soil or groundwater management plan or both have been submitted for approval by the Director.

(~~49~~6) "Soil sample" is a sample collected following the protocol established in Rule R311-205.

(~~50~~47) "Surface water sample" is a sample of water, other than a groundwater sample, collected according to protocol established in Rule R311-205.

(~~51~~48) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials, such as concrete, steel, or plastic, that provide structural support.

(~~52~~49) "Third-party Class B operator" is any individual who is not the facility owner/operator or an employee of the owner/operator and who, by contract, provides the services outlined in R311-201-12(e).

~~(53) "UAPA-exempt orders" are orders that are exempt from requirements of the Utah Administrative Procedures Act under Section 63G-4-102(2)(k), Utah Code Annot.]~~

(~~54~~0) "Under-Dispenser Containment", for the purposes of R311-203-6, means containment underneath a dispenser that will prevent leaks from the dispenser or transitional components that connect the piping to the dispenser (check valves, shear valves,

unburied risers or flex connectors, or other components that are beneath the dispenser) from reaching soil or groundwater.

~~(55) "Underground storage tank" or "UST" means any one or combination of tanks, including underground pipes connected thereto and any underground ancillary equipment and containment system, that is used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground pipes connected thereto, is ten percent or more beneath the surface of the ground, regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C., Section 6991e et seq.]~~

(~~56~~51) "Underground storage tank registration fee" means the fee assessed by Section 19-6-408 on tanks located in Utah.

(~~57~~2) "UST inspection" is the inspection required by state and federal underground storage tank rules and regulations during the installation, testing, repairing, operation or maintenance, and removal of regulated underground storage tank.

(~~58~~3) "UST inspector" is an individual who performs underground storage tank inspections for compliance with state and federal rules and regulations as authorized in Subsection 19-6-404(2) (c).

(~~59~~4) "UST installation" means the installation of an underground storage tank, including construction, placing into operation, building or assembling an underground storage tank in the field. It includes any operation that is critical to the integrity of the system and to the protection of the environment, which includes:

(A) pre-installation tank testing, tank site preparation including anchoring, tank placement, and backfilling;

(B) vent and product piping assembly;

(C) cathodic protection installation, service, and repair;

(D) internal lining;

(E) secondary containment construction; and

(F) UST repair and service.

(~~60~~55) "UST installation permit fee" means the fee established by Section 19-6-411(2)(a)(ii).

(~~61~~4) "UST installer" means an individual who engages in underground storage tank installation.

(~~62~~57) "UST removal" means the removal of an underground storage tank system, including permanently closing and taking out of service all or part of an underground storage tank.

(~~63~~58) "UST remover" means an individual who engages in underground storage tank removal.

(~~64~~59) "UST tester" means an individual who engages in UST testing.

(~~65~~0)(A) "UST testing" means

(i) a testing method which can detect leaks in an underground storage tank system, or

(ii) testing for compliance with corrosion protection requirements, or

(iii) testing or inspection for proper operation of overflow prevention devices and electronic or mechanical leak detection components.

(B) Testing methods must meet applicable performance standards[-øf].

(i) 40 CFR 280.40(a)(~~3~~4), 280.43(c), and 280.44(b) for tank and product piping tightness testing,

(ii) ~~280.44(a) for automatic line leak detector testing~~ 40 CFR 280.35(a)(1)(ii) for testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping,[-and]

- (iii) 280.31(b) for cathodic protection testing[-].
(iv) 280.35(a)(2) for overfill device inspection.
(v) 280.40(a)(3) for testing of mechanical and electronic release detection components, and
(vi) R311-206-11(c)(2)(C) for tank and piping secondary containment testing under R311-206-11.

KEY: petroleum, underground storage tanks

Date of Enactment or Last Substantive Amendment: [~~March 9, 2012~~2016]

Notice of Continuation: April 10, 2012

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403

Environmental Quality, Environmental
Response and Remediation
R311-201
Underground Storage Tanks:
Certification Programs and UST
Operator Training

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40753

FILED: 09/09/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: New types of underground storage tank (UST) testing have been added by the federal UST regulations. The rule change allows some of these types of testing to be done by certified UST installers or UST owner/operators because they do not require specialized equipment, or they relate more closely to the work currently done by UST installers rather than by UST testers. The types of testing that require specialized equipment are added to the statement that certification only applies to the equipment for which the certified tester has been trained by the equipment manufacturer to ensure that certified testers are properly trained to use the equipment. Wording changes are made to remove compliance dates that are in the past, provide greater clarity, and remove duplication. They do not change the essence of the rule. A reference to the Waste Management and Radiation Control Board hearing certification-related appeals is removed because the Board, by statute, no longer hears such appeals. Sections dealing with UST operator inspections and requirements for un-attended UST facilities are moved from the rule on operator training (Section R311-201-12) to Rule R311-203 because they do not relate expressly to UST operator training and fit better elsewhere. The incorporation by reference of the Utah UST operator inspection form is removed because the reference to the operator inspection form is moved to Section R311-203-7 and use of the new form will not be mandatory. AB operator re-

training requirements are changed to clarify the sequence of events if the operator that is required to re-train due to non-compliance does not successfully re-train and notify the Director of the re-training within 120 days of the determination of non-compliance. The reference to revoking the certificate of compliance is removed because it is unnecessary; the certificate can be revoked for any significant non-compliance under Section 19-6-414 of the Utah UST Act.

SUMMARY OF THE RULE OR CHANGE: This amendment specifies the new types of UST testing that can be performed by certified UST installers and UST owner/operators; adds new types of UST testing to the statement that certification only applies to the specific equipment on which the UST tester has been trained by the equipment manufacturer; removes dates that specified when UST-related activities first had to be performed by a certified individual; re-words UST Tester training requirements and standards of performance for certified individuals; removes a reference to the Board hearing certification-related appeals; moves sections on UST operator inspections and requirements for un-attended facilities to another part of the Utah UST rules; removes the incorporation by reference for the Utah UST operator inspection form; changes operator re-training requirements to state that if a Class A or Class B operator must be re-trained due to non-compliance, the operator's registration will lapse in 120 days after the determination of non-compliance instead of in 6 months after the determination of non-compliance; and removes reference to revoking the certificate of compliance due to failure of an A or B operator to re-train.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-1-301 and Section 19-6-105 and Section 19-6-402 and Section 19-6-403 and Section 63G-4-102 and Section 63G-4-503 and Sections 63G-4-201 through 63G-4-205

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Removes UST Operator Inspection - Utah, published by DERR, 06/03/2014

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** As an UST owner/operator, the state of Utah could save approximately \$14,000 based on the number of USTs the state currently owns or operates if it chooses to perform the allowed tests using state employees, rather than paying an installer or tester to perform them.
- ◆ **LOCAL GOVERNMENTS:** As UST owner/operators, local governments could save approximately \$11,000 based on the number of USTs currently owned or operated by local governments if they choose to perform the allowed tests using their own employees, rather than paying an installer or tester to perform them.
- ◆ **SMALL BUSINESSES:** Small businesses that own or operate USTs could save approximately \$125,000 based on the number of USTs currently owned or operated by small businesses if they choose to perform the allowed tests using their own employees, rather than paying an installer or tester to perform them.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local governments who own or operate USTs could save approximately \$400 based on the number of USTs currently owned or operated by these persons if they choose to perform the allowed tests themselves, rather than paying an installer or tester to perform them. A non-fiscal impact is that if UST owner/operators perform the new tests themselves, they can better understand their UST systems and be more involved which will help to reduce the number and severity of UST releases. Requiring that testers who perform new types of testing that require specialized equipment to be certified by the equipment manufacturer helps to ensure that testers are more capable and tests are performed accurately. Other changes clarify the rules and make them easier to understand.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed change allows some of the new required testing to be done by certified UST installers or UST owner/operators, rather than by UST testers. UST owner/operators have the option to perform some tests themselves. Certified installers and testers have the option to purchase equipment and qualify to perform new types of testing. The other proposed changes are for simplicity and clarification, and have no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There would not be a direct fiscal cost imposed by this rule because the requirement to perform new testing on underground storage tanks is in another part of the rule. Underground storage tank owners and operators could, under this rule, reduce the expenses related to the new testing requirements by doing some of the tests themselves rather than paying others to perform the tests.

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

ENVIRONMENTAL QUALITY
ENVIRONMENTAL RESPONSE AND
REMEDICATION
FIRST FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 10/17/2016 02:00 PM, Department of Environmental Quality, 195 North 1950 West, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2017

AUTHORIZED BY: Brent Everett, Director

R311. Environmental Quality, Environmental Response and Remediation.

R311-201. Underground Storage Tanks: Certification Programs and UST Operator Training.

R311-201-1. Definitions.

Definitions are found in Rule R311-200.

R311-201-2. Certification Requirement.

(a) Certified UST Consultant. [~~After December 31, 1995, n~~]No person shall provide or contract to provide information, opinions, or advice relating to UST release management, abatement, investigation, corrective action, or evaluation for a fee, or in connection with the services for which a fee is charged, without having certification to conduct these activities, except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b). The Certified UST Consultant shall be the person directly overseeing UST release-related work. The Certified UST Consultant shall make pertinent project management decisions and be responsible for ensuring that all aspects of UST-related work are performed in an appropriate manner, and all related documentation for work performed submitted to the Director shall contain the Certified UST Consultant's signature. A [~~fter December 31, 1995, a~~]ny release abatement, investigation, and corrective action work performed by a person who is not certified or who is not working under the direct supervision of a Certified UST Consultant, and is performed for compliance with Utah underground storage tank release-related rules, except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b), may be rejected by the Director.

(b) UST Inspector. [~~After December 31, 1989, n~~]No person shall conduct underground storage tank inspection as authorized in Subsection 19-6-404(2)(c) without having certification to conduct these activities.

(c) UST tester.

(1) [~~After December 31, 1989~~]Except as outlined in Subsections (c)(2) and (c)(3), no person shall conduct UST testing without having certification to conduct such activities. [~~After December 31, 1989~~]Except as outlined in Subsection (c)(2) and (c)(3), no owner or operator shall allow UST testing to be conducted on an UST under their ownership or operation unless the person conducting the UST testing is certified according to Rule R311-201.

(2) An individual certified under Rule R311-201 as an installer may:

(A) perform a test of spill prevention equipment and containment sumps used for interstitial monitoring of piping, to meet the requirements of 40 CFR 280.35(a)(1)(ii), if no equipment that requires training by the manufacturer is used;

~~(B) perform an overfill device inspection to meet the requirements of 40 CFR 280.35(a)(2);~~

~~(C) perform a test for proper operation of release detection components to meet the requirements of 40 CFR 280.40(a)(3)(i),(ii), (iv), and (v); and~~

~~(D) perform a test of a piping containment sump or under-dispenser containment to meet the requirements of R311-206-11(e)(2), if no equipment that requires training by the manufacturer is used.~~

~~(3) An UST owner or operator may:~~

~~(A) perform a hydrostatic test of spill prevention equipment and containment sumps used for interstitial monitoring of piping, to meet the requirements of 40 CFR 280.35(a)(1)(ii), if no equipment that requires training by the manufacturer is used, and~~

~~(B) perform a test of a piping containment sump or under-dispenser containment to meet the requirements of R311-206-11(e)(2), if no equipment that requires training by the manufacturer is used.~~

~~(4) Certification by the Director under this Rule [for tank, line and leak detector testing] shall apply only to the specific UST testing equipment and procedures for which the UST tester has been successfully trained by the manufacturer of the equipment, or by training determined by the Director to be equivalent to the manufacturer training, for these types of testing:~~

~~(A) tank, line, and leak detector testing;~~

~~(B) interstitial tests of tanks and piping; and~~

~~(C) spill prevention device and containment sump testing, if equipment that requires training by the manufacturer is used.~~

~~(5) The Director may issue a limited certification restricting the type of UST testing the applicant can perform.~~

~~(d) Groundwater and soil sampler. [After December 31, 1989, n]No person shall conduct groundwater or soil sampling for determining levels of contamination which may have occurred from regulated underground storage tanks without having certification to conduct these activities. [After December 31, 1989, n]No owner or operator shall allow any groundwater or soil sampling for determining levels of contamination which may have occurred from regulated underground storage tanks to be conducted on a tank under their ownership or operation unless the person conducting the groundwater or soil sampling is certified according to Rule R311-201.~~

~~(e) UST Installer. [After January 1, 1991, n]No person shall install an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. [After January 1, 1991, n]No owner or operator shall allow the installation of an underground storage tank to be conducted on a tank under their ownership or operation unless the person installing the tank is certified according to Rule R311-201. The Director may issue a limited certification restricting the type of UST installation the applicant can perform.~~

~~(f) UST Remover. [After January 1, 1991, n]No person shall remove an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. [After January 1, 1991, n]No owner or operator shall allow the removal of an underground storage tank to be conducted on a tank under their ownership or operation unless the person conducting the tank removal is certified according to Rule R311-201.~~

R311-201-3. Application for Certification.

(a) Any individual may apply for certification by paying any applicable fees and by submitting an application to the Director to demonstrate that the applicant

(1) meets applicable eligibility requirements specified in S[ubs]ection R311-201-4 and

(2) will maintain the applicable performance standards specified in S[ubs]ection R311-201-6 after receiving a certificate.

(b) Applications submitted under Subsection R311-201-3(a) shall be reviewed by the Director for determination of eligibility for certification. If the Director determines that the applicant meets the applicable eligibility requirements described in S[ubs]ection R311-201-4 and meets the standards described in S[ubs]ection R311-201-6, the Director shall issue to the applicant a certificate.

(c) Certification for all certificate holders shall be effective for a period of two years from the date of issuance, unless revoked before the expiration date pursuant to Section R311-201-9 or inactivated pursuant to Section R311-201-8. Certificates shall be subject to periodic renewal pursuant to S[ubs]ection R311-201-5.

R311-201-4. Eligibility for Certification.

(a) Certified UST Consultant.

(1) Training. For initial and renewal certification, an applicant must meet Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120 and any other applicable safety training, as required by federal and state law, and within a six-month period prior to application must complete an approved training course or equivalent in a program approved by the Director to provide training to include the following areas: state and federal statutes, rules and regulations, groundwater and soil sampling, and other applicable and related Department of Environmental Quality policies.

(2) Experience. Each applicant must provide with the application a signed statement or other evidence demonstrating three years, within the past seven years, of appropriately related experience in underground storage tank release abatement, investigation, and corrective action, or an equivalent combination of appropriate education and experience, as determined by the Director.

(3) Education. Each applicant must provide with the application college transcripts or other evidence demonstrating the following:

(A) a bachelor's or advanced degree from an accredited college or university with major study in environmental health, engineering, biological, chemical, environmental, or physical science, or a specialized or related scientific field, or equivalent education/experience as determined by the Director;

(B) a professional engineering certificate licensed under Title 58, Chapter 22, of the Professional Engineers and Land Surveyors Licensing Act or equivalent certification as determined by the Director; or

(C) a professional geologist certificate licensed under Title 58, Chapter 76 of the Professional Geologist Licensing Act, or equivalent certification as determined by the Director.

(4) Initial Certification Examination. Each applicant who is not certified pursuant to R311-201-3 must successfully pass an initial

certification examination or equivalent administered under the direction of the Director. The Director shall determine the content of the initial examination based on the training requirements as outlined in Subsection R311-201-4(a)(1).

(5) Renewal Certification Examination. Certified UST Consultants seeking to renew their certification pursuant to R311-201-5 must successfully pass a renewal certification examination or equivalent administered under the direction of the Director. The Director shall determine the content of the renewal examination based on the training requirements as outlined in Subsection R311-201-4(a)(1). The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(6) Examination for Revoked or Expired Certification. Any applicant who is not a Certified UST Consultant on the date the renewal certification examination is given, because the consultant's prior UST Consultant certification was revoked or expired prior to completing a renewal application, must successfully pass the initial certification examination administered under R311-201-4(a)(4).

(b) UST Inspector.

(1) Training. For initial certification, an applicant must have successfully completed an underground storage tank inspector training course or equivalent within the six month period prior to application. The training course shall be approved by the Director and shall include instruction in the following areas: corrosion, geology, hydrology, tank handling, tank testing, product piping testing, disposal, safety, sampling methodology, state site inspection protocol, state and federal statutes, rules and regulations. Renewal certification training will be established by the Director. The applicant must provide documentation of training with the application.

(2) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(b)(1), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(c) UST Tester.

(1) Financial Assurance. An applicant or applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers UST testing and which, in combination, represent an unencumbered value of the largest UST testing contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$50,000, whichever is greater. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the certification application.

(2) Training.

(A) ~~[Tank and product piping tightness testing, and automatic line leak detector testing.]~~ For initial certification, an applicant shall complete underground storage tank testers training within the six month period prior to application, in a program approved by the Director to provide training to include applicable and related areas of state and federal statutes, rules, and regulations. Renewal certification training will be established by the Director. The applicant must provide documentation of training with the application.

(B) For initial certification to perform the types of testing specified in R311-201-2(c)(3), an applicant must have successfully passed a training course conducted by the manufacturer of the UST testing equipment that he will be using, or a training course determined by the Director to be equivalent to the manufacturer training, in the correct use of the necessary equipment, and testing procedures required to operate the UST test system. An applicant for renewal of certification must have successfully passed an appropriate refresher training course conducted by the manufacturer of the UST testing equipment that he will be using, or training as determined by the Director to be equivalent to the manufacturer training, in the correct use of the necessary equipment, and testing procedures required to operate the UST test system. For renewal certification, refresher training or equivalent must be completed within one year prior to the expiration date of the certificate. ~~[In addition, an applicant must complete underground storage tank testers training within the six month period prior to application in a program approved by the Director to provide training to include applicable and related areas of state and federal statutes, rules and regulations. Renewal certification training will be established by the Director. The applicant must provide documentation of training with the application.]~~

([B]C) Cathodic protection testing. For initial and renewal of certification, the applicant shall provide documentation of training as a "Cathodic protection tester" as defined in 40 CFR 280.12. The applicant shall provide documentation of training with the application.

(3) Performance Standards of Equipment. An applicant shall submit documentation that demonstrates the UST testing equipment used by the applicant meets the performance standards ~~[of 40 CFR Part 280.40(a)(3), 280.43(e), and 280.44(b) for tank and product piping tightness testing]~~ specified in R311-200-1(b)(60)(B). This documentation shall be obtained through an independent lab, professional engineering firm, or other independent organization or individual approved by the Director. The documentation shall be submitted at the time of application for certification.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(c)(2), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(d) Groundwater and soil sampler.

(1) Training. For initial certification an applicant shall successfully complete an underground storage tank groundwater and soil sampler training course or equivalent within the six month period prior to application. The training course shall be approved by the Director and shall include instruction in the following areas: chain of custody, decontamination, EPA testing methods, groundwater and soil sampling protocol, preservation of samples during transportation, coordination with Utah certified labs, state and federal statutes, rules and regulations. Renewal certification training will be determined by the Director. The applicant shall provide documentation of training with the application.

(2) Certification Examination. An applicant must successfully pass a certification examination administered under the

direction of the Director. The Director shall determine the content of the initial and subsequent examinations, based on the training requirements as outlined in Subsection R311-201-4(d)(1), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(e) UST Installer.

(1) Financial assurance. An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers underground storage tank installation and which, in combination, represents an unencumbered value of not less than the largest underground storage tank installation contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater. Evidence of financial assurance shall be provided with the application. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the application.

(2) Training. For initial certification, an applicant must have successfully completed an underground storage tank installer training course or equivalent within the six-month period prior to the application. The training course shall be approved by the Director, and shall include instruction in the following areas: tank installation, pre-installation tank testing, product piping testing, excavation, anchoring, backfilling, secondary containment, leak detection methods, piping, electrical, state and federal statutes, rules and regulations. The applicant must provide documentation of training with the application.

(3) Experience. Each applicant must provide with his application a sworn statement or other evidence that he has actively participated in a minimum of three underground storage tank installations.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(e)(2), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(f) UST Remover.

(1) Financial assurance. An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers underground storage tank removal and which, in combination, represents an unencumbered value of not less than the largest underground storage tank removal contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater. Evidence of financial assurance shall be provided with the application. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the application.

(2) Training. For initial certification, an applicant must have successfully completed an underground storage tank remover approved training course or equivalent within the six-month period prior to the application. The training course shall be approved by the Director and shall include instruction in the following areas: tank removal, tank removal safety practices, state and federal statutes, rules and regulations. The applicant must provide documentation of training with the application.

(3) Experience. Each applicant must provide with his application a sworn statement or other evidence that he has actively participated in a minimum of three underground storage tank removals.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Director. The Director shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(f)(2), and the standards and criteria against which the applicant will be evaluated. The Director may offer a renewal certification examination that is less comprehensive than the initial certification examination.

R311-201-5. Renewal.

(a) A certificate holder may apply for certificate renewal not more than six months prior to the expiration date of the certificate by:

(1) submitting a completed application form to demonstrate that the applicant meets the applicable eligibility requirements described in R311-201-4 and meets the applicable performance standards specified in R311-201-6;

(2) paying any applicable fees, and

(3) passing a certification renewal examination.

(b) If the Director determines that the applicant meets the applicable eligibility requirements of R311-201-4 and the applicable performance standards of R311-201-6, the Director shall reissue the certificate to the applicant.

(c) Renewal certificates shall be issued for a period equal to the initial certification period, and shall be subject to inactivation under R311-201-8 and revocation under R311-201-9.

(d) Any applicant who has a certification which has been revoked or expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and certification examination requirements for initial certification under R311-201-4 for the applicable certificate before receiving the renewal certification, except as provided in R311-201-4(a)(6) for certified UST consultants.

R311-201-6. Standards of Performance.

(a) Individuals who are certified in accordance with Rule R311-201 shall:

(1) display the certificate upon request;

(2) comply with all local, state, and federal laws, rules, and regulations regarding the UST activity for which certification is granted;

(3) report the discovery of any release caused by or encountered in the course of performing the UST activity for which certification is granted to the Director, the local health district, and the local public safety office within twenty-four hours. Certified UST consultants and certified groundwater and soil samplers shall report the discovery of any release caused by or encountered in the course of performing environmental sampling for compliance with Utah UST rules, or report the results indicating that a release may have occurred, to the Director, the local health district, and the local public safety office within twenty-four hours.

(4) not participate in fraudulent, unethical, deceitful, or dishonest activity with respect to a certificate application or performance of work for which certification is granted; and

(5) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

~~(b) Certified individuals shall, in addition to meeting the performance standards in R311-201-6(a), observe the following:~~

~~(1) Certified UST Consultant. An individual who provides UST consulting services in the State of Utah:~~

~~[(1) shall display the certificate upon request;~~

~~[(2) shall comply with all local, state and federal laws, rules and regulations regarding UST release-related consulting in this state;]~~

~~[(3)A] shall provide, or shall associate appropriate personnel in order to provide a high level of experience and expertise in release abatement, investigation, or corrective action;~~

~~[(4)B] shall perform, or take steps to ensure that work is performed with skill, care, and diligence consistent with a high level of experience and expertise in release abatement, investigation, or corrective action;~~

~~[(5)C] shall perform work and submit documentation in a timely manner;~~

~~[(6)D] shall review and certify by signature any documentation submitted to the Director in accordance with UST release-related compliance; and~~

~~[(7)E] shall ensure and certify by signature all pertinent release abatement, investigation, and corrective action work performed under the direct supervision of a Certified UST Consultant;~~

~~[(8) shall report the discovery of any release caused by or encountered in the course of performing environmental sampling for compliance with Utah underground storage tank rules, or report the results indicating that a release may have occurred, to the local health district, local public safety office and the Director within twenty-four hours;~~

~~[(9) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and;~~

~~[(10) shall not participate in any other activities regulated under Rule R311-201 without meeting all requirements of that certification program.]~~

~~(b)2) UST Inspector. An individual who performs underground storage tank inspecting for the Division of Environmental Response and Remediation:~~

~~[(1) shall display his certificate upon request;~~

~~[(2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank inspecting in this state;~~

~~[(3) shall report the discovery of any release caused by or encountered in the course of performing tank inspecting to the local health district, local public safety office and the Director within twenty-four hours;]~~

~~[(4)A] shall conduct inspections of USTs and records to determine compliance with this rule only as authorized by the Director.~~

~~[(5) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;~~

~~[(6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and;~~

~~[(7) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.]~~

~~(e)3) UST Tester. An individual who performs UST testing in the State of Utah:~~

~~[(1) shall display his certificate upon request;~~

~~[(2) shall comply with all local, state and federal laws, rules and regulations regarding UST testing in this state;]~~

~~[(3)A] shall perform all work in a manner that there is no release of the contents of the tank;~~

~~[(4) shall report the discovery of any release caused by or encountered in the course of performing tank testing to the local health district, local public safety office and the Director within twenty-four hours;]~~

~~[(5)B] shall assure that all operations of UST testing which are critical to the integrity of the system and to the protection of the environment shall be supervised by a certified person; and~~

~~[(6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;~~

~~[(7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release or suspected release from an underground storage tank or which would falsify UST testing results of the underground storage tank system;]~~

~~[(8)C] shall perform work in a manner that the integrity of the underground storage tank system is maintained[; and;].~~

~~[(9) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.~~

~~(d) Groundwater and soil sampler. An individual who performs environmental sampling for compliance with Utah underground storage tank rules:~~

~~[(1) shall display his certificate upon request;~~

~~[(2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank sampling in this state;~~

~~[(3) shall report the discovery of any release caused by or encountered in the course of performing groundwater or soil sampling or report the results indicating that a release may have occurred to the local health district, local public safety office and the Director within twenty-four hours;~~

~~[(4) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;~~

~~[(5) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and;~~

~~[(6) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.]~~

~~(e)4) UST Installer. An individual who performs underground storage tank installation in the State of Utah:~~

~~[(1) shall display his certificate upon request;~~

~~[(2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank installation in this state;~~

~~[(3) shall perform all work in a manner that there is no release of the contents of the tank;~~

~~[(4) shall report the discovery of any release caused by or encountered in the course of performing tank installation to the local health district, local public safety office and the Director within twenty-four hours;]~~

~~[(5)A] shall assure that all operations of tank installation which are critical to the integrity of the system and to the protection of~~

the environment, ~~[which] includ[es]ing pre-installation tank testing, tank site preparation including anchoring, tank placement, backfilling, cathodic protection installation, service, or repair, vent and product piping assembly, fill tube attachment, installation of tank manholes, pump installation, secondary containment construction, and UST repair, shall be supervised by a certified person; and~~

~~[(6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;~~

~~[(7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release from an underground storage tank; and~~

~~[(8) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.]~~

~~[(9)B] shall notify the Director as required by R311-203-3(a) before installing or upgrading an UST.~~

~~[(f)5] UST Remover. An individual who performs underground storage tank removal in the State of Utah:~~

~~[(1) shall display his certificate upon request;~~

~~[(2) shall comply with all local, state and federal laws and regulations regarding underground storage tank removal in this state;~~

~~[(3) shall perform all work in a manner that there is no release of the contents of the tank;~~

~~[(4) shall report the discovery of any release caused by or encountered in the course of performing tank removal to the local health district, local public safety office and the Director within twenty-four hours;]~~

~~[(5)A] shall assure that all operations of tank removal which are critical to safety and to the protection of the environment which includes removal of soil adjacent to the tank, disassembly of pipe, final removal of product and sludges from the tank, cleaning of the tank, purging or inerting of the tank, removal of the tank from the ground, and removal of the tank from the site shall be supervised by a certified person; and~~

~~[(6)B] shall not proceed to close a regulated UST without an approved closure plan, except as outlined in Subsection R311-204-2(b)[5].~~

~~[(7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;~~

~~[(8) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release from an underground storage tank; and~~

~~[(9) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program, except as outlined in Subsection R311-204-5(b).]~~

R311-201-7. Denial of Certification and Appeal of Denial.

Any individual whose application or renewal application for certification or certification renewal is denied shall be provided with a written documentation by the Director specifying the reason or reasons for denial. An applicant may appeal th[at]e determination [to the Solid and Hazardous Waste Control Board] using the procedures specified in Section [63G-4-102]19-1-301.5, et seq., and Rule R[311-210]305-7.

R311-201-8. Inactivation of Certification.

If an applicant was certified based upon his employer's financial assurance, certification is contingent upon the applicant's continued employment by that employer. If the employer loses his financial assurance or the applicant leaves the employer, his certificate shall automatically be deemed inactive and he shall no longer be certified for purposes of this Rule. Inactive certificates may be reactivated by submitting a supplemental application with new financial assurances and payment of any applicable fees. Reactivated certificates shall be effective for the remainder of their original term unless subsequently revoked or inactivated before the end of that term.

R311-201-9. Revocation of Certification.

Upon receipt of evidence that a certificate holder does not meet one or more of the eligibility requirements specified in Section R311-201-4 or does not meet one or more of the performance standards specified in Section R311-201-6, the individual's certification may be revoked. Procedures for revocation are specified in Rule R305-[6]7.

R311-201-10. Reciprocity.

If the Director determines that another state's certification program is equivalent to the certification program provided in this rule, the applicant successfully passes the Utah certification examination, and payment of any fees associated with this rule are made, he may issue a Utah certificate. The certificate will be valid until the expiration date of the previous state's certificate or the expiration of the certification period described in Subsection R311-201-3(c), as appropriate, whichever is first.

R311-201-12. UST Operator Training and Registration.

(a) To meet the Operator Training requirement (42 USC Section 6991i) of the Solid Waste Disposal Act as amended by the Energy Policy Act of 2005, each UST facility shall ~~[by January 1, 2012;]~~ have UST facility operators that are trained and registered according to the requirements of this section. Each facility shall have three classes of operators: A, B, and C.

(1) A facility may have more than one person designated for each operator class.

(2) An individual acting as a Class A or B operator may do so for more than one facility.

(b) The UST owner or operator shall provide documentation to the Director to identify the Class A, B, and C operators for each facility. If an owner or operator does not register and identify Class A, B, and C operators for a facility, the certificate of compliance for the facility may be revoked for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.

(c) ~~[After January 1, 2012, n]~~New Class A and B operators shall be trained and registered within 30 days of assuming responsibility for an UST facility. New Class C operators shall be trained before assuming the responsibilities of a Class C operator.

(d) The Class A operator shall be an owner, operator, employee, or individual designated under Subsection R311-201-12(d) (2). The Class A operator has primary responsibility for the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the UST system.

(1) The Class A operator shall:

- (A) have a general knowledge of UST systems;
- (B) ensure that UST records are properly maintained according to 40 CFR 280;
- (C) ensure that yearly UST fees are paid;
- (D) ensure proper response to and reporting of emergencies caused by releases or spills from USTs;
- (E) make financial responsibility documents available to the Director as required; and
- (F) ensure that Class B and Class C operators are trained and registered.

(2) An owner or operator may designate a third-party Class B operator as a Class A operator if:

(A) the UST owner or operator is a financial institution or person who acquired ownership of an UST facility solely to protect a security interest in that property and has not operated the USTs at the facility;

(B) all USTs at the facility are properly temporarily closed in accordance with 40 CFR 280.70 and Section R311-204-4; and

(C) all USTs at the facility are empty in accordance with 40 CFR 280.70(a).

(e) The Class B operator shall implement routine daily aspects of operation, maintenance, and recordkeeping for UST systems. The Class B operator shall be an owner, operator, employee, or third-party Class B operator. The Class B operator shall:

(1) ensure that on-site UST operator inspections are conducted according to the requirements of Section R311-20[4-12(h)]3-7;

(2) ensure that UST release detection is performed according to 40 CFR 280 subpart D;

(3) ensure that the status of the UST system is monitored [every seven days] for alarms and unusual operating conditions that may indicate a release;

(4) document the reason for an alarm or unusual operating condition identified in Subsection R311-201-12(e)(3), if it is not reported as a suspected release according to 40 CFR 280.50;

(5) ensure that appropriate release detection and other records are kept according to 40 CFR 280.34 and 280.45, and are made available for inspection;

(6) ensure that spill prevention, overflow prevention, and corrosion protection requirements are met;

(7) be on site for facility compliance inspections, or designate another individual to be on site for inspections;

(8) ensure that suspected releases are reported according to the requirements of 40 CFR 280.50; and

(9) ensure that Class C operators are trained and registered, and are on-site during operating hours.

(f) A[fter January 1, 2012, a]ny individual providing services as a third-party Class B operator shall be trained and registered in accordance with Subsection R311-201-12(j)h and shall:

(1) be certified in accordance with Rule R311-201 as:

(A) a UST Tester, or

(B) a UST installer as either a general installer or service/repair technician, or

(2) meet the training requirements of a certified UST inspector and document comprehensive or general liability insurance with limits of \$250,000 minimum per occurrence.

(g) The Class C operator is an employee and is generally the first line of response to events indicating emergency conditions. A Class C operator shall:

(1) be present at the facility at all times during normal operating hours;

(2) monitor product transfer operations according to 40 CFR 280.30(a), to ensure that spills and overfills do not occur;

(3) properly respond to alarms, spills, and overfills;

(4) notify Class A and/or Class B operators and appropriate emergency responders when necessary; and

(5) act in response to emergencies and other situations caused by spills or releases from an UST system that pose an immediate danger or threat to the public or to the environment, and that require immediate action.

(h) [UST Operator Inspections:

~~(1) Each UST facility shall have an on-site operator inspection conducted every 30 days, or as approved under Subsection R311-201-12(h)(4) or (5). The inspection shall be performed by or under the direction of the designated Class B operator. The Class B operator shall ensure that documentation of each inspection is kept and made available for review by the Director.~~

~~(2) The UST operator inspection shall document that:~~

~~(A) release detection systems are properly operating and maintained;~~

~~(B) spill, overflow, vapor recovery, and corrosion protection systems are in place and operational;~~

~~(C) tank top manways, tank and dispenser sumps, secondary containment sumps, and under-dispenser containment are intact, and are properly maintained to be free of water, product, and debris;~~

~~(D) alarm conditions that could indicate a release are properly investigated and corrected, and are reported as suspected releases according to 40 CFR 280.50 or documented to show that no release has occurred; and~~

~~(E) unusual operating conditions and other indications of a release or suspected release indicated in 40 CFR 280.50 are properly reported.~~

~~(3) The individual conducting the inspection shall use the form "UST Operator Inspection - Utah" to conduct on-site operator inspections. The form, dated June 3, 2014, and including information required to be completed during the inspection, is hereby incorporated by reference.~~

~~(4) The Director may allow operator inspections to be performed less frequently in situations where it is impractical to conduct an inspection every 30 days. The owner or operator shall request the exemption, justify the reason for the exemption, and submit a plan for conducting operator inspections at the facility.~~

~~(5) An UST facility whose tanks are properly temporarily closed according to 40 CFR 280.70 and R311-204-4 shall have an operator inspection every 90 days.~~

~~(i) A facility that normally has no employee or other responsible person on site, or is open to dispense fuel at times when no employee or responsible person is on site, shall have:~~

~~(1) a sign posted in a conspicuous place, giving the name and telephone number of the facility owner, operator, or local emergency responders; and~~

~~(2) an emergency shutoff device in a readily accessible location, if the facility dispenses fuel.~~

~~(j)~~ Operator Training and Registration

(1) Training and testing.

(A) Applicants for Class A and B operator registration shall successfully complete an approved operator training course within the six-month period prior to application.

(B) The training course shall be approved by the Director, and shall include instruction in the following: notification, temporary and permanent closure, installation permitting, underground tank requirements of the 2005 Energy Policy Act, Class A, B, and C operator responsibilities, spill prevention, overfill prevention, UST release detection, corrosion protection, record-keeping requirements, emergency response, product compatibility, Utah UST rules and regulations, UST financial responsibility, and delivery prohibition.

(C) Applicants for Class A and B operator registration shall successfully pass a registration examination authorized by the Director. The Director shall determine the content of the examination.

(D) An individual applying for Class A or B operator registration may be exempted from meeting the requirements of Subsections R311-201-12(~~j~~)(1)(A) and (C) by completing the following within the six-month period prior to application:

(i) successfully passing a nationally recognized UST operator examination approved by the Director, and

(ii) successfully passing a Utah UST rules and regulations examination authorized by the Director. The Director shall determine the content of the examination.

(E) Class C operators shall receive instruction in product transfer procedures, emergency response, and initial response to alarms and releases.

(2) Registration application.

(A) Applicants for Class A and B operator registration shall submit a registration application to the Director, shall document proper training, and shall pay any applicable fees.

(B) Class C operators shall be designated by a Class B operator. The Class B operator shall maintain a list identifying the Class C operators for each UST facility. The list shall identify each Class C operator, the date of training, and the trainer. Identification on the list shall serve as the operator registration for Class C operators.

(C) A registered Class A or B operator may act as a Class C operator by meeting the training and registration requirements for a Class C operator.

(D) Class A and B registration shall be effective for a period of three years, and shall not lapse or ~~expire~~ become inactive if the registered operator leaves the employment of the company under which the registration was obtained.

(3) Renewal of registration.

(A) Class A and B operators shall apply for renewal of registration not more than six months prior to the expiration of the registration by:

(i) submitting a completed application form;

(ii) paying any applicable fees; and

(iii) documenting successful completion of any re-training required by Subsection R311-201-12(~~k~~).

(B) If the Director determines that the operator meets all the requirements for registration, the Director shall renew the applicant's registration for a period equal to the initial registration.

(C) Any applicant for renewal who has a registration that has been expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and examination

requirements for initial registration under Subsection R311-201-12(~~j~~)(1) before receiving the renewal registration.

~~(k)~~ Re-training.

(1) A Class A operator shall be subject to re-training requirements if any facility for which the Class A operator has oversight is found to be out of compliance due to:

(A) lapsing of certificate of compliance;

(B) failure to provide acceptable financial responsibility; or

(C) failure to ensure that Class B and C operators are trained and registered.

(2) A Class B operator shall be subject to re-training requirements if a facility for which the Class B operator has oversight is found to be out of compliance due to:

(A) failure to document significant operational compliance, as determined by the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both incorporated by reference in Subsection R311-206-10(b)(1);

(B) failure to perform UST operator inspections required by ~~Subsection R311-201-12(h)3-7~~; or

(C) failure to ensure that Class C operators are trained and registered, and are on-site during operating hours.

(3) To be re-trained, Class A and Class B operators shall successfully complete the appropriate Class A or B operator training course and examination, or shall complete an equivalent re-training course and examination approved by the Director.

(4) Class A and B operators shall be re-trained within 90 days of the date of the determination of non-compliance, and shall submit documentation showing successful completion of the re-training to the Director within 30 days of the re-training. If the documentation is not received by the Director within 120 days of the date of the determination of non-compliance, ~~the Director may revoke the certificate of compliance for the facility for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.~~

~~(5) If the documentation of re-training is not received by the Director within six months of the date of determination of non-compliance, the Class A or B operator's registration shall lapse. To re-register, the operator shall meet the requirements of Subsection R311-201-12(~~j~~)(1) and (2).~~

~~(6)~~ If a facility for which a Class A or B operator has oversight is found to be out of compliance under Subsections R311-201-12(~~k~~)(1) or (2), re-training shall not be required if the Class A or B operator successfully completes and documents re-training under Subsections R311-201-12(~~k~~)(3) and (4) for a prior determination of non-compliance that occurred during the previous nine months.

~~(h)~~ Reciprocity.

(1) If the Director determines that another state's operator training program is equivalent to the operator training program provided in this rule, he may accept an applicant's Class A or Class B registration application, provided that the applicant:

(A) submits a completed application form;

(B) passes the Utah UST rules and regulations examination referenced in Subsection R311-201-12(~~j~~)(1)(D)(ii), and

(C) submits payment of any applicable registration fees.

(2) The Class A or Class B registration shall be valid until the Utah registration expiration described in Subsection R311-201-12(~~j~~)(2)(D).

KEY: hazardous substances, administrative proceedings, underground storage tanks, revocation procedures
Date of Enactment or Last Substantive Amendment: [~~October 10, 2014~~]2016

Notice of Continuation: April 10, 2012

Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-6-105; 19-6-402; 19-6-403; 63G-4-102; 63G-4-201 through 205; 63G-4-503

Environmental Quality, Environmental Response and Remediation **R311-202** Underground Storage Tank Technical Standards

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40754

FILED: 09/09/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Utah is required to have an underground storage tank (UST) program no less stringent than the federal UST regulations. The new federal UST regulations are, therefore, adopted by reference with some exceptions to ensure that Utah continues to have an approved UST program. Because some compliance dates in the new federal regulations have now passed, those dates are changed to the date the Utah rule will become effective to ensure continuity of program requirements and ensure valid enforcement of the regulations and state rules. The operator training section of the new federal regulations, Subpart J, and associated definitions are not incorporated by reference because Utah already has an approved operator training program in place, in accordance with the Energy Policy Act of 2005, and due to differences in Utah's present program and the operator training requirements in the new federal UST regulations, Utah prefers to keep its present program.

SUMMARY OF THE RULE OR CHANGE: This amendment incorporates by reference most of 40 CFR Part 280 in effect as of 10/13/2015, with certain exceptions and changes to dates.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-403

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates 40 CFR Part 280, published by US Environmental Protection Agency, 10/13/2015

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** As an owner/operator of USTs, the state of Utah will be required, by 10/13/2018, to test spill

prevention devices and piping containment sumps used for interstitial monitoring, and inspect overfill prevention devices and electronic and mechanical leak detection components. The cost for the initial tests is estimated to be \$46,000, based on the number of USTs currently owned or operated by the State of Utah. Subsequent testing of spill prevention, overfill prevention, and containment sumps will occur every three years. Testing of leak detection components will occur yearly.

◆ **LOCAL GOVERNMENTS:** Local governments that own or operate USTs will be required, by 10/13/2018, to test spill prevention devices and piping containment sumps used for interstitial monitoring, and inspect overfill prevention devices and electronic and mechanical leak detection components. The cost for the initial tests is estimated to be \$27,000, based on the number of USTs currently owned or operated by local governments. Subsequent testing of spill prevention, overfill prevention, and containment sumps will occur every three years. Testing of leak detection components will occur yearly.

◆ **SMALL BUSINESSES:** Small businesses that own or operate USTs will be required, by 10/13/2018, to test spill prevention devices and piping containment sumps used for interstitial monitoring, and inspect overfill prevention devices and electronic and mechanical leak detection components. The cost for the initial tests is estimated to be \$280,000, based on the number of USTs currently owned or operated by small businesses. Subsequent testing of spill prevention, overfill prevention, and containment sumps will occur every three years. Testing of leak detection components will occur yearly.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local governments who own or operate USTs will be required, by 10/13/2018, to test spill prevention devices and piping containment sumps used for interstitial monitoring and inspect overfill prevention devices and electronic and mechanical leak detection components. The cost for the initial tests is estimated to be \$1,300, based on the number of USTs currently owned or operated by these persons. Subsequent testing of spill prevention, overfill prevention, and containment sumps will occur every three years. Testing of leak detection components will occur yearly. Non-fiscal impacts include that UST owner/operators will be more involved and knowledgeable about their UST systems, which will result in better operation and maintenance of their USTs. New testing and better UST maintenance will find leaks sooner and prevent leaks. When leaks do occur, they will be easier to clean up, which will result in better protection of the environment and groundwater.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Costs for a typical facility that uses interstitial monitoring for piping, which requires testing of the piping containment sumps and under dispenser containment, are estimated to be \$1,100 every 3 years, and \$150 yearly. Costs for a typical facility that does not use interstitial monitoring for piping are estimated to be \$400 every 3 years and \$150 yearly. Costs to add leak detection to emergency generator tanks are estimated to be \$5,000 to \$10,000, if little or no of the required monitoring

equipment is currently in place. Most emergency generator facilities already have all or most of the equipment that will be needed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: New tests of UST systems will cost approximately \$800 to \$1,500 for a typical UST facility over a 3-year period; most tests will be required every 3 years; some will be required every year. These tests will help provide savings in the long term by reducing the number and severity of UST releases that occur. Most other federal requirements being adopted replace requirements already in place in Utah from the 2005 Energy Policy Act. Although the state rules are being changed, the programs already in place from the Energy Act will, in practice, continue essentially as they have been operating with little change, fiscal or otherwise.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 ENVIRONMENTAL RESPONSE AND
 REMEDIATION
 FIRST FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 10/17/2016 02:00 PM, Department of Environmental Quality, 195 North 1950 West, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2017

AUTHORIZED BY: Brent Everett, Director

R311. Environmental Quality, Environmental Response and Remediation.

R311-202. Federal Underground Storage Tank ~~[Technical Standards]~~ Regulations.

R311-202-1. Incorporation by Reference.

~~[40 CFR Part 280 in effect as of December 6, 1995, is hereby adopted and incorporated by reference.]~~ This rule incorporates by reference 40 CFR Part 280, the federal underground storage tank regulations, in effect as of October 13, 2015, except that:

(a) 40 CFR 280 Subpart J is not incorporated by reference;

(b) the definitions of Class A operator, Class B operator, Class C operator, and Training program in 40 CFR 280.12 are not incorporated by reference;

~~(c) The date October 13, 2015 in 280.10(a)(1)(ii), 280.10(a)(1)(iii), 280.20(c)(3), 280.35(b)(1), 280.35(b)(2), 280.42(a) note, 280.42(e), 280.45(a), 280.251(a)(1), 280.251(a)(2), 280.251(b), 280.252(b), 280.252(e), 40 CFR Part 280 appendix 1, and 40 CFR Part 280 appendix 2 is, in each instance, changed to January 1, 2017; and~~

~~(d) The date April 11, 2016 in 280.20, 280.20(f), 280.41(a)(1), 280.41(a)(2), 280.41(b)(1), and 280.41(b)(2) is, in each instance, changed to January 1, 2017.~~

KEY: hazardous substances, petroleum, underground storage tanks[*]

Date of Enactment or Last Substantive Amendment: [September 16, 1996] 2016

Notice of Continuation: April 10, 2012

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403

**Environmental Quality, Environmental
 Response and Remediation
 R311-203
 Underground Storage Tanks: Technical
 Standards**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40755

FILED: 09/09/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The requirement for an underground storage tank (UST) owner to notify the director of the Division of Environmental Response and Remediation (DERR) when storing an alternative fuel in an UST is removed because the new federal UST regulations contain a comparable section on compatibility and notification for alternative fuels. The current Utah wording is therefore no longer necessary. Wording requiring prenotification by installers before installing a cathodic protection system relates to original requirements from the federal UST regulations that dealt with the 1998 UST upgrade requirement for older USTs. Removal of the wording allows for notification in all instances when a cathodic protection system is installed. Wording to specify the fees that are due for previously unregistered USTs that are promptly removed clarifies the procedure and the fee that will be assessed. It also acts as an incentive for prompt removal of the USTs by allowing the DERR director to decline to pursue other past due fees if the tanks are removed promptly. Some UST testing requirements are removed because they are now included in the federal UST regulations. Requirements for reporting the results of spill containment equipment and containment sump testing will provide consistency in reporting and also allow those who conduct the tests some latitude. Because testing will be done by

certified UST testers, certified UST installers, and UST owner/operators, consistency in reporting results will aid the DERR director in understanding the test results. The secondary containment rule is modified to specify that the rule applies to UST installations that occur between 10/01/2008 and 01/01/2017, to provide continuity and the ability to enforce the rule for installations that took place during that time period. To provide for enforcement of secondary containment requirements on or after 01/01/2017, a statement is added to specify that UST installations that occur after 01/01/2017 must meet the requirements of 40 CFR 280.20. The requirements for UST operator inspections and unattended UST facilities are included in Rule R311-203 because they are more appropriate here than in the UST operator training rule (Section R311-201-12). The operator inspection requirements are modified to incorporate the new federal UST operator inspection requirements in 40 CFR 280.36. Because there are now more options for performing the inspections, and to allow some latitude to UST owner/operators in recording and reporting their inspections, a new Utah UST operator inspection form will be available for use but will not be required.

SUMMARY OF THE RULE OR CHANGE: This amendment removes the requirement for notification by the UST owner/operator when an alternative fuel is stored in a UST; removes wording that specifies situations in which a certified installer must notify the Director before performing a cathodic protection system installation; adds a statement to clarify the fees that are to be paid for previously unregistered USTs that are removed promptly after discovery; removes certain UST testing requirements; specifies the reporting requirements for testing of spill containment equipment and containment sumps; modifies parts of the secondary containment rule (Section R311-203-6); adds requirements for UST operator inspections and unattended facilities (moved from Section R311-201-12 and modified); and provides for a revised UST operator inspection form.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-403 and Section 19-6-408

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** From previously unknown USTs that are found and promptly removed, the state budget could lose up to \$440 in UST registration fees per tank. The total amount lost depends on the number of such tanks that are found. The benefits to the environment outweigh the cost of the lost fees.

◆ **LOCAL GOVERNMENTS:** As a UST owner/operator, a local government could save the cost of two years of UST registration fees (\$440 per UST) if it finds a previously unknown and unregistered UST and removes it promptly. The total savings depend on the number of such USTs that are found and removed. The local government could also save a portion of the costs for its monthly operator inspections if it contracts with a third party to perform the inspections. The total amount saved would depend on the

degree to which the third-party inspector could reduce charges due to the reduced amount of work necessary to perform the inspection.

◆ **SMALL BUSINESSES:** As a UST owner/operator, a small business could save the cost of 2 years of UST registration fees (\$440 per UST) if it finds a previously unknown and unregistered UST, and removes it promptly. The total savings depend on the number of such USTs that are found and removed. The small business could also save a portion of the costs for its monthly operator inspections if it contracts with a third party to perform the inspections. The total amount saved would depend on the degree to which the third-party inspector could reduce charges due to the reduced amount of work necessary to perform the inspection.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** In cases where previously unregistered USTs are found and removed promptly, the UST owner/operator will save the cost of 2 years of UST registration fees (\$220 per tank per year). The director could otherwise pursue collection of three years of fees. The total savings will depend on the number of such tanks that are found and promptly removed. UST owner/operators who contract with third parties to perform the monthly UST operator inspections could save part of the present cost of the inspection because the proposed change will require a reduced monthly inspection. The total saved would depend on the present charge by third-party inspectors and the degree to which the inspections will be reduced. Non-fiscal impacts are that the incentive to remove previously unregistered USTs helps protect human health and the environment by removal of old out-of-use USTs and finding releases that may otherwise not be found if the tanks are not removed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs are anticipated. The proposed changes could result in some savings to UST owner/operators who use insurance for their UST financial responsibility and who contract with third parties for their monthly UST operator inspections. Other changes remove wording from the state rule that is now part of the federal UST regulations, and do not make substantive changes to the UST requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There should be little or no impact. Some items are removed or modified because the federal regulations now address them or are modified to address situations that the federal regulations may not specifically address. Other changes provide options for tank owners to report testing and monthly inspections.

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

ENVIRONMENTAL QUALITY
ENVIRONMENTAL RESPONSE AND
REMEDATION
FIRST FLOOR
195 N 1950 W

SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 10/17/2016 02:00 PM, Department of Environmental Quality, 195 North 1950 West, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2017

AUTHORIZED BY: Brent Everett, Director

R311. Environmental Quality, Environmental Response and Remediation.

R311-203. Underground Storage Tanks: Technical Standards.

R311-203-1. Definitions.

Definitions are found in Rule R311-200.

R311-203-2. Notification.

(a) The owner or operator of an underground storage tank shall notify the Director whenever:

- (1) new USTs are brought into use;
- (2) the owner or operator changes;
- (3) changes are made to the tank or piping system; and
- (4) release detection, corrosion protection, or spill or overflow prevention systems are installed, changed or upgraded; ~~and~~
- ~~(5) whenever an alternative fuel is stored in the tank.~~

(b) All notifications shall be submitted on the current approved notification form.

~~(c)~~ (1) Notifications submitted to meet the requirements of R311-203-2(a)(1) through (4) shall be submitted within 30 days of the completion of the work or the change of ownership.

~~(2) Notifications submitted to meet the requirement of R311-203-2(a)(5) shall be submitted at least 10 days, or another time period approved by the Director, prior to storing an alternative fuel in the tank.~~

(e) (d) To satisfy the requirement of Subsection 19-6-407(1) (c) the certified installer shall:

(1) complete the appropriate section of the notification form to be submitted by the owner or operator, and ensure that the notification form is submitted by the owner or operator within 30 days of completion of the installation; or

(2) provide separate notification to the Director within 60 days of the completion of the installation.

R311-203-3. New Installations, Permits.

(a) Certified UST installers shall notify the Director at least 10 days, or another time period approved by the Director, before commencing any of the following activities:

- (1) the installation of a full UST system or tank only;

(2) the installation of underground product piping for one or more tanks at a facility, separate from the installation of one or more tanks at a facility;

(3) the internal lining of a previously-existing tank;

(4) the installation of a cathodic protection system on one or more previously-existing tanks at a facility ~~where the structural integrity of the UST was required to be assessed, or where there is no documentation of a properly working cathodic protection system on the UST within 10 years of the proposed upgrade~~;

(5) the installation of a bladder in a tank;

(6) any retro-fit, replacement, or installation that requires the cutting of a manway into the tank;

(7) the installation of a spill prevention or overflow prevention device;

(8) the installation of a leak detection monitoring system; and

(9) the installation of a containment sump or under-dispenser containment.

(b) The UST installation company shall submit to the Director an UST installation permit fee of \$200 when any of the activities listed in R311-203-3(a)(1) through (6) is performed on an UST system that has not qualified for a certificate of compliance before the commencement of the work.

(c) The fees assessed under 19-6-411(2)(a)(i) shall be determined based on the number of full UST installations performed by the installation company in the 12 months previous to the fee due date. Installations for which the fee assessed under 19-6-411(2)(a)(ii) and R311-203-3(c) is charged shall count toward the total installations for the 12-month period.

(d) For the purposes of Subsections 19-6-411(2)(a)(ii), 19-6-407(1)(c), and R311-203-2(~~e~~)d, an installation shall be considered complete when:

(1) in the case of installation of a new UST system, tank only, or product piping only, the new installation first holds a regulated substance; or

(2) in the case of installation of the components listed in Subsections R311-203-3(a)(3) through (a)(6), the new installation is functional and the UST holds a regulated substance and is operational.

(e) If, before completion of an installation for which an UST installation permit fee is required, the owner or operator decides to install additional UST system components, the installer shall notify the Director of the change. When additions are made, the UST installation permit fee shall not be increased unless the original UST installation permit fee would have been higher had the addition been considered at the time the original fee was determined.

(f) The number of UST installation companies performing work on a particular installation shall not be a factor in determining the UST installation permit fee for that installation. However, each installation company shall identify itself at the time the UST installation permit fee is paid.

(g) When a new UST system, tank only, product piping only, or new cathodic protection system is installed, the owner or operator shall submit to the Director an as-built drawing, to scale, that meets the requirements of R311-200-1(b)(~~3~~)2.

R311-203-4. Underground Storage Tank Registration Fee.

(a) Registration fees shall be assessed by the Department against all tanks which are not permanently closed for the entire fiscal year, and shall be billed per facility.

(b) Registration fees shall be due on July 1 of the fiscal year for which the assessment is made, or, for underground storage tanks brought into use after the beginning of the fiscal year, underground storage tank registration fees shall be due when the tanks are brought into use, as a requirement for receiving a certificate of compliance.

(c) The Director may waive all or part of the penalty assessed under Subsection 19-6-408(5) if no fuel has been dispensed from the tank on or after July 1, 1991 and if the tank has been properly closed according to ~~[Sections]~~ Rules R311-204 and R311-205, or in other circumstances as approved by the Director.

(d) The Director shall issue a certificate of registration to owners or operators for individual underground storage tanks at a facility if:

(1) the tanks are in use or are temporarily closed according to 40 CFR Part 280 Subpart G; and,

(2) the underground storage tank registration fee has been paid.

(e) Pursuant to 19-6-408(5)(c), all past due registration fees, late payment penalties and interest must be paid before the Director may issue or re-issue a certificate of compliance regardless of whether there is a new owner or operator at the facility. However, the Director may decline active collection of past due registration fees, late payment penalties and interest if a certificate of compliance is not issued and the new owner or new operator properly closes the underground storage tanks within one year of becoming the new owner or operator of the facility.

(f) An underground storage tank will be assessed the higher registration fee established under Section 63J-1-504 if it is found to be out of significant operational compliance with leak prevention or leak detection requirements during an inspection, and remains out of compliance for six months or greater following the initial inspection. The higher registration fee shall be due July 1 following the documented six-month period of non-compliance. A tank will be out of significant operational compliance if it fails to meet any of the significant operational compliance measures stated in the EPA compliance measures matrices incorporated by Subsection R311-206-10(b)(1).

(g) When the Director is notified of the existence of a previously un-registered regulated UST, the Director shall assess the registration fee for the current fiscal year. If the UST is properly permanently closed within 90 days of the notification of the existence of the UST, the Director may decline active collection of past-due registration fees, late payment penalties, and interest for previous fiscal years.

R311-203-5. UST Testing Requirements.

(a) Tank tightness testing. The testing method must be able to test the UST system at the maximum level that could contain regulated substances. Tanks with overfill prevention devices that prevent product from entering the upper portion of the tank may be tested at the maximum level allowed by the overfill device.

~~(b) [Automatic line leak detector testing. Line leak detectors shall be tested annually for functionality according to 40 CFR 280.44(a) and R311-200-1(b)(4). An equivalent test may be approved by the Director. The test shall simulate a leak and provide a determination based on the test whether the leak detector functions properly and meets the requirements of 40 CFR 280.44(a). If a sump sensor is used as an automatic line leak detector, the sensor shall be located as close as is practical to the lowest portion of the sump.] Spill~~

prevention equipment. An individual who conducts a test of spill prevention equipment to meet the requirements of 40 CFR 280.35(a)(1)(ii) shall report the test results using:

(1) the form "Utah Spill Prevention Test", or

(2) the form "Appendix C-3 Spill Bucket Integrity Testing Hydrostatic Test Method Single and Double-Walled Vacuum Test Method", found in PEI RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities", or

(3) another form approved by the Director.

(c) Containment sump testing. An individual who conducts a test of a containment sump used for interstitial monitoring to meet the requirements of 40 CFR 280.35(a)(1)(ii) or a test of a piping containment sump or under-dispenser containment to meet the requirements of R311-206-11 shall report the test results using:

(1) the form "Utah Containment Sump Test", or

(2) the form "Appendix C-4 Containment Sump Integrity Testing Hydrostatic Testing Method", found in PEI RP1200, or

(3) another form approved by the Director.

(d) When a sump sensor is used as an automatic line leak detector, the secondary containment sump shall be tested for tightness annually according to the manufacturer's guidelines or standards, or by another method approved by the Director. The sensor shall be located as close as is practicable to the lowest portion of the sump.

([d]e) Cathodic protection testing. Cathodic protection tests shall meet the inspection criteria outlined in 40 CFR 280.31(b)(2), or other criteria approved by the Director. The tester who performs the test shall provide the following information: location of at least three test points per tank, location of one remote test point for galvanic systems, test results in volts or millivolts, pass/fail determination for each tank, line, flex connector, or other UST system component tested, the criteria by which the pass/fail determination is made, and a site plat showing locations of test points. A re-test of any cathodic protection system is required within six months of any below-grade work that may harm the integrity of the system.

([e]f) UST testers performing tank and line tightness testing shall include the following as part of the test report: pass/fail determination for each tank or line tested, the measured leak rate, the test duration, the product level for tank tests, the pressure used for pressure tests, the type of test, and the test equipment used.

R311-203-6. Secondary Containment and Under-dispenser Containment.

(a) Secondary containment for tanks and piping.

(1) To meet the requirements of Section 42 USC 6991b(i) of the Solid Waste Disposal Act, all tanks and product piping that are installed as part of an underground storage tank system after October 1, 2008 and before January 1, 2017 shall have secondary containment if the installation is located 1000 feet or less from an existing community water system or an existing potable drinking water well.

(2) The secondary containment installed under Subsection (a) shall meet the requirements of 40 CFR 280.42(b), and shall be monitored monthly for releases from the tank and piping. Monthly monitoring shall meet the requirements of 40 CFR 280.43(g).

(3) Containment sumps for piping that is installed under Subsection (a) shall be required:

(A) at the submersible pump or other location where the piping connects to the tank;

(B) where the piping connects to a dispenser, or otherwise goes above-ground; and

(C) where double-walled piping that is required under Subsection (a) connects with existing piping.

(4) Containment sumps for piping that is installed under Subsection (a) shall:

(A) contain submersible pumps, check valves, unburied risers, flexible connectors, and other transitional components that connect the piping to the tank, dispenser, or existing piping; and

(B) meet the requirements of Subsections (b)(2)(A) through (C).

(5) In the case of a replacement of tank or piping, only the portion of the UST system being replaced shall be subject to the requirements of Subsection (a). If less than 100 percent of the piping from a tank to a dispenser is replaced, the requirements of Subsection (a) shall apply to all new product piping that is installed. The closure requirements of R311-205 shall apply to all product piping that is taken out of service. When new piping is connected to existing piping that is not taken out of service, the connection between the new and existing piping shall be secondarily contained, and shall be monitored for releases according to 40 CFR 280.43(g).

(6) The requirements of Subsection (a) shall not apply to:

(A) piping that meets the requirements for "safe suction" piping in 40 CFR 280.41(b)(2)(i) through (v), or

(B) piping that connects two or more tanks to create a siphon system.

(7) The requirements of Subsection (a) shall apply to emergency generator USTs installed after October 1, 2008.

(b) Under-dispenser containment.

(1) To meet the requirements of Section 42 USC 6991b(i) of the Solid Waste Disposal Act, all new motor fuel dispenser systems installed after October 1, 2008 and before January 1, 2017, and connected to an underground storage tank, shall have under-dispenser containment if the installation is located 1000 feet or less from an existing community water system or an existing potable drinking water well.

(2) The under-dispenser containment shall:

(A) be liquid-tight on its sides, bottom, and at all penetrations;

(B) be compatible with the substance conveyed by the piping; and

(C) allow for visual inspection and access to the components in the containment system, or shall be continuously monitored for the presence of liquids.

(3) If an existing dispenser is replaced, the requirements of Subsection (b) shall apply to the new dispenser if any equipment used to connect the dispenser to the underground storage tank system is replaced. This equipment includes unburied flexible connectors, risers, and other transitional components that are beneath the dispenser and connect the dispenser to the product piping.

(c) The requirements of Subsections (a) and (b) shall not apply if the installation is located more than 1000 feet from an existing community water system or an existing potable drinking water well.

(1) The UST owner or operator shall provide to the Director documentation to show that the requirements of Subsections (a) and (b) to not apply to the installation. The documentation shall be provided at least 60 days before the beginning of the installation, and shall include:

(A) a detailed to-scale map of the proposed installation that demonstrates that no part of the installation is within 1000 feet of any community water system, potable drinking water well, or any well the owner or operator plans to install at the facility, and

(B) a certified statement by the owner or operator explaining who researched the existence of a community water system or potable drinking water well, how the research was conducted, and how the proposed installation qualifies for an exemption from the requirements of Subsections (a) and (b).

(d) To determine whether the requirements of Subsections (a) and (b) apply, the distance from the UST installation to an existing community water system or existing potable drinking water well shall be measured from the closest part of the new underground tank, piping, or motor fuel dispenser system to:

(1) the closest part of the nearest community water system, including:

(A) the location of the wellheads for groundwater and/or the location of the intake points for surface water;

(B) water lines, processing tanks, and water storage tanks; and

(C) water distribution/service lines under the control of the community water system operator, or

(2) the wellhead of the nearest existing potable drinking water well.

(e) If a new underground storage tank facility is installed, and is not within 1000 feet of an existing community water system or an existing potable drinking water well, the requirements of Subsections (a) and (b) apply if the owner or operator installs a potable drinking water well at the facility that is within 1000 feet of the underground tanks, piping, or motor fuel dispenser system, regardless of the sequence of installation of the UST system, dispenser system, and well.

(f) To meet the requirements of 40 CFR 280.20, all tanks and product piping that are installed or replaced as part of an underground storage tank system on or after January 1, 2017 shall be secondarily contained and use interstitial monitoring in accordance with 40 CFR 280.43(g).

R311-203-7. Operator Inspections.

(a) Owners and operators shall perform periodic inspections in accordance with 40 CFR 280.36. Inspections shall be conducted by or under the direction of the designated Class B operator. The Class B operator shall ensure that documentation of each inspection is kept and made available for review by the Director.

(b) The individual who conducts inspections to meet the requirements of 40 CFR 280.36(a)(1) or (a)(3) shall use the form "UST Operator Inspection- Utah" or another form approved by the Director.

(c) The Director may allow operator inspections to be performed less frequently in situations where it is impractical to conduct an inspection every 30 days. The owner or operator shall request the exemption, justify the reason for the exemption, and submit a plan for conducting operator inspections at the facility.

(d) An UST facility whose tanks are properly temporarily closed according to 40 CFR 280.70 and R311-204-4 shall have an annual operator inspection.

(e) An owner or operator who conducts visual checks of tank top containment sumps and under dispenser containment sumps for compliance with piping leak detection in accordance with 40 CFR

280.43(g) shall conduct the visual checks monthly and report the results on the operator inspection form.

R311-203-8. Unattended Facilities.

(a) A facility that normally has no employee or other responsible person on site, or is open to dispense fuel at times when no employee or responsible person is on site, shall have:

(1) a sign posted in a conspicuous place, giving the name and telephone number of the facility owner, operator, or local emergency responders, and

(2) an emergency shutoff device in a readily accessible location, if the facility dispenses fuel.

KEY: fees, hazardous substances, petroleum, underground storage tanks

Date of Enactment or Last Substantive Amendment: [~~February 14, 2011~~]2016

Notice of Continuation: April 10, 2012

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-408

Environmental Quality, Environmental
Response and Remediation
R311-206
Underground Storage Tanks:
Certificate of Compliance and Financial
Assurance Mechanisms

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 40756
FILED: 09/09/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Requiring submittal of the manufacturer's installation checklist for newly installed tanks will help ensure that the work was done properly and that tank deflection readings were taken. Submittal of the checklist also provides documentation for the tank warranty. References to yearly submittal of financial responsibility documents are removed because, in recent years, some underground storage tank (UST) owner/operators using alternate financial assurance have obtained insurance policies with a term of more than one year. If no review of the policy is needed during a given fiscal year, the owner should not have to pay the review fee for that year. In Subsection R311-206-4(e), the reference to fiscal year 1998 is removed to allow the subsection to refer to auditing of facility throughput records for other years and to keep the criteria for audits of UST owner self-worth for self-insurance under Subsection R311-206-4(f). In Section R311-206-11, references to "continuous" monitoring are removed to avoid misinterpretation of the term "continuous" and to provide an accurate description of the level of monitoring

required to qualify for the rebate. Other changes are made to clarify and update the rule and do not make substantive changes to the meaning of the rule.

SUMMARY OF THE RULE OR CHANGE: This amendment adds a requirement that the UST owner/operator must submit the tank manufacturer's installation checklist in order to receive a certificate of compliance for newly installed tanks; removes the requirement for submittal of financial responsibility documents each year; makes minor grammatical and technical changes; corrects citations due to changes elsewhere in the rules and changes to the federal UST regulations; updates fire code adoption reference; removes reference to fiscal year 1998 in the section that specifies the requirements for audits of UST facility throughput records; and rewords Environmental Assurance Fee rebate requirements by replacing references to "continuous" monitoring with more appropriate wording.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-403 and Section 19-6-410.5 and Section 19-6-428

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The state budget may lose approximately \$1,000 per year in alternate financial assurance mechanism processing fees. The amount could change if more or fewer UST owner/operators obtain UST insurance policies with terms longer than one year.

♦ **LOCAL GOVERNMENTS:** If a local government is a UST owner/operator, it may save \$240 per year if it has a UST insurance policy with a term greater than one year. The total amount saved would depend on the number of local government UST owner/operators that obtain such policies. There is no cost for submittal of the UST manufacturer's installation checklist. In current practice, the UST installer completes the checklist and generally submits it to the DERR. Other changes do not have cost or savings associated with them but clarify or improve wording of the rule.

♦ **SMALL BUSINESSES:** If a small business is a UST owner/operator, it may save \$240 per year if it has a UST insurance policy with a term greater than one year. The total amount saved would depend on the number of small businesses UST owner/operators that obtain such policies. There is no cost for submittal of the UST manufacturer's installation checklist. In current practice, the UST installer completes the checklist and generally submits it to the DERR. Other changes do not have cost or savings associated with them but clarify or improve wording of the rule.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** A UST owner/operator may save \$240 per year if it has a UST insurance policy with a term greater than 1 year. The total amount saved would depend on the number of UST owner/operators that obtain such policies. There is no cost for submittal of the UST manufacturer's installation checklist. In current practice, the UST installer completes the checklist and generally submits it to the DERR. Other changes do not have cost or savings associated with them, but clarify or

improve wording of the rule. Non-fiscal impacts are that the proposed change to require submittal of the UST manufacturer's installation checklist will help ensure that underground storage tanks and product piping are installed properly according to the specifications of the tank and piping manufacturers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs are anticipated. The proposed changes can provide minor savings to UST owner/operators with UST insurance policies.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Most of the changes would not have a fiscal impact on businesses. They formalize current practice and clean up the rule where out-of-date references exist, or the clarity of the rule can be improved. If a tank owner has an insurance policy for USTs and that policy runs longer than one year, the owner would not have to pay the \$240 financial assurance processing fee in the years the policy is not renewed.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 ENVIRONMENTAL RESPONSE AND
 REMEDIATION
 FIRST FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 10/17/2016 02:00 PM, Department of Environmental Quality, 195 North 1950 West, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2017

AUTHORIZED BY: Brent Everett, Director

R311. Environmental Quality, Environmental Response and Remediation.

R311-206. Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms.

R311-206-1. Definitions.

Definitions are found in Rule R311-200.

R311-206-2. Declaration of Financial Assurance Mechanism.

(a) To demonstrate financial assurance, as required by 40 CFR 280, subpart H, owners or operators of petroleum storage tanks shall:

(1) meet all requirements for participation in the Environmental Assurance Program, or

(2) demonstrate financial assurance by an allowable method specified in 40 CFR 280, subpart H.

(b) Owners or operators shall declare whether they will participate in the Environmental Assurance Program under Section 19-6-410.5, or show financial assurance by another method.

(c) For the purposes of Subsection 19-6-412(6), all tanks at a facility shall be covered by the same financial assurance mechanism, and shall be considered to be in one area, unless the Director determines there is sufficient information so that releases from different tanks at the facility could be accurately differentiated.

R311-206-3. Requirements for Issuance of Certificates of Compliance.

(a) The Director shall issue a certificate of compliance to an owner or operator for individual petroleum storage tanks at a facility if:

(1) the owner or operator has a certificate of registration;

(2) the tank is substantially in compliance with all state and federal statutes, rules and regulations;

(3) the UST test, conducted within 6 months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual UST is not leaking;

(4) the owner or operator has submitted a letter to the Director stating that based on customary business inventory practices standards there has been no release from the tank;

(5) the owner or operator has submitted a completed application according to a form provided and approved by the Director, and has declared the financial assurance mechanism that will be used;

(6) the owner or operator has met all requirements for the financial assurance mechanism chosen, including payment of all applicable fees; ~~and~~

(7) the owner or operator has submitted an as-built drawing that meets the requirements of R311-200-1(b)(3) ~~and~~

(8) the owner or operator has, for newly-installed tanks, submitted the completed tank manufacturer's installation checklist.

R311-206-4. Requirements for Environmental Assurance Program Participants.

(a) In accordance with Subsection 19-6-411(1)(a), the annual facility throughput rate, if reported, shall be reported to the Director as a specific number of gallons, based on the throughput for the previous calendar year.

(b) In accordance with Subsection 19-6-411(1)(b), when a petroleum storage tank is initially registered with the Director, any Petroleum Storage Tank fee for that tank for the current fiscal year shall be due when the tank is brought into use, as a requirement for receiving a Certificate of Compliance.

(c) In accordance with Subsection 19-6-411(6), the Director may waive all or part of the fees required to be paid on or before May 5, 1997 under Section 19-6-411 if no fuel has been dispensed from the tank on or after July 1, 1991, and if the tank has been properly closed

according to Rules R311-204 and R311-205, or in other circumstances as approved by the Director.

(d) In accordance with Subsection 19-6-411(2)(a)(i), if an installation company receives its annual permit after the beginning of the fiscal year, the annual fee must be paid for the entire year.

(e) Auditing of UST facility throughput records~~[for fiscal year 1998]~~.

(1) Owners and operators shall retain for seven years the monthly tank throughput records of the facility~~[for the months of July 1997 through June 1998]~~. Tank throughput records shall include all financial and product documentation for receipts, dispositions and inventories.

(2) The Director may audit or order an audit, by an independent auditor, of records which support the amount of throughput, for each tank at a participant's facility.

(A) Records shall be made available at the Department for inspection within 30 calendar days after receiving notice from the Director.

(B) Audits may be determined by random selection or for particular reasons, including suspicion or discovery of inaccuracies in throughput reports, aggregating throughput reports, having a release, or filing a claim.

(C) Auditing tank throughput may be accomplished by any method approved by the Director.

(D) All costs of an independent audit shall be paid by the owner or operator.

(f) Owners or operators eligible for coverage by the Fund shall demonstrate financial assurance for the difference between coverage provided by the Fund and coverage amounts required by 40 CFR 280 Subpart H. If the owner or operator chooses self-[-]insurance as the mechanism for demonstrating financial assurance for the difference, the owner or operator must document a tangible net worth of \$10,000 upon request and to the satisfaction of the Director. An owner or operator may also select and document another mechanism specified in 40 CFR 280.94 to demonstrate financial assurance for the difference. The processing fee requirement referenced in Subsection R311-206-5(b) is not applicable because the administrative cost is covered by the PST fund fee. However, the Director may require the owner or operator to submit an independent audit to demonstrate net worth for self-[-]insurance. The owner or operator shall bear the expense for the audit. The criteria for an audit are the same as set forth in Subsection R311-206-4(e)(2).

R311-206-5. Requirements for Owners and Operators Demonstrating Financial Assurance by Other Methods.

(a) Owners and operators who elect to utilize an alternate form of financial assurance shall use one or a combination of mechanisms specified in 40 CFR 280.94. Owners and operators shall submit to the Director the documents required by 40 CFR 280.111 to be kept and maintained for the mechanism used.

(1) Formats, calculations, letters, reporting, and record keeping shall be done in accordance with each applicable financial assurance mechanism specified in 40 CFR 280 subpart H.

(2) If the financial assurance documentation submitted to the Director is not in accordance with 40 CFR 280 subpart H, it shall be rejected and shall be invalid.

(b) The processing fee established in Subsection 19-6-408(2)~~(a)~~ for each new or changed financial assurance document submitted for approval shall be included with the financial assurance document and shall be payable to the Department. Processing fees for subsequent ~~[yearly]~~ reviews of ~~[a]~~ financial assurance documents shall be due on July 1 ~~[annually]~~ of the fiscal year for which the review is required.

(1) Pursuant to 40 CFR 280.97, if the financial assurance mechanism is an insurance policy, the insurer is liable for payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with right of reimbursement by the insured for such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95-280.~~[407]~~102 and 280.104-280.107. A showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in Subsection R311-206-5(b) above.

(2) If an owner or operator desires to make any material change to the financial assurance document, the change shall be approved by the Director, and an additional processing fee shall be paid in circumstances as determined by the Director.

(c) Evidence of a current and approved financial assurance mechanism shall be reported to the Director ~~[each year]~~ as follows:

(1) Owners and operators using the financial test of self-[-] insurance shall submit the "Letter from Chief Financial Officer" to the Director within the maximum 120 day period specified in 40 CFR 280.95.

(2) Owners and Operators using insurance and risk retention group coverage for financial assurance shall submit the coverage policy in its entirety, with the current Certificate of Insurance or Endorsement specified in 40 CFR 280.97(b), to the Director within 30 days of acceptance of such policy by the insurer or risk retention group.

(A) If the insurance policy or risk retention group coverage is cancelled, the insurer or risk retention group shall provide written notice of cancellation or other termination of coverage required by 40 CFR 280.97(b)(1)2.d. and 40 CFR 280.97(b)(2)2.d. to the Director as well as the insured.

(B) The insurer shall have a rating of A- or greater by A.M. Best Co.

(3) Owners and operators using an irrevocable letter of credit shall submit proof of the letter of credit, standby trust fund, and formal certification of acknowledgement to the Director within 30 days of issuance from the issuing institution.

(4) Owners and operators using a fully funded trust fund for financial assurance shall submit proof of the trust fund and formal certification of acknowledgement to the Director within 30 days after implementation of the trust fund.

(5) Owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the Director within 30 days of issuance. The owner or operator shall also submit the guarantor's letter from chief financial officer within the 120-day period specified in 40 CFR 280.95.

(6) Owners and operators using a surety bond for financial assurance shall submit the surety bond document, standby trust fund, and certification of acknowledgement to the Director within 30 days of issuance.

(7) Guarantees and surety bonds may be used as financial assurance mechanisms in Utah only if the requirement of 40 CFR Part 280.94(b) is met.

(8) Owners and operators using one of the local government methods specified in 40 CFR 280.104 through 107 shall submit the letter from chief financial officer and associated documents to the Director within 120 days of the end of the owner/operator's or guarantor's fiscal year.

(d) The Director may require reports of financial condition or any other information relative to justification of the financial assurance mechanism from the owner or operator at any time. Information requested shall be reported to the Director within 30 calendar days after receiving the request.

(1) Owners and operators shall maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.111.

(2) Owners and operators shall keep records of all financial assurance mechanisms for a period of three years.

(3) The Director may audit or order an audit of records supporting the financial assurance mechanism at any time.

(A) Audits may be determined by random selection or for specific reasons, including the occurrence of a release or suspected release, deficiencies in complying with regulations or orders, or the suspicion or discovery of inaccuracies.

(B) Auditing of financial assurance methods may be accomplished by any method approved by the Director.

(e) Any and all costs of securing a selected financial assurance mechanism and generating and providing the necessary reporting evidence of an assurance mechanism to the Director shall be the sole responsibility of the owner or operator.

(f) Processing of the alternate financial assurance mechanism documents may be accomplished utilizing any method approved by the Director.

R311-206-6. Voluntary Admission of Eligible Exempt Underground Storage Tanks and above-ground storage tanks to the Environmental Assurance Program.

(a) Owners or operators of eligible exempt underground storage tanks specified in Subsection 19-6-415(1)(a) may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(1) and Subsection R311-206-3(a);

(2) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D; and

(3) meeting the upgrade requirements in 40 CFR 280.21 or the new tank requirements in 40 CFR 280.20, as applicable.

(b) Owners or operators of above-ground storage tanks may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(2) and Subsection R311-206-3(a);

(2) meeting applicable requirements of the Utah State Fire Code adopted pursuant to Section [53-7-106]15A-1-403;

(3) performing an annual line tightness test of all underground product piping, or documenting monthly monitoring of sensor-equipped double-walled underground product piping; and

(4) performing a tightness test of all above-ground tanks every five years, using a tightness test method capable of properly testing the tank.

R311-206-7. Revocation and Lapsing of Certificates.

(a) The Director shall revoke a certificate of compliance or registration if he determines that the owner or operator has willfully submitted a fraudulent application or is not in compliance with any requirement pertaining to the certificate.

(b) A petroleum storage tank owner or operator who has had a certificate of compliance revoked under Section 19-6-414 or Subsection R311-206-7(a) may have the certificate reissued by the Director after the owner or operator demonstrates compliance with Subsection 19-6-412(2), Subsection 19-6-428(3), and Section R311-206-3.

(c) A petroleum storage tank owner or operator who has had a certificate of compliance lapse under Subsection 19-6-408(5)(c) may have the certificate reissued by the Director after the owner or operator demonstrates compliance with Subsection 19-6-412(2) and Section R311-206-3.

(d) A petroleum storage tank owner or operator who has had eligibility to receive payments for claims against the fund lapse under Section 19-6-411(3)(c)(ii) shall meet the requirements of Subsection 19-6-428(3) and pay all fees, interest, and penalties due to reinstate eligibility.

(e) Upon permanent closure of a tank which is covered by the Fund, the eligibility to make a claim against the Fund shall terminate as specified in Section R311-207-2. Permanently closed tanks are not eligible to be reissued a certificate of compliance.

(f) In accordance with Section 19-6-414, the Director may revoke a certificate of compliance for the owner's or operator's failure to comply with 40 CFR 280, which requires release reporting, abatement, investigation, corrective action, or other measures to bring the release site under control.

R311-206-8. Delivery Prohibition.

(a) In accordance with Subsection 19-6-411(7), the Director shall authorize the placement of a delivery prohibition tag identifying a tank:

(1) for which the certificate of compliance has been revoked in accordance with Section 19-6-414, or

(2) for which the certificate of compliance has lapsed for non-payment of fees in accordance with Subsection 19-6-408(5), or

(3) that has never qualified for a certificate of compliance, and is not a new installation under Subsection R311-206-8(a)(4), or

(4) that is a new installation, and has not been issued a certificate of compliance.

(b) In accordance with Subsection 19-6-403(1)(b)(i), the Director shall authorize the placement of a delivery prohibition tag to be placed on the tank as soon as practicable after the determination is made that a tank:

(1) does not have spill prevention equipment required under 40 CFR 280.20(c) or 40 CFR 280.21(d), or

(2) does not have overfill prevention equipment required under 40 CFR 280.20(c) or 40 CFR 280.21(d), or

(3) does not have equipment required for tank or piping leak detection in accordance with 40 CFR 280 Subpart D, or

(4) does not have equipment required for tank or piping corrosion protection in accordance with 40 CFR 280 Subpart B or C.

(c) The delivery prohibition tag shall be placed on the tank fill or in a visible location near the tank fill.

(d) A person who delivers or accepts delivery of a regulated substance or petroleum into a tank marked with a delivery prohibition tag shall be subject to the penalties outlined in Section 19-6-416, unless authorized under R311-206-8(e).

(e) The Director may issue written approval for a delivery of petroleum to:

(1) provide ballast for a new tank during installation, or

(2) allow for the tank tightness test required under Section 19-6-413.

(f) The delivery prohibition tag shall remain in place until the Director issues:

(1) for tanks that have a tag in place in accordance with Subsection R311-206-8(a):

(A) a new certificate of compliance for the tank, and

(B) written authorization to remove the delivery prohibition tag, or

(2) for tanks that have a tag in place in accordance with Subsection R311-206-8(b):

(A) written authorization to remove the delivery prohibition tag.

(g) If a delivery prohibition tag is removed without the authorization specified in Subsection R311-206-8(f)(1)(B) or Subsection R311-206-8(f)(2)(A), the UST owner or operator shall be subject to:

(1) a re-inspection and any applicable fees, and

(2) placement of a new delivery prohibition tag on the tank.

R311-206-9. Removing Participating Tanks from the Environmental Assurance Program.

(a) Owners and operators of petroleum storage tanks who have voluntarily elected to participate in the Environmental Assurance Program may cease participation in the program and be exempted from the requirements described in Section R311-206-4 by:

(1) permanently closing tanks as outlined in 40 CFR 280, subpart G, Rule R311-204, and Rule R311-205, or

(2) meeting the following requirements:

(A) demonstrating compliance with Section R311-206-5, and

(B) notifying the Director in writing at least 30 days before the date of cessation of participation in the program, and specifying the date of cessation.

(i) The Director may waive the 30-day requirement if the owner or operator has already documented current financial assurance under R311-206-5 for other USTs owned or operated by the owner or operator.

(ii) The date of cessation of participation in the program may occur after the date designated in Subsection R311-206-9(a)(2)(B) if the owner or operator does not document compliance with R311-206-5 by the date originally designated.

(b) The fund will not give pro-rata refunds.

(c) For tanks being removed voluntarily from the program, the date of cessation of participation in the program shall be the date on which coverage under the program ends. Subsequent claims for payments from the fund must be made in accordance with Section 19-6-424 and Section R311-207-2.

R311-206-10. Participation in the Environmental Assurance Program After a Period of Voluntary Non-participation.

(a) Owners and operators who choose not to participate in the Environmental Assurance Program shall, before any subsequent participation in the program, meet the following requirements:

(1) notify the Director of the intent to participate in the program;

(2) comply with the requirements of Subsection 19-6-428(3), and

(3) meet the requirements of Subsection R311-206-3(a) to qualify for a new certificate of compliance.

(b) In accordance with Subsection 19-6-428(3)(b), the Director may determine that there is reasonable cause to believe that no petroleum has been released if the owner or operator, for each UST to participate in the program, meets the following requirements at the time the owner or operator applies for participation:

(1) The last two compliance inspections verify significant operational compliance, and verify that no release has occurred. Significant operational compliance status shall be determined using the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both dated March 3, 2005 and incorporated herein by reference. The matrices contain leak prevention and leak detection criteria to be used by inspectors in determining compliance status of underground storage tanks.

(2) The owner or operator documents compliance with all release prevention and release detection requirements that are required for the time period since the last compliance inspection, and the records submitted do not give reason to suspect a release has occurred. The owner or operator shall submit:

(i) tank and piping leak detection records, or a tank and line tightness test performed within the last six months;

(ii) the most recent simulated leak test for all automatic line leak detectors;

(iii) cathodic protection tests, if applicable, and

(iv) internal lining inspections, if applicable.

(3) The period of non-participation in the Program is less than six months, or the UST is less than ten years old.

R311-206-11. Environmental Assurance Fee Rebate Program.

(a) To meet the requirements of Subsection 19-6-410.5(5) (d), each UST Facility participating in the Program shall receive a risk value calculated according to "Environmental Assurance Program Risk Factor Table and Calculation", which is hereby incorporated by reference. The table, dated June 2, 2014, contains risk factors and the formula for risk value calculation.

(b) The risk value for each facility participating in the Environmental Assurance Program shall be:

(1) calculated on a facility basis;

(2) valid for the calendar year;

(3) based on the facility characteristics as of December 15 of the prior calendar year; and

(4) determined, at sites with mixed equipment, by considering the highest risk-valued UST system component for each risk factor.

(c) To qualify as secondarily contained for purposes of risk calculation, tanks shall:

(1) meet the requirements for secondary containment in [Section R311-203-6]40 CFR 280.20, and

(2) meet one of the following:

(A) ~~[have continuous]~~ use an interstitial sensor and documentation of monthly interstitial monitoring, or

(B) ~~documentation of monthly visual checks of a brine-filled interstitial space, or~~

(C) have the interstitial space tested at least once every three years and be documented to be tight by using vacuum, pressure, or liquid testing in accordance with one of the following:

(i) ~~[R]~~ requirements developed by the manufacturer, or

(ii) ~~[A]~~ a Code of Practice developed by a nationally recognized association or independent testing laboratory.

(d) To qualify as secondarily contained for purposes of risk calculation, piping shall:

(1) meet the requirements for secondary containment outlined in ~~[Section R311-203-6]~~ 40 CFR 280.20, and

(2) meet one of the following:

(A) ~~[have continuous]~~ maintain monthly records of monitoring of the interstice by vacuum, pressure, or liquid filled interstitial space, or

(B) use an interstitial monitoring method not listed in Subsection (d)(2)(A), and the integrity of the interstitial space is ensured at least once every three years by using vacuum, pressure, or liquid test in accordance with criteria listed in Subsection (c)(2)(~~[B]~~ C).

(e) To qualify as secondarily contained for purposes of risk calculation, piping containment sumps and under-dispenser containment shall:

(1) be double-walled with ~~[continuous]~~ monthly ~~documentation of~~ monitoring of the space between the walls, or

(2) be tested at least once every three years to show the piping containment sump or under-dispenser containment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following:

(A) requirements developed by the manufacturer, or

(B) a code of practice developed by a nationally recognized association or independent testing laboratory.

(f) Each facility that participates in the Environmental Assurance Program may be eligible for a rebate of a portion of the Environmental Assurance Fee according to the rebate schedule in "Environmental Assurance Fee Rebate Table", which is hereby incorporated by reference. The table, dated June 2, 2014, lists risk tiers and the rebate for each tier.

(g) A facility that begins participation in the Environmental Assurance Program after January 1 of a calendar year shall have its risk value calculated for that year based on the risk factors in place at the facility on the date the facility begins participation in the Program.

KEY: hazardous substances, petroleum, underground storage tanks

Date of Enactment or Last Substantive Amendment: ~~[October 10, 2014]~~ 2016

Notice of Continuation: April 10, 2012

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-410.5; 19-6-428

Environmental Quality, Environmental Response and Remediation **R311-212** Administration of the Petroleum Storage Tank Loan Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40757

FILED: 09/09/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: When an underground storage tank (UST) owner/operator applies for a loan from the Petroleum Storage Tank Loan Program for closing, replacing, or upgrading USTs, the division director may make an initial disbursement of up to 40% of the approved loan amount to the applicant after the loan is approved and before the work is done. To avoid making an initial disbursement that is more than the amount the applicant's contractor requires as an initial payment from the applicant, the rule is changed to state that the initial disbursement may be for the lesser of 40% of the approved loan amount or the amount that the contractor requires up front from the customer (the loan applicant). The loan application form is also changed to reflect the clarification of the amount of the initial disbursement.

SUMMARY OF THE RULE OR CHANGE: Section R311-212-7 is changed to specify that an initial disbursement of loan proceeds to an applicant for a PST loan, paid to the applicant after the loan is approved and prior to the start of work, may be for the lesser of 40% of the approved loan amount or the amount the contractor who will perform the work requires as an initial payment from the customer (the loan applicant). Similar wording is added to the loan application form, and the new form is incorporated by reference.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-403 and Section 19-6-409

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates Loan Application, published by DERR, 07/14/2016

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--The amount saved due to the lower initial disbursement is paid after the work is completed as the final disbursement of the loan proceeds.

♦ LOCAL GOVERNMENTS: None--If a local government, as a UST owner/operator, applies for a PST loan, the proposed change clarifies the amount of the loan that can be paid to the applicant before the work is done. The change does not alter the total loan amount or alter the costs to the applicant.

♦ SMALL BUSINESSES: None--If a small business, as a UST owner/operator, applies for a PST loan, the proposed change clarifies the amount of the loan that can be paid to the applicant before the work is done. The change does not alter the total loan amount or alter the costs to the applicant.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--If a person, as a UST owner/operator, applies for a PST loan, the proposed change clarifies the amount of the loan that can be paid to the applicant before the work is done. The change does not alter the total loan amount or alter the costs to the applicant. Non-fiscal impacts are that the ability to receive part of the loan proceeds before starting the work helps the applicant meet contractor requirements and may encourage UST owner/operators to remove or upgrade older USTs, reducing the number and severity of releases from UST systems.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed change clarifies the amount of the loan that can be paid to the applicant up front. It does not alter the total loan amount or alter the costs to the applicant.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule change does not have any fiscal impact on businesses.

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

ENVIRONMENTAL QUALITY
ENVIRONMENTAL RESPONSE AND
REMEDICATION
FIRST FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at gastin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 10/17/2016 02:00 PM, Department of Environmental Quality, 195 North 1950 West, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/01/2017

AUTHORIZED BY: Brent Everett, Director

R311. Environmental Quality, Environmental Response and Remediation.

R311-212. Administration of the Petroleum Storage Tank Loan Program.

R311-212-1. Definitions.

Definitions are found in Rule R311-200.

R311-212-2. Declaration of Loan Application Periods, and Loan Application Submittal.

(a) Application for a loan shall be made on forms incorporated in Section R311-212-10, in accordance with Subsection 19-6-409(9). Loan applications shall be accepted during application periods designated by the Director.

(b) At least one application period shall be designated each calendar year if, on January 1,:

(1) the current balance due for all outstanding loans is less than twenty-five per cent of the cash balance of the Petroleum Storage Tank Trust Fund, and

(2) the cash balance of the Petroleum Storage Tank Trust Fund exceeds \$10,000,000.

(c) If the requirements of Subsections R311-212-2(b)(1) and (b)(2) are not met on January 1, but are met at a later time in the calendar year, the Director may designate an application period.

(d) An open application period will close if:

(1) the current balance due for all outstanding loans exceeds twenty-five per cent of the cash balance of the Petroleum Storage Tank Trust Fund, or

(2) the cash balance of the Petroleum Storage Tank Trust Fund is less than \$10,000,000.

(e) If an open application period closes as required by Subsection R311-212-2(d), loan applications currently under review when the application period closes may be renewed when a new application period opens, unless the applicant must re-apply as required by Subsection R311-212-5(a).

(f) Applications must be received by the Director by 5:00 p.m. on the last day of the application period.

(g) Loan applications received outside the application period shall be invalid.

R311-212-3. Eligibility Review.

(a) The Director shall determine if the applicant meets the eligibility criteria stated in Subsections 19-6-409(5), 19-6-409(6), 19-6-409(7), and 19-6-409(8).

(b) To meet the eligibility requirements of 19-6-409(6) the applicant must, for all facilities for which the applicant requests a loan, demonstrate current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks, or must be able to achieve compliance with the loan proceeds.

(c) To meet the eligibility requirements of 19-6-409(6) the applicant must meet the following for all facilities owned or operated by the applicant for which the applicant does not request a loan:

(1) The applicant has demonstrated current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks;

(2) All regulated underground petroleum storage tanks owned by the applicant have met the requirements of Section 19-6-412(2) and have a current certificate of compliance;

(3) The applicant has paid all underground storage tank registration fees, interest and penalties which have been assessed; and

(4) The applicant has paid all applicable petroleum storage tank fees, interest and penalties which have been assessed.

(d) To meet the requirements of Section 19-6-409(5), the loan request must be for the purpose of:

(1) Upgrading petroleum USTs;

(2) replacing USTs; or

(3) Permanently closing USTs. If an applicant requests a loan for closing USTs which will be replaced by above-ground storage tanks, the loan, if approved, will be only for closing the USTs. The security pledged by the applicant for a loan to replace USTs with above-ground storage tanks shall be subject to the limitations in R311-212-6.

R311-212-4. Prioritization of Loan Applications.

(a) When determined by the Director to be necessary, all applications received during a designated application period shall be prioritized by total points assigned. Ten points shall be given for each item that applies to the applicant or the facility for which the loan is requested:

(1) The applicant has less than \$1,000,000 annual gross income and fewer than five full-time employee equivalents and is not owned or operated by any person not meeting the income and employee criteria.

(2) The applicant's income is derived solely from operations at UST facilities.

(3) The applicant owns or operates no more than two facilities.

(4) The facility is located in a U.S. Census Bureau population unit containing fewer than 5,000 people.

(5) There are no more than three operating retail outlets selling motor fuel within 15 miles road distance in all directions.

(6) Loan proceeds will be used solely for replacing or upgrading USTs.

(7) All USTs at the facility are greater than 15 years old.

(b) One point shall be given for each road mile of distance from the facility to the nearest operating retail outlet selling motor fuel, to a maximum of 30 points.

(c) Applications which receive the same number of points shall be sub-prioritized according to the date postmarked or the date delivered to the Director by any other method.

(d) Applications shall remain in priority order regardless of availability of funds until a new application period is declared. When a new application period begins, priority order of applications which have not been reviewed terminates. An applicant whose application has not been reviewed or an applicant whose application has not been approved because the applicant has not satisfied the requirements of Subsections 19-6-409(5) through (8), loses eligibility to apply for a

loan and must submit a new application in the subsequent period to be considered for a loan in that period.

R311-212-5. Loan Application Review.

(a) The applicant shall ensure that the loan application is complete. The completed application with supporting documents shall contain all information required by the application. If the applicant does not submit a complete application within 60 days of eligibility approval, the applicant's eligibility approval shall be forfeited, and the applicant must re-apply.

(b) All costs incurred in processing the application including appraisals, title reports, or UCC-1 releases shall be the responsibility of and paid for by the applicant. The Director may require payment of costs in advance. The Director shall not reimburse costs which have been expended, even if the loan fails to close, regardless of the reason.

(c) The review and approval of the application shall be based on information provided by the applicant, and:

(1) review of any and all records and documents on file;

(2) verification of any and all information provided by the applicant;

(3) review of credit worthiness and security pledged; and

(4) review of a site construction work plan.

(d) The applicant must close the loan within 30 days after the Director conveys the loan documents for the applicant's signature. If the applicant fails to close the loan within this time period, the approval is forfeited and the applicant must re-apply. An exception to the 30 day period may be granted by the Director if the closing is delayed due to circumstances beyond the applicant's control.

R311-212-6. Security for Loans.

(a) When an applicant applies for a loan of greater than \$30,000, the applicant must pledge for security personal or real property which meets or exceeds the following criteria:

(1) The loan amount may not be greater than 80 percent of the value of the applicant's equity in the security for cases where the Department obtains a first mortgage position, or

(2) The loan amount may not be greater than 60 percent of the value of the applicant's equity in the security for cases where the Department obtains a second mortgage position.

(b) The applicant shall provide acceptable documentation of the value of the property to be used as security using:

(1) a current written appraisal, performed by a State of Utah certified appraiser;

(2) a current county tax assessment notice, or

(3) other documentation acceptable to the Director.

(c) A title report on all real property and a UCC-1 clearance on all personal property used as security shall be submitted to the Director by a title company or appropriate professional person approved by the Director.

(d) When the title report indicates an existing lien or encumbrance on real property to be used as security, the existing lien holders may subordinate their interest in favor of the Department. The Department shall accept no less than a second mortgage position on real property pledged for loan security.

(e) Whenever a corporation seeks a loan, its principals must guarantee the loan personally.

(f) The applicant must provide a complete financial statement with cash flow projections for debt service.

(g) Above ground storage tanks and real property on which they are located shall not be acceptable as security.

(h) Underground storage tanks and the real property on which they are located shall not be acceptable as security unless:

(1) The UST facility offered for security has not had a petroleum release which has not been properly remediated; and

(2) The applicant provides documentation to demonstrate the UST facility is currently in compliance with the loan eligibility requirements set forth in R311-212-3.

(i) If a loan is made without security, the maximum loan repayment period shall be seven years.

R311-212-7. Procedure for Making Loans.

(a) Loan funds shall be obligated after all documents to secure a loan are complete, processed, and appropriately signed by the applicant and the Director.

(b) The Director may approve a borrower's request for one initial disbursement of loan proceeds to the borrower after the loan is closed, and before work begins. The initial disbursement shall be for the lesser of [no more than] 40 per cent of the approved loan amount or the amount required by the borrower's contractor as an initial payment before work is done. Disbursement of the remaining loan proceeds, or disbursement of the entire loan proceeds if no initial disbursement is made, shall be made after work at the site is completed, and all paperwork and notifications have been received by the Director.

(1) If an initial loan disbursement is made, the borrower shall begin work on the project no later than 60 days, or another time period approved by the Director, following the initial disbursement. Disbursement of the remaining loan proceeds shall be made no later than 180 days, or another time period approved by the Director, following the initial disbursement.

(2) If work is not initiated or completed within the time periods established in Subsection R311-212-7(b)(1), the loan balance shall be paid within 30 days of notice provided by the Director.

(c) Loan proceeds shall not be used to pay underground storage tank registration fees, penalties, or interest assessed under Section 19-6-408 or petroleum storage tank fees, penalties, or interest assessed under Section 19-6-411.

(d) Loans shall not be made for work which is performed before the applicant's loan application is approved and the loan is closed.

R311-212-8. Servicing the Loans.

(a) The Director shall establish a repayment schedule for each loan based on the financial situation and income circumstances of the borrower and the term of loans allowed by Subsection 19-6-409(8) (b)(ii). Loans shall be amortized with equal payment amounts and payments shall be of such amount to pay all interest and principal in full.

(b) The initial installment payment shall be due on a date established by the Director. Subsequent installment payments shall be due on the first day of each month. A notice of payment and due date shall be sent for each subsequent payment. Non-receipt of the statement of account or notice of payment shall not be a defense for non-payment or late payment.

(c) The Director shall apply loan payments received first to penalty, next to interest and then to principal.

(d) Loan payments may be made in advance, and the remaining principal balance of the loan may be paid in full at any time without penalty.

(e) Notices of late payment penalty assessed with amounts of penalty and the total payment due shall be sent to the borrower.

(f) The penalty for late loan payments shall be 10 percent of the payment due. The penalty shall be assessed and payable on payments received by the Director more than five days after the due date. A penalty shall be assessed only once on a given late payment. Payments shall be considered received the day of the U.S. Postal Service post mark date or receipted date for payments delivered to the Director by methods other than the U.S. Postal Service. If a loan payment check is returned due to insufficient funds, a service charge in the amount allowed by law shall be added to the payment amount due.

(g) Notice of loans paid in full shall be sent after all penalties, interest and principal have been paid.

(h) Releases of the Director's interest in security shall be prepared and sent to the borrower or filed for public notice as applicable.

R311-212-9. Recovering on Defaulted Loans.

(a) Loans may be considered in default when two consecutive payments are past due by 30 days or more, when the applicant's ability to receive payments for claims against the fund lapses, or if the certificate of compliance lapses or is revoked. Lapsing under Subsection R311-206-7(e) shall not be considered as grounds for default for USTs which are permanently closed.

(b) The Director may declare the full amount of the defaulted loan, penalty, and interest immediately due.

(c) The Director need not give notice of default prior to declaring the full amount due and payable.

(d) The borrower shall be liable for attorney's fees and collection costs for defaulted loans whether incurred before or after court action.

R311-212-10. Forms.

(a) The forms dated and listed below, on file with the Department, are incorporated by reference as part of Rule R311-212, and shall be used by the Director for making loans.

- (1) Loan Application version [7/29/14]7/14/16
- (2) Balance Sheet version 7/29/14
- (3) Loan Agreement version 7/29/14
- (4) Corporate Authorization version 7/29/14
- (5) Promissory Note version 7/29/14
- (6) Extension and Modification of Promissory Note Agreement version 7/29/14
- (7) Security Agreement version 7/29/14
- (8) Hypothecation Agreement version 7/29/14
- (9) General Pledge Agreement version 7/29/14
- (10) Assignment version 7/29/14
- (11) Assignment of Account version 7/29/14
- (12) Trust Deed version 7/29/14
- (13) Trust Deed Note version 7/29/14
- (14) Extension and Modification of Trust Deed Note Agreement version 7/29/14

(b) The Director may require or allow the use of other forms that are consistent with these rules as necessary for the loan approval

process. The Director may change these forms for administrative purposes provided the revised forms remain consistent with the substantive provisions of the adopted forms.

R311-212-11. Rules in Effect.

(a) The rules in effect on the closing date of the loan and the forms signed by the parties shall govern the parties.

KEY: hazardous substances, petroleum, underground storage tanks

Date of Enactment or Last Substantive Amendment: [~~October 10, 2014~~2016]

Notice of Continuation: April 10, 2012

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-409

**Health, Disease Control and
Prevention, Epidemiology
R386-900**

**Special Measures for the Operation of
Syringe Exchange Programs**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 40765

FILED: 09/13/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As mandated by H.B. 308 from the 2016 General Session, the purpose of this rule is to specify how and when an entity operating a syringe exchange program shall make the report required by Subsection 26-7-8(2)(c).

SUMMARY OF THE RULE OR CHANGE: This new rule outlines operating and reporting requirements for entities operating syringe exchange programs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-7-8

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Department is utilizing .40 FTE in federal funds to monitor, analyze, and report on syringe exchange programs throughout the state, which comes to \$35,380 (personnel and fringe).

◆ **LOCAL GOVERNMENTS:** Anticipated costs cannot be estimated as each eligible agency will decide if it will participate in syringe exchange and to what extent it will conduct syringe exchange activities. Costs may also vary based on the agencies' existing activities and the compatibility of a syringe exchange program with existing services the agency may already be providing.

◆ **SMALL BUSINESSES:** Anticipated costs cannot be estimated as each eligible agency will decide if it will participate in syringe exchange and to what extent it will conduct syringe exchange activities. Costs may also vary based on the agencies' existing activities and the compatibility of a syringe exchange program with existing services the agency may already be providing.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Anticipated costs cannot be estimated as each eligible agency will decide if it will participate in syringe exchange and to what extent it will conduct syringe exchange activities. Costs may also vary based on the agencies' existing activities and the compatibility of a syringe exchange program with existing services the agency may already be providing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs cannot be estimated as each eligible agency will decide if it will participate in syringe exchange and to what extent it will conduct syringe exchange activities; compliance costs include completing mandatory reporting forms and faxing/emailing forms to the Department. Time and personnel costs will vary depending on extent of involvement in syringe exchange.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is proposed in compliance with H.B. 308 (2016) to specify how and when an entity operating a syringe exchange program shall make the statutory required report. There may be fiscal impact on any business choosing to operate an exchange program in the form of administrative costs for personnel, educational materials, syringes and sharps disposals.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
EPIDEMIOLOGY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Erin Fratto by phone at 801-538-6701, or by Internet E-mail at efratto@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R386. Health, Disease Control and Prevention, Epidemiology.
R386-900. Special Measures for the Operation of Syringe Exchange Programs.

R386-900-1. Authority.

This rule is authorized under Utah Code 26-7-8.

R386-900-2. Purpose.

This rule establishes operating and reporting requirements required of an entity operating a syringe exchange pursuant to 26-7-8.

R386-900-3. Definitions.

The following definitions apply to this rule:

- (1) "Department" means the Utah Department of Health Bureau of Epidemiology Prevention, Treatment and Care Program.
- (2) "Syringe exchange" is defined in 26-7-8.
- (3) "Operating entity" is defined in 26-7-8.
- (4) "HIV" human immunodeficiency virus.
- (5) "HCV" hepatitis C virus.
- (6) "HBV" hepatitis B virus.
- (7) "Opiate antagonist" is defined by Chapter 55, Opiate Overdose Response Act.

R386-900-4. Operating Requirements.

(1) An operating entity shall utilize the department's enrollment form to provide written notice of intent to conduct syringe exchange activities to the department 15 days prior to conducting syringe exchange activities. If an operating entity discontinues syringe exchange activities, written notice shall also be submitted utilizing the department's report form within 15 days of termination of activities to the department.

(2) An operating entity must submit a safety protocol to the department for the prevention of needlestick and sharps injury before initiating syringe exchange activities.

(3) An operating entity shall submit a sharps disposal plan to the department. Sharps disposal is the financial responsibility of the entity operating and responsible for the syringe exchange program.

(4) An operating entity shall facilitate the exchange of an individuals used syringes by providing a disposable, medical grade sharps container for the disposal of used syringes.

(5) The operating entity shall exchange one or more new syringes in sealed sterile packages to the individual free of charge.

(6) As available, the department will provide syringes, education materials, and other resources to entities operating a syringe exchange program.

(7) An operating entity must provide and make available to all recipients of new syringe(s) verbal and written instruction on:

- (a) Methods for preventing the transmission of blood borne pathogens, including HIV, HBV and HCV;
- (b) Information and referral to drug and alcohol treatment;
- (c) Information and referral for HIV and HCV testing; and
- (d) How and where to obtain an opiate antagonist.

R386-900-5. Reporting Requirements.

(1) All entities operating a syringe exchange program shall report aggregate data elements in accordance to 26-7-8 to the department on a quarterly basis, utilizing the format provided by the department which is to include:

- (a) Number of individuals who have exchanged syringes.
- (b) A self-reported or approximated number of used syringes exchanged for new syringes.
- (c) Number of new syringes provided in exchange for used syringes.
- (d) Educational materials distributed; and
- (e) Number of referrals provided.

R386-900-6. Penalty.

(1) Any person who violates any provision of R386-900 may be assessed a penalty as provided in section 26-23-6.

R386-900-7. Official References.

(1) Centers for Disease Control and Prevention (CDC), 2016, Program Guidance for Implementing Certain Components of Syringe Services Programs.

(2) Federal Register, Health and Human Services Department, 2011, Determination That a Demonstration Needle Exchange Program Would be Effective in Reducing Drug Abuse and the Risk of Acquired Immune Deficiency Syndrome Infection Among Intravenous Drug Users.

(3) Harm Reduction Coalition, 2006, Syringe Exchange Programs and Hepatitis C.

(4) Harm Reduction Coalition, 2006, Syringe Exchange Programs: Reducing the Risks of Needlestick Injuries.

(5) Substance Abuse and Mental Health Services Administration (SAMHSA), Summary of Syringe Exchange Program Studies.

(6) United States Department of Health and Human Services (HHS), 2016, Implementation Guidance to Support Certain Components of Syringe Services Programs.

(7) World Health Organization (WHO), 2004, Effectiveness of sterile needle and syringe programming in reducing HIV/AIDS among injecting drug users.

KEY: syringe exchange programs, needles, syringes

Date of Enactment or Last Substantive Amendment: 2016

Authorizing, Implemented, or Interpreted Law: 26-7-8

Human Resource Management,
 Administration
R477-101-18
 Training

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 40774

FILED: 09/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add training specifications to existing administrative law judge rule.

SUMMARY OF THE RULE OR CHANGE: The rule change introduces the requirement of a procedural fairness training for administrative law judges.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19e-110

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect affect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no affect on business.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 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:

- ◆ Greg Hargis by phone at 801-891-5680, or by Internet E-mail at ghargis@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

AUTHORIZED BY: Debbie Cragun, Executive Director

R477. Human Resource Management, Administration.**R477-101. Administrative Law Judge Conduct Committee.****R477-101-18. Training.**

(1) The department shall provide an annual webcast on the topic of procedural fairness for administrative law judges. The content of the webcast shall comply with the provisions and requirements set forth in Utah Code 67-19e-110.

(2) Each year that an administrative law judge receives a performance evaluation conducted by the department under this section, the administrative law judge shall complete the procedural fairness training program established by the department.

KEY: administrative law judges, conduct committee

Date of Enactment or Last Substantive Amendment: ~~July 1, 2014~~ 2016

Authorizing, and Implemented or Interpreted Law: 67-19e-101 through 67-19e-109

Human Services, Substance Abuse and Mental Health

R523-11

Utah Standards for Approval of Alcohol and Drug Educational Providers and Instructors for Court-Referred DUI Offenders

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40768

FILED: 09/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the amendment is to change requirements and provide clarification.

SUMMARY OF THE RULE OR CHANGE: The changes: 1) remove some of the items required to be submitted for

certification; 2) change the age threshold for class separation from 21 to 18; 3) increase the waiting time to recertify after revocation from 6 months to 12 months; and 4) give flexibility to the providers in the number of days it takes to complete the classes. The total hours remain the same, but they can be flexible to meet the demands of the participants.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR Chapter 1 Subchapter A Part 2 and Section 17-43-201 and Section 41-6a-502 and Section 41-6a-510 and Section 41-6a-528 and Section 62A-15-103 and Section 62A-15-105 and Section 63G-4-302 and Section 73-18-12 and Section 76-5-207 and Sections 62A-15-501 through 62A-15-503

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The changes being made to this rule are primarily for the purpose of clarification and to provide flexibility in the structure of the classes. The change in age threshold will not have a financial impact. The total hours remain the same, but the providers have flexibility to structure the classes for more days and shorter class times, or longer class times and fewer days, based on demand. These changes are optional to the providers. None of the changes to this rule have a material impact on the costs associated with the way the state administers this program that would result in anticipated cost or saving to the state budget.

◆ LOCAL GOVERNMENTS: There are only a very few local governments that are involved as providers of DUI education. The change in age threshold will not have a financial impact. The scheduling changes are optional to the providers and are expected to have only a marginal impact in the way of savings to the providers.

◆ SMALL BUSINESSES: The changes being made to this rule are primarily for the purpose of clarification and to provide flexibility in the structure of the classes. The total hours remain the same, but the providers have flexibility to structure the classes for more days and shorter class times, or longer class times and fewer days, based on demand. These changes are optional to the providers. These changes are optional to the providers and expected to have only a marginal impact in the way of savings to the providers. The change in age threshold will not have a financial impact.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The change in age threshold will not have a financial impact. The scheduling changes are optional to the providers and are expected to have only a marginal impact in the way of savings to the providers, and it is doubtful that the participants will see any change in the costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change in age threshold will not have a financial impact. The scheduling changes are optional to the providers and are expected to have only a marginal impact in the way of

savings to the providers, and it is doubtful that the participants will see any change in the costs. Therefore, the agency sees no real compliance cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The change in age threshold will not have a financial impact. The scheduling changes are optional to the providers and are expected to have only a marginal impact in the way of savings to the providers, and it is doubtful that the participants will see any change in the costs. As a result, there is no meaningful impact to businesses.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov
◆ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.
R523-11. Utah Standards for Approval of Alcohol and Drug Educational Providers and Instructors for Court-Referred DUI Offenders.

R523-11-1. Purpose and Statutory Authority.

(1) Purpose. This rule prescribes standards for approval of Providers and certification of Instructors for providing alcohol and drug education to court-referred offenders convicted of a Driving Under the Influence (DUI) violation of Sections 41-6a-502, 41-6a-510, 41-6a-528, and 73-18-12.

(2) Statutory Authority. This rule is promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (hereinafter referred to as "Division") as authorized by Sections 41-6a-502, 62A-15-103, 62A-15-105, 17-43-201, 62A-15-501 through 503 and 76-5-207.

(3) Intent. The objective of the DUI Educational Program is to: (a) eliminate alcohol and other drug-related traffic offenses by helping the participant examine the behavior that led to the arrest, (b) assist the participant in implementing behavior changes to cope with problems associated with alcohol and other drug use, and (c) impress upon the participant the severity of the DUI offense.

R523-11-2. Definitions.

(1) "DUI Educational Program" herein referred to as "Program" is an instructional series offered by a licensed substance abuse treatment Provider agency which satisfies the standards established by the Division.

(2) "Provider" is a licensed substance abuse treatment agency that has been approved to offer DUI Education.

(3) "DUI" is driving or being in actual physical control of a vehicle while under the influence of alcohol or any drug or the combined influence of alcohol and any drug to a degree, which renders the person incapable of safely driving a vehicle. In these standards, "DUI" shall refer to individuals convicted of violating Sections 41-6a-510, 41-6a-502, 41-6a-528, and 73-18-12.

(4) "Certificate" is a written authorization issued by the Division to indicate that the Provider agency has been found to be in compliance with these Division standards and may offer DUI Education.

(5) "Screening" is a process using the SASSI (Substance Abuse Subtle Screening Inventory) or other Division approved screening tool in order to identify the need for education or additional assessment.

(6) "Instructor" is a person employed by a Provider who has been certified ~~[by the Division]~~ to instruct the state approved education course for a court-referred participant ~~[-convicted of DUI]~~.

(7) "Participant" is a person attending DUI Education classes as a result of a DUI conviction or arrest. This person has received a screening which indicated education is appropriate.

(8) "Victim Impact Panel". A presentation designed to reflect the principles taught in the educational program that helps participants understand the potential impact on others of driving under the influence.

R523-11-3. Certification Requirements for DUI Educational Providers.

(1) In order to operate, a potential DUI Educational Provider shall make application to the Division at least 60 days prior to the planned effective date. The Division will provide the application form.

(2) Application for certification shall require the following:

(a) A brief description and purpose of the agency, and an explanation of the agency's relationship with other components of the local DUI system, i.e., Local Substance Abuse Authorities, local courts, police, Probation and Parole, Alcoholics or Narcotics Anonymous, etc.;

(b) The geographical area to be served;

(c) The ownership and person or group responsible for agency operation;

(d) The location and time that DUI classes would normally be held;

(e) A list of instructors employed by the agency; and

(f) A copy of the ~~[#]~~ agency substance abuse treatment license.

(g) An outline describing how the agency will conduct the victim impact panel required by Section 62A-15-501;

~~[(h) Copies of all materials, i.e., presentations, workbooks, written documents, photographs used in the presentation or distributed to participants during victim impact panels shall be submitted to the Division for approval prior to use.]~~

~~[(i) A written plan that describes goals, objectives and format of in-person victim impact panels to the Division for approval prior to use.]~~

(3) A DUI Educational Provider shall also:

(a) Ensure that each participant receive no less than 16 hours of face-to-face instruction using the Division~~['s]~~ approved curriculum with no more than ~~[4]~~8 hours of instruction occurring in any calendar day;

(b) Allow no more than 25 persons, including participant and others to a class;

(c) Follow the recommendations of the screening which has been provided;

(d) Ensure that screenings are conducted by staff from a licensed treatment agency who have been trained in administering the screening tool;

(e) Report the number of participants completing the DUI Educational Program to the Division at least every quarter;

(f) Have policies ensuring confidentiality of information maintained on each participant that conform to the requirements in 42 Code of Federal Regulations Chapter 1 Subchapter A Part 2;

(g) Ensure that Instructors follow the Division-approved curriculum;

(h) Have available for review a copy of the Provider's charter, constitution, or bylaws;

(i) Outline the eligibility criteria for admission to the program, including the screening tool used;

(j) Ensure that all Instructors employed by the Provider ~~[have completed the Division required DUI training/certification]~~ are certified to teach;

(k) Inform the Division of any licensing or address change;

(l) Comply with all applicable local, state and federal laws and regulations.

(m) Ensure that none of the Instructors are on probation or parole for any offense;

(n) Ensure that none of the Instructors has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous 3 years;

(o) Notify the Division in writing within 30 days if any Instructor has been arrested for any reason;

(p) Provide separate classes for participants who are younger than ~~[24]~~18 years of age at the completion of the course; and

(4) Ensure that any victim impact panel be consistent with the educational program taught, and ensure that the total attendance is no more than 25 participants.

~~[(5)]~~4 A participant's participation in the DUI Educational Program shall not be a substitute for treatment as determined by a ~~[#]~~ screening and assessment.

~~[(6)]~~5 The Division shall issue the Provider a certificate after determination has been made that the ~~[applicant]~~ agency is in compliance with these standards.

~~[(7)]~~6 The Division Director or designee has the authority to grant exceptions to any of the certification requirements.

R523-11-4. On-site Survey of Provider.

(1) After a review of the application, a site review may be scheduled by a designated representative of the Division. With each ~~[initial]~~ application ~~[and application for renewal]~~ the applicant agrees, as a condition of Provider certification, to permit representative(s) of the Division and/or ~~[the local substance abuse authority as]~~ others

authorized by the Division to enter and survey the physical facility, program operation, client records and to interview staff and class participants ~~[for determining]~~ to determine compliance with applicable laws.

(2) The DUI Educational Provider also agrees to allow representatives from the Division and ~~[from the local substance abuse authority as]~~ others authorized by the Division to attend the classes held. Such visits may be announced or unannounced.

(3) Review Procedures. Within 30 days after completion of an on-site survey, the Division shall notify the applicant of action taken: approval, denial, or request for further information.

R523-11-5. Instructor Certification.

(1) By this rule the Division hereby establishes certification requirements for Instructors, which consist of the following:

(a) All Instructors employed by any DUI Educational Provider shall be certified ~~[by the Division]~~ to teach prior to instructing the state approved DUI curriculum for any DUI Educational Provider.

(b) All Instructors shall attend and complete the requirements of the Instructor training ~~[sponsored]~~ authorized by the Division.

(c) Requirements in R523-11-5(a) and (b) above shall be complete and verifiable.

(d) The Instructor agrees, as a condition of certification, to use only the Division-approved curriculum when conducting a DUI Educational Program.

(e) The Instructor agrees to attend all required DUI training sessions sponsored or approved by the Division.

(f) An Instructor shall not be certified to teach DUI Education if he or she is on probation or parole for any offense.

(g) An Instructor shall not be certified to teach DUI Education if he or she has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous three years.

(h) An ~~[Certified]~~ Instructor shall notify the Division within 30 days of any arrest.

R523-11-6. Recertification of Instructors.

(1) An Instructor must recertify every twenty-four months by: ~~[annually, on a calendar year basis]~~ attending and completing the requirements of any Division-sponsored or approved DUI training sessions. The Instructor shall sign a register at those training sessions which have been set aside for DUI Instructor recertification.

(2) It is the responsibility of the Instructor to notify the Division immediately of any address change.

(3) An Instructor shall not be certified to teach DUI Education if he or she is on probation or parole for any offense.

(4) An Instructor shall not be certified to teach DUI Education if he or she has been convicted of a felony of any kind or any drug or alcohol misdemeanor offense in the previous three years.

(5) If a current Instructor is arrested, he or she has 30 days to report the arrest to the Division.

(6) The Division Director or designee has the authority to grant exceptions to any of the certification requirements.

R523-11-7. Corrective Action for a Provider or an Instructor.

(1) If the Division becomes aware that a DUI education Provider or an Instructor is in violation of these standards, it shall proceed with the following steps:

(a) Within 30 days of becoming aware of the violation, the Division shall notify the Provider or the Instructor in writing of the area(s) of noncompliance.

(b) Within 30 days of receiving notification of violation, the program or the Instructor shall submit a written plan to the Division for achieving compliance.

(c) If the written plan is not accepted as satisfactory by the Division within 30 days the Provider or the Instructor shall be notified that they have been suspended ~~[until compliance is achieved]~~.

(d) A Provider or an Instructor must cease conducting any DUI Educational Provider until the suspension is lifted.

(e) If the Division does not receive written evidence of compliance within 30 days of notification of suspension, the Division shall revoke the Provider or Instructor's certification.

R523-11-8. Revocation of a Provider's or an Instructor's Certification.

(1) The Division shall revoke the certification of a Provider or an Instructor for the following reasons:

(a) If the Provider or the Instructor fails to provide the Division by certified mail with written evidence of compliance within 30 days of notification of suspension.

(b) If the Provider or the Instructor continues to provide any DUI Education during the period of suspension, or

(c) If any Provider or Instructor receives more than two notices of noncompliance with these standards in a one-year period.

(2) If any Provider or Instructor's certification is revoked, they may not reapply for recertification for a period of ~~[six]~~ twelve months.

R523-11-9. Redress Procedures for Programs or Instructors.

(1) Any Provider or Instructor whose certification has been revoked may request in writing an informal hearing with the Division Director or ~~[his]~~ designee within ten days of receiving notice of revocation. Within ten days following the close of the hearing, the Division shall inform the Provider or the Instructor in writing of the decision as required under Section 63G-4-302 and R497-100-1 through R497-100-10.

(2) If they so choose, the Provider or the Instructor may appeal in writing the decision of the Division Director or designee by requesting a reconsideration hearing with the Office of Administrative Hearings as provided for under Section 63G-4-302.

R523-11-10. Standards for Victim Impact Panels.

(1) Victim impact panels may be conducted in person or by use of filmed versions approved by the Division.

(2) Providers shall ensure that victim impact panels are available in English, Spanish and other languages as needed.

(3) Providers shall limit attendance at victim impact panels to no more than 25 participants.

KEY: DUI programs, certification of instructors

Date of Enactment or Last Substantive Amendment: ~~[December 22, 2015]~~ 2016

Authorizing, and Implemented or Interpreted Law: 17-43-201; 41-6a-502; 41-6a-510; 41-6a-528; 62A-15-103; 62A-15-105; 62A-15-501 through 503; 63G-4-302; 73-18-12; 76-5-207; 42 CFR Chapter 1 Subchapter A Part 2

Natural Resources, Wildlife Resources

R657-11

Taking Furbearers

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40758
FILED: 09/12/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted for taking public input and reviewing the division's furbearer program.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule: 1) add definitions for "cage trap", "foothold trap", "good condition", and "owner"; 2) allow a green pelt or unskinned carcass from a bobcat or marten to not have a permanent tag until the second Friday in March; 3) remove Section R657-11-8, Purchase of License by Mail; 4) set additional requirements for the use of bait; and 5) make technical corrections.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments are technical in nature; therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be done with existing budget.

◆ **LOCAL GOVERNMENTS:** None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment makes technical changes to the rule and provides the criteria for which trapping on Waterfowl Management Areas will be done and does not impose any additional requirements on small businesses, nor generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment makes technical changes to the rule and provides the criteria for which trapping on Waterfowl Management Areas will be done and does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment changes wording for clarification and consistency with other division applications. Therefore, DWR determines that there is no additional compliance costs associated with the amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

AUTHORIZED BY: Gregory Sheehan, Director

R657. Natural Resources, Wildlife Resources. **R657-11. Taking Furbearers.**

R657-11-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking furbearers.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking furbearers.

R657-11-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Artificial cubby set" means any artificially manufactured container with an opening on one end that houses a trapping device. [~~Bait must be placed inside the artificial cubby set at least eight inches from the opening. Artificial cubby sets must be placed with the top of the opening even with or below the bottom of the bait so that the bait is not visible from above.~~]

(b) "Bait" means any lure containing animal parts larger than one cubic inch [~~, or eight cubic inches if used in an artificial cubby set,~~] with the exception of white-bleached bones with no hide or flesh attached.

(c) "Cage trap" means any enclosure containing a one-way door triggered by a treadle or pan that prevents escape of an animal after the door closes.

(d) "Exposed bait" means bait which is visible from any angle, except when used in an artificial cubby set.

(~~d~~)e) "Foothold trap" means any underspring or jump trap, longspring trap or coil-spring trap with two smooth arms or jaws that come together when an animal steps on a pan in the center of the trap.

(e) "Fur dealer" means any individual engaged in, wholly or in part, the business of buying, selling, or trading skins or pelts of furbearers within Utah.

(~~e~~)f) "Fur dealer's agent" means any person who is employed by a resident or nonresident fur dealer as a buyer.

(~~f~~)g) "Good condition" means the carcass is fresh or frozen and securely wrapped to prevent decomposition so that the tissue remains suitable for analysis.

(h) "Green pelt" means the untanned hide or skin of any furbearer.

(~~g~~)i) "Owner" means the person who has been issued a trap registration number associated with one or more trapping devices.

(i) "Pursue" means to chase, tree, corner, or hold a furbearer at bay.

(~~h~~)k) "Scent" means any lure composed of material of less than one cubic inch that has a smell intended to attract animals.

R657-11-3. License, Permit and Tag Requirements.

(1) A person who has a valid[~~current~~] furbearer license may take furbearers during the established furbearer seasons published in the guidebook of the Wildlife Board for taking furbearers.

(2) A person who has a valid[~~current~~] furbearer license and valid bobcat permits may take bobcat during the established bobcat season published in the guidebook of the Wildlife Board for taking furbearers.

(3) A person who has a valid[~~current~~] furbearer license and valid marten trapping permit may take marten during the established marten season published in the guidebook of the Wildlife Board for taking furbearers.

(4) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing furbearers.

R657-11-4. Bobcat Permits.

(1) Bobcat permits can only be obtained and are only valid with a valid[~~current~~] furbearer license.

(2)(a) A person may obtain up to the number of bobcat permits authorized each year by the Wildlife Board.

(b) Permit numbers shall be published in the guidebook of the Wildlife Board for taking furbearers.

(3) Bobcat permits will be available during the dates published in the guidebook of the Wildlife Board for taking furbearers and may be obtained by submitting an application through the division's Internet address.

(4) Bobcat permits are valid for the entire bobcat season.

R657-11-5. Tagging Bobcats.

(1) The pelt or unskinned carcass of any bobcat must be tagged in accordance with Section 23-20-30.

(2) The tag must remain with the pelt or unskinned carcass until a permanent tag has been affixed.

(3) Possession of an untagged green pelt or unskinned carcass is prima facie evidence of unlawful taking and possession.

(4) The lower jaw of each bobcat taken must be removed and tagged with the numbered jaw tag corresponding to the number of the temporary possession tag affixed to the hide.

R657-11-6. Marten Permits.

(1) A person may not trap marten or have marten in possession without having a valid[~~current~~] furbearer license and a marten trapping permit in possession.

(2) Marten trapping permits are available free of charge from any division office.

(~~3~~)a) ~~Applications for marten permits must contain the applicant's full name, mailing address, phone number, and valid, current furbearer license number.~~

(b) ~~Permit applications are accepted by mail or in person at any regional division office.]~~

R657-11-7. Permanent Possession Tags for Bobcat and Marten.

(1) A person may not:

(a) possess a green pelt or unskinned carcass from a bobcat or marten that does not have a permanent tag affixed after the [~~first~~second] Friday in March ;

(b) possess a green pelt or the unskinned carcass of a bobcat with an affixed temporary bobcat possession tag issued to another person, except as provided in Subsections (5) and (6); or

(~~b~~)c) buy, sell, trade, or barter a green pelt from a bobcat or marten that does not have a permanent tag affixed.

(2) Bobcat and marten pelts must be delivered to a division representative to have a permanent tag affixed and to surrender the lower jaw for each harvested bobcat.

(3) Bobcat and marten pelts may be delivered to the following division offices, by appointment only, during the dates published in the guidebook of the Wildlife Board for taking furbearers:

(a) Cedar City - Regional Office;

(b) Ogden - Regional Office;

(c) Price - Regional Office;

(d) Salt Lake City - Salt Lake Office;

(e) Springville - Regional Office; and

(f) Vernal - Regional Office.

(4) There is no fee for permanent tags.

(5) Bobcat and marten which have been legally taken may be transported from an individual's place of residence by an individual other than the [~~fur harvester~~furharvester] to have the permanent tag affixed; bobcats must be tagged with a temporary possession tag and accompanied by a valid furbearer license belonging to the [~~fur harvester~~furharvester].

(6) Any individual transporting a bobcat or marten for another person must have written authorization stating the following:

- (a) date of kill;
- (b) location of kill;
- (c) species and sex of animal being transported;
- (d) origin and destination of such transportation;
- (e) the name, address, signature and furbearer license number of the ~~[fur harvester]~~ furharvester;
- (f) the name of the individual transporting the bobcat or marten; and
- (g) the ~~[fur harvester]~~ furharvester's marten permit number if marten is being transported.

(7) Green pelts of bobcats and marten legally taken from outside the state may not be possessed, bought, sold, traded, or bartered in Utah unless a permanent tag has been affixed or the pelts are accompanied by a shipping permit issued by the wildlife agency of the state where the animal was taken.

(8)(a) ~~[Fur harvesters]~~ Furharvesters taking marten are ~~[requested]~~ required to present the entire skinned carcass ~~[intact, including the lower jaw,]~~ to the division in good condition when ~~[the pelt is presented]~~ brought for permanent tagging.

~~[(b) "Good condition" means the carcass is fresh or frozen and securely wrapped to prevent decomposition so that the tissue remains suitable for lab analysis.]~~

R657-11-8. [Purchase of License by Mail.]

~~[A person may purchase a license by mail by sending the following information to a division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, driver license number (if available), proof of furharvester education certification, and fees.]~~

[R657-11-9.] Trap Registration Numbers.

(1) ~~[For the purposes of this section, "owner" means the person who has been issued a trap registration number, which is permanently marked or affixed to the trapping device.]~~

~~[(2)]~~ Each trapping device used to take furbearers must be permanently marked or tagged with the ~~[trap]~~ registered trap number of the owner.

~~[(3)]~~ 2 No more than one trap registration number may be on a trapping device.

(3) Trap registration numbers must be legible.

(4) Trap registration numbers ~~[must be legible.]~~

~~[(5)]~~ Trap registration numbers are permanent and may be obtained by ~~[mail or]~~ mail or in person from any division office.

~~[(6)]~~ 5 Applicants must include their full name, including middle initial, and complete home address.

~~[(7)]~~ 6 A registration fee of \$10 must accompany the request. This fee is payable only once.

~~[(8)]~~ 7 Each individual is issued only one trap registration number.

~~[(9)]~~ 8 Any person who has obtained a trap registration number must notify the division within 30 days of any change in address or the theft of traps.

R657-11-~~10~~ 9. Traps.

(1) All ~~[long spring, jump, or coil spring]~~ foothold traps must have spacers on the jaws which leave an opening of at least 3/16 of an inch when the jaws are closed, except;

- (a) rubber-padded jaw traps,

- (b) traps with jaw spreads less than 4.25 inches, and
- (c) traps that are ~~[not]~~ completely submerged under water when set.

~~(2)~~ (a) All cable devices (i.e. snares), except those set in water or with a loop size less than 3 inches in diameter, must be equipped with a breakaway lock device that will release when any force greater than 300 lbs. is applied to the loop.

(b) Breakaway cable devices must be fastened to an immovable object solidly secured to the ground.

(c) The use of drags is prohibited.

(3) On the middle section of the Provo River, between Jordanelle Dam and Deer Creek Reservoir, the Green River, between Flaming Gorge Dam and the Utah Colorado state line; ~~[and]~~ the Colorado River, between the Utah Colorado state line and Lake Powell; and the Escalante River, between Escalante and Lake Powell, trapping within 100 yards of either side of these rivers, including their tributaries from the confluences upstream 1/2 mile, is restricted to the following devices:

(a) Nonlethal-set foot hold traps with a jaw spread less than 5 1/8 inches, and nonlethal-set padded foot hold traps. Drowning sets with these traps are prohibited.

(b) Body-gripping, killing-type traps with body-gripping area less than 30 square inches (i.e., 110 Conibear).

(c) Nonlethal dry land cable devices equipped with a stop-lock device that prevents it from closing to less than a six-inch diameter.

(d) Size 330, body-gripping, killing-type traps (i.e. Conibear) modified by replacing the standard V-trigger assembly with one top side parallel trigger assembly, with the trigger placed within one inch of the side, or butted against the vertical turn in the Canadian bend.

(4) A person may not disturb or remove any trapping device, except:

~~(a) [a person who possesses a valid, current furbearer license, the appropriate permits or tags, and who has been issued a trapper registration number, which is permanently marked or affixed to] the owner of the trapping device; ~~[or]~~~~

~~(b) peace officers in the performance of their duties; ~~[or]~~~~

~~(c) the landowner where the trap has been placed; or~~

~~(d) the owner of a domestic pet that has been caught.~~

~~(e) as provided in Subsection (6).~~

(5) A person may not kill or remove wildlife caught in any trapping device, except:

~~(a) [a person] the owner who [possesses] must possess a valid permit, ~~[current furbearer license, the appropriate permits or tags, and who has been issued a trapper registration number, which is permanently marked or affixed to the trapping device; or] license or tag(s) for the species that has been captured;~~~~

~~(b) a peace officer in the performance of their duties;~~

~~(c) as provided in Subsection (6) ~~[; or]~~~~

~~[(6)]~~ For the purposes of this section, "owner" means the person who has been issued a trap registration number, which is permanently marked or affixed to the trapping device.

~~[(7)]~~ d as provided in R657-11-12.

(6) A person, other than the owner, may possess, disturb or remove a trapping device; or possess, kill or remove wildlife caught in a trapping device provided:

(a) the person possesses a valid ~~[current]~~ furbearer license, the appropriate permits or tags; and

(b) has obtained written authorization from the owner of the trapping device stating the following:

- (i) date written authorization was obtained;
- (ii) name and address of the owner;
- (iii) owner's trap registration number;
- (iv) the name of the individual being given authorization;
- (v) signature of owner.

([8]2) The owner of any trapping device[;] providing written authorization to another person under Subsection ([6]5)[;] shall be strictly liable for any violations of this guidebook resulting from the use of the trapping device by the authorized person.

([9]8) The owner of any trapping device[;] providing written authorization to another person under Subsection ([6]5)[;] must keep a record of all persons obtaining written authorization and furnish a copy of the record upon request from a conservation officer.

([10]9)(a) A person may not set any trap or trapping device on posted private property without the landowner's permission.

(b) ~~[Any trap or trapping device set on posted property without the owner's permission may be sprung by the landowner.~~

~~(e)~~ Wildlife officers should be informed as soon as possible of any illegally set traps or trapping devices.

([11]10) Peace officers in the performance of their duties may seize all traps, trapping devices, and wildlife used or held in violation of this rule.

([12]11) A person may not possess any trapping device that is not permanently marked or tagged with that person's registered trap number while engaged in taking wildlife.

([13]12) All traps and trapping devices must be checked and animals removed at least once every 48 hours, except;

- (a) killing traps striking dorso-ventrally[;];
- (b) drowning sets[;]; and

(c) lethal cable devices that are set to capture on the neck, that have a nonrelaxing lock, without a stop, and are anchored to an immovable object; which must be checked every 96 hours.

(14) A person may not transport or possess live protected wildlife. Any animal found in a trap or trapping device must be killed or released immediately by the trapper.

R657-11-[14]-10. Use of Bait.

(1) A person may not use any protected wildlife or their parts, except for white-bleached bones with no hide or flesh attached, as bait or scent; however, parts of legally taken furbearers and nonprotected wildlife may be used as bait.

(2) Traps or trapping devices may not be set within 30 feet of any exposed bait.

(3) ~~[A person using bait is responsible if it becomes exposed for any reason.]~~ Traps may be placed near carcasses of protected wildlife provided the carcass has not been moved or relocated for the purpose of trapping furbearers and the trap is not located within 30 feet of the carcass.

(4) White-bleached bones with no hide or flesh attached may be set within 30 feet of traps.

(5)(a) Bait used inside an artificial cubby set must be placed at least eight inches from the opening.

(b) Artificial cubby sets must be placed with the top of the opening even with or below the bottom of the bait so that the bait is not visible from above.

(c) A person using bait is responsible if it becomes exposed for any reason.

R657-11-[12]-11. Accidental Trapping.

(1)(a) Any bear, bobcat, cougar, marten, otter, wolverine, any furbearer trapped out of season, or other protected wildlife accidentally caught in a trap must be released unharmed.

(b) ~~[Written permission]~~ Permission must be obtained from a division representative to remove the carcass of any of these species from a trap.

(c) The carcass remains the property of the state and must be turned over to the division.

(2) All incidents of accidental trapping of any of these animals must be reported to the division within 48 hours.

(3) Black-footed ferret, lynx and wolf are protected species under the Endangered Species Act. Accidental trapping or capture of these species must be reported to the division within 48 hours.

R657-11-[13]-12. Methods of Take and Shooting Hours.

(1) Furbearers, except bobcats and marten, may be taken by any means, excluding explosives and poisons, or as otherwise provided in Section 23-13-17.

(2) Bobcats may be taken only by shooting, trapping, or with the aid of dogs as provided in Section R657-11-26.

(3) Marten may be taken only with an elevated, covered set in which the maximum trap size shall not exceed 1 1/2 foothold or 160 Conibeat.

(4) Taking furbearers by shooting or with the aid of dogs is restricted to one-half hour before sunrise to one-half hour after sunset, except as provided in Section 23-13-17.

(5) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

R657-11-[14]-13. Spotlighting.

(1) Except as provided in Subsection (3):

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

(3) The provisions of this section do not apply to the use of an artificial light when used by a trapper to illuminate his path and trap sites for the purpose of conducting the required trap checks, provided that:

(a) any artificial light must be carried by the trapper;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used; and

(c) while checking traps with the use of an artificial light, the trapper may not occupy or operate any motor vehicle.

(4) Spotlighting may be used to hunt coyote, red fox, striped skunk, or raccoon where allowed by a county ordinance enacted pursuant to Section 23-13-17.

(5) The ordinance shall provide that:

(a) any artificial light used to spotlight coyote, red fox, striped skunk, or raccoon must be carried by the hunter;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used to spotlight the animal; and

(c) while hunting with the use of an artificial light, the hunter may not occupy or operate any motor vehicle.

(6) For purposes of the county ordinance, "motor vehicle" shall have the meaning as defined in Section 41-6-1.

(7) The ordinance may specify:

(a) the time of day and seasons when spotlighting is permitted;

(b) areas closed or open to spotlighting within the unincorporated area of the county;

(c) safety zones within which spotlighting is prohibited;

(d) the weapons permitted; and

(e) penalties for violation of the ordinance.

(8)(a) A county may restrict the number of hunters engaging in spotlighting by requiring a permit to spotlight and issuing a limited number of permits.

(b) A fee may be charged for a spotlighting permit.

(9) A county may require hunters to notify the county sheriff of the time and place they will be engaged in spotlighting.

(10) The requirement that a county ordinance must be enacted before a person may use spotlighting to hunt coyote, red fox, striped skunk, or raccoon does not apply to:

(a) a person or his agent who is lawfully acting to protect his crops or domestic animals from predation by those animals; or

(b) a wildlife service's agent acting in his official capacity under a memorandum of agreement with the division.

R657-11-~~15~~-14. Use of Dogs.

(1) Dogs may be used to take furbearers only from one-half hour before sunrise to one-half hour after sunset and only during the prescribed open seasons.

(2) The owner and handler of dogs used to take or pursue a furbearer must have a valid, current furbearer license in possession while engaged in taking furbearers.

(3) When dogs are used in the pursuit of furbearers, the licensed hunter intending to take the furbearer must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

R657-11-~~16~~-15. State Parks.

(1) Taking any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614-4.

(2) Hunting with a rifle, handgun, or muzzleloader on park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns, crossbows, and archery equipment is prohibited within one quarter mile of the above stated areas.

R657-11-~~17~~-16. Transporting Furbearers.

(1)(a) A person who has obtained the appropriate license and permit may transport green pelts of furbearers. Additional restrictions apply for taking bobcat and marten as provided in Section R657-11-6.

(b) A registered Utah fur dealer or that person's agent may transport or ship green pelts of furbearers within Utah.

(2) A furbearer license is not required to transport red fox or striped skunk.

R657-11-~~18~~-17. Exporting Furbearers from Utah.

(1) A person may not export or ship the green pelt of any furbearer from Utah without first obtaining a valid shipping permit from a division representative.

(2) A furbearer license is not required to export red fox or striped skunk from Utah.

R657-11-~~19~~-18. Sales.

(1) A person with a valid furbearer license may sell, offer for sale, barter, or exchange only those species that person is licensed to take, and which were legally taken.

(2) Any person who has obtained a valid fur dealer or fur dealer's agent certificate of registration may engage in, wholly or in part, the business of buying, selling, or trading green pelts or parts of furbearers within Utah.

(3) Fur dealers or their agents and taxidermists must keep records of all transactions dealing with green pelts of furbearers.

(4) Records must state the following:

(a) the transaction date; and

(b) the name, address, license number, and tag number of each seller.

(5) A receipt containing the information specified in Subsection (4) must be issued whenever the ownership of a pelt changes.

(6)(a) A person may possess furbearers and tanned hides legally acquired without possessing a license, provided proof of legal ownership or possession can be furnished.

(b) A furbearer license is not required to sell or possess red fox or striped skunk or their parts.

R657-11-~~20~~-19. Wasting Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts as provided in Section 23-20-8.

(2) The skinned carcass of a furbearer may be left in the field and does not constitute waste of wildlife.

R657-11-~~21~~-20. Depredation by Badger, Weasel, and Spotted Skunk.

(1) Badger, weasel, and spotted skunk may be taken anytime without a license when creating a nuisance or causing damage, provided the animal or its parts are not sold or traded.

(2) Red fox and striped skunk may be taken any time without a license.

R657-11-~~22~~-21. Depredation by Bobcat.

(1) Depredating bobcats may be taken at any time by duly appointed ~~[animal damage control agents, supervised by the animal damage control program]~~ Wildlife Services agents, employed by Wildlife Services, while acting in the performance of their assigned duties and in accordance with procedures approved by the division.

(2) A livestock owner or his employee, on a regular payroll and not hired specifically to take furbearers, may take bobcats that are molesting livestock.

(3) Any bobcat taken by a livestock owner or his employee must be surrendered to the division within 72 hours.

R657-11-~~23~~-22. Depredation by Nuisance Beaver.

(1) Beaver doing damage or other nuisance behaviors may be taken or removed during open and closed seasons with either a valid furbearer license or a nuisance permit.

(2) A nuisance permit to remove beaver must first be obtained from a division office or conservation officer.

R657-11-~~24~~-23. Survey.

Each permittee who is contacted for a survey about their furbearer harvesting experience should participate in the survey regardless of success. Participation in the survey helps the division evaluate population trends, harvest success and collect other valuable information.

R657-11-~~25~~-24. Prohibited Species.

(1)(a) A person may not take black-footed ferret, fisher, lynx, otter, wolf, or wolverine.

(b) Accidental trapping or capture of any of these species must be reported to the division within 48 hours.

R657-11-~~26~~-25. Season Dates and Bag Limits.

Season dates, bag limits, and areas with special restrictions are published annually in the guidebook of the Wildlife Board for taking furbearers.

R657-11-~~27~~-26. Approval to Trap on State Waterfowl Management Areas.

(1)(a) Trapping on state waterfowl management areas is a property management tool used to protect waterfowl populations and infrastructure improvements found on the property.

(b) The authorization to trap on state waterfowl management areas shall be provided through a certificate of registration that is awarded to an individual or individuals through a competitive proposal solicitation process.

(c) On or before October 1 of each year, the division shall publicly notice which state waterfowl management areas are available for proposal by publishing the notice on its website and by publishing a notice in a newspaper of general circulation at least once a week for two consecutive weeks.

(d) The notification and advertising shall include:

(i) the deadline for applying for the certificate of registration;

(ii) a general description of the trapping area authorized under the certificate of registration;

(iii) the desired form of compensation to the division, whether monetary, in-kind, or both;

(iv) the division's management objectives for the state waterfowl management area; and

(v) any special considerations or limitations the division will require of the trapper or trappers while they are on the state waterfowl management area.

(2)(a) Applications must include the following:

(i) a nonrefundable application fee;

(ii) the name of the state waterfowl management area being applied for;

(iii) a description of the applicant's familiarity with the state waterfowl management area being applied for;

(iv) a list of the individuals who will conduct trapping activities under the certificate of registration;

(v) a description of each individual's experience trapping and their ability to utilize removal of targeted species to protect waterfowl populations and infrastructure found at state waterfowl management areas;

(vi) the projected number of animals, specifically muskrat, that may be removed via trapping;

(vii) how the proposal accomplishes the identified management objectives for the waterfowl management area;

(viii) how the proposal conforms with any special considerations or limitations identified by the division in its public notice; and

(viii) a bid amount to be paid to the Division in exchange for the authorization to trap on the state waterfowl management area.

(c) All individuals listed on the application who will conduct trapping activities under the certificate of registration must meet all age requirements, proof of hunter education and furharvester requirements, and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(d) The bid amount described in Subsection (vi) above may include non-monetary, in-kind contributions.

(3)(a) Late or incomplete applications may be rejected.

(b) A separate application must be submitted for each state waterfowl management area an individual wishes to trap on.

(c) In the event that there is more than one application for a certain state waterfowl management area, the division will analyze each application and select a successful applicant or applicants whose proposal best accomplishes the division objectives identified in the public notice.

(4) The selected applicant will be issued a certificate of registration authorizing trapping activities on the state waterfowl management area for a period of up to two years.

(5) A certificate of registration issued pursuant to this Part may be revoked, suspended, or terminated consistent with the terms of Utah Code 23-19-9 and Utah Admin. Code R657-26.

R657-11-~~28~~-27. Fees.

(1) Upon verified payment of trapping fees, permits will be mailed to successful applicants are granted trapping rights for management areas.

(2) If a successful applicant fails to make full payment within 14 days of the results posting date, an alternate trapper will be selected.

(3) Permits are not valid until signed by the superintendent in charge of the area to be trapped.

R657-11-[29-]28. Vehicle Travel.

Vehicle travel is restricted to developed roads. However, written permission for other travel may be obtained from the waterfowl management area superintendent.

R657-11-[30-]29. Trapping Hours.

On waterfowl management areas traps may be checked only between one-half hour before official sunrise to one-half hour after official sunset.

R657-11-[31-]30. Responsibility of Trappers.

(1) All trappers are directly responsible to the waterfowl management area superintendent.

(2) Violation of management or trapping rules, including failure to return a trapping permit within five days of cessation of trapping activities, or failure to properly trap an area, as determined and recommended by the superintendent, may be cause for cancellation of trapping privileges, existing and future, on all waterfowl management areas.

R657-11-[32-]31. Closed Area.

Davis County - Trapping is allowed only on the dates published in the guidebook of the Wildlife Board for taking furbearers, on those lands administered by the state lying along the eastern shore of the Great Salt Lake, commonly known as the Layton-Kaysville marshes. In addition, there may be a portion of the above stated area that is closed to trapping. This area will be posted and marked.

R657-11-[33-]32. Wildlife Management Areas.

(1) A person may not use motor vehicles on division-owned wildlife management areas closed to motor vehicle use without first obtaining written authorization from the appropriate division regional office.

(2) For purposes of coyote trapping, the division may, in its sole discretion, authorize limited motor vehicle access to its wildlife management areas closed to such use provided the motor vehicle access will not interfere with wildlife or wildlife habitat.

KEY: wildlife, furbearers, game laws, wildlife law

Date of Enactment or Last Substantive Amendment:
[November 10, 2015]2016

Notice of Continuation: July 13, 2015

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-13-17

Public Safety, Driver License
R708-41
Requirements for Acceptable
Documentation, Storage and
Maintenance

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40759

FILED: 09/12/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule specifies the acceptable documentation for an individual to obtain a Utah driver license or Utah identification card. This rule also defines the procedures for storage and maintenance of said documents.

SUMMARY OF THE RULE OR CHANGE: This amendment updates the definitions to include general discharge and adds additional documentation that is now acceptable for military individuals to apply for a Utah driver license or Utah identification card.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-3-104 and Section 53-3-205 and Section 53-3-214 and Section 53-3-410 and Section 53-3-804

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendment to this rule will not have any fiscal impact to the state budget because this change applies to acceptable documentation for the purpose of obtaining a Utah driver license or Utah identification card, and it does not affect the fees charged by the Driver License Division.

◆ **LOCAL GOVERNMENTS:** The amendment to this rule will not have any fiscal impact to local government because this change applies to acceptable documentation for the purpose of obtaining a Utah driver license or Utah identification card.

◆ **SMALL BUSINESSES:** The amendment to this rule will not have any fiscal impact to small businesses because this change applies to acceptable documentation for the purpose of obtaining a Utah driver license or Utah identification card.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendment to this rule will not have any fiscal impact to persons other than small businesses, businesses, or local government entities because this change applies to acceptable documentation for the purpose of obtaining a Utah driver license or Utah identification card.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This change will neither cost nor save money for the individual applying for a Utah driver license or identification card because the fees are not changing, only the acceptable documentation.

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
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY, UT 84119-5595
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
◆ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO
LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/08/2016

AUTHORIZED BY: Chris Caras, Director

R708. Public Safety, Driver License.

R708-41. Requirements for Acceptable Documentation, Storage and Maintenance.

R708-41-1. Authority.

This rule is authorized by Section 53-3-104.

R708-41-2. Purpose.

The purpose of this rule is to define acceptable documentation for a Utah license certificate or Utah Identification card and to establish procedures for storage and maintenance of those documents pursuant to Title 53, Chapter 3.

R708-41-3. Definitions.

(1) "Acceptable Document" means an original document or a copy certified by the issuing agency, which the division accepts for determining the validity of information submitted in connection with a license certificate or identification card (ID card) application which may include but is not limited to, the applicant's identification, legal/lawful presence, social security number (SSN) or ineligibility to obtain a social security number as a result of the applicant's legal/lawful presence status, individual tax identification number (ITIN) or the Utah residence address. Any document that has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with, or altered in any manner or that is not legible may not be accepted for licensing and identification card purposes.

(2) "Alternate Document" means a document that may be accepted when the applicant is, for reasons beyond their control, unable to present all necessary documents to establish identity or date of birth as required in definition (6)(a) or U.S. Citizenship as required for proof of legal/lawful presence in definition (8)(a) subject to approval by the Department of Homeland Security (DHS) or the division director or designee.

(3) "Driving Privilege Card" (DPC) means a driving certificate that may only be issued to an applicant who meets the requirements of definition (14) for an undocumented immigrant.

(4) "Exception Process" means a written, defined process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity, date of birth or U.S. Citizenship.

(5) "Full Legal Name Evidence" means the name established on the identity document referenced in definition (6). Any name variation from the original or certified document(s) must be accompanied by legal authorizing documentation, except that, the name established on the division's database may be considered to be the full legal name unless otherwise determined by the division. Upon application for any license certificate or ID card, a change of the applicant's full legal name must be accompanied by an acceptable document which authorizes the name change.

(6) "Identity Document" means an original, government-issued document which contains identifying information about the subject of the document including the full legal name and date of birth or a document approved by DHS or the division director or designee. A copy of an original document must be certified by the issuing agency.

(a) Group A documents are acceptable for applicants for a regular driver license, Commercial Driver License (CDL) or ID card referenced in definition (9)(a):

(i) Valid, unexpired U.S. passport or passport card which may provide evidence of both legal/lawful presence and identity;

(ii) Certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's State of birth which may provide evidence of both legal/lawful presence and identity;

(iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545 which may provide evidence of both legal/lawful presence and identity;

(iv) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;

(v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;

(vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;

(vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity; or

(viii) Alternate documents may be accepted if approved by DHS or the division director or designee.

(b) Group B documents are acceptable for applicants for a limited-term driver license, limited-term CDL or limited-term ID card referenced in definition (9)(b):

(i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766, or Form I-688B verified through the Systematic Alien Verification for Entitlements system (SAVE) which may provide evidence of both legal/lawful presence; or

(ii) Unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States verified through SAVE which may provide evidence of both legal/lawful presence.

(c) Group C documents are acceptable for applicants for a DPC referenced in definition (14) and at least one of the documents

listed below must be presented with a foreign birth certificate including a certified translation if the birth certificate is not in English or a foreign passport including a certified translation if the passport is not in English:

- (i) Church records;
- (ii) Court records;
- (iii) Driver License;
- (iv) Employee ID;
- (v) Insurance ID card;
- (vi) Matricular Consular Card (issued in Utah);
- (vii) Mexican Voter Registration card;
- (viii) School records;
- (ix) Utah DPC;
- (x) Other evidence considered acceptable by the division director or designee.

(7) "Individual Tax Identification Number (ITIN) Evidence" means an official document(s) used to verify an individual's assigned ITIN including:

- (a) ITIN card issued by the Internal Revenue Service (IRS);

or

- (b) Document or letter from the IRS verifying the ITIN.

(8) "Legal/lawful Presence or Status" means that an individual's presence in the United States does not violate state or federal law and includes:

(a) Group A applicants who may qualify for a regular driver license, CDL or ID card if they are a:

- (i) United States citizen;
- (ii) National of the United States of America; or
- (iii) Legal Permanent Resident Alien.

(b) Group B applicants who may qualify for a limited-term driver license, limited-term CDL, or limited-term ID card if they are an immigrant who has:

(i) Unexpired immigrant or nonimmigrant visa status for admission into the United States;

(ii) Pending or approved application for asylum in the United States;

(iii) Admission into the United States as a refugee;

(iv) Pending or approved application for temporary protected status in the United States;

(v) Approved deferred action status;

(vi) Pending application for adjustment of status to legal permanent resident or conditional resident; or

(vii) Conditional permanent resident alien.

(9) "Legal/Lawful Presence or Status Evidence" means a document(s) issued by the United States Government or approved by DHS or the division director or designee which shows legal presence of an individual including:

(a) Group A documents are acceptable for applicants referenced in definition (8)(a) for a regular driver license, CDL, or ID card:

(i) Valid, unexpired U.S. passport or passport card which may provide evidence of both legal/lawful presence and identity;

(ii) Certified copy of a birth certificate filed with the State Office of Vital Statistics or equivalent agency in the individual's State of birth which may provide evidence of both legal/lawful presence and identity;

(iii) Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State, Form FS-240, DS-1350 or FS-545 which may provide evidence of both legal/lawful presence and identity;

(iv) Valid, unexpired Permanent Resident Card, Form I-551, which may provide evidence of both legal/lawful presence and identity;

(v) Certificate of Naturalization issued by DHS, Form N-550 or Form N-570, which may provide evidence of both legal/lawful presence and identity;

(vi) Certificate of Citizenship, Form N-560 or Form N-561, issued by DHS which may provide evidence of both legal/lawful presence and identity;

(vii) Regular Utah driver license, CDL or ID card that has been issued on or after January 1, 2010 is only acceptable for renewal or duplicate certificates and may provide evidence of both legal/lawful presence and identity; or

(viii) Alternate documents may be accepted if approved by DHS or the division director or designee.

(b) Group B documents are acceptable for applicants referenced in definition (8)(b) for a limited-term driver license, limited-term CDL or limited-term ID card with verification from SAVE:

(i) Unexpired employment authorization document (EAD) issued by DHS, Form I-766 or Form I-688B;

(ii) Unexpired foreign passport with documentary evidence of the applicant's most recent admittance into the United States;

(iii) A document issued by the U.S. Federal Government that provides proof of one of the statuses listed below verifies lawful entrance into the United States of America:

(A) Unexpired immigrant or nonimmigrant visa status for admission into the United States issued by the U.S. Federal Government;

(B) Pending or approved application for asylum in the United States;

(C) Admission into the United States as a refugee;

(D) Pending or approved application for temporary protected status in the United States;

(E) Approved deferred action status;

(F) Pending application for adjustment of status to legal permanent resident or conditional resident; or

(G) Conditional permanent resident alien.

(10) "SAVE Verification" means a document issued by the U.S. Federal government has been verified through the DHS SAVE, or such successor or alternate verification system approved by the Secretary of Homeland Security.

(11) "Social Security Number Evidence" means an official document(s) used to verify an individual's assigned U.S. Social Security Number (SSN) and may be verified through the Social Security On-Line Verification system (SSOLV) during every application process and includes:

(a) Social Security card issued by the U.S. government that has been signed or,

(b) If the Social Security card is not available, the applicant may present one of the following documents which contain the applicant's name and SSN:

(i) W-2 form;

(ii) SSA-1099 form;

(iii) Non SSA-1099 form;

(iv) Pay stub showing the applicant's name and SSN; or

(v) Other documents approved by DHS or the division director or designee.

(12) "Social Security Number Ineligibility" means an individual is ineligible to receive a Social Security Number as a result of their legal/lawful presence status.

(13) "Social Security Number Ineligibility Evidence" means letter from the Social Security Administration indicating the individual is not eligible to receive a Social Security Number as a result of their legal/lawful presence status.

(14) "Undocumented Immigrant" means a person who does not meet the qualifications outlined in definition (8) and does not possess the documentation outlined in definition (9) and is only eligible for a DPC.

(15) "U.S. Citizen" means a native or naturalized person of the United States of America.

(16) "Utah Residence Address" means the place where an individual has a fixed permanent home and principal establishment in Utah and in which the individual voluntarily resides, that is not for a special or temporary purpose. Under unique situations that require an individual to be under temporary care, custody, or treatment of a government, public, or private business the division may authorize the sponsoring agency to sign an affidavit verifying the residence of the applicant. Upon approval of the division director or designee, the division will recognize the sponsoring agency's address as the Utah residence address of the applicant.

(17) "Utah Residence Address Evidence" means the Utah residence address recorded on the Utah Driver License Division database unless otherwise determined by the division or, upon application for a Utah license certificate or ID card if the applicant's Utah residence address has not been recorded by the division or has changed from what is recorded on the division's database, two documents which display the applicant's name and principle Utah residence address including:

- (a) Bank statement (dated within 60 days);
- (b) Court documents;
- (c) Current mortgage or rental contract;
- (d) Major credit card bill (dated within 60 days);
- (e) Property tax notice (statement or receipt dated within one year);
- (f) School transcript (dated within 90 days);
- (g) Utility bill (billing date within 60 days), cell phone bills will not be accepted;
- (h) Valid Utah vehicle registration or title;
- (i) Other documents acceptable to the division upon review, except that only one document printed from the internet may be accepted.

(18) "Veteran indicator" means the word VETERAN will be added to specific driver license certificates and identification certificates during the application process at the applicant's request and upon the applicant providing proof of an honorable discharge or general discharge under honorable conditions from the United States military in the form of a DD214, DD256, DD257, NGB22 or other documents, if approved by the division director or designee.

KEY: acceptable documents, identification cards, license certificates, limited-term license certificates

Date of Enactment or Last Substantive Amendment: [~~October 24, 2012~~2016

Notice of Continuation: March 10, 2015

Authorizing, and Implemented or Interpreted Law: 53-3-104; 53-3-205; 53-3-214; 53-3-410; 53-3-804

Tax Commission, Property Tax **R884-24P-33** 2016 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40747

FILED: 09/08/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The valuation guides and schedules contained in this rule are reviewed and updated annually by the Property Tax Division. The personal property guides and schedules are used for local property tax valuation and assessment of business personal property and certain motor vehicles by county assessors.

SUMMARY OF THE RULE OR CHANGE: Section 59-2-107 authorizes the State Tax Commission to promulgate rules that define classes of items considered to be personal property and provide valuation percent good schedules to value locally assessed personal property. County assessors must use the percent good schedules as contained in this rule. Any deviation that affects an entire class or type of personal property requires a written report documenting the schedule change to be submitted to the Tax Commission for approval prior to use. The proposed amendments also clarify the air coolers that are included in Class 8 as VGO tank air coolers and adds "pipe laid in or affixed to land" in the items listed in Class 16.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-301

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amount of savings or cost to state government is not affected by this rule. Tax revenue generated by taxing personal property is distributed to local governments to finance public services, programs, school districts, and local districts. No tax revenues generated by taxation of personal property will be retained by state government.

◆ **LOCAL GOVERNMENTS:** The amount of saving or cost to local government is undetermined. Local governmental entities receive tax revenue based on increased or decreased personal property values and the change in the annual property tax rate. Increases or decreases in 2017 property tax revenue cannot be determined, even if there were no changes in the percent good tables, because taxpayer acquisitions and deletions of personal property during 2016 are unknown. The proposed personal property schedules in this amendment are raised, or lowered, or remain the same

for 2017 based upon the type and age of the personal property assessed. Schedules used to value business personal property increase or decrease based upon the calculation of economic trends from cost indexes published by the Marshall Valuation Service. It is anticipated that the change in the annual property tax rate will have a larger impact on revenue than will the proposed amendments to this rule.

♦ **SMALL BUSINESSES:** In the aggregate, the amount of savings or cost to individuals and business is undetermined. Affected persons pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in this rule are raised, or lowered, or remain the same for 2017 based upon the type and age of the property. Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2017 personal property mix compared to the previous year.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** In the aggregate, the amount of savings or cost to individuals and business is undetermined. Affected persons pay property taxes based on increased or decreased personal property values and the change in the annual property tax rate. The proposed personal property schedules in this rule are raised, or lowered, or remain the same for 2017 based upon the type and age of the property. Since some schedules are increased and some decreased, it is not possible to determine the change to affected persons without knowing the 2017 personal property mix compared to the previous year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Local business owners and property tax practitioners will once again be required to be aware of new percent good figures. This is an annual occurrence; therefore, the compliance cost in completing the assessment process will not change. The change in taxes charged for these businesses depends entirely on the owner's mix of personal property since some percent good schedules are increasing and others decreasing. For example, the owner of a business may discard some personal property items and add new equipment or replace equipment which may increase or decrease personal property values. In addition, the personal property percent good schedule percentages often change from the previous year due to current economic conditions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact on businesses is undetermined for the reasons stated under "small businesses" alone.

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

TAX COMMISSION
PROPERTY TAX
210 N 1950 W
SALT LAKE CITY, UT 84134

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

AUTHORIZED BY: Rebecca Rockwell, Commissioner

R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-33. [2016]2017 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a)(i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) class 6 heavy and medium duty trucks;

(B) class 13 heavy equipment;

(C) class 14 motor homes;

(D) class 17 vessels equal to or greater than 31 feet in length; and

(E) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal

property, but the motherboard, hard drive, tower, or sound card are not.

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

- (i) an all-terrain vehicle;
- (ii) a camper;
- (iii) an other motorcycle;
- (iv) an other trailer;
- (v) a personal watercraft;
- (vi) a small motor vehicle;
- (vii) a snowmobile;
- (viii) a street motorcycle;
- (ix) a tent trailer;
- (x) a travel trailer; and

(xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length and

(c) an aircraft subject to the uniform statewide fee under Section 59-2-404.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-404, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

- (A) barricades/warning signs;
- (B) library materials;
- (C) patterns, jigs and dies;
- (D) pots, pans, and utensils;
- (E) canned computer software;
- (F) hotel linen;
- (G) wood and pallets;
- (H) video tapes, compact discs, and DVDs; and
- (I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

- (A) retail price of the canned computer software;
- (B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or
- (C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at \$15.00 per tape or disc for the first year and \$3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
[15] 16	69%
[14] 15	40%
[13] 14 and prior	10%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:

(A) CNC mills;

(B) CNC lathes;

(C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
[15]16	88%
[14]15	[79]78%
[13]14	[68]67%
[12]13	57%
[11]12	47%
[10]11	36%
[09]10	24%
[08]09 and prior	12%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:

(A) office machines;

(B) alarm systems;

(C) shopping carts;

(D) ATM machines;

(E) small equipment rentals;

(F) rent-to-own merchandise;

(G) telephone equipment and systems;

(H) music systems;

(I) vending machines;

(J) video game machines; and

(K) cash registers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
[15]16	[83]82%
[14]15	67%
[13]14	51%
[12]13	34%
[11]12 and prior	18%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

(A) furniture;

(B) bars and sinks;

(C) booths, tables and chairs;

(D) beauty and barber shop fixtures;

(E) cabinets and shelves;

(F) displays, cases and racks;

(G) office furniture;

(H) theater seats;

(I) water slides; and

(J) signs, mechanical and electrical.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
[15]16	89%
[14]15	[81]80%
[13]14	71%
[12]13	61%
[11]12	[53]52%
[10]11	43%
[09]10	32%
[08]09	22%
[07]08 and prior	12%

(e) Class 6 - Heavy and Medium Duty Trucks.

(i) Examples of property in this class include:

(A) heavy duty trucks;

(B) medium duty trucks;

(C) crane trucks;

(D) concrete pump trucks; and

(E) trucks with well-boring rigs.

(ii) Taxable value is calculated by applying the percent good factor against the cost new.

(iii) Cost new of vehicles in this class is defined as follows:

(A) the documented actual cost of the vehicle for new vehicles; or

(B) 75 percent of the manufacturer's suggested retail price.

(iv) For state assessed vehicles, cost new shall include the value of attached equipment.

(v) The [2016]2017 percent good applies to [2016]2017 models purchased in [2015]2016.

(vi) Trucks weighing two tons or more have a residual taxable value of \$1,750.

TABLE 6

Model Year	Percent Good of Cost New
[16]17	90%
[15]16	[71]70%
[14]15	[65]64%
[13]14	[60]59%
[12]13	[54]53%
[11]12	[49]48%
[10]11	[43]42%

[09]10	[38]36%
[08]09	[32]31%
[07]08	[27]25%
[06]07	[21]20%
[05]06	[16]15%
[04]05	10%
[03]04 and prior	4%

(f) Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

(i) Examples of property in this class include:

- (A) medical and dental equipment and instruments;
- (B) exam tables and chairs;
- (C) microscopes; and
- (D) optical equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
[15]16	[91]90%
[14]15	84%
[13]14	76%
[12]13	68%
[11]12	61%
[10]11	54%
[09]10	45%
[08]09	37%
[07]08	29%
[06]07	20%
[05]06 and prior	11%

(g) Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

(i) Examples of property in this class include:

- (A) manufacturing machinery;
- (B) amusement rides;
- (C) bakery equipment;
- (D) distillery equipment;
- (E) refrigeration equipment;
- (F) laundry and dry cleaning equipment;
- (G) machine shop equipment;
- (H) processing equipment;
- (I) auto service and repair equipment;
- (J) mining equipment;
- (K) ski lift machinery;
- (L) printing equipment;
- (M) bottling or cannery equipment;
- (N) packaging equipment; and
- (O) pollution control equipment.

(ii) Except as provided in Subsection (6)(g)(iii), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii)(A) Notwithstanding Subsection (6)(g)(ii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iii)(B):

- (I) VGO (Vacuum Gas Oil) reactor;
- (II) HDS (Diesel Hydrotreater) reactor;
- (III) VGO compressor;
- (IV) VGO furnace;
- (V) VGO and HDS high pressure exchangers;
- (VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;

- (VII) VGO, amine, SWS, and HDS separators and drums;
- (VIII) VGO and tank pumps;
- (IX) TGU modules; and
- (X) VGO tank and VGO tank air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iii)(A) shall be calculated by:

(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and

(II) multiplying the product described in Subsection (6)(g)(iii)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
[15]16	[91]90%
[14]15	84%
[13]14	76%
[12]13	68%
[11]12	61%
[10]11	54%
[09]10	45%
[08]09	37%
[07]08	29%
[06]07	20%
[05]06 and prior	11%

(h) Class 9 - Off-Highway Vehicles.

(i) Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
[15]16	92%
[14]15	[88]87%
[13]14	81%
[12]13	75%
[11]12	70%
[10]11	65%
[09]10	57%
[08]09	[52]51%
[07]08	46%
[06]07	40%

[05]06	34%
[04]05	27%
[03]04	19%
[02]03 and prior	9%

(j) Class 11 - Street Motorcycles.

(i) Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(k) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

- (A) data processing equipment;
- (B) personal computers;
- (C) main frame computers;
- (D) computer equipment peripherals;
- (E) cad/cam systems; and
- (F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
[15]16	62%
[14]15	46%
[13]14	21%
[12]13	9%
[11]12 and prior	7%

(l) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

- (A) construction equipment;
- (B) excavation equipment;
- (C) loaders;
- (D) batch plants;
- (E) snow cats; and
- (F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) [2016]2017 model equipment purchased in [2015]2016 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
[15]16	49%
[14]15	46%
[13]14	43%
[12]13	[41]40%
[11]12	38%
[10]11	35%
[09]10	[33]32%
[08]09	[30]29%
[07]08	[27]26%
[06]07	24%
[05]06	[22]21%
[04]05	[19]18%
[03]04	[16]15%
[02]03 and prior	[14]13%

(m) Class 14 - Motor Homes.

(i) Taxable value is calculated by applying the percent good against the cost new.

(ii) The [2016]2017 percent good applies to [2016]2017 models purchased in [2015]2016.

(iii) Motor homes have a residual taxable value of \$1,000.

TABLE 14

Model Year	Percent Good of Cost New
[16]17	90%
[15]16	71%
[14]15	67%
[13]14	[64]63%
[12]13	[60]59%
[11]12	56%
[10]11	52%
[09]10	[49]48%
[08]09	[45]44%
[07]08	[41]40%
[06]07	[38]37%
[05]06	[34]33%
[04]05	[30]29%
[03]04	[26]25%
[02]03	[23]22%
[01]02	[19]18%
[00]01 and prior	[12]14%

(n) Class 15 - Semiconductor Manufacturing Equipment.

Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

(i) Examples of property in this class include:

- (A) crystal growing equipment;
- (B) die assembly equipment;
- (C) wire bonding equipment;
- (D) encapsulation equipment;
- (E) semiconductor test equipment;
- (F) clean room equipment;
- (G) chemical and gas systems related to semiconductor manufacturing;
- (H) deionized water systems;
- (I) electrical systems; and
- (J) photo mask and wafer manufacturing dedicated to semiconductor production.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
[15]16	47%
[14]15	34%
[13]14	24%
[12]13	15%
[11]12 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:

- (A) billboards;
- (B) sign towers;
- (C) radio towers;
- (D) ski lift and tram towers;
- (E) non-farm grain elevators;
- (F) bulk storage tanks;
- (G) underground fiber optic cable; ~~and~~
- (H) solar panels and supporting equipment; and
- (I) pipe laid in or affixed to land.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
[15]16	94%
[14]15	[91]90%
[13]14	86%
[12]13	[82]81%
[11]12	79%
[10]11	76%
[09]10	70%
[08]09	[67]66%
[07]08	64%
[06]07	[61]60%
[05]06	59%
[04]05	[55]54%
[03]04	[50]49%
[02]03	43%
[01]02	36%
[00]01	29%
[99]00	22%
[98]99	15%
[97]98 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

(i) Examples of property in this class include:

- (A) houseboats equal to or greater than 31 feet in length;
- (B) sailboats equal to or greater than 31 feet in length;

and

(C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

- (A) is not included in Class 17;
- (B) may not be valued using Table 17; and
- (C) is subject to an age-based uniform fee under Section 59-2-405.2.

(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.

(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

- (A) the following publications or valuation methods:
 - (I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;

(II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or

(III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

(aa) the manufacturer's suggested retail price for comparable property; or

(bb) the cost new established for that property by a documented valuation source; or

(B) the documented actual cost of new or used property in this class.

(v) The ~~[2016]~~2017 percent good applies to ~~[2016]~~2017 models purchased in ~~[2015]~~2016.

(vi) Property in this class has a residual taxable value of \$1,000.

TABLE 17

Model Year	Percent Good of Cost New
[16]17	90%
[15]16	[65]66%
[14]15	[62]64%
[13]14	[60]61%
[12]13	[58]59%
[11]12	[56]57%
[10]11	[53]54%
[09]10	[51]52%
[08]09	[49]50%
[07]08	47%
[06]07	[44]45%
[05]06	[42]43%
[04]05	[40]41%
[03]04	38%
[02]03	[35]36%
[01]02	[33]34%
[00]01	31%
[99]00	29%
[98]99	[26]27%
[97]98	24%
[96]97	20%
[95]96 and prior	16%

(q) Class 17a - Vessels Less Than 31 Feet in Length

(i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.

(i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

- (A) oil and gas exploration equipment;
- (B) distillation equipment;
- (C) wellhead assemblies;
- (D) holding and storage facilities;
- (E) drill rigs;
- (F) reinjection equipment;
- (G) metering devices;
- (H) cracking equipment;
- (I) well-site generators, transformers, and power lines;

- (J) equipment sheds;
- (K) pumps;
- (L) radio telemetry units; and
- (M) support and control equipment.
- (ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
[15] 16	92%
[14] 15	[86] 84%
[13] 14	[80] 79%
[12] 13	[73] 72%
[11] 12	[67] 65%
[10] 11	[61] 59%
[09] 10	53%
[08] 09	[47] 45%
[07] 08	[41] 39%
[06] 07	[35] 33%
[05] 06	[28] 26%
[04] 05	[20] 18%
[03] 04 and prior	[11] 10%

- (t) Class 21 - Commercial Trailers.
 - (i) Examples of property in this class include:
 - (A) dry freight van trailers;
 - (B) refrigerated van trailers;
 - (C) flat bed trailers;
 - (D) dump trailers;
 - (E) livestock trailers; and
 - (F) tank trailers.
 - (ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.
 - (iii) The [2016]2017 percent good applies to [2016]2017 models purchased in [2015]2016.
 - (iv) Commercial trailers have a residual taxable value of \$1,000.

TABLE 21

Model Year	Percent Good of Cost New
[16] 17	95%
[15] 16	[90] 87%
[14] 15	[86] 83%
[13] 14	[81] 79%
[12] 13	[77] 75%
[11] 12	[72] 71%
[10] 11	[68] 67%
[09] 10	[64] 63%
[08] 09	59%
[07] 08	55%
[06] 07	[49] 51%
[05] 06	[45] 47%
[04] 05	[39] 41%
[03] 04	[34] 36%
[02] 03	[28] 30%
[01] 02	[23] 25%
[00] 01 and prior	[16] 17%

- (u) Class 21a - Other Trailers (Non-Commercial).
 - (i) Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.
 - (v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.
 - (i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.
 - (ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.
 - (w) Class 22a - Small Motor Vehicles.
 - (i) Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.
 - (x) Class 23 - Aircraft Required to be Registered With the State.
 - (i) Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.
 - (y) Class 24 - Leasehold Improvements on Exempt Real Property.
 - (i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See Tax Commission rule R884-24P-32. Leasehold improvements include:
 - (A) walls and partitions;
 - (B) plumbing and roughed-in fixtures;
 - (C) floor coverings other than carpet;
 - (D) store fronts;
 - (E) decoration;
 - (F) wiring;
 - (G) suspended or acoustical ceilings;
 - (H) heating and cooling systems; and
 - (I) iron or millwork trim.
 - (ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.
 - (iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
[15] 16	94%
[14] 15	88%
[13] 14	82%
[12] 13	77%
[11] 12	71%
[10] 11	65%
[09] 10	59%
[08] 09	54%
[07] 08	48%
[06] 07	42%
[05] 06	36%
[04] 05 and prior	30%

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Examples of property in this class include:

- (A) aircraft parts manufacturing jigs and dies;
- (B) aircraft parts manufacturing molds;
- (C) aircraft parts manufacturing patterns;
- (D) aircraft parts manufacturing taps and gauges; and
- (E) aircraft parts manufacturing test equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
[15] 16	[84] 82%
[14] 15	[68] 67%
[13] 14	[52] 51%
[12] 13	[36] 35%
[11] 12	19%
[10] 11 and prior	4%

(aa) Class 26 - Personal Watercraft.

(i) Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures

(i) Examples of property in this class include:

- (A) electrical power generators; and
- (B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
[15] 16	97%
[14] 15	95%
[13] 14	92%
[12] 13	90%
[11] 12	87%
[10] 11	84%
[09] 10	82%
[08] 09	79%
[07] 08	77%
[06] 07	74%
[05] 06	71%
[04] 05	69%
[03] 04	66%
[02] 03	64%
[01] 02	61%
[00] 01	58%
[99] 00	56%
[98] 99	53%
[97] 98	51%
[96] 97	48%
[95] 96	45%
[94] 95	43%
[93] 94	40%

[92] 93	38%
[91] 92	35%
[90] 91	32%
[89] 90	30%
[88] 89	27%
[87] 88	25%
[86] 87	22%
[85] 86	19%
[84] 85	17%
[83] 84	14%
[82] 83	12%
[81] 82 and prior	9%

(cc) Class 28 - Noncapitalized Personal Property. Property shall be classified as noncapitalized personal property if the following conditions are met:

(i) the property is an item of taxable tangible personal property with an acquisition cost of \$1,000 or less; and

(ii) the property is eligible as a deductible expense under Section 162 or Section 179, Internal Revenue Code, in the year of acquisition, regardless of whether the deduction is actually claimed.

TABLE 28

Year of Acquisition	Percent Good of Acquisition Cost
[15] 16	75%
[14] 15	50%
[13] 14	25%
[12] 13 and prior	0%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, [2016]2017.

KEY: taxation, personal property, property tax, appraisals
Date of Enactment or Last Substantive Amendment: [July 14,] 2016

Notice of Continuation: January 3, 2012

Authorizing, and Implemented or Interpreted Law: Art XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703

Transportation, Operations,
 Construction
R916-5
 Health Reform -- Health Insurance
 Coverage in State Contracts --
 Implementation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 40772

FILED: 09/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 72-6-107.5(6) requires the Utah Department of Transportation to adopt administrative rules which: 1) establish the procedure a contractor must follow to demonstrate that he will maintain an offer of qualified health insurance coverage for the contractor's employees for the duration of the state contract; 2) set penalties that may be imposed if a contractor intentionally violates the section; and 3) identify the website where a benchmark for qualified health insurance coverage can be found. H.B. 282 amended Subsection 72-6-107.5(6) during the 2016 General Session of the Legislature. This amendment makes the changes required by H.B. 282.

SUMMARY OF THE RULE OR CHANGE: This amendment: 1) raises the application threshold from \$1,500,000 to \$2,000,000 for prime contractors and \$750,000 to \$1,000,000 for subcontractors; 2) updates citations to the Utah code needed due to renumbering by the Legislature; 3) includes text that requires prime and subcontractors to certify to the Department that they have obtained and will maintain offers of qualified health insurance coverage to employees that comply with an actuarial equivalence determination that is bench-marked by the Department of Health; and 4) makes a number of grammatical corrections.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-6-107.5

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Department does not anticipate that this amendment will result in direct costs or savings to the state's budget because it does not require an allocation or payment of funds from or to the state or a subdivision of the state.

◆ **LOCAL GOVERNMENTS:** The Department does not anticipate that this amendment will result in direct costs or savings to the budgets of local governments because it does not require an allocation or payment of funds from or to local government or a subdivision of a local government.

◆ **SMALL BUSINESSES:** This amendment may lead to savings by those small businesses that have been required to offer health care benefits to their employees due to the application thresholds included in the former rule and will no longer be required to offer health care benefits to their employees due to the higher thresholds included in this amendment.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate that this amendment will result in direct costs or savings to the budgets of persons other than small businesses, businesses, or local government entities because it does not require an allocation or payment

of funds from or to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate this amendment will result in any additional compliance costs for affected persons because it does not require an allocation or payment of funds from or to persons other than small businesses, businesses, or local government entities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment may have a positive fiscal impact on business, but an exact measure of that impact is not known at this time.

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

TRANSPORTATION
OPERATIONS, CONSTRUCTION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov
◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov
◆ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov
◆ Michelle Jeronimo by phone at 801-965-3883, or by Internet E-mail at mjeronimo@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 10/31/2016

THIS RULE MAY BECOME EFFECTIVE ON: 11/07/2016

AUTHORIZED BY: Carlos Braceras, Executive Director

R916. Transportation, Operations, Construction.**R916-5. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.****R916-5-1. Purpose.**

The purpose of this rule is to comply with Section 72-6-107.5 and establish the requirements and procedures a contractor, subcontractor, consultant and subconsultant must follow to demonstrate they will maintain an offer of health insurance as required by Section 72-6-107.5. This rule also establishes penalties for intentional violations of Section 72-6-107.5.

R916-5-2. Authority.

This rule is authorized under Section 72-6-107.5 which requires the Utah Department of Transportation to make rules related to health insurance in certain design and construction contracts.

R916-5-3. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 72-6-107.5

(2) In addition:

(a) "Executive Director" means the Executive Director of the Department of Transportation, including, unless otherwise stated, the Executive Director's duly authorized designee.

(b) "Department" means the Department of Transportation established pursuant to Section 72-1-201.

(c) "Employee(s)" is as defined in 72-6-107.5 and includes only those employees that live and/or work in the State of Utah along with their dependents. "Employee" for purposes of this rule, shall not be construed as to be broader than that the use of the term employee for purposes of State of Utah Workers' Compensation laws.

(d) "State" means the State of Utah.

R916-5-4. Applicability of Rule.

(1) Except as provided in Subsection (2) below, this rule applies to all contracts entered into by the Department on or after July 1, 2009, and is applicable to a prime contractor if its contract is in the amount of ~~\$(1,500,000)~~ 2,000,000.00 or greater at the original execution of the contract, and to a subcontractor if its subcontract is in the amount of ~~\$(750,000)~~ 1,000,000.00 or greater at the original execution of the contract.

(2) This rule does not apply if:

(a) the application of this rule jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement; or

(d) the rule is in conflict with federal law.

(3) This rule does not apply to a change order as defined in Section 63G-6-103, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection R916-5-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of subsection (1) is guilty of an infraction.

R916-5-5. Contractors or Consultants to Comply with Section 72-6-107.5.

All contractors, subcontractors, consultants or subconsultants that are subject to the requirements of Section 72-6-107.5 shall comply with all the requirements, and be subject to the penalties and liabilities of Section 72-6-107.5.

R916-5-6. Not Basis for Protest, Suspension, Disruption, or Termination Design or Construction.

(1) The failure of contractors, subcontractors, consultants, or subconsultants to comply with Section 72-6-107.5:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor or consultant under Section 63G-~~[6-801]~~ 6a-1602 or any other provision in Title 63G, Chapter 6a, Part ~~[8]~~ 16, Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor or consultant as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

(2) A contractor who is unable to demonstrate compliance upon submission of the executed contract, signed by the successful

bidder, may be declared non-responsive and the Department may award the contract to the next lowest responsive bidder.

(3) A consultant who is unable to demonstrate compliance within 14 calendar days of being ranked first during the consultant selection process~~[;]~~ may be declared non-responsive and the Department may enter negotiations with the new first-ranked responsive consultant.

R916-5-7. Requirements and Procedures a Contractor or Consultant Must Follow.

(1) A contractor, or consultant, subcontractors or subconsultants must comply with the following requirements and procedures, and demonstrate, no later than the time of execution of the contract, compliance with Section 72-6-107.5:

(a) ~~[b]~~ By providing a written certification to the Executive Director that the contractor, consultants, subcontractors, and subconsultants have and will maintain for the duration of the contract an offer of qualified health insurance coverage for the employees who live and/or work within the State, along with their dependents; and

(b) the contractor or consultant shall also provide such written certification prior to the execution of the contract, in regard to all subcontractors or subconsultants at any tier that are subject to the requirements of this rule.

(c) The contractor shall: (i) Include a requirement in the applicable subcontract and certify to the Department that the subcontractor must obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and

(ii) certify to the Department that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the prime contract.

(2) Recertification. The Executive Director shall have the right to request a recertification by the contractor or consultant by submitting a written request to the contractor or consultant, and the contractor or consultant shall so comply with the written request within ten (10) working days of receipt of the written request; however, in no case may the contractor or consultant be required to demonstrate such compliance more than twice in any 12-month period.

(3) Demonstrating Compliance with Actuarially Equivalent Determination. The actuarially equivalent determination required by Subsection (1) of 72-6-107.5 is met by the contractor or consultant if the contractor or consultant provides the Executive Director with a written statement of actuarial equivalency, which is no more than one year old, from either the Utah Insurance Department, an actuary selected by the contractor or the contractor's insurer, an actuary selected by the consultant or the consultant's insurer, or an underwriter who is responsible for developing the employer groups premium rates.

(a) For purposes of this rule, actuarial equivalency, or greater is achieved by meeting or exceeding the requirements of qualified health insurance coverage as defined in Subsection 72-6-107.5(1)(c). The commercially equivalent benchmark, provided by the Department of Health, ~~[plan]~~ referred to in Subsection 72-6-107.5(1)(c), may be found at: <http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf>.

(4) The health insurance must be available upon the first day of the calendar month following the initial 90 days from the date of hire.

(5) Consultant Compliance Process. Consultants who are subject to this rule must demonstrate compliance with this rule in their initial Financial Screening Application. The consultant's will then be required to demonstrate the offer of health insurance that meets the requirements outlined in Section 72-6-107.5. During the procurement process and no later than the execution of the contract with the consultant, the consultant will confirm the prime is still in compliance with this rule and the subconsultants of the consultant will certify through their prime consultant they meet the requirements of this rule. The written contract will contain a provision where the consultant confirms compliance with this rule by both the consultant and applicable subconsultants.

(6) Contractor Compliance Process. Contractors who are subject to this rule must demonstrate compliance with this rule. When a contract is written, contractors will confirm the prime contractor is in compliance with this rule and their subcontractors will certify through their contractor that they meet the requirements of this rule. The written contract shall contain a provision where the contractor confirms compliance with this rule by both the contractor and applicable subcontractors.

(7) The contractor [M] must be in [E] compliance at the [F] time the [E] contract is executed. Notwithstanding any prequalification of a contractor, subcontractor, consultant or subconsultant that is subject to this rule, the contractor subcontractor, consultant or subconsultant must agree to the language in the executed contract that requires the contractor to be in compliance with this rule at the time of the execution of the contract and throughout the duration of the executory contract.

(8) The contractor's compliance is subject to an audit by the Department or the Office of the Legislative Auditor General.

R916-5-8. Department Hearing and Penalties.

(1) Hearing. Any hearing regarding the failure to comply with this rule shall be held in accordance with the Utah Administrative Procedures Act and [R]rule R907-1 unless specifically stated otherwise in a governing statute.

(2) Penalties. The penalties that may be imposed if a contractor, consultant, subcontractor or subconsultant, at any tier intentionally violates this rule include:

(a) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation, regardless of which tier the contractor or subcontractor is involved;

(b) a six-month suspension of the contractor, subcontractor, consultant or subconsultant from entering into future contracts with the state upon the second violation, regardless of which tier the contractor or subcontractor is involved;

(c) an action for debarment of the contractor, subcontractor, consultant or subconsultant in accordance with Section 63G-~~6-804~~6a-904 upon the third or subsequent violation; and

(d) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor, subcontractor, consultant or subconsultant who was not offered qualified health insurance coverage during the duration of the contract.

(e) A prime contractor or consultant will not be subject to penalties for the failure of a subcontractor or subconsultant to meet the requirement of maintaining their offer of qualified health care coverage.

R916-5-9. Does Not Create Any Contractual Relationship With Any Subcontractor or Subconsultant.

Nothing in this rule shall be construed as to create any contractual relationship whatsoever between the Department or the State with any subcontractor or subconsultant at any tier.

KEY: contracts, health insurance, health insurance in state contracts, health reform

Date of Enactment or Last Substantive Amendment: [~~October 11, 2011~~]2016****

Notice of Continuation: September 12, 2014

Authorizing, and Implemented or Interpreted Law: 72-6-107.5

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Commerce, Occupational and Professional Licensing **R156-72** Acupuncture Licensing Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40749
FILED: 09/08/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 72, provides for the licensure and regulation of acupuncturists. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-72-201(3) (a) provides that the Acupuncture Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 72, with respect to acupuncturists.

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 October 2011, it has been amended two times, once in February 2014 and once in July 2015. The Division did receive a 2013 written comment from Mark Montgomery with respect to this rule. Mr. Montgomery sent an email to the Division in February 2013 in response to a discussion of

proposed acupuncture rule changes during a November 30, 2012, and January 2013 Acupuncture Board meetings. In February 2013 and based on further discussions between the parties, it was determined that the Division and Board would hold off on considering the association's request for a rule change. No other written comments have been received with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 72, with respect to acupuncturists. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Larry Marx by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at lm Marx@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 09/08/2016

**Commerce, Occupational and
Professional Licensing
R156-75**

Genetic Counselors Licensing Act Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40748
FILED: 09/08/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 75, provides for the licensure of genetic counselors. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-75-201(3) provides that the Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 75, with respect to genetic counselors.

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 October 2011, it has been amended two times. The Division did receive a 06/14/2012 email from Hunter Finch from the Governor's Office of Planning and Budget notifying the Division of a nonsubstantive change that needed to be made in the rule in Section R156-75-102. As a result of that email, the Division filed a nonsubstantive change rule filing on 07/09/2012. The Division has received no other written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 75, with respect to genetic counselors. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Dane Ishihara by phone at 801-530-7632, by FAX at 801-530-6511, or by Internet E-mail at dishihara@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 09/08/2016

**Education, Administration
R277-109
Legislative Reporting and
Accountability**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40782
FILED: 09/15/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1) directs the Utah State Board of Education (Board) to establish rules and minimum standards for the public schools; Subsection 53A-1-401(a) gives the Board general control and supervision of the state's public education system for adoption and enforcement of rules; and Section 53A-1-401 allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-109 continues to be necessary because it provides requirements for data collection necessary to fulfill statutory or Board reporting requirements. Therefore, this rule should be continued.

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

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

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

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

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

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

EFFECTIVE: 09/15/2016

EFFECTIVE: 09/15/2016

Education, Administration
R277-116
Audit Procedure

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 40783
 FILED: 09/15/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 63I-5-201(4) requires the Utah State Board of Education (Board) to direct the establishment of an internal audit department for programs administered by the entities it governs; Section 53A-1-401 allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Subsection 53A-1-402(1)(e) directs the Board to develop rules and minimum standards regarding school productivity and cost-effectiveness measures.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-116 continues to be necessary because it outlines the role of the Audit Director, Superintendent, and agency in the audit process, and outlines the Board's procedures for audits of agencies. Therefore, this rule should be continued.

Education, Administration
R277-600
Student Transportation Standards and Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 40784
 FILED: 09/15/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(d) directs the Utah State Board of Education (Board) to establish rules for bus routes, bus safety and other transportation needs; Section 53A-17a-126.5 directs the Board to make rules to implement unsafe route grants; and Section 53A-1-401 allows the Board to makes rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-600 continues to be necessary because it provides the standards under which school districts may qualify for and receive state transportation funds. Therefore, this rule should be continued.

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

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

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

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

EFFECTIVE: 09/15/2016

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

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

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

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

EFFECTIVE: 09/15/2016

Education, Administration

R277-603

Autism Awareness Restricted Account Distribution

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40785
FILED: 09/15/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-1-304 authorizes the Superintendent to distribute autism awareness funds appropriated by the Legislature; and Section 53A-1-401 allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-603 continues to be necessary because it provides procedures, timelines, and accountability for distribution of funds for autism awareness. Therefore, this rule should be continued.

Education, Administration

R277-708

Enhancement for At-Risk Students Program

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40786
FILED: 09/15/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-17a-166 directs the Utah State Board of Education (Board) to manage the Enhancement for At-Risk Students interventions; and Section 53A-1-401 allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-708 continues to be necessary because it establishes criteria and procedures for distributing Enhancement for At-Risk Students funds to local education agencies. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

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

EFFECTIVE: 09/15/2016

Education, Administration
R277-914
Career and Technical Student
Organizations

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40787
FILED: 09/15/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-15-202(1) directs the Utah State Board of Education (Board) to establish minimum standards for career and technical programs for the public education system; Subsection 53A-15-202(3) directs the Board to cooperate with federal and state governments to administer programs which promote and maintain career and technical education; and Section 53A-1-401 allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-914 continues to be necessary because it provides procedures for fiscal accountability for

career and technical student organizations. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov

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

EFFECTIVE: 09/15/2016

Environmental Quality, Air Quality
R307-121
General Requirements: Clean Air and
Efficient Vehicle Tax Credit

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40746
FILED: 09/07/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 59-7-605 and 59-10-1009 authorize an income tax credit for those purchasing a new vehicle that uses natural gas, propane, or electricity. Rule R307-121 sets forth conditions for eligibility and the process of application for corporate and individual income tax credits, as required under Subsection 19-2-104(3)(b)(vi).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-121 has been amended five times since the last five-year review: DAR No. 35718 (nonsubstantive change), DAR No. 36809 (nonsubstantive change), DAR No. 37990 (effective 01/01/2014), DAR No. 38837 (effective 01/01/2015), and DAR No. 39353 (effective 09/03/2015). One comment was received in relation to changes made to DAR No. 38837. The comment was about concerns that the proposed rule did not require any evidence

that the system meets state emission requirements or is safe according to NFPA 52 code. Instead it puts the responsibility on the taxpayer to know those requirements and to certify that the installation complies with them. Division of Air Quality (DAQ) Response: The person commenting is correct when stating that the responsibility to ensure that the system meets emission and safety requirements falls on the taxpayer. Subsection 19-2-406(1) states that the owner of the converted vehicle is responsible to ensure that the vehicle is inspected by a CSA America Inspector and tested to ensure that the vehicle satisfies emission standards. No other comments have been received 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: Rule R307-121 should be continued because it provides necessary guidance in the administration of the Utah Clean Fuel Tax Credit program, which is required by Subsection 19-2-104(3)(b)(vi).

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

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Mat Carlile by phone at 801-536-4116, by FAX at 801-536-4136, or by Internet E-mail at mcarlile@utah.gov

AUTHORIZED BY: Bryce Bird, Director

EFFECTIVE: 09/07/2016

Health, Administration
R380-200
Patient Safety Surveillance and
Improvement Program

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40760
FILED: 09/13/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE

OR REQUIRE THE RULE: This rule exists under the Utah Public Health Authority to protect Utah citizens from adverse events, to facilitate quality improvement and to provide public transparency under Subsections 26-1-30(2)(a), 26-1-30(2)(b), 26-1-30(2)(d), 26-1-30(2)(e), and 26-1-30(2)(g), and Section 26-3-8.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This rule was revised, and the final version published in December 2015. Revisions were conducted in partnership with representatives from the hospitals and ambulatory care centers. The revisions updated the list of reported events to be consistent with National Standards, to reduce duplication, and to improve transparency and outcome improvement. Comments were captured through the monthly users group which is comprised of hospital quality managers and include expanding to skilled nursing facilities, expanding concept of root cause analysis to causal analysis to give more flexibility to reporting facilities, adding a harm scale, and instituting annual reporting requirements. The last revision conducted in 2015 expanded reporting to be consistent with the National Quality Forum list of serious reportable events and to include Skilled Nursing Facilities.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: No oppositions to date have been encountered. There is an ongoing users group that meets monthly to determine what the reporting rules and use of the data should be. Continuation is needed to provide public accountability and transparency, to protect the public, to analyze trends, and to identify opportunities for improvement consistent with national standards and public demand. Therefore, this rule should be continued.

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

HEALTH
ADMINISTRATION
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:

♦ Iona Thraen by phone at 801-273-6643, by FAX at 801-273-4150, or by Internet E-mail at ithraen@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 09/13/2016

Health, Administration
R380-210
 Health Care Facilities Patient Safety
 Program

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 40761
 FILED: 09/13/2016

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule exists under the Utah Public Health Authority to protect Utah citizens from adverse events, to facilitate quality improvement and to provide public transparency using hospital discharge data for adverse event and adverse drug event trends under Subsections 26-1-30(2)(a), 26-1-30(2)(b), 26-1-30(2)(d), 26-1-30(2)(e), and 26-1-30(2)(g), and Section 26-3-8.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received to date.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Hospital discharge data as one of the data sources for analyzing patient safety events is necessary since the All Payer Claims Database (APCD) does not have all outpatient claims. The agency is working toward including the APCD data sources for more robust analysis of patient safety events particularly in the area of adverse drug events. Therefore, this rule should be continued.

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

HEALTH
 ADMINISTRATION
 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:
 ♦ Iona Thraen by phone at 801-273-6643, by FAX at 801-273-4150, or by Internet E-mail at ithraen@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 09/13/2016

Health, Family Health and
 Preparedness, Licensing
R432-200
 Small Health Care Facility (Four to
 Sixteen Beds)

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 40776
 FILED: 09/15/2016

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

HEALTH
 FAMILY HEALTH AND PREPAREDNESS,
 LICENSING
 3760 S HIGHLAND DR
 SALT LAKE CITY, UT 84106
 or at the 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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 09/15/2016

Health, Family Health and Preparedness, Licensing

R432-300

Small Health Care Facility - Type N

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40775
FILED: 09/15/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the 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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 09/15/2016

Health, Family Health and Preparedness, Licensing

R432-650

End Stage Renal Disease Facility Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40777
FILED: 09/15/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the 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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 09/15/2016

Health, Family Health and Preparedness, Licensing
R432-700
Home Health Agency Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40778
FILED: 09/15/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the 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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 09/15/2016

Health, Family Health and Preparedness, Licensing
R432-725
Personal Care Agency Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40779
FILED: 09/15/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the 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

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 09/15/2016

Health, Family Health and Preparedness, Licensing
R432-750
Hospice Rule

Health, Family Health and Preparedness, Licensing
R432-950
Mammography Quality Assurance

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40780
FILED: 09/15/2016

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40781
FILED: 09/15/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, is the health code that mandates the licensing of health facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department agrees with the need to continue the rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Office of Administrative Rules.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carmen Richins by phone at 801-273-2802, by FAX at 801-274-0658, or by Internet E-mail at carmenrichins@utah.gov
♦ Joel Hoffman by phone at 801-273-2804, by FAX at 801-274-0658, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 09/15/2016

EFFECTIVE: 09/15/2016

Natural Resources; Oil, Gas and
Mining; Coal
R645-100

Administrative: Introduction

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40731
FILED: 09/06/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. The definitions and other administrative components in this rule are utilized for consistent regulation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The definitions applicable to the Coal Program in this rule are necessary to avoid inconsistent use of terminology by the board, division, and affected parties. The other administrative items in this rule include the description of the applicability of these rules, petitions for rulemaking, citizen suits, availability of records, and computation of time frames. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/06/2016

Natural Resources; Oil, Gas and
Mining; Coal
R645-103

Areas Unsuitable for Coal Mining and
Reclamation Operations

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40732
FILED: 09/06/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-24 specifically establishes provisions for a planning process enabling objective decisions for land areas unsuitable for coal mining operations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes procedures that are necessary for the designation of lands unsuitable for coal mining and reclamation operations. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/06/2016

EFFECTIVE: 09/06/2016

**Natural Resources; Oil, Gas and Mining; Coal
R645-200**

Coal Exploration: Introduction

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40733

FILED: 09/06/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-8 specifically establishes provisions for coal exploration rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes categories of coal exploration based upon tons of coal to be removed and the general responsibility of the division and any person seeking to conduct coal exploration. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

**Natural Resources; Oil, Gas and Mining; Coal
R645-201**

Coal Exploration: Requirements for Exploration Approval

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40734

FILED: 09/06/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-8 specifically establishes provisions for coal exploration rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes requirements that are necessary for coal exploration permit approval within Utah. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/06/2016

Natural Resources; Oil, Gas and
Mining; Coal
R645-202

Coal Exploration: Compliance Duties

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40735
FILED: 09/06/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-8 specifically establishes provisions for coal exploration rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes standards that are necessary for required documents to be available and for performance standards pertaining to the coal exploration. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/06/2016

Natural Resources; Oil, Gas and
Mining; Coal
R645-203

Coal Exploration: Public Availability of
Information

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40736
FILED: 09/06/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Section 40-10-8 specifically establishes provisions for coal exploration rules. Section 40-10-19 also specifically establishes provisions for records obtained under the chapter to be made available to the public.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes standards that are necessary for availability of public records and confidentiality pertaining to coal exploration. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/06/2016

Natural Resources; Oil, Gas and Mining; Coal
R645-300

Coal Mine Permitting: Administrative Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40737
FILED: 09/06/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Sections 40-10-9 and 40-10-10 specifically establish provisions for permitting of coal mining operations within the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the administrative procedures that are necessary for permitting of coal mines including public participation, approval of permit applications, and administrative and judicial review of decisions on permits. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/06/2016

Natural Resources; Oil, Gas and Mining; Coal
R645-301

Coal Mine Permitting: Permit Application Requirements

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40738
FILED: 09/06/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Sections 40-10-9 and 40-10-10 specifically establish provisions for permitting of coal mining operations within the state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary since it states the required information to be included in each permit application by a coal mine operator including information on soils, biology, engineering, geology, hydrology, and bonding. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/06/2016

Natural Resources; Oil, Gas and
Mining; Coal
R645-302

Coal Mine Permitting: Special
Categories and Areas of Mining

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40739
FILED: 09/06/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Sections 40-10-9 and 40-10-10 specifically establish provisions for permitting of coal mining operations within the state. Section 40-10-17 also specifically establishes provisions for performance standards for coal mining and reclamation, as well as rulemaking authority to govern the granting of variances.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes standards that are necessary for special categories of mining such as steep slopes and experimental practices mining, and special areas of mining such as prime farmland and alluvial valley floors. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/06/2016

Natural Resources; Oil, Gas and
Mining; Coal
R645-303

Coal Mine Permitting: Change,
Renewal, and Transfer, Assignment, or
Sale of Permit Rights

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40740
FILED: 09/06/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Sections 40-10-9 and 40-10-12 specifically establish provisions for permit renewal as well as permit revision and transfer, assignment, or sale of the rights granted under the permit.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes procedures that are necessary for coal mine permit renewals and changes, as well as transfer, assignment, or sale of permit rights. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/06/2016

**Natural Resources; Oil, Gas and
Mining; Coal
R645-402**

**Inspection and Enforcement: Individual
Civil Penalties**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION
DAR FILE NO.: 40741
FILED: 09/06/2016**

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Subsection 40-10-20(6) specifically establishes provisions for civil penalties for a director, officer, or agent of a corporation who knowingly authorizes a violation of a condition of a coal mining permit.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes standards and procedures that are necessary for individual civil penalties against any corporate director, officer, or agent of a corporate permittee who knowingly authorizes a permit violation. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE

SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/06/2016

**Natural Resources; Oil, Gas and
Mining; Coal
R645-403**

Alternative Enforcement

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION
DAR FILE NO.: 40742
FILED: 09/06/2016**

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 40-10-6 and 40-10-6.5 provide for rulemaking authority to the Board of Oil, Gas and Mining as necessary for the regulation of coal mining operations and reclamation operations. Subsections 40-10-20(4) through 40-10-20(7) specifically establish provisions for civil actions and criminal penalties for willfully and knowingly violating a condition of a coal mining permit. Subsection 40-10-22(2) and Section 40-10-23 establish procedures for the division request of the attorney general for relief due to violations or refusals to comply, and establish the time for bringing a criminal proceeding.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes standards and procedures for criminal penalties for willfully and knowingly violating conditions of a coal permit, plus standards and procedures for requests to the Utah Attorney General to pursue civil actions against a permittee. This rule should be continued so Utah's Coal Program continues to retain primacy under the federal Surface Mining Control and Reclamation Act.

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

NATURAL RESOURCES
OIL, GAS AND MINING; COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 09/06/2016

**School and Institutional Trust Lands,
Administration
R850-140
Development Property**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40767

FILED: 09/14/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53C-1-302(1)(a) authorizes the director to manage the agency in fulfillment of its purpose and establish fees, procedures, and rules consistent with general policies prescribed by the Board of Trustees. Section 53C-4-101 authorizes the director to establish criteria by rule for the sale, exchange, lease, or other disposition or conveyance of trust lands. This rule allows the School and Institutional Trust Lands Administration (SITLA) to designate certain trust lands for development activities and establishes the guidelines that will facilitate development to generate optimum revenue for the Trust.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received by the agency for this rule since the previous five-year review filed in September 2011.

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 allows SITLA to designate lands that

have development potential to generate optimum revenue for the Trust as development properties. Development transactions are very complex and the guidelines provided in this rule allow the agency to proceed in a more traditional, business-like approach rather than a governmental-like approach. Because real estate transactions are time sensitive, SITLA needs to be able to take advantage of opportunities as they arise and respond accordingly. Therefore, this rule should be continued.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
ROOM 500
675 E 500 S
SALT LAKE CITY, UT 84102-2818
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Rodger Mitchell by phone at 801-538-5176, or by Internet E-mail at rodgermitchell@utah.gov

AUTHORIZED BY: David Ure, Director

EFFECTIVE: 09/14/2016

**Transportation, Administration
R907-62
Americans with Disabilities Act**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40730

FILED: 09/02/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: 28 CFR 35.107 requires public entities that employ 50 or more persons to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title II of the Americans with Disabilities Act, and adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Act. This rule brings the Department into compliance with those requirements.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any written comments during and since the last five-year

review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The federal law that required the Department to promulgate this rule originally is still in effect. The Department must continue this rule to remain in compliance with federal law.

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:

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov
- ◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov
- ◆ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov
- ◆ Michelle Jeronimo by phone at 801-965-3883, or by Internet E-mail at mjeronimo@utah.gov

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 09/02/2016

**Transportation, Program Development
R926-2
Evaluation of Proposed Additions to or
Deletions from the State Highway
System**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40751
FILED: 09/08/2016

**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 72-4-102.5(7)(a) requires the Department to make rules that establish and define a functional classification of highways, define and designate regionally significant arterial highways, and

establish an access management policy consistent with the functional classification of roadways. This rule satisfies the requirements established by Subsection 72-4-102.5(7)(a), which remains in effect.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any written comments during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule satisfies the requirements established by Subsection 72-4-102.5(7)(a), and this subsection of the Transportation Code is still enforceable law. The Department is justified in maintaining this rule so long as it is required by the Code. Therefore, this rule should be continued.

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

TRANSPORTATION
PROGRAM DEVELOPMENT
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov
- ◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov
- ◆ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov
- ◆ Michelle Jeronimo by phone at 801-965-3883, or by Internet E-mail at mjeronimo@utah.gov

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 09/08/2016

**Transportation, Program Development
R926-3
Class B and Class C Road Funds**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 40750
FILED: 09/08/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 72-3-103 defines county roads as Class B roads and authorizes counties to expend funds from the Transportation Fund under rules made by the Department, and Section 72-3-104 defines city streets as Class C roads and authorizes cities to expend funds from the Transportation Fund under rules made by the Department. Rule R926-3 is the Department's rule which provides the procedure for cities and counties to follow when expending funds allocated from the Transportation Fund. Rule R926-3 remains necessary to control how cities and counties spend allocated Transportation Fund money.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any written comments during and since the last five-year review of the rule from interested persons supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: Rule R926-3 remains necessary because it controls how cities and counties spend funds allocated to them from the Transportation Fund. Therefore, this rule should be continued.

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

TRANSPORTATION
PROGRAM DEVELOPMENT
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov
- ◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov
- ◆ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov
- ◆ Michelle Jeronimo by phone at 801-965-3883, or by Internet E-mail at mjeronimo@utah.gov

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 09/08/2016

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

Commerce

Occupational and Professional Licensing
No. 40589 (AMD): R156-11a. Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule
Published: 08/01/2016
Effective: 09/08/2016

No. 40588 (AMD): R156-64. Deception Detection Examiners Licensing Act Rule
Published: 08/01/2016
Effective: 09/08/2016

Environmental Quality

Air Quality
No. 40471 (NEW): R307-124. General Requirements: Conversion to Alternative Fuel Grant Program
Published: 07/01/2016
Effective: 09/08/2016

Governor

Economic Development
No. 40605 (AMD): R357-11. Technology Commercialization Innovation Program (TCIP)
Published: 08/01/2016
Effective: 09/12/2016

Health

Health Care Financing, Coverage and Reimbursement Policy
No. 40599 (AMD): R414-1-5. Incorporations by Reference
Published: 08/01/2016
Effective: 09/15/2016

Human Services

Child and Family Services
No. 40587 (REP): R512-10. Youth Mentor Program
Published: 08/01/2016
Effective: 09/07/2016

Money Management Council

Administration
No. 40603 (NEW): R628-10. Rating Requirements to Be a Permitted Depository
Published: 08/01/2016
Effective: 09/07/2016

Public Safety

Fire Marshal
No. 40601 (AMD): R710-2. Rules Pursuant to the Utah Fireworks Act
Published: 08/01/2016
Effective: 09/13/2016

No. 40602 (AMD): R710-6. Liquefied Petroleum Gas Rules
Published: 08/01/2016
Effective: 09/13/2016

No. 40598 (AMD): R710-7. Concerns Servicing Automatic Fire Suppression Systems
Published: 08/01/2016
Effective: 09/13/2016

Workforce Services

Employment Development
No. 40557 (AMD): R986-100. Employment Support Programs
Published: 07/15/2016
Effective: 10/01/2016

No. 40556 (AMD): R986-200-221. Drug Testing Requirements
Published: 07/15/2016
Effective: 09/14/2016

NOTICES OF RULE EFFECTIVE DATES

No. 40555 (AMD): R986-700. Child Care Assistance
Published: 07/15/2016
Effective: 10/01/2016

Rehabilitation
No. 40591 (NEW): R993-100. Authority, Purpose and
Administrative Review
Published: 08/01/2016
Effective: 10/01/2016

No. 40592 (NEW): R993-200. Order of Selection
Published: 08/01/2016
Effective: 10/01/2016

No. 40593 (NEW): R993-300. Certification Requirements for
Interpreters for the Hearing Impaired
Published: 08/01/2016
Effective: 10/01/2016

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2016 through September 15, 2016. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Office of Administrative Rules (801-538-3003).

A copy of the **RULES INDEX** is available for public inspection at the Office of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Office's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

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<u>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
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	40441	AMD	07/22/2016	2016-12/6
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
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R25-7	Travel-Related Reimbursements for State Employees	40547	AMD	08/22/2016	2016-14/6
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
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R33-1	Utah Procurement Rules, "General Procurement Provisions," Definitions	40559	AMD	08/22/2016	2016-14/11
R33-4	General Procurement Provisions, Prequalifications, Specifications, and Small Purchases	40560	AMD	08/22/2016	2016-14/15
R33-5	Request for Information	40571	AMD	08/22/2016	2016-14/19
R33-6	Bidding	40561	AMD	08/22/2016	2016-14/24
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
R33-7	Request for Proposals	40567	AMD	08/22/2016	2016-14/27
R33-8	Exceptions to Procurement Requirements	40570	AMD	08/22/2016	2016-14/34
R33-9	Cancellations, Rejections, and Debarment	40565	AMD	08/22/2016	2016-14/39
R33-12	Terms and Conditions, Contracts, Change Orders and Costs	40562	NSC	07/15/2016	Not Printed
R33-12-502	Technology Modifications	40047	AMD	02/23/2016	2016-2/7
R33-15	Architect-Engineer Services	40563	NSC	07/15/2016	Not Printed
R33-16	Controversies and Protests	40564	NSC	07/15/2016	Not Printed
R33-18	Appeal to the Utah Court of Appeals	40566	NSC	07/15/2016	Not Printed
R33-21	Interaction Between Procurement Units	40568	AMD	08/22/2016	2016-14/42
R33-24	Unlawful Conduct	40569	AMD	08/22/2016	2016-14/44

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R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	40282	AMD	06/01/2016	2016-8/6
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AGRICULTURE AND FOOD

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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

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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
R58-24	Community Spay and Neuter Grants	40637	5YR	08/02/2016	2016-17/87

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R52-7	Horse Racing	40703	5YR	08/25/2016	2016-18/41
R52-7-5	Occupation Licensing and Registration	40366	AMD	06/23/2016	2016-10/8

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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

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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

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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
R70-920	Packaging and Labeling of Commodities	40634	5YR	08/02/2016	2016-17/87
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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
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R131-2	Capitol Hill Complex Facility Use	40458	AMD	07/22/2016	2016-12/8
R131-4	Capitol Preservation Board General Procurement Rule	40092	5YR	01/11/2016	2016-3/507

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R151-14	New Automobile Franchise Act Rule	40293	5YR	03/31/2016	2016-8/92

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R152-15-3	Compensated Employees and Independent Contractors	40414	AMD	07/08/2016	2016-11/2
R152-26	Telephone Fraud Prevention Act	40341	5YR	04/19/2016	2016-10/80

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R156-15	Health Facility Administrators Act Rule	40705	5YR	08/25/2016	2016-18/41
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R156-17b-614a	Operating Standards - General Operating Standards, Class A and B Pharmacy	40407	AMD	07/11/2016	2016-11/7
R156-22-302b	Qualifications for Licensure - Education Requirements	40594	NSC	08/01/2016	Not Printed
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
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R156-57	Respiratory Care Practices Act Rule	40355	5YR	04/26/2016	2016-10/83
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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
R156-64	Deception Detection Examiners Licensing Act Rule	40588	AMD	09/08/2016	2016-15/14
R156-67	Utah Medical Practice Act Rule	40196	5YR	02/08/2016	2016-5/24
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R156-73	Chiropractic Physician Practice Act Rule	40208	5YR	02/11/2016	2016-5/25
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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
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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
R162-2g	Real Estate Appraiser Licensing and Certification Administrative Rules	40684	5YR	08/18/2016	2016-18/43
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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
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R277-116	Audit Procedure	40783	5YR	09/15/2016	Not Printed
R277-200	Utah Professional Practices Advisory Commission (UPPAC), Definitions	40325	REP	08/12/2016	2016-9/7
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R277-207	Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions	40333	REP	08/12/2016	2016-9/31
R277-210	Utah Professional Practices Advisory Commission (UPPAC), Definitions	40502	NEW	08/12/2016	2016-13/10
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R277-215	Utah Professional Practices Advisory Commission (UPPAC), Disciplinary Rebuttable Presumptions	40506	NEW	08/12/2016	2016-13/29
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R277-404	Requirements for Assessments of Student Achievement	40507	AMD	08/11/2016	2016-13/31
R277-419	Pupil Accounting	40287	AMD	06/03/2016	2016-8/12
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R277-510	Educator Licensing - Highly Qualified Assignment	40100	AMD	03/09/2016	2016-3/8
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R277-515	Utah Educator Standards	40510	AMD	08/12/2016	2016-13/41
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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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Agriculture and Food, Horse Racing Commission (Utah)	39951	R52-7	AMD	02/02/2016	2015-24/4
	40703	R52-7	5YR	08/25/2016	2016-18/41
	40366	R52-7-5	AMD	06/23/2016	2016-10/8
<u>horses</u>					
Agriculture and Food, Horse Racing Commission (Utah)	39951	R52-7	AMD	02/02/2016	2015-24/4
	40703	R52-7	5YR	08/25/2016	2016-18/41
	40366	R52-7-5	AMD	06/23/2016	2016-10/8
<u>hospital</u>					
Health, Administration	40760	R380-200	5YR	09/13/2016	Not Printed
	40761	R380-210	5YR	09/13/2016	Not Printed
<u>hospital policy</u>					
Health, Center for Health Data, Health Care Statistics	40172	R428-10	R&R	03/25/2016	2016-4/43
	40173	R428-11	REP	03/25/2016	2016-4/45
<u>hostile work environment</u>					
Human Resource Management, Administration	40396	R477-15-1	AMD	07/01/2016	2016-10/61
<u>HOT lanes</u>					
Transportation Commission, Administration	40205	R940-1	EXT	02/09/2016	2016-5/30
	40467	R940-1	5YR	06/02/2016	2016-13/171
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Governor, Economic Development	40027	R357-13	NEW	03/14/2016	2016-2/76
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Health, Child Care Center Licensing Committee	39902	R381-60	AMD	01/31/2016	2015-22/34
	40163	R381-60	AMD	03/30/2016	2016-4/15
<u>housing</u>					
Housing Corporation (Utah), Administration	40013	R460-1	NSC	01/15/2016	Not Printed
	40014	R460-4	NSC	01/15/2016	Not Printed
	40015	R460-5	NSC	01/15/2016	Not Printed
	40016	R460-6	NSC	01/15/2016	Not Printed
	40017	R460-8	NSC	01/15/2016	Not Printed
Labor Commission, Antidiscrimination and Labor, Fair Housing	40717	R608-1	5YR	08/29/2016	2016-18/45
Navajo Trust Fund, Trustees	40025	R661-7	NEW	02/29/2016	2016-2/113
<u>housing finance</u>					
Housing Corporation (Utah), Administration	40012	R460-2	AMD	03/09/2016	2016-2/90
	40018	R460-3	AMD	03/09/2016	2016-2/92

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Human Services, Administration	40264	R495-885	NEW	05/11/2016	2016-7/18	
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Natural Resources, Wildlife Resources	40404	R657-23	AMD	07/11/2016	2016-11/43	
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Natural Resources, Parks and Recreation	40215	R651-637	AMD	04/21/2016	2016-6/23	
<u>impersonating a peace officer</u>						
Public Safety, Peace Officer Standards and Training	40537	R728-411	R&R	08/23/2016	2016-14/126	
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Transportation, Motor Carrier	40721	R909-1	5YR	08/30/2016	2016-18/57	
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Natural Resources, Wildlife Resources	40094	R657-3	AMD	03/09/2016	2016-3/486	
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	40474	R918-5	EXD	06/08/2016	2016-13/173	
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Public Safety, Peace Officer Standards and Training	40530	R728-500	REP	08/23/2016	2016-14/128	
	40539	R728-501	REP	08/23/2016	2016-14/130	
	40538	R728-502	R&R	08/23/2016	2016-14/132	
<u>incentives</u>						
Governor, Economic Development	40459	R357-17	NEW	07/22/2016	2016-12/26	
Governor, Energy Development (Office of)	40433	R362-4	NEW	07/14/2016	2016-11/32	
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Public Service Commission, Administration	39934	R746-409	AMD	03/30/2016	2015-23/42	
	39934	R746-409	CPR	03/30/2016	2016-3/504	
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Health, Health Care Financing, Coverage and Reimbursement Policy	40380	R414-304	AMD	07/01/2016	2016-10/32	
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Health, Administration	40761	R380-210	5YR	09/13/2016	Not Printed	
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	40636	R70-940	5YR	08/02/2016	2016-17/88	
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	40576	R313-18	5YR	07/01/2016	2016-14/175	
	40007	R313-18-11	NSC	01/15/2016	Not Printed	
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Public Safety, Peace Officer Standards and Training	40538	R728-502	R&R	08/23/2016	2016-14/132	
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	40718	R610-3	5YR	08/29/2016	2016-18/47
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	40354	R156-9	5YR	04/26/2016	2016-10/81
	40071	R156-9a	5YR	01/07/2016	2016-3/508
	40705	R156-15	5YR	08/25/2016	2016-18/41
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	40651	R156-55b	5YR	08/08/2016	2016-17/90
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	40652	R156-55c	5YR	08/08/2016	2016-17/91
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	40009	R313-22	NSC	01/15/2016	Not Printed
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	40323	R313-22	AMD	06/10/2016	2016-9/63
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	39943	R25-15	NEW	01/13/2016	2015-23/6	
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