UTAH STATE BULLETIN

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

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

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

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

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

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SPECIAL NOTICES

Health
Health Care Financing, Coverage and Reimbursement Policy

Notice for Amendment to Cover Dental Services for Adults with Disabilities or with Blindness

The Utah Department of Health, Division of Medicaid and Health Financing will submit a request to amend the 1115 Primary Care Network Demonstration Waiver to cover dental services for Medicaid eligible adults with disabilities or with blindness. This amendment would implement Senate Bill 39 (2016) if the service is adequately funded in the 2017 General Session. A copy of the Department's Request for Amendment can be viewed at: https://medicaid.utah.gov/disabled-dental

The public may comment on this request through December 31, 2016, by submitting comments to jmeyersmart@utah.gov

End of the Special Notices Section

EXECUTIVE DOCUMENTS

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

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

Calling the Sixty-First Legislature Into the Fourth Special Session, Utah Proclamation No. 2016-4S

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

WHEREAS, since the adjournment of the 2016 General Session of the Sixty-first Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do by this Proclamation call the Sixty-first Legislature of the State of Utah into a Fourth Special Session at the Utah State Capitol, in Salt Lake City, Utah, on the 16th day of November 2016, at **4:00 p.m**., to consider the following:

1. Funding for class B and C roads;
2. Legislation related to the regulation of solid waste similar to 2016 House Bill 258; and
3. For the Senate to consent to appointments made by the Governor.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 14th day of November 2016.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2016/4/S

NOTICES OF
PROPOSED RULES

A state agency may file a **Proposed Rule** when it determines the need for a substantive change to an existing rule. With a **Notice of Proposed Rule**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between November 02, 2016, 12:00 a.m., and November 15, 2016, 11:59 p.m. are included in this, the December 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 January 3, 2017. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **Rule Analysis**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **Proposed Rule**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through March 31, 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** or a **Change in Proposed Rule**, the **Proposed Rule** lapses.

The public, interest groups, and governmental agencies are invited to review and comment on **Proposed Rules**. *Comment may be directed to the contact person identified on the* **Rule Analysis** *for each rule.*

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

The Proposed Rules Begin on the Following Page

Administrative Services, Facilities Construction and Management
R23-3
Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40947
FILED: 11/03/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for the changes includes clarifying language and adding requirements to comply with S.B. 156 which passed in the 2016 General Session.

SUMMARY OF THE RULE OR CHANGE: The changes include references to the governing sections of the Utah Code, changed or clarified definitions, updated deadlines for reporting and filing requests, and additional detailed requirements related to the operation and maintenance of state-owned facilities.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-5-103 and Section 63A-5-211

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Exact cost or savings to the state budget is unknown. The expanded requirements include inspections by properly certified persons, computer-based tracking systems, and detailed programs, which may have an effect on the state budget as they are implemented. There is potential for additional costs depending on the whether the implementing agencies have some or all of the systems in place. The cost will vary with each agency.
♦ LOCAL GOVERNMENTS: There are no anticipated costs to local governments. This rule applies to state-owned facilities and, therefore, the scope of its effects are limited to such facilities and the maintenance thereof.
♦ SMALL BUSINESSES: There are no anticipated costs to small businesses. This rule applies to state-owned facilities and, therefore, the scope of its effects are limited to such facilities and the maintenance thereof.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs to persons other than small businesses, businesses, or local government entities. This rule applies to state-owned facilities and, therefore, the scope of its effects are limited to such facilities and the maintenance thereof.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons is unknown. The expanded requirements include inspections by properly certified persons, computer-based tracking systems, and detailed programs, which may have an effect on the state budget as they are implemented. There is potential for additional costs depending on the whether the implementing agencies have some or all of the systems in place. The cost will vary with each agency.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no fiscal impacts as a result of the changes to this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
♦ Jeff Reddoor by phone at 801-971-9830, or by Internet E-mail at jreddoor@utah.gov
♦ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Jeff Reddoor, State Building Board Manager

R23. Administrative Services, Facilities Construction and Management.
R23-3. Planning, Programming, Request for [~~Capitol~~]Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities.
R23-3-1. Purpose and Authority.

(1) This rule establishes policies and procedures for the authorization, funding, and development of programs for capital development and capital improvement projects and the use and administration of the Planning Fund.

(2) The Board's authority to administer the planning process for state facilities is contained in Section 63A-5-103.

(3) The statutes governing the Planning Fund are contained in Section 63A-5-211.

(4) This rule is also to provide the rules and standards as required by Section 63A-5-103(1)(e)(v).

(5) The Board's authority to make rules for its duties and those of the Division is set forth in Subsection 63A-5-103(1).

R23-3-2. Definitions.

(1) "Agency" means as defined in Section 63A-1-103(1). [~~each department, agency, institution, commission, board, or other administrative unit of the State of Utah.~~]

(2) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(3) "Capital Development" is defined in Section 63A-5-104.

(4) "Capital Improvement" is defined in Section 63A-5-104.

(5) "Director" means the Director of the Division, including, unless otherwise stated, the Director's[~~his~~] duly authorized designee.

(6) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(7) "Planning Fund" means the revolving fund created pursuant to Section 63A-5-211 for the purposes outlined therein.

(8) "Program" means a document containing a detailed description of the scope, the required areas and their relationships, and the estimated cost of a construction project.

(a) "Program" typically refers to an architectural program but, as used in this rule, the term "program" includes studies that approximate an architectural program in purpose and detail.

(b) "Program" may include[~~does not mean~~] feasibility studies, building evaluations and a[~~,~~] master plan[~~s~~].[~~or general project descriptions prepared for purposes of soliciting funding through donations or grants.~~]

R23-3-3. When Programs Are Required.

(1) For capital development projects, a program must be developed before the design may begin unless the Director determines that a program is not needed for that specific project. Examples of capital development projects that may not require a program include land purchases, building purchases requiring little or no remodeling, and projects repeating a previously used design.

(2) For capital improvement projects, the Director shall determine whether the nature of the project requires that a program be prepared.

R23-3-4. Authorization of Programs.

(1) The initiation of a program for a capital development project must be approved by the Legislature or the Board if it is anticipated that state funds will be requested for the design or construction of the project.

(2) When requesting Board approval, the agency shall justify the need for initiating the programming process at that point in time and also address the level of support for funding the project soon after the program will be completed.

R23-3-5. Funding of Programs.

Programs may be funded from one of the following sources.

(1) Funds appropriated for that purpose by the Legislature.

(2) Funds provided by the agency.

(a) This would typically be the funding source for the development of programs before the Legislature funds the project.

(b) Funds advanced by agencies for programming costs may be included in the project budget request but no assurance can be given that project funds will be available to reimburse the agency.

(c) Agencies that advance funds for programming that would otherwise lapse may not be reimbursed in a subsequent fiscal year.

(3) If an agency is able to demonstrate to the Board that there is no other funding source for programming for a project that is likely to be funded in the upcoming legislative session, it may request to borrow funds from the Planning Fund as provided for in Section R23-3-8.

R23-3-6. Administration of Programming.

(1) The development of programs shall be administered by the Division in cooperation with the requesting agency unless the Director authorizes the requesting agency to administer the programming.

(2) This Section R23-3-6 does not apply to projects that are exempt from the Division's administration pursuant to Subsection 63A-5-206(3).

R23-3-7. Restrictions of Programming Firm.

(1) The Division may in its sole discretion based on the interest of the State, determine whether a programming firm (person) may be able to participate in any or all of the design or other similar aspects of a project.

(2) If there is any restriction of a programming firm to participate in future selections of a project, the Division, shall provide this restriction in any competitive solicitation, if there is one, that may be issued for selecting a programming firm. If there is no solicitation for the selection of the programming firm (i.e. sole source, small purchase, emergency procurement, etc.), then Division may simply provide any restriction of the firm's future participation in any other aspect of the project, by placing the restriction in the contract.

(3) Notwithstanding any provision of this Rule or any other Rule of this Board, the Division may terminate or suspend programming and design contracts at any time consistent with the provisions of the contract.

R23-3-8. Use and Reimbursement of Planning Fund.

(1) The Planning Fund may be used for the purposes stated in Section 63A-5-211 including the development of:

(a) facility master plans;

(b) programs; and

(c) building evaluations or studies to determine the feasibility, scope and cost of capital development and capital improvement requests.

(2) Expenditures from the Planning Fund must be approved by the Director.

(3) Expenditures in excess of $25,000 for a single planning or programming purpose must also be approved in advance by the Board.

(4) The Planning Fund shall be reimbursed from the next funded or authorized project for that agency that is related to the purposes for which the expenditure was made from the Planning Fund.

(5) The Division shall report changes in the status of the Planning Fund to the Board.

R23-3-9. Development and Approval of Master Plans.

(1) For each major campus of state-owned buildings, the agency with primary responsibility for operations occurring at the campus shall, in cooperation with the Division, develop and maintain a master plan that reflects the current and projected development of the campus.

(2) The purpose of the master plan is to encourage long term planning and to guide future development.

(3) Master plans for campuses and facilities not covered by Subsection (1) may be developed upon the request of the Board or when the Division and the agency determine that a master plan is necessary or appropriate.

(4) The initial master plan for a campus, and any substantial modifications thereafter, shall be presented to the Board for approval.

R23-3-10. Standards and Requirements for a Capital Development Project Request, Including a Feasibility Study.

(1) The [~~Building Board~~]Board Director shall establish a form for the consideration of Capital Development Projects which provides the following:

(a) the type of request, including whether it is, in whole or part, state funded, non-state or private funded, or whether it is non-state or private funded with an operations and maintenance request;

(b) defines the appropriateness and the project scope including proposed square footage;

(c) the proposed cost of the project including the preliminary cost estimate, proposed funding, the previous state funding provided, as well as other sources;

(d) the proposed ongoing operating budget funding, new program costs and new full time employees for the operations and maintenance and other programs;

(e) an analysis of current facilities and why the proposed facility is needed;

(f) a project executive summary of why the project is needed including the purpose of the project, the benefits to the State, how it relates to the mission of the entity and related aspects;

(g) the feasibility and planning of the project that includes how it corresponds to the applicable master plan, the economic impacts of the project, pedestrian, transportation and parking issues, various impacts including economic and community impacts, the extent of site evaluation, utility and infrastructure concerns and all other aspects of a customary feasibility study for a project of the particular type, location, size and magnitude;

(h) any land banking requests; and

(i) any other federal or state statutory or rule requirements related to the project.

(2) The form referred to in subsection (1) above shall also include the scoring criteria and weighting of the scores to be used in the Board's prioritization process, including:

(a) existing building deficiencies and life safety concerns;

(b) essential program growth;

(c) cost effectiveness;

(d) project need, including the improved program effectiveness and support of critical programs/initiatives;

(e) the availability of alternative funding sources that does not include funding from the Utah legislature; and

(f) weighting for all the above criteria as published in the Five Year Building Program for each agency[~~State Agencies and Institution~~] as published and submitted to the Utah Legislature for the General Session immediately preceding the prioritization of the Board unless the Board in a public meeting has approved a different criteria and/or weighting system.

(3) The Board shall verify the completion and accuracy of the feasibility study referred to in this Rule.

(4) A capital development request by an agency described in Section 53B-1-102 shall comply with Section 63A-5-104(2)(b)(iii).

(5) An agency may not modify a capital development project request after the deadline for submitting the request prior to the Board's October meeting, except to the extent that a modification: of the scope of the project; or the amount of funds requested, is necessary due to increased construction costs or other factors outside of the agency's control.

R23-3-11. Standards and Requirements Related to[~~for Reporting~~] Operations and Maintenance [~~Expenditures for~~]of State-Owned Facilities[~~, Including Utility Metering~~].

(1) No later than October 1[~~December 31st~~] of each calendar year, each agency shall report operations and maintenance expenditures for state owned facilities covering the prior fiscal year to the Board Director in accordance with Section 63A-5-103(e)(v) and this rule. All data must be entered into the Riskonnect database by the agency in accordance with the format outlined by the Board Director.[~~the Board shall consider, adopt and publish facility maintenance standards which shall require annual reporting by all agencies and institutions to the Building Board Director no later than December 31st of each calendar year.~~]

(2) The facility maintenance standards shall include utility metering requirements to track the utility costs as well as all other necessary requirements to monitor facility maintenance costs.

(3) The adopted Board facility management standards including annual reporting requirements shall be published on the Division of Facilities Construction and Management website.

(4) If the Board does not adopt new or amended facility maintenance standards, the prior adopted standards on the DFCM website shall apply.

(5) The [~~Building Board~~]Board Director shall oversee the conducting of facility maintenance audit for state-owned facilities.

(6) Each agency shall create operations and maintenance programs in accordance with this rule and have it included in the agency institutional line items. On or before September 1, 2016, and each September 1 of every following year, each agency shall revise the agency's budget to comply with Section 63A-5-103 and this Rule R23-3-11(6).

(7) The Board Director in the annual capital needs request sent to the agencies, shall provide an adjustment for inflationary costs of goods and services for the previous 12 months from the issuance of the annual needs request. When the annual report of each agency is reviewed by the Board and later submitted to the Office of the Legislative Fiscal Analyst and the Governor's Office of Management and Budget, it shall include the review and adjustment for inflationary costs of goods and services. All matters in this subsection shall be in accordance with Section 63A-5-103(1)(e)(v) and this rule.

(8) The report by the agencies to the Board Director shall also include the actual cost for operations and management requests for a new facility, when applicable.

R23-3-12. Operations and Maintenance Standards, Facilities Maintenance Programs and Standards.

The purpose of these programs and standards is to outline the minimum requirements for maintaining state owned facilities and infrastructures in a manner that will maximize the usefulness and cost effectiveness of these facilities in enhancing the quality of life of Utah state employees, citizens, and visitors. Additional work may be required to satisfy code or judicial requirements. All agencies and institutions shall comply and will be audited against these standards by the Board. Exempt agencies are to review their maintenance programs against these standards and to report the degree of compliance for each of their individual building level or complexes to the legislature through the Board.

(1) Documentation.

(a) Architectural and Mechanical.

(i) At least one copy of the Operations and Maintenance Manuals shall be maintained at the facility or complex.

(ii) At least one copy of the architectural, mechanical, and electrical as-built drawings shall be maintained at the facility or complex.

(iii) A mechanism shall be provided whereby as-built drawings are promptly updated upon changes in the structural, mechanical, electrical, or plumbing systems.

(iv) As-built drawings shall be reviewed periodically to ensure that they reflect the current building or infrastructure configuration to be maintained at the facility or complex.

(v) Reserve copies of all building documentation shall be archived in an appropriate and separate location from the facility.

(2) Equipment Data Base and Tagging.

(a) An appropriate equipment numbering system shall be utilized and metal, plastic tags or labels placed on all building equipment and electrical panels.

(b) All equipment name plate data shall be collected, documented, and filed in a computerized data base/computerized maintenance management system (CMMS).

(3) Corrective Maintenance.

(a) A work request system shall be defined and made available to the user of the facility/infrastructure so that maintenance problems can be reported and logged promptly by the maintenance department. A log of all requests shall be maintained indicating the date of the request and the date of completion.

(b) A work order system shall be established to govern the procedures for corrective maintenance work. The work order system shall capture maintenance time, costs, nature of repair, and shall provide a basis for identifying maintenance backlog on the facility/infrastructure.

(c) Maintenance backlogs on the facility/infrastructure shall be regularly reviewed and older requests processed so that no request goes unheeded and all requests are acted upon in a timely manner.

(d) A priority system for corrective maintenance shall be established so that maintenance work is accomplished in an orderly and systematic manner. The facility user shall be made aware of the priority of requested maintenance and the time expected to accomplish the correction. If the stated goal cannot be met, the user shall be informed of the new goal for completing the request.

(e) The agency and institution shall report to the Board Director current and accurate operations and maintenance costs tracked to the individual building level for any facility measuring 3,000 GSF or greater. Locations consisting of multiple facilities that individually do not meet the minimum GSF requirement shall be required to report operations and maintenance costs at the campus/complex level. Reporting for Individual building O&M cost shall be reported no later than October 1 of each year.

(f) All operations and maintenance expenditure reports for both direct and indirect cost shall contain current and accurate costs including but not limited to: Utilities (Electrical, Gas/Fuel, and Water in certain cases Steam, High Temp Water, Chilled Water and Sewer may need reporting), Labor, Materials, Custodial, Landscape and Grounds services, Insurance, travel, leasing and rent.

(4) Preventive Maintenance.

(a) State facilities managers shall automate preventive maintenance scheduling and equipment data bases.

(b) All equipment (e.g. chillers, boilers, air handlers and associated controls, air compressors, restroom exhaust fans, domestic hot water circulating pumps, automatic door operators, temperature control devices, etc.) shall be on a computer based preventive maintenance schedule. The frequency of preventive maintenance procedures shall be determined by manufacturer's recommendations and local craft expertise and site specific conditions.

(c) A filter maintenance schedule shall be established for HVAC filters and a record of filter changes maintained.

(d) Preventive maintenance work orders shall be issued for both contract and in house preventive maintenance and the completion of the prescribed maintenance requirements documented.

(e) Emergency generators shall be test run at least monthly. If test runs are not automatic, records of these test runs shall be maintained at the site. At least yearly, the transfer from outside power to emergency power shall be scheduled and successfully performed.

(5) Boilers.

(a) Steam Boilers.

(i) Steam boilers shall be checked daily when operational or on an automated tracking system.

(ii) Low water cut off devices shall be checked for actual boiler shut down at the beginning of the heating season and at least quarterly thereafter by duplicating an actual low-water condition.

(iii) Boiler relief valves shall be tested for proper operation at least annually.

(iv) A record of these tests shall be maintained near the location of the boiler.

(v) A daily log of the operating parameters shall be maintained on boilers when they are operational to include pressures, temperatures, water levels, condition of makeup and boiler feed water, and name of individual checking parameters.

(b) Hot Water And Steam Boilers

(i) All boilers shall receive inspections and certification as required from an authorized state agent or insurance inspector. The certificate of compliance shall be maintained at the boiler.

(ii) Monthly tests of boiler water pH and Total Dissolved Solids shall constitute the basis upon which to add water treatment chemicals. A log of these tests shall be maintained in the boiler room.

(6) Life Safety.

(a) All elevators shall receive regular inspections and maintenance by certified elevator maintenance contractors. Records of such maintenance shall be maintained at the site. Telephones within elevators shall be checked monthly for proper operation.

(i) All elevators shall have current Permits to Operate posted near the elevator equipment as required by the Utah State Labor Commission.

(b) Fire Protection Equipment.

(i) Detection and notification systems (e.g. control panel, smoke detection devices, heat sensing devices, strobe alarm lights, audible alarm indicating devices, phone line communication module, etc.) shall be inspected annually and tested for operation at least semi-annually by a properly certified technician. A record of these inspections shall be maintained and the FACP needs to be properly tagged as required by the Utah State Fire Marshal.

(ii) Halon/Ansulor pre-action systems shall be inspected and tested by a certified inspector semi-annually to ensure their readiness in the event of a fire. Testing and inspection of these systems shall be documented.

(iii) Fire extinguishers shall be inspected monthly and tagged annually by a certified inspector and all tags should be properly and legibly completed.

(iv) Automatic fire sprinkler systems, standpipes and fire pumps shall be inspected annually by a certified technician. Tags should be properly and completely filled out including the type of inspection, month and year those inspections were performed, the person who performed the inspection, and the certificate of registration number of the person performing the inspection.

(c) Uninterruptible power supply systems for data processing centers shall be inspected and tested appropriately to ensure their readiness in the event of external power interruptions. Maintenance on these systems shall be documented.

(d) Emergency directional and exit devices (e.g. exit signs, emergency lights, ADA assist equipment, alarm communicators, etc.) shall be inspected at least quarterly for proper operation.

(7) Air Conditioning and Refrigerated Equipment.

(a) Chillers.

(i) A daily log or computerized log of important data (e.g. chilled water supply and return temperature, condenser water supply and return temperature, current draw, outside air temperature, oil level and pressure, etc.) should be kept, and the information trended to identify changes in the system operation. The causes of change should then be determined and corrected to prevent possible system damage.

(ii) The systems shall be leak checked on a quarterly basis during the operating season and once during the winter.

(iii) A factory trained technician should perform a service inspection annually to include an oil analysis. Any abnormal results should be discussed with the chiller manufacturer to determine a proper course of action.

(iv) Chillers shall not be permitted to leak in excess of 15% of their total charge annually. Losses exceeding this amount are in violation of the law and may result in costly fines.

(v) Should refrigerant need to be added to a system, document the amount of refrigerant added; the cause of the loss; and type of repairs done.

(vi) An adequate supply of refrigerant for the uninterrupted operation of existing CFC chillers shall be maintained until the chiller is converted or replaced. Examples of CFCs are R11, R12, R113, R502, etc.

(vii) Maintenance personnel that perform work other than daily logs and visual inspections on CFC chillers or refrigeration equipment containing CFCs or HCFCs must by law have an EPA certification matching the type of equipment being serviced.

(viii) The condition of refrigerant cooling water systems such as cooling towers shall be checked visually at least weekly for algae growth and scaling and appropriate treatment administered.

(b) Roof Top and Package Units.

(i) Annually check and clean as needed the condenser coil and evaporator coil.

(ii) The following preventive maintenance items shall be completed annually: tighten belts, oil motors, leak check, clean evaporator pans and drains.

(iii) Quarterly check filters and replace where necessary.

(c) Small Refrigerated Equipment.

(i) Annually clean condenser coil.

(ii) Annually oil the condenser fan motor and visually inspect the equipment and make necessary repairs as needed.

(8) Plumbing.

(a) All Backflow Prevention Devices shall be tested by a certified technician at least annually and proper documentation shall be filed with the appropriate agency. Proper documentation shall be kept on site and readily available.

(b) Cross-connection control shall be provided on any water operated equipment or mechanism using water treating chemicals or substances that may cause pollution or contamination of domestic water supply.

(c) Any water system containing storage water heating equipment shall be provided with an approved, UL listed, adequately sized combination temperature and pressure relief valve, and must also be seismically strapped.

(d) Pressure vessels must be tested annually or as required and all certificates must be kept current and available on site.

(9) Electrical Systems.

(a) All electrical panels shall have a thermal-scan test performed bi-annually on all components to identify hot spots or abnormal temperatures. The results of the test shall be documented.

(b) A clearance of three feet, or as required by NEC shall be maintained around all electrical panels and electrical rooms shall not be used for general storage.

(c) Every electrical panel shall be properly labeled identifying the following: panel identifier; area being serviced by each individual breaker; and equipment being serviced by each breaker or disconnect.

(d) All pull boxes, junction boxes, electrical termination boxes shall have proper covers in place and panels accessible to persons other that maintenance personnel shall remain locked to guard against vandalism or personal injury.

(e) Only qualified electrical personnel shall be permitted to work on electrical equipment.

(10) Facility Inspections.

(a) The facility shall periodically receive a detailed and comprehensive maintenance audit. The audit shall include HVAC filter condition, mechanical room cleanliness and condition, corrective and preventive maintenance programs, facility condition, ADA compliance, level of performance of the janitorial service, condition of the grounds, and a customer survey to determine the level of user satisfaction with the facility and the facility management and maintenance services.

(b) A copy of the above audit shall be maintained at the facility.

(c) Each year a Facility Risk Management Inspection shall be conducted, documented, and filed with the Risk Management Division of the Department of Administrative Services.

(d) Actions necessary to bring the facility into compliance with Risk Management Standards for routine maintenance items shall be completed within two months following the above Risk Management Inspection. Items requiring capital expenditures shall be budgeted and accomplished as funds can be obtained.

(e) Every five years the facility shall be inspected and evaluated by an Architect/Engineer (A/E), qualified third party or qualified in-house personnel to determine structural and infrastructural maintenance and preventive maintenance needs.

(i) The structural inspection and evaluation may include interior and exterior painting, foundations, walls, carpeting, windows, roofs, doors, ADA and OSHA compliance, brick work, landscaping, sidewalks, structural integrity, and exterior surface cleanliness.

(ii) The mechanical and electrical evaluation shall include the HVAC systems, plumbing systems, security, fire prevention and warning systems, and electrical distribution systems.

(f) The above inspection shall be documented and shall serve as a basis for budgeting for needed capital improvements.

(g) Intrusion alarm systems that communicate via phone line shall be tested monthly to ensure proper operation.

(h) Periodic inspections of facilities may be requested of local fire departments and the identified deficiencies promptly corrected. These inspections and corrections shall be documented and kept on file at the facility.

(11) Indoor Air Quality and Energy Management.

(a) Indoor air quality shall be maintained within pertinent ASHRAE, OSHA, and State of Utah guidelines.

(b) All individual building utility costs (gas, electric, water, etc.) at facilities meeting the criteria listed in section 3.5 of the Facility Maintenance Standards shall be metered and reported back to the Board Director by October 1 of each year and made available at the facility so that energy usage can be accurately determined and optimized.

(c) Based on the ongoing analysis of energy usage, appropriate energy conservation measures shall be budgeted for, implemented, and the resulting energy savings documented.

(12) The following documents shall be on hand at the facility (where applicable) in an up to-date condition:

(a) A Hazardous Materials Management Plan;

(b) An Asbestos Control and Management Plan;

(c) A Laboratory Hygiene Plan;

(d) A Lockout/Tag out Procedure for Performing Maintenance on Building Equipment;

(e) A Blood Born Pathogen Program;

(f) An Emergency Management Plan to include emergency evacuation and disaster recovery; and

(g) A Respirator Program.

KEY: planning, public buildings, design, procurement
Date of Enactment or Last Substantive Amendment: [~~November 9, 2015~~|2017
Notice of Continuation: April 3, 2014
Authorizing, and Implemented or Interpreted Law: 63A-5-103; 63A-5-211

Administrative Services, Facilities Construction and Management
R23-30
State Facility Energy Efficiency Fund

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40946
FILED: 11/03/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes to this rule were made to comply with the requirements in S.B. 13 from the 2016 General Session.

SUMMARY OF THE RULE OR CHANGE: The words "savings and" as well as "using objective and verifiable post-construction measures if available" were added to Subsection R23-30-6(h). Additionally, Section R23-30-8 was updated to reflect the changes required by S.B. 13 (2016).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-5-603

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings that are expected to the state budget. The changes to this rule only address that objective and verifiable post-construction measurements are to be used, if available, when

describing what energy savings and cost savings will be measured. These changes were made as a requirement of S.B. 13 (2016).
♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings that are expected to local government. The changes to this rule only address that objective and verifiable post-construction measurements are to be used, if available, when describing what energy savings and cost savings will be measured. These changes were made as a requirement of S.B. 13 (2016).
♦ SMALL BUSINESSES: There are no anticipated costs or savings that are expected to small businesses. The changes to this rule only address that objective and verifiable post-construction measurements are to be used, if available, when describing what energy savings and cost savings will be measured. These changes were made as a requirement of S.B. 13 (2016).
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings that are expected to persons other than small businesses, businesses, or local government entities. The changes to this rule only address that objective and verifiable post-construction measurements are to be used, if available, when describing what energy savings and cost savings will be measured. These changes were made as a requirement of S.B. 13 (2016).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons. The changes to this rule only address that objective and verifiable post-construction measurements are to be used, if available, when describing what energy savings and cost savings will be measured. These changes were made as a requirement of S.B. 13 (2016).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts that this rule may have on businesses. The changes to this rule only address that objective and verifiable post-construction measurements are to be used, if available, when describing what energy savings and cost savings will be measured. These changes were made as a requirement of S.B. 13 (2016).

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
♦ Jeff Reddoor by phone at 801-971-9830, or by Internet E-mail at jreddoor@utah.gov
♦ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Jeff Reddoor, State Building Board Manager

R23. Administrative Services, Facilities Construction and Management.
R23-30. State Facility Energy Efficiency Fund.
R23-30-1. Purpose.

This rule is for the purposes of:

(1) conducting the responsibilities assigned to the State Building Board and the Division of Facilities Construction and Management in managing the State Facility Energy Efficiency Fund and implementing the associated revolving loan program established in Utah Code Section 63A-5-603; and

(2) establishing requirements for eligibility for loans from the State Facility Energy Efficiency Fund, procedures for accepting, evaluating, and prioritizing applications for loans, and the terms and conditions for loans.

R23-30-2. Authority and Requirements for [t]This Rule.

[~~Pursuant to Utah Code Section 63A-5-603, the State Building Board shall make rules establishing criteria, procedures, priorities, conditions for the award of loans from the State Facility Energy Efficiency Fund and other requirements for the rule as specified in Section 63A-5-603.~~]This Rule is authorized by Section 63A-5-603.

R23-30-3. Definitions.

(1) "Board" means the State Building Board.

(2) "Energy cost payback" or "cost payback" means the period of time, generally expressed in years, that is needed for the energy cost savings of an energy efficiency project to equal the cost of the energy efficiency project. It does not include the time-value of money.[~~ and is sometimes referred to as simple payback.~~]

(3) "Energy savings" means monies not expended by a state agency as the result of energy efficiency measures.

(4) "Fund" means the State Facility Energy Efficiency Fund under Section 63A-5-603.

(5) "Quarter" means a three month period beginning with one of the following dates: January 1, April 1, July 1, and October 1.

(6) "SBEEP" means the State Building Energy Efficiency Program, a program within the Division of Facilities Construction and Management, which is required by Section 63A-5-603 to serve as staff to the revolving loan program associated with the State Facilities Energy Efficiency Fund.

(7) "DFCM" means the Division of Facilities Construction and Management.

(8) "State Agency" means a state agency as defined in Section 63A-5-701.

(9) "SBEEP Manager" means the designee of the DFCM Director that manages the SBEEP Program.

R23-30-4. Eligibility of Projects for Loans.

(1) Eligibility for loans from the Fund is limited to state agencies.

(2) Loans may be used only by state agencies to fully or partially finance energy efficiency projects within buildings owned and controlled by the state.

(3) For energy efficiency projects involving renovation, upgrade, or improvement of existing buildings, the following project measures may be eligible for loan financing from the Fund:

(a) building envelope improvements;

(b) increase or improvement in building insulation;

(c) lighting upgrades;

(d) lighting delamping;

(e) heating, ventilation, and air conditioning (HVAC) replacements or upgrades;

(f) improvements to energy control systems;

(g) other energy efficiency projects or programs that a state agency can demonstrate will result in a [~~significant~~]reduction in the consumption of energy; and

(h) renewable energy projects.

(4) There is no limit to the total number of loans a single state agency may receive from the Fund.

(5) An energy efficiency project is eligible for a loan only if the loan criteria is met, including an [~~acceptable~~]energy cost payback, all subject to approval by the Board.

R23-30-5. Eligible Costs.

(1) This Rule R23-30-5 defines the specific costs incurred by an energy efficiency project that may be eligible for financing from the Fund.

(2) The following direct costs of an energy efficiency project may be eligible for financing, subject to the remaining conditions of this section:

(a) building materials;

(b) doors and windows;

(c) mechanical systems and components including HVAC and hot water;

(d) electrical systems and components including lighting and energy management systems;

(e) labor necessary for the construction or installation of the energy efficiency project;

(f) design and planning of the energy efficiency project;

(g) energy audits that identify measures included in the energy efficiency project; and

(h) inspections or certifications necessary for implementing the energy efficiency project.

(3) The following costs are not eligible for financing from the Fund: the costs of a renovation project that are not directly related to energy efficiency measures;

(4) in cases for which the state agency receives a financial incentive or rebate from a utility or other third party for undertaking some or all of the measures in an energy efficiency project, such incentives or rebates are to be deducted from the costs that are eligible for financing from the Fund. No loans made from the Fund may exceed the final cost incurred by the state agency for the project after third party financing.

(5) For an energy efficiency project undertaken as part of the renovation of an existing building, building components or systems that are covered by the prescriptive requirements of the Utah Energy Code must exceed the minimum Utah Energy Code requirements in order for their costs to be eligible for a loan from the Fund. In addition, each project must comply with all applicable DFCM energy design requirements as well as all applicable codes, laws and regulations.

R23-30-6. Loan Application Process.

(1) The Board shall receive and evaluate applications for loans from the Fund. Notice of due dates for applications will be made available to state agencies no less than thirty (30) days in advance of the next scheduled Board meeting at which applications will be evaluated.

(2) State agencies interested in applying for a loan should first contact the SBEEP Manager. The SBEEP Manager will consult or meet with the state agency to make an initial assessment of the strength or weakness of a proposed project. The SBEEP Manager may also choose to conduct a site visit and inspection of the proposed project location prior to the submittal of an application and the state agency shall cooperate with the SBEEP Manager in making the relevant aspects of site available for such site visit and inspection. The SBEEP Manager may assist state agencies in assessing potential project measures and in preparing an application.

(3) Applications for loans will be made using forms developed by the SBEEP Manager. State agencies shall provide the following information on the forms developed by the SBEEP Manager and approved by the Board:

(a) name and location of the state agency;

(b) name and location of the building or buildings where the energy efficiency project will take place;

(c) a description of the building or buildings, including what the building is used for, seasonal variations in use, general construction of the building, and square footage;

(d) a description of the current energy usage of the building, including types and quantities of energy consumed, building systems, and the age of the building and the particular systems and condition;

(e) a description of the energy efficiency project to be undertaken, including specific measures to be undertaken, the cost or incremental cost of each measure, and the equipment or building materials to be installed;

(f) projected or estimated energy savings that result from each measure undertaken as part of the project;

(g) projected or estimated energy cost savings from each measure undertaken as part of the project;

(h) a description of how energy savings and cost savings will be measured and verified using objective and verifiable post-construction measures, that take into account fluctuations in energy cost and temperature, as well as describing the commissioning procedures for the project;

(i) a description of any additional community or environmental benefits that may result from the project; and

(j) plans and specifications shall accompany the form which describes the proposed energy efficiency measures.

(4) Applications shall be received for the Board by the SBEEP Manager. The SBEEP Manager will conduct an initial review of each application. This initial review will be for the purpose of determining the completeness of the application, whether additional information is needed, provide advice on the likelihood that proposed projects, measures, and costs may be eligible for loan financing, and to assist the state agency in improving its application.

(5) When the SBEEP Manager has determined that an application is complete and that the proposed project complies with this rule, the application will be forwarded to the Board for its evaluation.

(6) The SBEEP Manager shall make a recommendation for each application to the Board[~~using the following criteria and scoring~~]. Based upon the score as determined by the SBEEP Manager, the SBEEP Manager will make recommendations to the Board for the funding of energy efficiency projects. The SBEEP Manager may have the assistance of others with the appropriate expertise to assist with the review of the application. The SBEEP Manager and any others that assist the SBEEP Manager in scoring the application must disclose to the Board any conflicts of interest that exist in regard to the review of the application. The SBEEP manager shall make a recommendation to the Board based on the following criteria and scoring:

(a) the feasibility and practicality of the project (maximum 30 points);

(b) the projected energy cost payback period of the project (maximum 20 points);

(c) the energy cost savings attributable to eligible energy efficiency measures (maximum 30 points); and

[~~(d) the financial need of the agency for the loan including its financial condition (maximum 10 points);~~]

([~~e~~]d) the environmental and other benefits to the state and local community attributable to the project (maximum [~~10~~]20 points);

([~~f~~]e) the availability of another source of funding may result in a reduction in the number of overall points in proportion to the likelihood of such other source of funding and the degree to which the source of other funding will fund the entire project. If the other source of funding is likely and funds the entire project, then the SBEEP Manager may recommend to the Board that the project is ineligible for funding and the Board may so determine;

([~~g~~]f) if there are matching funds from another source that are available for the project, the SBEEP Manager may add points to the overall score to the project in proportion to the likelihood that the matching funds will be available and the degree to which the matching funds applies to the entire project; and

([~~h~~]g) the SBEEP Manager may deduct points from the score of the entire project if the state agency has not used funds properly in the past, not performed the work properly in the past, not provided annual reports or access for inspections, any of which based on the degree of noncompliance.

[~~Based upon the score as determined by the SBEEP Manager, the SBEEP Manager will make recommendations to the Board for the funding of energy efficiency projects. The SBEEP Manager may have the assistance of others with the appropriate expertise assist with the review of the application. The SBEEP Manager and any others that assist the SBEEP Manager in scoring the application must disclose to the Board any conflicts of interest that exist in regard to the review of the application. For applications that receive an average score of less than 70 points, the SBEEP Manager shall recommend that the Board not provide a loan from the Fund. Applications receiving an average score over 70 will normally be recommended by the SBEEP Manager for funding. However, if the current balance of the fund does not permit for the funding of all projects with an average score over 70, the SBEEP Manager will recommend, beginning with the highest scoring application and working downward in score, those applications that may be funded given the current balance of the Fund.~~]

(7) The SBEEP Manager shall provide[~~s~~] advice and recommendations to the Board. For applications that receive an average score of less than 70 points, the SBEEP Manager shall recommend that the Board not provide a loan from the Fund. Applications receiving an average score over 70 will normally be recommended by the SBEEP Manager for funding. However, if the current balance of the fund does not permit for the funding of all projects with an average score over 70, the SBEEP Manager will recommend, beginning with the highest scoring application and working downward in score, those applications that may be funded given the current balance of the Fund. The SBEEP Manager is not [~~vested with the authority~~]authorized to make decisions regarding the public's business in connection with the Fund. The Board is the decision making authority with regard to the award of loans from the Fund.

(8) Based upon the SBEEP Manager's scoring, evaluations and recommendations, SBEEP will prepare a memorandum for the Board that will:

(a) provide a brief description of each project reviewed by the SBEEP Manager;

(b) list the energy savings, energy cost savings, and cost payback for each project as estimated by the applicant;

(c) list the energy savings, energy cost savings, and cost payback for each project as estimated by the SBEEP technical specialist for the program;

(d) list the total score and the score for each evaluation criterion for each application;

(e) specify projects recommended for funding and those not recommended for funding;

(f) provide a brief explanation of the SBEEP Manager's rationale for each application that is not recommended for funding.

This memorandum is to be provided to each member of the Board no less than seven (7) calendar days prior to the next scheduled Board meeting at which applications will be evaluated.

(9) At its next scheduled meeting after the SBEEP Manager has submitted the recommendations to the Board, the Board will consider pending applications for loans from the Fund and will review the SBEEP Manager's recommendations for each project. The Board will also provide an opportunity for applicants and other interested persons to comment regarding the recommendations and information provided by the SBEEP Manager[~~, the Board will then review and made determinations regarding the applications~~].

(10) When considering Loan applications, the Board may modify the dollar amount or project scope for which a loan is awarded if the Board determines that individual measures included in a project do not meet the requirements of this rule, are not cost effective, or that funds could better be used for funding of other projects.

(11) In reviewing energy efficiency measures for possible funding after receiving the report and recommendations of the SBEEP Manager and other testimony and documents provided to the Board, the Board shall:

(a) review the loan application and the plans and specifications for the energy efficiency measures;

(b) determine whether to grant the loan by applying the loan eligibility criteria; and

(c) if the loan is granted by the Board, prioritize the funding of the energy efficiency measures by applying the prioritization criteria.

(12) The Board may condition approval of a loan application and the availability of funds on assurances from the state agency that the Board considers necessary to ensure that the state agency:

(a) uses the proceeds to pay the cost of the energy efficiency measures; and

(b) implements the energy efficiency measures.

R23-30-7. Loan Terms.

(1) The amount of a loan award approved by the Board represents a maximum approved project cost. The final value of any loan may vary from the Board-approved amount according to the actual incursion of costs by the state agency. In cases where costs have exceeded those presented in the initial application, a state agency may request that the Board increase its loan award, by filing a written request with the SBEEP Manager. The Board can approve [~~or deny any~~]such request[s] if good cause has been submitted by the state agency for such increase, and may deny a request in its sole discretion.

(2) After approval of a loan application by the Board, a state agency must complete the project in accordance with the construction schedule provided in the approved application for the energy efficiency project. If the state agency is unable to complete the project on time, prior to the deadline, the state agency may request an extension from the Board, by filing a written request with the SBEEP Manager, if good cause has been submitted by the state agency for such extension.

(3) Loan amounts from the Fund will be disbursed only upon documentation of actual costs incurred from the state agency during construction of the energy efficiency project.

(4) Once a project has been completed as determined by the SBEEP Manager, the state agency shall provide to the SBEEP Manager, documentation of actual costs incurred, such as invoices from contractors, as well as information on any third party financial incentives received. SBEEP will use this information to determine the actual cost of the project measures approved by the Board.

(5) The final loan amount will be equal to actual costs incurred for the project minus the value of any third party incentives received unless:

(a) this amount exceeds the amount approved by the Board, in which case the loan amount will be set at the amount originally approved by the Board; or

(b) this amount exceeds the amount approved by the Board and the Board increases the loan award at the request of the state agency.

(6) The Board will establish repayment terms and interest rates.

(7) State Agencies that are approved by the Board for a loan award will enter into a contract with the Board that specifies all terms applying to the loan, including the terms specified in this rule and other contract terms deemed necessary by the Board to carry out the purposes of this rule. The Board may authorize the SBEEP Manager to execute the contract on its behalf. The SBEEP Manager shall thereafter provide a copy of the contract to the Board at its next available regular meeting after complete execution of the contract, in order that the Board be kept apprised of all contracts.

R23-30-8. Reporting and Site Visits.

(1) In the period between Board approval and project completion, the state agency shall complete and provide to the SBEEP Manager, a written report at the beginning of each calendar quarter. The report shall include information on the state agency's progress in completing the energy efficiency project, its most-current estimate for the time of project completion, and any notable problems or changes in the project since Board approval, such as construction delays or cost overruns.

(2) After loan funds have been disbursed, the state agency shall complete and provide to the SBEEP manager, [~~if the SBEEP manager requests,~~]a report which [~~may~~]shall include the following:

(a) a description of the performance of the building and of the performance of the measures included in the energy efficiency project using the approved objective and verifiable post-construction measures, that take into account fluctuations in energy costs and temperature, approved in the loan application process;

(b) a description of any [~~notable~~]problems that have occurred with the building or the project;

(c) a description of any [~~notable~~]changes to the building or to its operations that would cause a [~~significant~~]change in its energy consumption;

(d) copies of energy bills incurred for the building during the prior year such as electric and utility bills or shipping invoices for fuels such as fuel oil or propane;

(e) documentation of energy consumed by the building in the prior year; and

(f) other information requested by the SBEEP Manager or deemed important by the state agency.

(3) Approximately one year after project completion, the SBEEP Manager will conduct a site visit to the location of the energy efficiency project to verify project completion and assess the success of the project. Additional site visits may also be conducted by the SBEEP Manager during the repayment period. Loan recipients will assist the SBEEP Manager with such site visits, including providing access to all components of the energy efficiency project.

KEY: energy, efficiency, agencies, loans
Date of Enactment or Last Substantive Amendment: [~~September 10, 2013~~]2017
Notice of Continuation: July 15, 2013
Authorizing, and Implemented or Interpreted Law: 63A-5-603

Agriculture and Food, Animal Industry
R58-11
Slaughter of Livestock and Poultry

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40951
FILED: 11/04/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule governs the slaughter of poultry and livestock. It sets up the guidelines the meat establishments must follow to provide a safe product for consumption. The changes to the rule clarify the definition of sanitary operating conditions that must be met by those slaughtering livestock and poultry.

SUMMARY OF THE RULE OR CHANGE: The rule changes define to whom and how poultry producers may sell their product. Further, the rule adds procedures that must be followed by those growers/producers who slaughter their own birds. It outlines the licensure and sanitation requirements necessary.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 21 U.S.C 601 et seq. and 21 U.S.C. 451 et seq. and 7 U.S.C. 1901 et seq. and Section 4-32-8 and Subsection 4-2-2(i)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be no effect on the state budget. The department already has the necessary people in place to take care of the necessary enforcement.
♦ LOCAL GOVERNMENTS: There are no requirements made on local government in the changes to the rule.
♦ SMALL BUSINESSES: The changes are to only clarify definitions that have already been in use in the industry. Industry should already be meeting these standards.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The individual producers should already be following these sanitary standards. The changes are only to clarify definitions that have already been used in this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no additional compliance costs for individuals because they should already be meeting standards. The purpose of the rule change is to bring great clarity and understanding to those operating a slaughter facility to avoid confusion and to have uniform enforcement of the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no additional compliance cost as business and individuals should already be complying; however, the changes will lead to clarity in the requirements and more uniformity in enforcement.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Cody James by phone at 801-538-7166, by FAX at 801-538-7169, or by Internet E-mail at codyjames@utah.gov
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: LuAnn Adams, Commissioner

R58. Agriculture and Food, Animal Industry.
R58-11. Slaughter of Livestock and Poultry.
R58-11-1. Authority.

Promulgated under authority of Section 4-32-8.

R58-11-2. Definitions.

(1) "Adulterated" means as defined in Section 4-32-3(1).

(2) "Bill of Sale for Hides" means a hide release or some other formal means of transferring the title of hides.

(3) "Business" means an individual or organization receiving remuneration for services.

(4) "Commissioner" means the Commissioner of Agriculture or his representative.

(5) "Custom Slaughter-Release Permit" means a permit that will serve as a brand inspection certificate and will allow animal owners to have their animals farm custom slaughtered.

(6) "Department" means the Utah Department of Agriculture and Food.

(7) "Detain or Embargo" means the holding of a food or food product for legal verification of adulteration, misbranding or proof of ownership.

(8) "Emergency Slaughter" means for the purpose of this chapter that Emergency Slaughter is no longer allowed for non-ambulatory injured cattle. Non-ambulatory disabled cattle that cannot rise from a recumbent position or cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column or metabolic conditions, are not allowed to be slaughtered for food.

(9) "Farm Custom Slaughtering" means the slaughtering, skinning and preparing of livestock and poultry by humane means

for the purpose of human consumption which is done at a place other than a licensed slaughtering house by a person who is not the owner of the animal.

(10) "Food" means a product intended for human consumption.

(11) "Immediate Family" means persons living together in a single dwelling unit and/or their sons and daughters.

(12) "License" means a license issued by the Utah Department of Agriculture and Food to allow farm custom slaughtering.

(13) "Licensee" means a person who possesses a valid farm custom slaughtering license.

(14) "Misbranded" means as defined in Section 4-32-3(27).

(15) "Owner" means a person holding legal title to the animal.

(16) "Sanitary Standards, Practices",

(a) Sanitary operating conditions: All food-contact surfaces and non-food-contact surfaces of an exempt facility are cleaned and sanitized as frequently as necessary to prevent the creation of insanitary conditions and the adulteration of product. Cleaning compounds, sanitizing agents, processing aids, and other chemicals used by an exempt facility are safe and effective under the conditions of use. Such chemicals are used, handled, and stored in a manner that will not adulterate product or create insanitary conditions. Documentation substantiating the safety of a chemical's use in a food processing environment are available to inspection program employees for review. Product is protected from adulteration during processing, handling, storage, loading, and unloading and during transportation from exempt establishments.

(b) Grounds and pest control: The grounds of exempt operation are maintained to prevent conditions that could lead to insanitary conditions or adulteration of product. Plant operators have in place a pest management program to prevent the harborage and breeding of pests on the grounds and within the facilities. The operator's pest control operation is capable of preventing product adulteration. Management makes every effort to prevent entry of rodents, insects, or animals into areas where products are handled, processed, or stored. Openings (doors and windows) leading to the outside or to areas holding inedible product have effective closures and completely fill the openings. Areas inside and outside the facility are maintained to prevent harborage of rodents and insects. The pest control substances used are safe and effective under the conditions of use and are not applied or stored in a manner that will result in the adulteration of product or the creation of insanitary conditions.

(c) Sewage and waste disposal: Sewage and waste disposal systems properly remove sewage and waste materials--feces, feathers, trash, garbage, and paper--from the facility. Sewage is disposed of into a sewage system separate from all other drainage lines or disposed of through other means sufficient to prevent backup of sewage into areas where product is processed, handled, or stored. When the sewage disposal system is a private system requiring approval by a State or local health authority, upon request, the management must furnish to the inspector a letter of approval from that authority.

(d) Water supply and water, ice, and solution reuse: A supply of running water that complies with the National Primary Drinking Water regulations (40 CFR part 141) at a suitable temperature and under pressure as needed, is provided in all areas where required (for processing product; for cleaning rooms and equipment, utensils, and packaging materials; for employee sanitary facilities, etc.). If a facility uses a municipal water supply, it must make available to the inspector, upon request, a water report, issued under the authority of the State or local health agency, certifying or attesting to the potability of the water supply. If a facility uses a private well for its water supply, it must make available to the inspector, upon request, documentation certifying the potability of the water supply that has been renewed at least semi-annually.

(e) Facilities: Maintenance of facilities during slaughtering and processing is accomplished in a manner to ensure the production of wholesome, unadulterated product.

(f) Dressing rooms, lavatories, and toilets: Dressing rooms, toilet rooms, and urinals are sufficient in number ample in size, conveniently located, and maintained in a sanitary condition and in good repair at all times to ensure cleanliness of all persons handling any product. Dressing rooms, lavatories, and toilets are separate from the rooms and compartments in which products are processed, stored, or handled.

(g) Inedible Material Control: The operator handles and maintains inedible material in a manner that prevents the diversion of inedible animal products into human food channels and prevents the adulteration of human food.

(17) Commerce: Means the exchange transportation of poultry product between states, U.S. territories (Guam, Virgin Islands of the United States, and American Samoa), and the District of Columbia.

R58-11-7. Poultry Slaughter.

(1) Personal Use Exemption.

(a) A person who raises poultry may slaughter and or process the poultry if:

(i) slaughtering or processing poultry is not prohibited by local ordinance;

(ii) the poultry product derived from the slaughtered poultry is consumed exclusively by the person or the person's immediate family, regular employees of the person, or nonpaying guests;

(iii) the slaughtering and processing of the poultry is performed only by the owner or an employee;

(iv) the poultry is healthy when slaughtered;

(v) the exempt poultry is not sold or donated for use as human food; and

(vi) the immediate containers bear the statement, "NOT FOR SALE".

(2) Farm Custom Slaughter/Processing

(a) A person may slaughter and or process poultry belonging to another person if:

(i) the person holds a valid farm custom slaughter license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

(iii) the licensee does not engage in the business of buying or selling poultry products capable for use as human food;

(iv) the poultry is healthy when slaughtered;

(v) the slaughtering and or processing is conducted in accordance with sanitary standards, practices, and procedures that

produce poultry products that are sound, clean, and fit for human food;

(vi) the unit or vehicle used for farm custom slaughtering shall be so constructed as to permit maintenance in a clean and sanitary manner;

(A) the immediate containers bear the following information:

(B) the owner's name and address;

(C) the licensee's name and address, and;

(D) the statement, "NOT FOR SALE".

(3) Producer/Grower 1,000 Bird Limit Exemption

(a) A poultry grower may slaughter no more that 1,000 birds of his or her own raising in a calendar year for distribution as human food if;

(i) the person holds a valid poultry exemption license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

(iii) the poultry grower does not engage in buying or selling poultry products other than those produced from poultry raised on his or her own farm (includes rented or leased property);

(iv) the slaughtering and or processing [~~is conducted in a approved establishment and in accordance with sanitation performance standards, and procedures that produce~~]are conducted under sanitary standards, practices and procedures according to United State Department of Agriculture (USDA) Food Safety Inspection Service (FSIS) regulations and guidance material capable of producing poultry products that are sound, clean, and fit for human food (not adulterated);

(v) the producer keeps slaughter records and records covering the sales of poultry products to customers for the current calendar year,

(vi) The poultry products do not move in commerce. [~~is for distribution~~] Distribution directly to household consumers, retail establishments, restaurants, hotels, and boarding houses for use in their dining rooms or in the preparation of meals sold directly to consumers within the jurisdiction where it is prepared; and

(vii) the immediate containers bear the following information:

(A) name of product;

(B) ingredients statement (if applicable);

(C) net weights statement;

(D) name and address of processor;

(E) Safe food handling statement;

(F) date of package and/or Lot number, and;

(G) the statement "Exempt R58-11-7(C)".

(4) Producer/Grower 20,000 Bird Limit Exemption

(a) A poultry grower may slaughter no more [~~that~~]than 20,000 healthy birds of his or her own raising in a calendar year for distribution as human food if;

(i) the person holds a valid poultry exemption license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

(iii) the poultry grower does not engage in buying or selling poultry products other than those produced from poultry raised on his or her own farm (includes rented or leased property);

(iv) the slaughtering and or processing is conducted in a fixed establishment and in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

(v) the producer keeps slaughter records and records covering the sales of poultry products to customers for the current calendar year,

(vi) The poultry products do not move in commerce. [~~is for distribution~~] Distribution is directly to household consumers, retail establishments, restaurants, hotels, and boarding houses for use in their dining rooms or in the preparation of meals sold directly to consumers within the jurisdiction where it is prepared; and

(vii) the immediate containers bear the following information:

(A) name of product;

(B) ingredients statement (if applicable);

(C) net weights statement;

(D) name and address of processor;

(E) Safe food handling statement;

(F) date of package and/or Lot number, and;

(G) the statement "Exempt R58-11-7(4)".

(5) Producer/Grower or Other Person Exemption

(a) The term "Producer/Grower or Other Person" in this section means a single entity, which may be:

(i) A poultry grower who slaughters and processes poultry that he or she raised for sale directly to household consumers, restaurants, hotels, and boarding houses to be used in those homes and dining rooms for the preparation of meals served or sold directly to customers.

(ii) A person who purchases live poultry from a grower and then slaughters these poultry and processes such poultry for sale directly to household consumers, restaurants, hotels, and boarding houses to be served in those homes or dining rooms for the preparation of meals sold directly to customers.

(b) A business may slaughter and process poultry under this exemption if;

(i) the person holds a valid poultry exemption license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

(iii) the producer/grower or other person slaughters for processing and sale directly to household consumers, restaurants, hotels, and boarding houses for use in dining rooms or in the preparation of meals sold directly to customers;

(iv) the producer/grower or other person slaughters no more than 20,000 birds in a calendar year that the producer/grower or other person raised or purchased;

(v) the producer/grower or other person does not engage in the business of buying or selling poultry or poultry products prepared under an other exemptions in the same calendar year he or she claims the Producer/Grower or Other Person Exemption;

[~~(vi) the processing is limited to preparation of poultry products from poultry slaughtered by the Producer/Grower or Other Person for distribution directly to: 1) household consumers, 2) restaurants, 3) hotels, and 4) boarding houses for use in their dining rooms or in the preparation of meals sold directly to consumers within the jurisdiction were it is prepared;~~]

(vi) The poultry products do not move in commerce. Distribution is directly to household consumers, restaurants, hotels, and boarding houses for use in their dining rooms or in the preparation of meals sold directly to consumers within the jurisdiction where it is prepared; and

(vii) the slaughtering and or processing is conducted in a fixed establishment and in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

(viii) the producer keeps slaughter records and records covering the sales of poultry products to customers for the current calendar year, and;

(ix) the immediate containers bear the following information:

(A) name of product;

(B) ingredients statement (if applicable);

(C) net weights statement;

(D) name and address of processor;

(E) safe food handling statement;

(F) date of package and/or Lot number, and;

(G) the statement "Exempt R58-11-7(5)".

(c) A business preparing poultry product under the Producer/Grower or Other Person Exemption may not slaughter or process poultry owned by another person.

(d) A business preparing poultry products under the Producer/Grower or Other Person Exemption may not sell poultry products to a retail store or other producer/grower.

(6) Small Enterprise Exemption

(a) A business that qualifies for the Small Enterprise Exemption may be:

(i) A producer/grower who raises, slaughters, and dresses poultry for use as human food whose processing of dressed exempt poultry is limited to cutting up;

(A) A business that purchases live poultry that it slaughters and whose processing of the slaughtered poultry is limited to the cutting up; or

(B) A business that purchases dressed poultry, which it distributes as carcasses and whose processing is limited to the cutting up of inspected or exempted poultry products, for distribution for use as human food.

(ii) A business may slaughter, dress, and cut up poultry for distribution as human food if;

(A) the person holds a valid poultry exemption license issued by the department;

(B) slaughtering or processing poultry is not prohibited by local ordinance;

(C) the processing of federal or state inspected or exempt poultry product is limited to the cutting up of carcasses or the business slaughters and dresses or cuts up no more than 20,000 birds in a calendar year;

(D) the slaughtering and or processing is conducted in a fixed establishment and in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

(E) the facility used to slaughter or process poultry is not used to slaughter or process another person's poultry;

(F) the immediate containers bear the following information:

(I) name of product;

(II) ingredients statement (if applicable);

(III) net weights statement;

(IV) name and address of processor;

(V) safe food handling statement;

(VI) date of package and/or Lot number, and;

(VII) the statement "Exempt R58-11-7(6)"

(iii) A business may not cut up and distribute poultry products produced under the Small Enterprise Exemption to a business operating under the following exemptions:

(A) Producer/Grower or PGOP Exemption,

(B) Retail Dealer, or

(C) Retail Store.

KEY: food inspections, slaughter, livestock, poultry
Date of Enactment or Last Substantive Amendment: [~~November 23, 2015~~]2017
Notice of Continuation: January 13, 2015
Authorizing, and Implemented or Interpreted Law: 4-32-8

Attorney General, Administration
R105-1
Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40950
FILED: 11/04/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes to this rule include clarifying ambiguous language; removing redundant language, such as citing statutes for definitions rather than duplicating those definitions; and making various technical changes.

SUMMARY OF THE RULE OR CHANGE: This rule explains the requirements for procurement managed by the Attorney General in connection with litigation support services such as outside counsel, expert witnesses, and other goods, services, software, or technology.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art VII, Sec 16 and Title 63G, Chapter 6 and Title 67, Chapter 5

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings as a result of the changes to this rule because the changes are technical in nature and simply clarify already existing requirements.

♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government as a result of the changes to this rule because the changes are technical in nature and simply clarify already existing requirements.
♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses as a result of the changes to this rule because the changes are technical in nature and simply clarify already existing requirements.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings persons other than small businesses, businesses, or local government entities as a result of the changes to this rule because the changes are technical in nature and simply clarify already existing requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs to affected persons as a result of the changes to this rule because the changes are technical in nature and simply clarify already existing requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts to businesses as a result of the changes to this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ATTORNEY GENERAL
ADMINISTRATION
ROOM 230 UTAH STATE CAPITOL
350 N STATE ST
SALT LAKE CITY, UT 84114
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
♦ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Bridget Romano, Deputy Attorney General

R105. Attorney General, Administration.
R105-1. Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services.
R105-1-1. Purpose and Authority.

(1) The purpose of this rule is to provide the requirements for procurements that are managed by the Attorney General, including the hiring of Outside Counsel, expert witnesses, and litigation support services[~~and procurement items~~].

(2) This rule is adopted pursuant to authority granted by the Utah Procurement Code and Section 67-5-32(1)(a), including authority to manage procurement of procurement items directly or by delegation of the Chief Procurement Officer of the Division of Purchasing of the Department of Administrative Services.

(3) The Attorney General may procure any procurement item and exercise any action authorized by the Procurement Code and this Rule.

R105-1-2. Definitions.

Terms in this Rule R105-1 shall be as defined in [~~the~~] Title 63G, Chapter 6a, Utah Procurement Code. The definitions in Rule R33-1 also apply to this Rule R105-1, except in case of conflict, the definitions in this Rule R105-1 shall control. Additional definitions are provided below.

(1) "Agency" [~~means any department, division, agency, commission, board, council, committee, authority, institution, or other entity within the State government of Utah (see~~]is as defined in Section [~~Utah Code Ann. Sec.~~]67-5-3[~~,~~]].

(2) "Attorney General" means the Attorney General of the State of Utah, or the Attorney General's designee.

(3) "Contingent fee case" means a legal matter for which legal services are provided under a contingent fee contract.

(4) "Contingent fee contract" means a contract for legal services under which the compensation for legal services is a percentage of the amount recovered in the legal matter for which the legal services are provided.

(5) [~~"Emergency" means a determination by the Attorney General in writing that a provision of this Rule needs to be waived due to the need for timeliness, litigation deadlines, confidentiality, or other emergency circumstances.~~

~~(6)~~]"Expert witness" means a person whose knowledge, skill, experience, training or education in a scientific, technical, or other specialized area, would enable the person to give testimony under [~~Rule 702 of~~]the Utah Rules of Evidence, Rule 702.

([~~7~~]6) "Legal matter" means a legal issue or administrative or judicial proceeding within the scope of the attorney general's authority.

([~~8~~]7) "Litigation Support Services" includes [~~any~~] goods, services, software, or technology.

([~~9~~]8) "Outside Counsel" means an attorney or attorneys who are not, or a law firm whose attorneys are not, employed by the Attorney General's office, pursuant to [~~Utah Code Ann. Sec.~~]Section 67-5-7 et seq., which the Attorney General [~~appoints~~]hires, pursuant to [~~Utah Code Ann. Sec.~~]Section 67-5-5, to represent, provide legal advice, or counsel to an agency of the State. "Outside Counsel" may or may not be designated as "Special Assistant Attorney General", as the Attorney General determines.

([~~10~~]9) "Procurement item" or "Procurement items"[~~means any goods, services, software or technology~~] is as defined in Section 63G-6a-103.

([~~11~~]10) "Securities class action" means an action brought as a class action alleging a violation of federal securities law, including a violation of the Securities Act of 1933, 15 U.S.C. Sec. 77a et seq., or the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78a et seq.

([~~12~~]11) "Small purchase" means a purchase under Rule R105-1-[~~7~~]6.

([~~13~~]12) "Sole source" means a determination by the Attorney General, in writing, that the sole source requirements of the Utah Procurement Code and this Rule have been met.

([~~14~~]13) "State" means the State of Utah.

R105-1-3. [~~Special Considerations to Best Serve the Public~~]General Process.

(1) This rule applies to the procurement and appointment of Outside Counsel, expert witnesses, litigation support services, litigation related consultants, as well as management software and services by the Attorney General.

(2) In order to properly fulfill the responsibilities of the Office, the procurement of Outside Counsel, expert witnesses, litigation support services, litigation related consultants, [~~as well as~~]and management software and services [~~often~~]may require[~~s~~] that public notice of a particular procurement not be provided. [~~The provisions of the Utah Procurement Code and this Rule must be met. Such a procurement must be processed as~~]Public notice of a procurement may only be waived in the event of an emergency procurement or[~~be a procurement that does not require notice~~] as authorized by the Procurement Code.

(3) The Attorney General may select Outside Counsel, expert witnesses, professional litigation support services, litigation related consultants, as well as management software and services pursuant to any authorized process under the Utah Procurement Code. In any such selection process, it may be specified that the Outside Counsel is responsible for providing the expert witnesses or other litigation goods and services through the selection process for Outside Counsel and pursuant to the contract provisions with the Attorney General.

(4) [~~If a procurement item is not procured through the request for proposals, small purchases, prequalification and vendor list, sole source, or emergency provisions of this rule, ~~]T[~~t~~]he Attorney General [~~may determine to use an Invitation for Bids or any other procurement process allowed by ~~]shall comply with the Utah Procurement Code.[~~ provided that the following applicable Utah laws are met:~~

~~(a) The Utah Procurement Code; and ~~]The Attorney General shall comply with Rule R33 only when necessary to comply with Utah Code, except when Rule R33 is in conflict with or preempted by this Rule R105-1.

[~~(b) Administrative Rules of the Division of Purchasing and General Services, when such rules of the Division of Purchasing and General Services are referred to in this Rule R105-1, except as otherwise exempted or in conflict with this Rule R105-1.~~]

(5) The Attorney General may, in a multistate case involving other states as parties aligned with Utah, elect to enter into a fee sharing agreement in which each state contributes to a litigation fund that is used to purchase expert witnesses and/or other litigation support services including litigation related consultants, as well as management software and services, or through a similar group procurement agreement. The agreement shall be treated collectively as a sole source procurement of all goods and services purchased under the terms of the agreement.

(6) The Attorney General may, in a multistate case involving other states as parties aligned with Utah, select Outside Counsel jointly with some or all of the other states as a sole source procurement.

(7) The Attorney General's office shall ensure that the procurement of outside counsel is supported by a determination by the Attorney General that the procurement is in the best interests of the state, in light of available resources of the Attorney General's office.

(8) The Attorney General's office shall provide for the fair and equitable treatment of all potential providers of outside counsel, expert witnesses, and other litigation support services including, litigation related consultants, as well as management software and services consistent with the limitations and procedures set forth in this Rule R105-1.

(9) The Attorney General's office shall ensure that fees for outside counsel, whether based on an hourly rate, contingency fee, or other arrangement, are reasonable and do not exceed industry standards.

(10) The procurement and requirements regarding a Contingency Fee Contract must meet the requirements of this Rule R105-1 and the applicable provisions of the Utah Code.

R105-1-4. Available Procurement Processes.

[~~(1) In General. ~~]Prior to any procurement for legal services, the Attorney General shall [~~first ~~]determine which process under the Utah Procurement Code shall be used.[~~, including but not limited to, small purchase, prequalification and vendor list, sole source, emergency procurement, availability of a statewide or regional contract, invitation for bids, or request for proposals.~~

~~(2) Prequalification and Approved Vendor Lists. Rules R33-4-101 and R33-4-102 shall apply to the Prequalification of Potential Vendors and Thresholds for Approved Vendor Lists, except that the maximum threshold for procuring the services of a licensed attorney(s) shall be $250,000.~~]

R105-1-5. [~~Invitation for Bids.~~

~~Any competitive sealed bidding (invitation for bids) or multiple stage bidding process may occur in accordance with Sections 63G-6a-601 through 63G-6a-612, as well as Rule R33-6.~~

~~R105-1-6. ~~]Request for Proposals Process.

[~~(1) The Request for Proposal process may be used in accordance with Sections 63G-6a-701 through 63G-6a-711. The process shall also be subject to Rule R33-7 except as otherwise specified in this Rule R105-1.~~

~~(2) The Request for Proposal process may be issued in stages, or may be issued after a request for information or other procurement process allowed by the Utah Procurement Code or this Rule.~~]

[~~(3) ~~]The Request for Proposals[~~,~~] shall contain, in addition to the requirements of Rule R33-7-102, at a minimum, the following information:

(a) A description of the project.

(b) [~~Any f~~]Fee arrangements.

(c) The persons or entities being sought in the procurement, including whether an individual person, firm or association of firms may respond.

(d) The qualification criteria and the relative importance of the criteria. The Attorney General shall request qualifications from outside counsel being considered to provide services under a contingent fee contract unless the Attorney General:

(i) determines that requesting qualifications is not feasible under the circumstances; and

(ii) sets forth the basis for this determination in writing.

(e) Examples of criteria include:

(i) Identification by name and experience of the proposed service provider(s);

(ii) A description of the duties and responsibilities of each person providing the service; and

(iii) The ability of the persons providing the service to meet the needs of the project, including the consideration of any association with other persons, expert witnesses or firms;

(f) The Contractual Requirements, which may be accomplished by including a copy of the contract.

(g) A request for a conflicts analysis, including potential conflicts of interest or other related matters concerning the offeror's ability to ethically perform the requested services.

[~~(h) Requirements regarding the date, time, place, form and method concerning the filing of the Response to the Request for Proposals.~~

~~(i) A statement that the Attorney General reserves the right to reject late-filed or nonconforming proposals.~~

~~(j) A statement that the Attorney General reserves the right to reject all proposals. The Attorney General also reserves the right to modify or cancel the Request for Proposal Process and may or may not initiate a new Request for Proposal Process for the particular procurement matter.~~

~~(4) Public notice of the Request for Proposals shall be provided in accordance with the Utah Procurement Code.~~

~~(5) The award process, including notice of award, shall be made by the Attorney General in accordance with the Utah Procurement Code and this Rule.~~

~~(6) A record of the procurement shall be made in accordance with the Utah Procurement Code and this Rule, including Rule R105-1-14.~~]

([~~7~~]2) In any selection process for outside counsel, it may be specified that the outside counsel is responsible for providing the expert witnesses or other litigation goods and services including litigation related consultants, as well as management software and services through the outside counsel's selection process and pursuant to the contract provisions with the Attorney General.

([~~8~~]3) Minimum scores for any of the criteria may be [~~used~~]established.

R105-1-[~~7~~]6. Small Purchases.

(1) [~~Small purchases shall be conducted in accordance with the requirements set forth in the Utah Procurement Code, Section 63G-6a-408, Rule R33-4-105 with the exception of subsection R33-4-105(3), and R33-4-106 through R33-4-107.~~]The maximum thresholds for small purchases shall be as described in this Rule R105-1-[~~7~~]6.[~~"Small Purchase" means a procurement conducted by a procurement unit that does not require the use of a standard procurement process.~~]

(2) For Outside Counsel, litigation related consultants, management software and services, as well as expert witnesses, the small purchase maximum threshold is $250,000 per contract. A written justification statement shall be filed explaining the reason(s) for selection of the[~~particular attorney, law firm or expert witness for the particular matter~~] contractor.

(3) For the selection of litigation support services that are not [~~covered~~]included under Rule R105-1-[~~7~~]6(2), including but not limited to court reporting, litigation related copying and printing services, the small purchase maximum threshold is $50,000 per contract. For a purchase of litigation support services that are not [~~covered~~]included under Rule R105-1-[~~7~~]6(2) between $2,500 and $50,000, a minimum of two quotes shall be obtained or there shall be developed a rotation system of qualified persons or firms that meet the qualifications for the service. For any purchase of litigation support services that are not [~~covered~~]included under Rule R105-1-[~~7~~]6(2) of $2500 or less, a direct award may be made.

(4)[~~The Attorney General may make such other small purchases delegated to the Attorney General by the Chief Procurement Officer pursuant to the Utah Procurement Code.~~

~~(5)~~] Under Section 63G-6a-408(3), a threshold stated in this Rule may be exceeded if the Attorney General [~~(not a designee)~~]or a person specifically designated in writing by the Attorney General gives written authorization to exceed the threshold that includes the reasons for exceeding the threshold.

R105-1-[8]7. Sole Source.

[~~(1) Sole Source procurement shall be conducted in accordance with the requirements set forth in Section 63G-6a-802 of the Utah Procurement Code.~~]

[~~(2)~~]Unless the Attorney General determines that a publication of a sole source shall be published, sole sourced procurement items [~~under this Rule~~]need not be published regardless of cost[~~, all of which is in accordance with Section 63G-6a-802(4)(b)(ii)~~].

R105-1-[9]8. Emergency Procurements[~~ and Waiver of Requirements~~].

(1) [~~Emergency procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-803 of the Utah Procurement Code and Rule R33-8-401.~~

~~(2) An emergency procurement is a procurement procedure where the Attorney General does not need to use a standard procurement process.~~

~~(3)~~]An emergency procurement may only be used when an emergency exists as [~~defined in this Rule~~]described in, and in compliance with, Section 63G-6a-803.

([~~4~~]2) Emergency procurements are limited to those [~~procurement items~~]necessary to mitigate the emergency.

[~~(5) While a standard procurement process is not required under an emergency procurement, when practicable, the Attorney General should seek to obtain as much competition as possible through the use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property or impairing the ability of a public entity to function or perform required services.~~

~~(6) The Attorney General shall make a written determination documenting the basis for the emergency and the selection. A record of the determination and selection shall be kept in the contract file. The documentation may be made after the emergency condition has been alleviated.~~]

R105-1-[~~10~~]9. Confidentiality of Procurement Records.

[~~Except when an emergency exists under Rule R105-1-9 and in accordance with applicable law, where public inspection may~~

~~be delayed until such time as the cause for the emergency no longer exists, the following shall be met:~~]

(1)[~~Protected Records.~~

~~(a) The following are protected records and may be redacted subject to the procedures described below in accordance~~] The Attorney General shall comply with [~~the~~]Title 63G, Chapter 2, Governmental Records Access and Management Act (GRAMA). [~~Title 63G, Chapter 2 of the Utah Code:~~

~~(i) Trade Secrets, as defined in Section 13-24-2;~~

~~(ii) Commercial information or non-individual financial information subject to the provisions of Section 63G-2-305(2); or~~

~~(iii) Other Protected Records under GRAMA.~~

~~(b) Process For Requesting Non-Disclosure. Any person requesting that a record be protected shall include with the bid/proposal or submitted document:~~

~~(i) a written indication of which provisions of the bid/proposal or submitted document are claimed to be considered for business confidentiality or as a protected record (including trade secrets or other reasons for non-disclosure under GRAMA); and~~

~~(ii) a concise statement of the reasons supporting each claimed provision of business confidentiality or as a protected record.~~]

([~~iii~~]2) Pricing may not be classified as [~~business confidential~~]protected and [~~will be~~]is considered public information.

([~~iv~~]3) An entire [~~set of bidding documents or proposal documents~~]response to a solicitation may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered non-responsive unless the [~~offeror~~]vendor removes the designation.

[~~(v) The term "bid" or "proposal" for purposes of this Rule shall apply to any document submitted to the Attorney General for purposes of a procurement matter.~~

~~(2) Notification.~~

~~(a) A person who complies with this Rule R105-1-10 shall be notified by the Attorney General's office prior to the public release of any information for which a claim of confidentiality has been asserted.~~

~~(b) Except as provided by court order, the Attorney General's office to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under this Rule but which the Attorney General's Office or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. This Rule does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.~~

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

([~~3~~]4) Publicizing Awards.

(a) In addition to the requirements of Section 63G-6a-709.5, the following shall be disclosed after receipt [~~by the Attorney General's Office~~]of a GRAMA request and [~~payment of any lawfully enacted and~~]applicable fees:

(i) the executed contract(s) [~~entered into as a result of the selection~~]and the successful proposal(s), except for those portions that are [~~to be non-disclosed under this Rule or State law~~]not Public;

(ii) unsuccessful proposals, except for those portions that are[~~to be non-disclosed under this Rule or State law~~] not Public;

(iii) the rankings of the proposals;

(iv) the names of the members of any evaluation committee[~~members (reviewing authority)~~];

(v) the final scores used by the evaluation committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings; and

(vi) the written justification statement supporting the selection, except for those portions that are[~~to be non-disclosed under this Rule or State law~~] not Public.

(b) After due consideration and public input, the following has been determined by the Procurement Policy Board and the Attorney General's Office to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and[~~, to the extent allowed by law,~~] will not be disclosed by the Attorney General's Office[~~at any time to the public including under any GRAMA request~~]:

(i) the names of individual scorers/evaluators in relation to their individual scores or rankings;

(ii) any individual scorer's/evaluator's notes, drafts, and working documents;

(iii) non-public financial statements; and

(iv) past performance and reference information[~~,~~] which is not provided by the [~~offeror~~]vendor and which is obtained as a result of the efforts of the Attorney General's Office. To the extent such past performance or reference information is included in the written justification statement, the justification statement is still subject to public disclosure.

(c) In regard to an Invitation for bids issued by the Attorney General's Office, the Attorney General's Office shall, on the day on which the award of a contract is announced, make available to each [~~bidder~~]vendor and to the public, a notice that includes:

(i) the name of the [~~bidder~~]vendor to which the contract is awarded and the price(s) of the procurement item(s); and

(ii) the names and the prices of each [~~bidder~~]vendor to which the contract is not awarded.

R105-1-[~~11~~]10. Special Provisions regarding Procurement of Outside Counsel.

(1) The Attorney General shall not enter into a contract for outside counsel unless the requirements of this Rule R105-1-[~~11~~]10 are met throughout the contract period and any extensions.

(2) The Attorney General shall review the proposed fee arrangement to hire outside counsel to ensure that [~~that~~]there is a reasonable, good faith legal basis to pursue the litigation in the interest of the citizens of the State[~~, and ensure that fees for outside counsel, whether based on an hourly rate, contingency fee, or other arrangement, are reasonable and consistent with industry standards~~].

(3) The Attorney General shall retain oversight and control over the course and conduct of the litigation or anticipated litigation.

(4) The Attorney General shall designate a member of the Attorney General's Office to personally oversee the litigation.

(5) The Attorney General shall retain veto power over any decisions made by outside counsel, and no lawsuit will be filed, or party added to or served with process in any lawsuit, by outside counsel, without express written permission of the Attorney General.

(6) The Attorney General shall be apprised of, attend, and[~~/or~~] participate in all settlement offers or conferences.

(7) Decisions regarding settlement of the case shall be made by the [~~Utah~~]Attorney General and not the outside counsel, provided that the Attorney General may give outside counsel a reasonable range of specific settlement authority in writing, within which outside counsel is authorized to settle the case.

(8) Written Determination regarding using a Contingency Fee Contracts. The Attorney General may not enter into a contingent fee contract with outside counsel unless the Attorney General makes a written determination that the contingent fee contract is cost-effective and in the public interest. This written determination shall:

(a) be made before or within a reasonable time after the Attorney General enters into a contingent fee contract; and

(b) include specific findings regarding:

(i) whether sufficient and appropriate legal and financial resources exist in the Attorney General's office to handle the legal matter that is the subject of the contingent fee contract; and

(ii) the nature of the legal matter, unless information conveyed in the findings would violate an ethical responsibility of the Attorney General or a privilege held by the state.

(9) Contingency Fee Limit. The Attorney General may not enter into a contingent fee contract with outside counsel that provides for outside counsel to receive a contingent fee, exclusive of reasonable costs and expenses, that exceeds:

(a) 25% of the amount recovered, if the amount recovered is no more than $10,000,000;

(b) 25% of the first $10,000,000 recovered, plus 20% of the amount recovered that exceeds $10,000,000, if the amount recovered is over $10,000,000 but no more than $15,000,000;

(c) 25% of the first $10,000,000 recovered, plus 20% of the next $5,000,000 recovered, plus 15% of the amount recovered that exceeds $15,000,000, if the amount recovered is over $15,000,000 but no more than $20,000,000; and

(d) 25% of the first $10,000,000 recovered, plus 20% of the next $5,000,000 recovered, plus 15% of the next $5,000,000 recovered, plus 10% of the amount recovered that exceeds $20,000,000, if the amount recovered is over $20,000,000; or

(e) $50,000,000.

(10) Opt-out regarding Contingency Fee Contracts.

(a) A provision of a contingent fee contract that is inconsistent with a provision of this section is invalid unless, before the contract is executed, the contingent fee contract provision is approved by a majority of the Attorney General, state treasurer, and state auditor.

(11) Exceptions regarding Contingency Fee Contracts:

(a) A contingent fee under a contingent fee contract may not be based on the imposition or amount of a penalty or civil fine.

(b) A contingent fee under a contingent fee contract may be paid only on amounts actually recovered by the state.

(c) Throughout the period covered by a contingent fee contract, including any extension of the contingent fee contract:

(i) outside counsel that is a party to the contingent fee contract shall acknowledge that the Attorney General retains complete control over the course and conduct of the contingent fee case for which outside counsel provides legal services under the contingent fee contract;

(ii) the Attorney General with supervisory authority shall oversee any litigation involved in the contingent fee case;

(iii) the Attorney General retains final authority over any pleading or other document that outside counsel submits to court;

(iv) an opposing party in a contingent fee case may contact the Attorney General directly, without having to confer with outside counsel;

(v) the Attorney General with supervisory authority over the contingent fee case may attend all settlement conferences; and

(vi) the outside counsel shall acknowledge that final approval regarding settlement of the contingent fee case is reserved exclusively to the discretion of the Attorney General.

(d) Nothing in Rule R105-1-[~~11~~]10(11) may be construed to limit the authority of the client regarding the course, conduct, or settlement of the contingent fee case.

(12) Website Posting regarding Contingency Fee Contracts. Within five business days after entering into a contingent fee contract, the Attorney General shall post on the Attorney General's website:

(a) the contingent fee contract;

(b) the written determination under R105-1-[~~11~~]10 (8) relating to that contingent fee; and

(c) if applicable, any written determination made under Rule R105-1-[~~6~~]5([~~3~~]1)(d) relating to that contingent fee contract.

(d) The Attorney General shall keep the contingent fee contract and written determination posted on the Attorney General's website throughout the term of the contingent fee contract.

(13) Contingency Fee Contract Records. The outside counsel that enters into a contingent fee contract with the Attorney General shall:

(a) from the time the contingent fee contract is entered into until three years after the contract expires, maintain detailed records relating to the legal services provided by outside counsel [~~attorney~~]under the contingent fee contract, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial records that relate to the legal services provided by outside counsel; and

(b) maintain detailed contemporaneous time records for the outside counsel's attorneys and paralegals working on the contingent fee case and promptly provide the records to the Attorney General upon request.

(14) Exemption regarding Contingency Fee Contracts. Rule R105-1-[~~11~~]10(8) through (13) as well as Rule R105-1-[~~12~~]11(3) do not apply to:

(a) to a contingent fee contract in existence before May 12, 2015, or to any renewal or modification of a contingent fee contract in existence before that date;

(b) to a contingent fee contract with outside counsel that the Attorney General hires to collect a debt that the Attorney General is authorized by law to collect; and

(c) with respect to a contingent fee contract with outside counsel in a securities class action in which the state is appointed as

lead plaintiff under Section 27(a)(3)(B)(i) of the Securities Act of 1933 or Section 21D(a)(3)(B)(i) of the Securities Exchange Act of 1934 or in which any state is a class representative, or in any other action in which the state is participating with one or more other states:

(i) apply only with respect to the state's share of any judgment, settlement amount, or common fund; and

(ii) do not apply to attorney fees awarded to outside counsel for representing other members of a class certified under Rule 23 of the Federal Rules of Civil Procedure or applicable state class action procedural rules.

(15) Notwithstanding any other provision of this Rule R105-1-[~~11~~]10, the solicitation for outside counsel may provide a lower fee limitation and/or provide for weights and scoring of the proposed fees in accordance with the Utah Procurement Code, which will allow for a competitive process and may provide for fees below the limitations set forth in this Rule.

R105-1-[~~12~~]11. Transparency in Contingency Fee Contracts with Outside Counsel.

(1) Except as otherwise provided by GRAMA, applicable law, Rules of Professional Conduct or this Rule, a copy of the executed contract with outside counsel shall be made available for public inspection in accordance with GRAMA.

(2) Any payment by the Attorney General under a contingency fee contract shall be made available for public inspection in accordance with GRAMA.

(3) After June 30 but on or before September 1 of each year, the Attorney General shall submit a written report to the president of the Senate and the speaker of the House of Representatives describing the Attorney General's use of contingent fee contracts with outside counsel during the fiscal year that ends the immediately preceding June 30.

(a) A report under Rule R105-1-[~~12~~]11(3) shall identify:

(i) each contingent fee contract the Attorney General entered into during the fiscal year that ends the immediately preceding June 30; and

(ii) each contingent fee contract the Attorney General entered into during any earlier fiscal year if the contract remained in effect for any part of the fiscal year that ends the immediately preceding June 30.

(iii) state the name of the outside counsel that is a party to the contingent fee contract, including the name of the outside counsel's law firm if the outside counsel is an individual;

(iv) describe the nature of the legal matter that is the subject of the contingent fee contract, unless describing the nature of the legal matter would violate an ethical responsibility of the Attorney General or a privilege held by the state;

(v) identify the state agency which the outside counsel was engaged to represent or counsel;

(vi) state the total amount of attorney fees approved by the Attorney General for payment to an outside counsel for legal services under a contingent fee contract during the fiscal year that ends the immediately preceding June 30; and

(vii) be accompanied by each written determination under R105-1-[~~11~~]10(8) and Rule R105-1-[~~6~~]5([~~3~~]1)(d) made during the fiscal year that ends the immediately preceding June 30.

R105-1-[~~13~~]12. Contracts.

Those awarded a contract under this Rule shall be required to enter into a written contract with the Attorney General. The written contract shall contain all material terms set forth in:

(1) The final procurement documents issued by the Utah Attorney General;

(2) The provisions in documents submitted by the provider to the extent such provisions are accepted by the Attorney General;

(3) A termination for cause and a termination for convenience clause; and

(4) Any terms required by law, whether by the constitutions, statutes, or rules or regulations of the United States or the State of Utah.

(5) Nothing in this Rule regarding contingency fee contracts may be construed to expand the authority of a state department, division, or other agency to enter into a contract if that authority does not otherwise exist.

R105-1-[~~14~~]13. Retention and Non-availability of Files.

(1) All proposals submitted to the Attorney General under this rule become the property of the State of Utah and the office of the Attorney General.

(2) All information in all proposals shall be placed in a file relating to the project for which the proposal was submitted. Each file shall contain:

(a) If applicable, a copy of all written determinations of the Attorney General required by the Utah Procurement Code or this Rule;

(b) A copy of the procurement documents and any written documentation related to notification requirements; and

(c) All responses to procurements and modifications, in writing, to any procurement if those modifications have been negotiated by the Attorney General.

(d) All records shall be maintained or disposed of in accordance with Part 20 of the Utah Procurement Code.

~~**[R105-1-15. Cancellations, Rejections, and Debarment.**~~

~~Cancellations, rejections and debarments shall be subject to the provisions of the Utah Procurement Code and, except as otherwise provided in this Rule R105, Rule R33-9.~~

~~**R105-1-16. Preferences.**~~

~~Preferences shall be subject to the provision of the Utah Procurement Code, and except as otherwise provided in this Rule R105, Rule R33-10.~~

~~**R105-1-17. Bond and Security.**~~

~~Any bonds or security shall comply with Part 11 of the Utah Procurement Code and Rule R33-11.~~

~~**R105-1-18. Terms and Conditions, Contracts, Multiple Year, Multiple Award, Change Orders and Costs.**~~

~~There shall be compliance, as applicable, with Part 12 of the Utah Procurement Code and Rule R33-12.~~

~~**R105-1-19. Controversies and Protests.**~~

~~Part 16 of the Utah Procurement Code shall apply as well as Rule R33-16.~~

~~**R105-1-20. Procurement Appeals Board, Appeals to Court and Court.**~~

~~Parts 17, 18 and 19 of the Utah Procurement Code shall apply as well as Rules R33-17, R33-18 and R33-19.~~

~~**R105-1-21. Interaction between Procurement Units.**~~

~~Part 21 of the Utah Procurement Code shall apply as well as Rule R33-21.~~

~~**R105-1-22. Unlawful Conduct and Penalties.**~~

~~There shall be compliance with Part 24 of the Utah Procurement Code and Rule R33-24.~~]

KEY: Attorney General, litigation support, outside counsel, expert witnesses
Date of Enactment or Last Substantive Amendment: [~~July 13, 2015~~]2017
Authorizing, and Implemented or Interpreted Law: Art VII Sec 16; 67-5; 63G-6

Commerce, Real Estate
R162-2f
Real Estate Licensing and Practices Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40952
FILED: 11/04/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the proposed rule amendment is to amend the requirements and restrictions for advertising by a licensee and to amend the experience points available to a licensee participating in a real estate sales transaction.

SUMMARY OF THE RULE OR CHANGE: In Subsection R162-2f-102(2), the definition of advertising is amended. In Section R162-2f-401h, the requirements and restrictions in advertising is amended. In Section R162-2f-501, the calculation of experience points for a real estate sales transaction by limiting the number of experience points for a transaction not subject to an exclusive brokerage agreement to one-quarter of the points available for a transaction that is subject to an exclusive brokerage agreement is amended.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2f-103 and Section 61-2f-203

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The division has the staff and budget in place to administer this proposed amendment. It is not expected that the proposed amendment will affect those resources or result in any additional cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: Local governments are not required to comply with or enforce the advertising and broker experience rules. No fiscal impact to local government is expected from the proposed amendment.
♦ SMALL BUSINESSES: The proposed amendment does not create new obligations for small businesses nor does it increase the cost associated with any existing obligation. No fiscal impact to small business is expected from the proposed amendment.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendment does not create new obligations for persons other than small businesses, businesses, or local government entities nor does it increase the cost associated with any existing obligation. No fiscal impact to persons other than small businesses, businesses, or local government entities is expected from the proposed amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule amendment would amend the current advertising rule and limit experience points for licensees participating in real estate sales transactions which are not subject to an exclusive brokerage agreement. While it is possible that there could be a compliance cost for affected persons, it is not possible to determine the amount of compliance cost, if any, from the proposed amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment to Sections R162-2f-102 and R162-2f-401h is to amend the restrictions for advertising by a licensee. No fiscal impact to business is anticipated. The amendment to Section R162-2f-501 changes the experience points available to a licensee participating in certain real estate transactions, reducing the number of points for transactions by agents who are merely listing properties on the MLS for a minimum fee but do not have an exclusive brokerage agreement for the property. No fiscal impact to business is anticipated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
REAL ESTATE
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:
♦ Justin Barney by phone at 801-530-6603, or by Internet E-mail at justinbarney@utah.gov or email at PO Box 146711, Salt Lake City, UT 84114-6711

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Jonathan Stewart, Director

R162. Commerce, Real Estate.
R162-2f. Real Estate Licensing and Practices Rules.
R162-2f-102. Definitions.

(1) "Active license" means a license granted to an applicant who:

(a) qualifies for licensure under Section 61-2f-203 and these rules;

(b) pays all applicable nonrefundable license fees; and

(c) affiliates with a principal brokerage.

(2) "Advertising" means a commercial message [~~solicitation~~] through:

(a) newspaper;

(b) magazine;

(c) Internet;

(d) e-mail;

(e) radio;

(f) television;

(g) direct mail promotions;

(h) business cards;

(i) door hangers;

(j) signs;

(k) other electronic communication; or

[~~(k)~~](l) any other medium.

(3) "Affiliate":

(a) when used in reference to licensure, means to form, for the purpose of providing a real estate service, an employment or non-employment association with another individual or entity licensed or registered under Title 61, Chapter 2f et seq. and these rules; and

(b) when used in reference to an undivided fractionalize long-term estate, means an individual or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified individual or entity.

(4) "Branch broker" means an associate broker who manages a branch office under the supervision of the principal broker.

(5) "Branch office" means a principal broker's real estate brokerage office other than the principal broker's main office.

(6) "Brokerage" means a real estate sales or a property management company.

(7) "Brokerage record" means any record related to the business of a principal broker, including:

(a) record of an offer to purchase real estate;

(b) record of a real estate transaction, regardless of whether the transaction closed;

(c) licensing records;

(d) banking and other financial records;

(e) independent contractor agreements;

(f) trust account records, including:

(i) deposit records in the form of a duplicate deposit slip, deposit advice, or equivalent document; and

(ii) conveyance records in the form of a check image, wire transfer verification, or equivalent document; and

(g) records of the brokerage's contractual obligations.

(8) "Business day" is defined in Subsection 61-2f-102(3).

(9) "Certification" means authorization from the division to:

(a) establish and operate a school that provides courses approved for prelicensing education or continuing education; or

(b) function as an instructor for courses approved for prelicensing education or continuing education.

(10) "Closing gift" means any gift given by a principal broker, or a licensee affiliated with the principal broker, to a buyer or seller, lessor or lessee, in appreciation for having used the services of a real estate brokerage.

(11) "Commission" means the Utah Real Estate Commission.

(12) "Continuing education" means professional education required as a condition of renewal in accordance with Section R162-2f-204 and may be either:

(a) core: topics identified in Subsection R162-2f-206c(5)(c); or

(b) elective: topics identified in Subsection R162-2f-206c(5)(e).

(13) "Correspondence course" means a self-paced real estate course that:

(a) is not distance or traditional education; and

(b) fails to meet real estate educational course certification standards because:

(i) it is primarily student initiated; and

(ii) the interaction between the instructor and student lacks substance and/or is irregular.

(14) "Day" means calendar day unless specified as "business day."

(15)(a) "Distance education" means education in which the instruction does not take place in a traditional classroom setting, but occurs through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including the following:

(i) computer conferencing;

(ii) satellite teleconferencing;

(iii) interactive audio;

(iv) interactive computer software;

(v) Internet-based instruction; and

(vi) other interactive online courses.

(b) "Distance education" does not include home study and correspondence courses.

(16) "Division" means the Utah Division of Real Estate.

(17) "Double contract" means executing two or more purchase agreements, one of which is not made known to the prospective lender or loan funding entity.

(18) "Expired license" means a license that is not renewed pursuant to Section 61-2f-204 and Section R162-2f-204 by:

(a) the close of business on the expiration date, if the expiration date falls on a day when the division is open for business; or

(b) the next business day following the expiration date, if the expiration date falls on a day when the division is closed.

(19) "Guaranteed sales plan" means:

(a) a plan in which a seller's real estate is guaranteed to be sold; or

(b) a plan whereby a licensee or anyone affiliated with a licensee agrees to purchase a seller's real estate if it is not purchased by a third party:

(i) in the specified period of a listing; or

(ii) within some other specified period of time.

(20) "Inactive license" means a license that has been issued pursuant to Sections R162-2f-202a through 202c or renewed pursuant to Section R162-2f-204, but that may not be used to conduct the business of real estate because the license holder is not affiliated with a principal broker. Pursuant to Section R162-2f-203, a license may be inactivated:

(a) voluntarily, with the assent of the license holder; or

(b) involuntarily, without the assent of the license holder.

(21) "Inducement gift" means any gift given by a principal broker, or a licensee affiliated with the principal broker, to a buyer or seller, lessor or lessee, in a real estate transaction as an incentive to use the services of a real estate brokerage.

(22) "Informed consent" means written authorization, obtained from both principals to a single transaction, to allow a licensee to act as a limited agent.

(23) "Limited agency" means the representation of all principals in the same transaction to negotiate a mutually acceptable agreement:

(a) subject to the terms of a limited agency agreement; and

(b) with the informed consent of all principals to the transaction.

(24) "Net listing" means a listing agreement under which the real estate commission is the difference between the actual selling price of the property and a minimum selling price as set by the seller.

(25)(a) "Non-certified education" means a continuing education course offered outside of Utah, but for which a licensee may apply for credit pursuant to Subsection R162-2f-206c(1)(b).

(b) "Non-certified education" does not include:

(i) home study courses; or

(ii) correspondence courses.

(26) "Nonresident applicant" means a person:

(a) whose primary residence is not in Utah; and

(b) who qualifies under Title 61, Chapter 2f et seq. and these rules for licensure as a principal broker, associate broker, or sales agent.

(27) "Principal brokerage" means the main real estate or property management office of a principal broker.

(28) "Principal" in a transaction means an individual who is represented by a licensee and may be:

(a) the buyer or lessee;

(b) an individual having an ownership interest in the property;

(c) an individual having an ownership interest in the entity that is the buyer, seller, lessor, or lessee; or

(d) an individual who is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor, or lessee.

(29) "Provider" means an individual or business that is approved by the division to offer continuing education.

(30) "Property management" is defined in Subsection 61-2f-102(19).

(31) "Registration" means authorization from the division to engage in the business of real estate as:

(a) a corporation;

(b) a partnership;

(c) a limited liability company;

(d) an association;

(e) a dba;

(f) a professional corporation;

(g) a sole proprietorship; or

(h) another legal entity of a real estate brokerage.

(32) "Reinstatement" is defined in Subsection 61-2f-102(22).

(33) "Reissuance" is defined in Subsection 61-2f-102(23).

(34) The acronym RELMS means "real estate licensing and management system," which is the online database through which licensees shall submit licensing information to the division.

(35) "Renewal" is defined in Subsection 61-2f-102(24).

(36) "Residential property" means real property consisting of, or improved by, a single-family one- to four-unit dwelling.

(37) "School" means:

(a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;

(b) any community college or vocational-technical school;

(c) any local real estate organization that has been approved by the division as a school; or

(d) any proprietary real estate school.

(38) "Sponsor" means:

(a) a person who is the original seller of an undivided fractionalized long-term estate.

(b) sponsor includes, if the seller is an entity, any individual who exercises managerial responsibility in the sponsoring entity.

(39) "Third party service provider" means an individual or entity that provides a service necessary to the closing of a specific transaction and includes:

(a) mortgage brokers;

(b) mortgage lenders;

(c) loan originators;

(d) title service providers;

(e) attorneys;

(f) appraisers;

(g) providers of document preparation services;

(h) providers of credit reports;

(i) property condition inspectors;

(j) settlement agents;

(k) real estate brokers;

(l) marketing agents;

(m) insurance providers; and

(n) providers of any other services for which a principal or investor will be charged.

(40) "Traditional education" means education in which instruction takes place between an instructor and students where all are physically present in the same classroom.

(41) "Undivided fractionalized long-term estate" is defined in Subsection 61-2f-102(26).

R162-2f-401h. Requirements and Restrictions in Advertising.

[~~(1) Advertising shall include the name of the real estate brokerage or, as applicable, the property management brokerage as shown on division records except where:~~

~~(a) a licensee advertises unlisted property in which the licensee has an ownership interest; and~~

~~(b) the advertisement identifies the licensee as "owner-agent" or "owner-broker."~~

~~(2) An advertisement that includes the name of an individual licensee shall also include the name of the licensee's brokerage in lettering that is at least one-half the size of the lettering identifying the individual licensee.~~

~~(3) An advertisement that includes a photograph of an individual who is not a licensee shall identify the individual's role in terms that make it clear that the individual is not licensed.~~

~~(4) An advertisement may not include artwork or text that states or implies that an individual has a position or status other than that of sales agent, associate broker, or principal broker affiliated with a brokerage.~~

~~(5) An advertising team, group, or other marketing entity that is not registered as a brokerage:~~

~~(a) shall, in all types of advertising, clearly:~~

~~(i) disclose that the team, group, or other marketing entity is not itself a brokerage; and~~

~~(ii) state the name of the registered brokerage with which the property being advertised is listed;~~

~~(b) shall, in any printed advertising material, clearly and conspicuously identify, in lettering that is at least one-half the size of the largest lettering used in the advertisement, the name of the registered brokerage with which the property being advertised is listed; and~~

~~(c) may not advertise as an "owner-agent" or "owner-broker."~~

~~(6)(a) A written advertisement of a guaranteed sales plan shall include, in print at least one-fourth as large as the largest print in the advertisement:~~

~~(i) a statement that costs and conditions may apply; and~~

~~(ii) information about how to contact the licensee offering the guarantee so as to obtain the disclosures required under Subsection R162-2f-401a(22).~~

~~(b) Any radio or television advertisement of a guaranteed sales plan shall include a conspicuous statement advising if any conditions and limitations apply.~~]

(1) Except as provided for in subsections (2) and (3), a licensee shall not advertise or permit any person employed by or affiliated with the licensee to advertise real estate services or property in any medium without clearly and conspicuously identifying in the advertisement the name of the brokerage with which the licensee is affiliated.

(2) When it is not reasonable for a licensee to identify the name of the brokerage in an electronic advertisement, the licensee shall ensure the electronic advertisement directly links to a display that clearly and conspicuously identifies the name of the brokerage.

(3) A licensee is not required to identify the name of the brokerage with which the licensee is affiliated if:

(a) the licensee advertises a property not currently listed with the brokerage with which the licensee is affiliated;

(b) the licensee has an ownership interest in the property; and

(c) the advertisement identifies the name of the individual licensee as "owner-agent" or "owner-broker."

(4) The name of the brokerage identified by a licensee in an advertisement shall be the name of the brokerage as shown on division records.

(5) A team, group, or other marketing entity which includes one or more licensees shall be subject to the same requirements and restrictions with regard to advertising as is an individual licensee.

(6)(a) If a licensee advertises a guaranteed sales plan, the advertisement shall include, in a clear and conspicuous manner:

(i) a statement that costs and conditions may apply; and

(ii) information about how to contact the licensee offering the guarantee so as to obtain the disclosures required under Subsection R162-2f-401a(23).

(b) Any radio or television advertisement of a guaranteed sales plan shall include a conspicuous statement advising if any conditions and limitations apply.

R162-2f-501. Appendices.

(1) When calculating experience points in Table 1, experience points for a transaction subject to an agency agreement other than an exclusive brokerage agreement as defined in Utah Code Subsection 61-2f-308(1)(d) are limited to one-quarter of the points described in Table 1.

(2) When calculating experience points from Tables 1 and 2, experience points are limited to points for those activities which require a real estate license and comply with R162-2f-401a. A minimum of one-half of the points in Tables 1 and 2 must derive from transactions of properties located in the state of Utah.

TABLE 1
APPENDIX 1 - REAL ESTATE SALES TRANSACTIONS
EXPERIENCE TABLE

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:		
(a)	One unit dwelling	2.5 points
(b)	Two- to four-unit dwellings	5 points
(c)	Apartments, 5 units or over	10 points
(d)	Improved lot	2 points
(e)	Vacant land/subdivision	10 points
COMMERCIAL		
(f)	Hotel or motel	10 points
(g)	Industrial or warehouse	10 points
(h)	Office building	10 points
(i)	Retail building	10 points

TABLE 2
APPENDIX 2 - LEASING TRANSACTIONS AND PROPERTY MANAGEMENT
EXPERIENCE TABLE

RESIDENTIAL		
(a)	Each property management agreement	1 point per unit up to 5 points
(b)	Each unit leased	1.25 points per unit
*(c)	All other property management	0.25 pt/month

COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building	
(a) Each property management agreement	1 point per unit up to 5 points
(b) Each unit leased	1.25 points per unit
*(c) All other property management	1 pt/month

*When calculating experience points from Table 2, the total combined monthly experience credit claimed for "All other property management" combined, both residential and commercial, may not exceed 25 points in any application to practice as a real estate broker.

TABLE 3
APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

KEY: real estate business, operational requirements, trust account records, notification requirements
Date of Enactment or Last Substantive Amendment: [~~2016~~]2017
Notice of Continuation: August 12, 2015
Authorizing, and Implemented or Interpreted Law: 61-2f-103(1); 61-2f-105; 61-2f-203(1)(e); 61-2f-206(3); 61-2f-206(4)(a); 61-2f-306; 61-2f-307

Education, Administration
R277-499
Seal of Biliteracy

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 41004
FILED: 11/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to provide procedures for a student who has achieved a level of proficiency in English and in a world language to have a Seal of Biliteracy placed electronically on the student's high school transcript.

SUMMARY OF THE RULE OR CHANGE: This new rule provides terms and procedures for a local education agency (LEA) to award the Seal of Biliteracy to a student who has achieved proficiency in English and intermediate-mid level or higher in one or more other world language.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This new Rule R277-499 provides procedures for a student to earn and an LEA to award the Seal of Biliteracy to a student, which likely will not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: This new Rule R277-499 provides procedures for a student to earn and an LEA to award the Seal of Biliteracy to a student, which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: This new Rule R277-499 provides procedures for a student to earn and an LEA to award the Seal of Biliteracy to a student, 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 R277-499 provides procedures for a student to earn and an LEA to award the Seal of Biliteracy to a student, 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 R277-499 provides procedures for a student to earn and an LEA to award the Seal of Biliteracy to a student, which likely will not result in any compliance costs for affected persons.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov or mail at PO BOX 144200, Salt Lake City, UT 84114-4200

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

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

R277. Education, Administration.
R277-499. Seal of Biliteracy.
R277-499-1. 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-1-402(1)(b), which allows the Board to establish rules and minimum standards for graduation requirements.

(2) The purpose of this rule is to establish rules and procedures for a student to earn a Seal of Biliteracy in conjunction with a high school diploma.

R277-499-2. Definitions.

(1) "Intermediate-Mid" level means a level of language proficiency in terms of speaking, writing, listening, and reading in real-world situations in a spontaneous and non-rehearsed context, as established by the American Council on the Teaching of Foreign Languages or tribal education directors.

(2) "Seal of Biliteracy " means a recognition, awarded in conjunction with a student's high school diploma, which certifies that a student is proficient in English and at Intermediate-Mid level or higher in one or more world languages.

(3) "World language" means a language other than English and includes:

(a) American Sign Language;

(b) American Native Languages, such as Navajo or Ute; and

(c) classical languages, such as Latin.

R277-499-3. Procedures for Award of Seal of Biliteracy.

(1)(a) An LEA may develop a local application process for a student who wishes to earn the Seal of Biliteracy.

(b) An LEA application process shall include procedures for:

(i) advertising the criteria for the Seal of Biliteracy;

(ii) tracking students who may qualify for the Seal of Biliteracy; and

(iii) documenting student progress.

(c) An LEA shall train counselors and world language coordinators to provide information on the application process to interested students.

(d) The Superintendent shall provide an application template which an LEA may use in the application process.

(2) An LEA may award the Seal of Biliteracy to a student who:

(a) demonstrates proficiency in an English assessment; and

(b) demonstrates a minimum of Intermediate Mid-level proficiency in a world language assessment.

(3)(a) The Superintendent shall maintain a list of acceptable national and international tests with qualifying scores to demonstrate proficiency as required by this rule.

(b) The Superintendent shall review and update the list provided by Subsection (3)(a) on a regular basis and publish the information on the Board's website.

(4) If a student meets the requirements of Subsection (2):

(a) the Superintendent shall place the Seal of Biliteracy electronically on the student's transcript; and

(b) an LEA may place a seal on the student's paper diploma.

KEY: biliteracy, seal, world languages
Date of Enactment of Last Substantive Amendment: 2017
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53A-1-402(1)(b)

Education, Administration
R277-503
Licensing Routes

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41005
FILED: 11/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-503 is amended to provide technical and conforming changes consistent with the administrative rulemaking style manual and provide updated definitions and terminology.

SUMMARY OF THE RULE OR CHANGE: The changes to Rule R277-503 provide technical and conforming changes and changes to definitions and terminology.

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

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The amendments to Rule R277-503 provide technical and conforming changes and changes to definitions and terminology, which likely will not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: The amendments to Rule R277-503 provide technical and conforming changes and changes to definitions and terminology, which likely will not result in a cost or savings to local government.

♦ SMALL BUSINESSES: The amendments to Rule R277-503 provide technical and conforming changes and changes to definitions and terminology, which likely will not result in a cost or savings to small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to Rule R277-503 provide technical and conforming changes and changes to definitions and terminology, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-503 provide technical and conforming changes and changes to definitions and terminology, which likely will not result in any compliance costs for affected persons.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov or mail at PO BOX 144200, Salt Lake City, UT 84114-4200

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

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

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R277. Education, Administration.
R277-503. Licensing Routes.
R277-503-[2]1. Authority and Purpose.

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

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

(b) Section 53A-1-402[~~(1)(a)~~], which directs the Board to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student services[~~,~~]; and

(c) 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) provide minimum eligibility requirements for applicants for teacher licenses;

(b) [~~and to~~] provide explanation and criteria of various teacher licensing routes[~~. The rule also~~];

(c) provide[~~s~~] criteria and procedures for licensed teachers to earn endorsements; and

(d) [~~the ~~]require[~~ment for~~] all applicants for licenses to[~~ have and pass~~]submit to a criminal background check[~~s~~].

R277-503-[1]2. Definitions.

[~~A.~~](1) "Alternative Routes to Licensure [~~(ARL) ~~] advisors" or "ARL advisors" means:

(a) a[~~ USOE~~] specialist designated by the Superintendent with specific professional development and educator licensing expertise[~~,~~]; and

(b) a [~~USOE-designated ~~]curriculum specialist designated by the Superintendent.

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

[~~C.~~](2)(a) "Career and technical education [~~(CTE)~~]" or "CTE" means organized educational programs [~~or competencies which directly or indirectly prepare students for employment, or for additional preparation leading to employment, in occupations where entry requirements do not generally require a baccalaureate or advanced degree. CTE programs provide all students a continuous education system, driven by a SEOP/plan for college and career readiness, through competency-based instruction, culminating in essential life skills, certified occupational skills, and meaningful employment. Categories~~]that:

(i) prepare individuals for a wide range of high-skill, high-demand careers;

(ii) provide all students with a seamless education system from public education to post-secondary education, driven by a Plan for College and Career Readiness; and

(iii) provide students competency-based instruction, hands-on experiences, and certified occupational skills, culminating in further education and meaningful employment.

(b) CTE areas of study include:

(i) agriculture;

(ii) business and marketing;

(iii) family and consumer sciences;

(iv) health science;

(v) information technology;[~~ marketing;~~]

(vi) skilled and technical sciences; and

(vii) technology and engineering[~~; and work-based learning, consistent with R277-916~~] education.

[~~D.~~](3) "Competency-based" means a teacher training approach structured for an individual to master and demonstrate content and teaching skills and knowledge at the individual's own pace and sometimes in alternative settings.

[~~O.~~](4) "[~~NCLB e~~]Core academic subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

[~~E.~~](5) "Council for Accreditation of Educator Preparation" or [~~(~~]"CAEP[~~)~~]" [~~is a~~]means the nationally-[~~-~~]recognized organization [~~which~~]that provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of [~~K~~]k-12 teachers.

[~~F. "Educational Testing Service (ETS)" is a worldwide educational testing and measurement organization.~~]

[~~G.~~](6) "Endorsement" means a supplemental qualification to a teaching license that is based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program.

[~~H.~~](7) "LEA," for purposes of this rule, [~~means a local education agency, including local school boards/public school~~

~~districts, charter schools, and for purposes of this rule,~~]includes the Utah Schools for the Deaf and the Blind.

[~~I.~~](8) "Letter of authorization" means a formal approval given to an individual, such as an out-of-state candidate or a first year ARL candidate who:

(a) is employed by an LEA in a position requiring a professional educator license;

(b) [~~who~~]has not completed the requirements for an ARL license or a Level 1, 2, or 3 license; or

(c) [~~who~~]has not completed necessary endorsement requirements.

[~~J.~~](9) "Level 1 license" means a Utah professional educator license issued by the Board [~~upon~~]to an applicant who has met all ancillary requirements established by law or rule, and:

(a) complet[~~ion~~]ed [~~of~~]an approved preparation program[~~or~~];

(b) completed an alternative preparation program[~~,~~]; [~~or~~]

(c) is approved pursuant to an agreement under the NASDTEC Interstate Contract[~~, to applicants who have also met all ancillary requirements established by law or rule.~~]; or

(d) completed the requirements of R277-511.

[~~K.~~](10) "Level 2 license" means a Utah professional educator license issued by the Board after satisfaction of all requirements for a Level 1 license and:

(1) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;

(3) additional requirements established by law or rule.

[~~L.~~](11) "Level 3 license" means a Utah professional educator license issued by the Board to an educator who holds a current Utah Level 2 license and has also received:

(a) National Board Certification[~~or~~];

(b) a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school[~~,~~]; or

(i) holds a Speech-Language Pathology area of concentration; and

(ii) has obtained American Speech-Language Hearing Association (ASHA) certification.

[~~M.~~](12) "National Association of State Directors of Teacher Education and Certification" or [~~(~~]"NASDTEC[~~)~~]" [~~is an~~]means the educator information clearinghouse that maintains an interstate reciprocity agreement and database for its members regarding educators whose licenses have been suspended or revoked.

[~~N.~~](13) "National Council for Accreditation of Teacher Education" or [~~(~~]"NCATE[~~)~~]" [~~is a~~]means the nationally-[~~-~~] recognized organization [~~which~~]that accredits the education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.

[~~P.~~](14) "Pedagogical knowledge" means practices and strategies of teaching, classroom management, preparation and planning that are in addition to an educator's content knowledge of an academic discipline.

[~~Q.~~](15) "Regional accreditation" means formal approval of a school that has met standards considered to be essential for the operation of a quality school program by the following organizations:

([~~1~~]a) Middle States Commission on Higher Education;

([~~2~~]b) New England Association of Schools and Colleges;

([~~3~~]c) North Central Association Commission on Accreditation and School Improvement;

([~~4~~]d) Northwest Accreditation Commission;

([~~5~~]e) Southern Association of Colleges and Schools; and

([~~6~~]f) Western Association of Schools and colleges: Senior College Commission.

[~~R.~~](16) "Restricted endorsement" means a qualification available only to teachers in necessarily existent small school settings based on content area knowledge obtained through a [~~USOE~~]Board-approved program of study or demonstrated through passage of a Board-designated test[~~, and shall be available only to teachers in necessarily existent small school settings~~].

[~~S.~~](17) "State-approved Endorsement Plan" or [~~(~~]"SAEP[~~)~~]" means a plan in place developed between the [~~USOE~~] Superintendent and a licensed educator to direct the completion of endorsement requirements by the educator.

[~~T.~~](18) "Teacher Education Accreditation Council" or [~~(~~]"TEAC[~~)~~]" [~~is a~~]means the nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.

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

R277-503-3. [~~USOE~~]Licensing Eligibility.

[~~A.~~](1) For a license applicant following the [~~T~~]traditional college [~~/~~] or university license[~~, A~~], the license applicant shall:

([~~1~~]a) [~~have~~]complete[~~d~~] a[~~n~~] Board approved college[~~/~~] or university teacher preparation program[~~,~~];

([~~2~~]b) [~~have been~~]be recommended for licensing[~~,~~]; and

([~~3~~]c) [~~have~~]satisf[~~ied~~]y all other requirements for educator licensing required by law; or

[~~B.~~](2) For a license applicant following an [~~A~~]alternative [~~L~~]licensing [~~R~~]route, [~~(1) A~~] the license applicant shall:

(a) have a bachelors degree or higher from an accredited higher education institution in an area related to the position the applicant is seek[~~s~~]ing;[~~ or~~]

([~~2~~]b) have skills, talents or abilities, as evaluated by the employing entity, making the applicant appropriate for a licensed teaching position and eligible to participate in an ARL program[~~,~~]; and

([~~3~~]c) while participating in an alternative licensing program, be approved for employment under an ARL license.

(3) An ARL program may not exceed three school years.

[~~C.~~](4) A[~~n~~] license applicant[~~s~~] seeking a Level 1 Utah educator license, or an area of concentration, or an endorsement in a[~~n NCLB~~] core academic subject area shall submit passing

score[~~(~~]s[~~)~~] on a[~~ rigorous~~] Board-designated content test, where tests are available, prior to the issuance of a renewable license or endorsement.

[~~D.~~](5) For each endorsement in a[~~n NCLB~~] core academic area to be posted on the license, a teacher[~~s are required to~~] shall submit passing scores on a [~~rigorous~~]Board-designated content test[~~(~~]s[~~)~~], where test[~~(~~]s[~~)~~] are available.

[~~E. An applicant shall submit electronic or original documentation of passing score(s) on a rigorous Board-designated content test to the USOE.~~]

[~~F.~~](6) A[~~ny~~] licensure candidate recommended for a Utah Level 1 license who does not submit a passing score on the test designated in Subsection [~~R277-503-3C~~](4) [~~shall~~]is not [~~be~~] eligible for licensure until achieving a passing score.

(7) All educators licensed under this rule shall also:

(a) complete the background check required under Section 53A-6-401;

(b) satisfy the professional development requirements of R277-500; and

(c) be subject to all Utah licensing requirements and professional standards.

R277-503-4. Licensing Routes - Traditional and Alternative Routes.

(1) An [~~A~~]applicant[~~s who~~] seeking a Utah educator license[~~s~~] shall successfully complete the accredited program[~~s~~] or legislatively-[~~-~~]mandated program[~~s~~] consistent with this rule.

[~~A.~~](2) To be recognized by the Board, an [~~I~~]institution of higher education teacher preparation program[~~s~~] shall be:

([~~1~~]a) Nationally accredited by:

([~~a~~]i) CAEP;[~~ or~~]

([~~b~~]ii) NCATE; or

([~~c~~]iii) TEAC; and

([~~2~~]b) [~~As of January 1, 2012, ~~]approved by [~~USOE~~]the Board to recommend for licensure in the license area, or endorsements, or both in designated areas.

[~~B.~~](3)(a) An applicant [~~that~~]who meets the eligibility requirements in Section R277-503-3[~~B~~], and is assigned to teach exclusively in an online setting, [~~shall be~~]is eligible to begin the ARL program[~~ but~~].

(b) [~~u~~]Upon completion of the ARL program, the applicant shall earn a license area of concentration that is restricted to providing instruction in an online setting.

R277-503-5. Alternative Routes to Licensure (ARL).

[~~C. USOE Alternative Routes to Licensure (ARL)~~]

(1) To be eligible to begin the ARL program, an applicant for a school position requiring an elementary license area of concentration shall have a bachelors degree and at least 27 semester hours of applicable content courses distributed among elementary curriculum areas[~~. Elementary curriculum areas are~~] provided under R277-700-4.

(2) To be eligible to begin the ARL program, an applicant[~~s~~] for a school position[~~s~~] requiring a secondary license area of concentration shall hold at least a bachelors degree and:

(a) a degree major or major equivalent directly related to the assignment; or

(b) have completed all Board-designated content coursework required for the relevant endorsement.

(3) To be eligible to begin the ARL program, an applicant[~~s~~] for a CTE school position[~~s that do~~] who does not meet the requirements in R277-503-4[~~C~~](2) shall meet the requirements for a CTE license area of concentration as provided in R277-518.

(4) To be eligible for acceptance in the ARL program, an applicant shall be employed in a position at a Utah public or accredited private school where the applicant:

(a) receives a teaching assignment where the applicant has primary instruction responsibility for the assigned students;

(b) is designated the teacher of record for assigned courses for all school accountability and educator evaluation purposes;

(c) is responsible for the instructional planning of the courses including developing, adapting, and implementing the curriculum to meet student needs;

(d) analyzes and assesses student progress and adjusts instruction, materials, and delivery strategies to meet the students' needs;

(e) has final responsibility for determining student grades and credit for the courses taught by the applicant;[~~ and~~]

(f) is assigned in:

(i) a 7-12 secondary setting and employed at least 0.5 FTE in the applicant's eligible content areas; or

(ii) a K-6 elementary setting and employed at least 0.5 FTE and is responsible to teach language arts and reading, mathematics, science, and social studies or is employed in a state-sponsored dual immersion program; and

(g) shall be formally evaluated twice each school year consistent with R277-531, Public Educator Evaluation Requirements (PEER).

R277-503-6. Licensing by Agreement.

[~~(5) Licensing by Agreement~~]

([~~a~~]1) An individual employed by an LEA shall satisfy the minimum requirements of R277-503-3 as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the [~~district~~]LEA.

([~~b~~]2) An applicant shall obtain an ARL application for licensing from the [~~USOE or USOE~~]Board's web site.

([~~c~~]3) After evaluation of a candidate's transcript[~~(~~]s[~~)~~] and[~~ rigorous~~] Board-designated content test score, the[~~ USOE~~] ARL advisors and the candidate shall determine the specific content knowledge and pedagogical knowledge required of the license applicant to satisfy the requirements for licensing.

([~~d~~]4) The[~~ USOE~~] ARL advisors may identify[~~ institution of~~] higher education courses, district sponsored coursework, Board-approved professional development, or Board-approved competency tests to prepare or indicate content, content-specific, and developmentally-appropriate pedagogical knowledge required for licensing.

([~~e~~]5) An applicant who has been employed as an educator under a competency-based license or as a full-time instructional paraeducator may offer that experience in lieu of one or more pedagogy courses as follows:

([~~i~~]a) The applicant has had at least three years of experience as an educator or paraeducator;

([~~ii~~]b) The applicant's experience has been successful based on documentation from the LEA; and

([~~iii~~]c) The [~~USOE~~]Superintendent and employing LEA ha[~~s~~]ve approved the applicant's experience in lieu of pedagogy course[~~(~~]s[~~)~~].

([~~f~~]6) [~~The~~] An employing LEA shall assign a trained mentor to work with [~~the~~]an applicant for licensing by agreement.

([~~g~~]7)(a) [~~The~~] An LEA shall supervise and assess [~~the~~]a license applicant's classroom performance for a minimum of one school year if the applicant teaches full-time or a minimum of two school years if the applicant teaches part-time.

(b) [~~The~~]An LEA may request assistance from an institution of higher education or the [~~USOE~~]ARL advisors in monitoring and assessing [~~the~~]an applicant.

([~~h~~]8)(a) [~~The~~]An LEA shall assess [~~the~~]a license applicant's disposition as a teacher following a minimum of one school year full-time teaching experience.

(b) [~~The~~]An LEA may request assistance in [~~this~~] assessment under Subsection (8)(a).[~~; and~~]

([~~i~~]9) The [~~USOE~~]ARL advisors shall annually review and evaluate [~~the~~]a license applicant following training, assessments or course work, and the full-time teaching experience and evaluation by the LEA.

([~~j~~]10) Consistent with evidence and documentation received, the[~~USOE~~] ARL advisors may recommend [~~the~~]a license applicant to the Board for a Level 1 educator license.

R277-503-7. Licensing by Competency.

[~~(6) USOE Licensing by Competency~~]

([~~a~~]1) An LEA may employ[~~s~~] an individual as a teacher if the individual:

(a) [~~with~~]has appropriate skills, training, or ability for an identified licensed teaching position in the LEA; and

(b) [~~who~~]satisfies the minimum requirements of Section R277-503-3.

([~~b~~]2)(a) An employing LEA, in consultation with the applicant and the [~~USOE~~]ARL advisors, shall identify Board-approved content knowledge and pedagogical knowledge examinations.

(b) The applicant shall pass designated examinations demonstrating the applicant's adequate preparation and readiness for licensing.

([e]3) [~~The~~]An employing LEA shall assign a trained mentor to work with [~~the~~]an applicant for licensing by competency.

([~~d~~]4) [~~The~~]An LEA shall monitor and assess [~~the~~]a license applicant's classroom performance during a minimum of one-year full-time or two-years part-time teaching experience.

([e]5) [~~The~~]An LEA shall assess [~~the~~]a license applicant's disposition for teaching following a minimum of one-year full-time teaching experience.

([~~f~~]6) [~~The~~]An LEA may request assistance in the monitoring or assessment of a license applicant's classroom performance or disposition for teaching.

([~~g~~]7) Following the one-year training period, [~~the~~]an LEA and [~~USOE~~]the Superintendent shall verify all aspects of preparation including [~~(~~]content knowledge, pedagogical knowledge, classroom performance skills, and disposition for teaching[~~)~~] to the [~~USOE~~]ARL advisors.

([~~h~~]8) If all evidence/documentation is complete and satisfactory, the [~~USOE~~]Superintendent shall recommend [~~the~~]an applicant for a Level 1 educator license.

([~~7~~]9) [~~USOE~~]An ARL candidate[~~s~~] under Section R277-503-[~~4C(4)~~]5 shall be issued an ARL license or license area as appropriate that is presumed to expire at the end of the school year.

([~~8~~]10) [~~The~~]An ARL license may be extended annually for two subsequent school years with the following documentation of progress in the ARL program[~~-~~]:

([~~9~~]a) [~~Documentation shall include, specifically, ~~]a copy of the supervisor's successful end-of-year evaluation[~~-~~];

(b) copies of transcripts and test results, or both, showing completion of required coursework[~~-~~];

(c) verification of working with a trained mentor[~~-~~]; and

(d) satisfaction of the full-time full year experience.

R277-503-8. LEA Specific Competency-Based Licenses.

[~~D. LEA specific competency-based licenses:~~]

(1)(a) An LEA may apply to the Board for a Level 1 competency-based license for an applicant to fill a position in the LEA.

(b) The application shall demonstrate that other licensing routes for the applicant are untenable or unreasonable.

(2) [~~The~~]An employing LEA shall request a Level 1 competency-based license no later than 60 days after the date of the individual's first day of employment.

(3) [~~The~~]An application for [~~the~~]a Level 1 competency-based license from the LEA for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b)(i) for a K-6 grade teacher, the satisfactory results of the[~~-rigorous~~] state test including subject knowledge and teaching skills in the required core academic subjects under Subsection 53A-6-104.5(3)(ii) as approved by the Board; or

([e]ii) for [~~the~~]a teacher in grades 7-12, demonstration of a high level of competency in each of the core academic subjects in which the teacher teaches by passing the[~~-rigorous~~] state core academic subject test required under Subsection R277-503-3[~~E~~](4), in each of the core academic subjects in which the teacher teaches at the [~~USOE~~]Superintendent-established passing score.

(4) [~~The~~]An application for [~~the~~]a Level 1 competency-based license from [~~the~~]an LEA for non-core teachers in grades K-12 shall provide documentation of:

(a) a bachelors degree, associates degree or skill certification; and

(b) skills, talents or abilities specific to the teaching assignment, as determined by the LEA.

(5) Following receipt of documentation and consistent with Subsection 53A-6-104.5(2), the [~~USOE~~]Superintendent shall approve a Level 1 competency-based license.

(6) If an individual with a Level 1 competency-based license leaves the LEA before the end of the employment period, the LEA shall notify the [~~USOE Licensing Section~~]Superintendent regarding the end-of-employment date.

(7) [~~The~~]An individual's Level 1 competency-based license shall be valid only in the LEA that originally requested the competency-based license.

(8) [~~The~~]A written copy of [~~the~~]a Level 1 competency-based license shall prominently state the name of the LEA followed by LEVEL 1 - LEA SPECIFIC - COMPETENCY-BASED LICENSE.

(9)(a) An LEA may change the assignment of a competency-based license holder[~~;~~] and provide notice to [~~USOE shall be required and~~]the Superintendent;

(b) The Superintendent may require additional competency-based documentation[~~ may be required~~] for the teacher to remain qualified.

(10) A Level 1 competency-based license is equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations, and subject to the same renewal procedures except that an individual may renew a Level 1 competency-based license.[~~ despite the limitations of R277-504-3D.~~]

(11) A Level 2 competency-based license may be issued to a Level 1 competency-based license holder if that individual successfully completes the Entry years Enhancement program as detailed in R277-522.

(12) A Level 2 competency-based license is equivalent to the Level 2 license as described in R277-500 and R277-502 as to length and professional development expectations.

(13) A Level 3 competency-based license may be issued to a Level 2 competency-based license holder if that individual holds a doctorate in education or in a field related to a content unit of the public education system from an accredited institution.

(14) A Level 3 competency-based license is equivalent to the Level 3 license as described in R277-500 and R277-502 as to length and professional development expectations.

(15) If an individual holds a Utah license, [~~the~~]an application for an LEA specific competency-based license shall be subject to additional [~~USOE~~]Superintendent review based upon the following criteria:

(a) license level;

(b) current license status;

(c) area of concentration and endorsements on Utah license; and

(d) circumstances justifying the LEA specific license.

(16)(a) If [~~the~~]an application is not approved based on [~~a USOE~~]the Superintendent's review of the criteria provided in Section R277-503-4[~~C(11)~~], appropriate licensure procedures shall be recommended to the requesting LEA.

(b) [~~The~~]An applicant may be required to:

(i) renew an expired license[~~;~~];

(ii) apply for an endorsement[~~;~~];

(iii) pass appropriate Board approved tests consistent with Subsection R277-503-3[~~C~~](4)[~~;~~];

(iv) obtain an additional area of concentration[~~;~~];

(v) apply to Alternative Route to Licensure[~~;~~]; or

(vi) satisfy other reasonable standards.

R277-503-[5]9. Endorsement Routes.

[~~A.~~](1)(a) An applicant shall successfully complete one of the following programs for an endorsement:

([~~1~~]i) a [~~USOE~~]Board-approved institution of higher education educator preparation program with endorsement[~~(~~]s[~~)~~]; [~~or~~]

([~~2~~]ii) assessment, approval, and recommendation by a designated and subject-appropriate [~~USOE~~]Board specialist[~~;~~]; or

(iii) [~~The USOE shall be responsible for final recommendation and approval; or~~

(3)]a [~~USOE~~]Board-approved Utah institution of higher education or Utah LEA-sponsored endorsement program [~~which~~]that includes content knowledge and content-specific pedagogical knowledge approved by the [~~USOE~~]Superintendent.

(b)(i) The Superintendent shall be responsible for final recommendation and approval for programs described in Subsections (1)(a)(i) and (ii).

([~~a~~]ii) [~~The~~]A university or LEA shall be responsible for final review and recommendation of programs described in Subsection (1)(a)(iii), and the [~~-~~

(b) The USOE]Superintendent shall be responsible for final approval.

[~~B.~~](2)(a) A restricted endorsement shall be available and limited to teachers in necessarily existent small schools as determined under R277-445.

(b) Teacher qualifications shall include at least nine semester hours of [~~USOE~~]Superintendent-approved university-level courses in each course taught by the teacher holding a restricted endorsement.

[~~C.~~](3) All provisions that directly affect the health and safety of students required for endorsements, such as prerequisites for drivers education teachers or coaches, shall apply to applicants seeking endorsements through all routes under this rule.

[~~D.~~](4) Prior to an individual taking courses, exams or seeking a recommendation in the ARL licensing program, the individual shall have LEA and [~~USOE~~]Superintendent authorization.

[~~R277-503-6. Additional Provisions.~~

~~A. All programs or assessments used in applicant preparation shall meet national professional educator standards such as those developed by NCATE, TEAC, and CAEP.~~

~~B. All educators licensed under this rule shall also:~~

~~(1) complete the background check required under Section 53A-6-401;~~

~~(2) satisfy the professional development requirements of R277-502; and~~

~~(3) be subject to all Utah licensing requirements and professional standards.~~

~~C. An applicant may satisfy the student teaching/clinical experience requirement for licensing through successful completion of either the licensing by agreement or by competency route.~~]

KEY: teachers, alternative licensing
Date of Enactment or Last Substantive Amendment: [~~June 9, 2014~~]2017
Notice of Continuation: March 15, 2016
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a); 53A-1-401[~~(3)~~]

Education, Administration
R277-507
Driver Education Endorsement

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 41006
FILED: 11/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-507 is amended to provide updated endorsement procedures and training requirements. Technical and conforming changes, consistent with the administrative rulemaking styles manual, are also provided.

SUMMARY OF THE RULE OR CHANGE: The changes to Rule R277-507 provide updated definitions, updated endorsement and training requirements, and technical and conforming changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-13-208 and Subsection 53A-1-402(1)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendments to Rule R277-507 provide updated endorsement and training requirements and technical and conforming changes, which likely will not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: The amendments to Rule R277-507 provide updated endorsement and training requirements and technical and conforming changes, which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: The amendments to Rule R277-507 provide updated endorsement and training requirements 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 Rule R277-507 provide updated endorsement and training requirements 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 Rule R277-507 provide updated endorsement and training requirements 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 resulting from the amendments to this rule.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov or mail at PO BOX 144200, Salt Lake City, UT 84114-4200

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

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

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R277. Education, Administration.
R277-507. Driver Education Endorsement.
R277-507-[~~2~~]1. Authority and Purpose.

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

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

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

(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; and

(d) [~~by~~] Section 53A-13-208, which directs the Board to establish procedures and standards to [~~license~~]certify teachers of driver education classes as driver license examiners.

[~~B.~~](2) The purpose of this rule is to establish standards and procedures for [~~high school~~]secondary teachers to qualify for [~~the~~]a driver education endorsement.

R277-507-[~~1~~]2. Definitions.

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

(1) "Driver License Division" or "DLD" means the Driver License Division of the Department of Public Safety.

[~~B.~~](2) "Endorsement" means a stipulation appended to a license setting forth the areas of practice to which the license applies.

[~~C.~~](3) "Level 1 License" means a license issued:

(a) upon completion of an approved educator preparation program[~~ or~~];

(b) upon completion of an alternative preparation program[~~ or~~];

(c) pursuant to an agreement under the NASDTEC Interstate Contract to candidates who have also met all ancillary requirements established by law or rule[~~.~~]; or

(d) in accordance with the requirements of Rule R277-511.

[~~D.~~](4) "Level 2 License" means a license issued after satisfaction of all requirements for a Level 1 license as well as any

additional requirements established by law or rule relating to professional preparation or experience.

[~~E.~~](5) "Level 3 License" means a license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate from an accredited institution.

[~~F. "NASDTEC" means the National Association of State Directors of Teacher Education and Certification.~~]

[~~G.~~](6) "NASDTEC Interstate Contract" means the contract implementing Title 53A, Chapter 6, Part 2, Compact [~~of~~]for Interstate Qualification of Educational Personnel, which is administered through [~~NASDTEC~~]the National Association of State Directors of Teacher Education and Certification, and which provides for reciprocity of educator licenses among states.

(7)(a) "Utah Driver Handbook" means a manual, prepared and periodically updated by the DLD, containing the rules which should be followed when operating a motor vehicle in Utah.

(b) The updated Utah Driver Handbook is available at http://dld.utah.gov/handbooksprintableforms/.

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

R277-507-3. Endorsement Requirements.

[~~A.~~](1) [~~The~~]A driver education endorsement shall be added to [~~the~~]an educator's Level 1, 2, or 3 license [~~provided~~]if the educator:

([~~1~~]a) [~~the individual~~]has a valid and current Level 1, 2, or 3 license with an area of concentration in one or more of the following:

(i) Secondary Education[~~,~~];

(ii) Special Education; [~~and/~~]or

(iii) School Counselor;

([~~2~~]b) [~~the individual~~] has a valid Utah automobile operator's license; [~~and~~]

([~~3~~]c) [~~the beginning teacher~~] has not had [~~no convictions for a moving violation or chargeable accident on record for which a driver~~]an automobile operator's license [~~was~~]suspended or revoked [~~for~~]during the two year period immediately prior to [~~employment~~]applying for the endorsement; and[~~-~~]

(d) has completed the professional preparation requirements set forth in Subsection (2).

[~~B. In order for a high school driver education teacher to be certified as a driver license examiner by the Driver License Division of the Department of Public Safety, the teacher shall first be licensed and endorsed by the USOE.~~]

[~~C.~~](2) A high school driver education teacher shall [~~have~~]complete professional preparation which includes [~~the following:~~

~~(1) ~~]sixteen (16) semester hours in the area of driver and safety education, as follows;

[~~(2) of the 16 hours required:~~]

(a) a minimum of twelve (12) semester hours shall be in the area of driver and safety education, including a practicum covering classroom, on-street, simulator, and driving range instruction;[~~- and~~]

[~~(b) a minimum of three (3) semester hours shall be selected from areas of related safety work; and~~]

(b) a minimum of two (2) semester hours of Driver Education State Law and Policy through Utah Education Network;

(c) a minimum of one (1) semester hour of current/valid first aid and CPR training[~~-~~]; and

(d) a minimum of one (1) semester hour of DLD online examiners training.

(3) In order for a high school driver education teacher to be certified as a driver license examiner by the DLD, the teacher shall first be licensed and endorsed as provided in this Section R277-507-3 by the Board.

[~~D.~~](4) [~~A high school driver education teacher a~~]After meeting the criteria of Subsection [~~3~~](1), a high school driver education teacher shall obtain a valid and current certificate from the [~~Driver License Division~~]DLD to administer [~~knowledge~~]written and driving [~~skills~~]tests, [~~as required by and specified in~~]in accordance with Section 53A-13-208.

R277-507-4. Driver Education Program Standards.

[~~The~~]A teacher preparation program of an institution may be approved by the Board if it requires demonstrated competency by the teacher in:

(1) structuring, implementing, identifying and developing support materials related to:

(a) regular classroom instruction[~~,~~];

(b) multimedia instruction[~~,~~];

(c) driving simulation[~~,~~];

(d) off-street multiple car driving range experiences[~~,~~]; and

(e) on-street driving experiences;

(2) assisting students in examining and clarifying their attitudes and values about safety;

(3) understanding and explaining the basic principles of motor vehicle systems, dynamics, and maintenance;

(4) understanding and explaining the interaction of all highway transportation system elements;

(5) initiating emergency procedures under varying circumstances;

(6) motor vehicle operation and on-street instruction;

(7) understanding and explaining the physiological and psychological influences of alcohol and other drugs especially as they relate to driving;

(8) understanding and explaining seat belt safety;

(9) understanding and explaining the consequences of distracted driving;

([~~8~~]10) understanding and explaining due process in the legal system;

([~~9~~]11) communicating effectively with federal, state, and local agencies concerning safety issues;

(1[~~0~~]2) understanding and explaining the frequency, severity, nature and prevention of accidents related to driving which occur in various age groups in various life activities; and

(1[~~1~~]3) understanding and explaining the [~~UTAH DRIVER HANDBOOK~~]Utah Driver Handbook[~~, prepared by the Driver License Division~~].

R277-507-5. Endorsement Suspension.

[~~A.~~](1) [~~The~~]A driver education endorsement shall be immediately suspended and the previously-endorsed individual [~~shall~~]may not be allowed to teach driver education following the suspension or revocation of the individual's automobile operator's

license.[~~a conviction for a moving violation, alcohol-related or chargeable accident for which an individual's driver license is suspended or revoked.~~]

[~~B.~~](2) Once an individual's endorsement to teach has been suspended, [~~he~~]the individual shall [~~be required to~~]maintain a driving record free of convictions for moving violations or chargeable accidents [~~for which a driver license is suspended or revoked~~]for a period of two years before the endorsement to teach may be reinstated.

KEY: professional education, driver education, educator licensure
Date of Enactment or Last Substantive Amendment: [~~December 16, 2005~~]2017
Notice of Continuation: March 15, 2012
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a); 53A-1-401[~~(3)~~]; 53A-13-208

Education, Administration
R277-512
Online Licensure

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41007
FILED: 11/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments to Rule R277-512 provide for an online licensing database where the general public may access information classified as public under the Government Records Access and Management Act. Technical and conforming changes are also provided.

SUMMARY OF THE RULE OR CHANGE: The changes to Rule R277-512 provide updated definitions, provide for a publicly accessible online licensing database, and provide technical and conforming changes throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-13-208 and Subsection 53A-1-402(1)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendments to Rule R277-512 provide for a publicly accessible online licensing database and provide technical and conforming changes throughout the rule. The database is developed by existing staff within existing budgets, so there will likely be no cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: The amendments to Rule R277-512 provide for a publicly accessible online licensing database and provide technical and conforming changes throughout the rule, which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: The amendments to Rule R277-512 provide for a publicly accessible online licensing database and provide technical and conforming changes throughout the rule, which likely will not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to Rule R277-512 provide for a publicly accessible online licensing database and provide technical and conforming changes throughout the rule, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities. The database will provide a more streamlined process for the general public to obtain public information on Utah licensed educators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-512 provide for a publicly accessible online licensing database and provide technical and conforming changes throughout the rule, which likely will not result in any compliance costs for affected persons.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov or mail at PO BOX 144200, Salt Lake City, UT 84114-4200

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

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

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R277. Education, Administration.
R277-512. Online Licensure.
R277-512-[~~2~~]1. Authority and Purpose.

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

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

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

(2) The purpose of this rule is to provide procedures to ensure that consistency, quality, and fairness are maintained [~~as~~]for online license transaction[~~s change to online~~] processes.[~~Online licensure shall incorporate current and emerging electronic and information technologies to better meet the needs of applicants for new licenses, for current license holders, for recommending institutions, and for school districts and charter schools.~~]

R277-512-[~~1~~]2. Definitions.

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

[~~B.~~](1)(a) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on [~~all licensed Utah educators. The file includes information such as~~]licenses and license applications, which may include:

([~~1~~]a) personal directory information;

([~~2~~]b) educational background;

([~~3~~]c) endorsements;

([~~4~~]d) employment history;

([~~5~~]e) professional development information; and

([~~6~~]f) a record of disciplinary action taken by the Board against the educator.

(b) [~~All i~~]Information contained in an individual's CACTUS file [~~is available to the individual, but is classified private or protected under Section 63G-2-302 or 305 and is accessible only to specific designated individuals.~~]may only be released in accordance with Title 63G, Chapter 2, Government Records Access Management Act.

(2) "LEA," for purposes of this rule, includes the Utah Schools for the Deaf and Blind.

[~~C.~~](3) "License," for purposes of this rule, means an authorization issued by the Board which permits the holder to serve in a professional capacity in the public schools consistent with Section 53A-6-103.

[~~D.~~](4) "License record" means the electronic record of license holder and license applicant personal information and credentials maintained by the Superintendent on the CACTUS database[~~ at the USOE~~].

[~~E.~~](5) "License transaction" means the interactions between a license holder or applicant and the [~~USOE or Board~~] Superintendent that result in issuance of:

(a) a license[~~;~~];

(b) a renewal of a license[~~;~~]; or

(c) a modification of a license or license record[~~ by or from the USOE~~].

[~~F.~~](6) "Online license transaction" means those license transactions that take place via the process maintained by [~~the USOE~~]a contracted provider, chosen by the Superintendent.

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

[~~H.~~](7) "Utah Professional Practices Advisory Commission" or "UPPAC" means a Commission established to assist and advise the Board in matters relating to the professional practices of educators, consistent with [~~Sections 53A-6-301 through 53A-6-307.~~]Title 53A, Chapter 6, Part 3, Utah Professional Practices Advisory Commission.

R277-512-3. Procedures.

[~~A.~~](1) All current Board rules, statutory and Board definitions, and requirements established by statute and Board rules shall apply to all license transactions, regardless of whether the transactions occur online or by other means.

[~~B.~~](2)(a) Educators may receive an electronic or paper verification[~~s~~] of a licensure transaction[~~s~~,].

(b) [~~but these shall not constitute the~~]A verification provided under Subsection (2)(a) is not an educator license.

[~~C.~~](3) CACTUS shall be the final repository of educator information and credentials for [~~school districts, charter schools,~~]LEAs and other authorized CACTUS users.

[~~D.~~](4) Timelines, electronic processes and procedures, payment procedures, formats, and other elements of online licensure transactions shall meet standards of quality, ease of use, and accessibility consistent with those generally found in other wide-spread online processes.

[~~E. USOE~~](5) The Superintendent shall conduct educator licensing transactions[~~ shall take place~~] electronically.

[~~F.~~](6) Approved Utah educator preparation institutions, [~~school districts, charter schools~~]LEAs, and other CACTUS users shall cooperate with the [~~USOE~~]Superintendent by using the online tools and procedures provided by the [~~USOE~~]Superintendent for transmission of information related to licensing.

R277-512-4. Audits.

[~~A.~~](1) The [~~USOE~~]Superintendent shall establish an auditing program that provides for[~~ adequate~~] review of online licensure transactions[~~.~~] for:

(a) [~~The purpose of audits is to ensure the~~]accuracy[~~;~~];

(b) reliability[~~;~~]; and

(c) completeness[~~ of online licensure transactions~~].

[~~B. All licensure transactions may be subject to audit within one year of the completion of the transaction or at any time for cause. Audits shall be conducted by USOE staff.~~]

(2) The Superintendent may subject any licensure transaction to audit:

(a) within one year without cause; or

(b) at any time with cause.

[~~C.~~](3) [~~Individuals designated by school districts and charter schools and approved by the USOE shall~~]An LEA may designate individuals, subject to approval by the Superintendent, to have the opportunity to access and review licenses acquired or renewed online to verify licensure of employees.

[~~D.~~](4)(a) [~~Audits~~]An audit conducted under Subsection (2) may include a review of license holder documentation to verify the statements made by the license holder as part of the online license transaction.

(b) In order to verify that the assertions made by a license holder were accurate, a [~~The~~] license holder may be required to submit:

(i) transcripts[~~;~~];

(ii) records of participation in professional development activities[~~;~~];

(iii) supervisor letters or endorsements[~~;~~]; and

(iv) other documentation [~~needed to determine that the assertions of the license holder made during the license transaction were accurate and verifiable.~~]requested by the Superintendent.

[~~E.~~](5) If an audit finds that a license applicant or license holder intentionally provided false, misleading, or otherwise inaccurate information in a license transaction, the audit findings shall be forwarded to [~~the Utah Professional Practices Advisory Commission~~]UPPAC.

[~~F.~~](6) A license transaction that was completed on the basis of inaccurate information may be voided at any time with[~~reasonable~~] notice to the license holder.

R277-512-5. License Applicant and License Holder Responsibilities.

[~~A.~~](1) A [~~L~~]license applicant[~~s and~~] or license holder[~~s~~] shall supply accurate and complete information[~~as requested~~] in all license transactions.

[~~B.~~](2) A [~~L~~]license applicant[~~s and~~] or license holder[~~s~~] shall maintain files and documentation of the information provided in [~~all~~]a license transaction[~~s~~] for a period of one year after the completion of the license transaction.

[~~C.~~](3) A license applicant or license holder that supplies inaccurate, misleading, false, or otherwise unreliable information in any license transaction shall be subject to the full range of disciplinary actions that may be applied by [~~the Utah Professional Practices Advisory Commission~~]UPPAC and the Board.

R277-512-6. Licensing Costs.

[~~A.~~](1) [~~The Utah legislative intent and the intent of the Board is that the~~]The licensing process [~~should~~]shall be automated and[~~should be~~] self-sustaining.

(2) The Superintendent shall incorporate current and emerging electronic and information technologies to better meet the needs of applicants for new licenses, for current license holders, for recommending institutions, for LEAs and the general public.

[~~B.~~](3) The [~~USOE~~]Superintendent shall determine and assess licensing fees to license applicants that cover the actual and complete costs of licensing.

[~~C.~~](4) The [~~USOE~~]Board's Licensing Section shall maintain accurate records and documentation of:

(a) fees assessed[~~and~~];

(b) costs of online licensing; and

(c) any [~~USOE~~]Superintendent review responsibilities.

R277-512-7. Licensing Records.

[~~A. Records~~](1) The Superintendent shall record documentation of online licensure transactions[~~shall be recorded~~] in CACTUS.

[~~B.~~](2)(a) License applicants shall be required to submit a social security number in order to be licensed.

(b) A license applicant's [~~S~~]social security number[~~s~~] shall be [~~carefully protected and only individuals specifically designated by school districts/charter schools and approved by the USOE shall have access to licensing files~~]classified as private in accordance with Subsection 62G-2-302(2)(d).

[~~C.~~](3) A [~~L~~]license applicant[~~s and~~] or license holder[~~s~~] shall update personal CACTUS information in a timely manner.

[~~D.~~](4) CACTUS records may be used by the [~~USOE~~]Superintendent for research and other valid educational purposes.

(5) The following records shall be classified as public pursuant to Title 63G, Chapter 2, Government Records Access and Management Act:

(a) licenses issued by the Board;

(b) endorsements on an educator's license;

(c) an educator's current assignment;

(d) an educator's assignment history in Utah public schools;

(e) an educator's education background; and

(f) Board disciplinary action against an educator's license, which resulted in:

(i) letter of reprimand;

(ii) suspension;

(iii) revocation; or

(iv) reinstatement.

(6) The Superintendent shall provide an online licensing database where the general public may access the information classified as public in Subsection (5).

KEY: online, licensure
Date of Enactment or Last Substantive Amendment: [~~January 23, 2007~~]2017
Notice of Continuation: January 17, 2012
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a); 53A-1-401[~~(3)~~]

Education, Administration
R277-517
LEA Codes of Conduct

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 41008
FILED: 11/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new Rule R277-517 provides for a local education agency (LEA) to adopt a code of conduct for the LEA's staff.

SUMMARY OF THE RULE OR CHANGE: This new Rule R277-517 provides definitions, a requirement for LEAs to adopt a code of conduct for its staff, and a list of items that need to be included in the LEA's code of conduct.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This new Rule R277-517 provides for LEAs to adopt a code of conduct, which likely will not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: This new Rule R277-517 provides for LEAs to adopt a code of conduct, which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: This new Rule R277-517 provides for LEAs to adopt a code of conduct, 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 R277-517 provides for LEAs to adopt a code of conduct, 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 R277-517 provides for LEAs to adopt a code of conduct, which likely will not result in any compliance costs for affected persons.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov or mail at PO BOX 144200, Salt Lake City, UT 84114-4200

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

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

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R277. Education, Administration.
R277-517. LEA Codes of Conduct.
R277-517-1. Authority and Purpose.
(1) This rule is authorized by:
(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and
(b) Section 53A-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 require LEAs to create a code of conduct applicable to the LEA's staff.
R277-517-2. Definitions.
(1) "Boundary violation" means the same as that term is defined in R277-515.
(2) "Staff" or "staff member" means an employee, contractor, or volunteer with unsupervised access to students.

R277-517-3. Required Code of Conduct.
(1) Each LEA shall adopt a code of conduct applicable to the LEA's staff.
(2) A code of conduct, adopted pursuant to Subsection (1), shall include, at a minimum:
(a) a statement that a staff member should avoid boundary violations, as defined in Rule R277-515, with students;
(b) a statement that a staff member may not subject a student to:
(i) physical abuse;
(ii) verbal abuse;
(iii) sexual abuse; or
(iv) mental abuse;
(c) a statement that a staff member shall report any suspected incidents of:
(i) physical abuse;
(ii) verbal abuse;
(iii) sexual abuse;
(iv) mental abuse; or
(v) neglect;
(d) a statement that a staff member may not touch a student in a way that makes a reasonably objective student feel uncomfortable;
(e) a statement regarding appropriate verbal or electronic communication between a staff member and a student;
(f) a statement regarding providing gifts, special favors, or preferential treatment to a student or group of students;
(g) a statement that a staff member shall not discriminate against a student on the basis of sex, race, religion, or any other prohibited class;
(h) a statement regarding appropriate use of electronic devices and social media for communication between a staff member and a student;
(i) a statement regarding use of alcohol, tobacco, and illegal substances during work hours and on school property;
(j) a statement that a staff member is required to:
(i) report any suspicion of child abuse or bullying to the proper authorities;
(ii) annually read and sign all policies related to identifying, documenting, and reporting child abuse; and
(iii) for an employee or contractor, annually attend abuse prevention training required in Section 53A-13-112; and
(3) An LEA shall post a code of conduct adopted pursuant to Subsection (1) on the LEA's website.
(4) An LEA shall provide information to staff that they should report and how to report:
(a) known violations of the LEA's code of conduct; and
(b) known violations of the Utah Educator Standards contained in R277-515.

KEY: codes of conduct
Date of Enactment of Last Substantive Amendment: 2017
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401

Education, Administration
R277-531
Public Educator Evaluation Requirements (PEER)

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41009
FILED: 11/15/2016

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-531 is amended to eliminate provisions not required by Utah law and to include additional requirements.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-531 eliminate provisions not required by Utah law and include a requirement that a school district implement an employee compensation system that is aligned with the school district's wage or salary schedule and is consistent with the provisions of Section 53A-8a-601.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-8a-301 and Subsection 53A-1-402(1)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendments to Rule R277-531 provide requirements for school districts, which likely will not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: The amendments to Rule R277-531 provide requirements for school districts to implement an employee compensation system that is aligned with the school district's wage or salary schedule. It is anticipated that the compensation system will be implemented by existing staff and within existing budgets, so there will likely be no cost or savings to local government.
♦ SMALL BUSINESSES: The amendments to Rule R277-531 provide requirements for school districts, which likely will not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to Rule R277-531 provide requirements for school districts to implement an employee compensation system that is aligned with the school district's wage or salary schedule. Employees may have a clearer expectation of compensation based on the system, but will likely see no cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-531 provide requirements for school districts, which likely will not result in any compliance costs for affected persons.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov or mail at PO BOX 144200, Salt Lake City, UT 84114-4200

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

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

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R277. Education, Administration.
R277-531. Public Educator Evaluation Requirements (PEER).
R277-531-1. 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;

(c) Subsections 53A-1-402(1)(a)(i) and (ii), which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services; and

(d) Section 53A-8a-301, which directs that the Board adopt rules to guide school district employee evaluations.

(2) The purpose of this rule is to provide a statewide educator evaluation system framework that includes required Board directed expectations and components and additional school district determined components and procedures to ensure the availability of data about educator effectiveness.

(3) The process shall:

(a) focus on the improvement of high quality instruction and improved student achievement;

(b) include common data that can be aggregated and disaggregated to inform Board and school district decisions about retention, preparation, recruitment, and improved professional learning practices; and

(c) ensure school districts engage in a consistent process statewide of educator evaluation.

R277-531-2. Definitions.

(1) "Educator" means an individual licensed under Section 53A-6-103 and who meets the requirements of Rule R277-502.

(2) "Educator Evaluation Program" means a school district's process, policies, and procedures for evaluating an educator's performance according to the educator's various assignments.

(3) "Formative evaluation" means an evaluation that provides an educator with information and assessments on how to improve the educator's performance.

(4) "Instructional quality data" means data acquired through observation of an educator's instructional practices.

(5) "Joint educator evaluation committee" means the local committee described under Section 53A-8a-403 that develops and assesses a school district evaluation program.

(6) "School administrator" means an educator:

(a) serving in a position that requires a Utah Educator License with an Administrative area of concentration; and

(b) who supervises Level 2 educators.

[~~(7) "Student growth score" means a measurement of a student's achievement towards educational goals in the course of a school year.~~]

([~~8~~]7) "Summative evaluation" means an evaluation that is used to make annual decisions or ratings of an educator's performance and may inform decisions on salary, confirmed employment, personnel assignments, transfers, or dismissals.

(9) "Utah Effective Educator Standards" means:

(a) the Effective Teaching Standards established in Section R277-530-5;

(b) the Educational Leadership Standards established in Section R277-530-6; and

(c) the Educational School Counselor Standards established in Section R277-530-7.

(10) "Valid and reliable measurement tool" means an instrument that has proved consistent over time and uses non-subjective criteria that require minimal interpretation.

R277-531-3. Public Educator Evaluation Framework.

(1)[~~(a)~~] The Board provides the public education evaluation framework described in this section, which includes general evaluation system areas and additional discretionary components required in a school district's educator evaluation system.

[~~(b) A school district's educator evaluation system shall conform to the framework no later than the 2015-2016 school year.~~]

(2) A school district shall:

(a) have a joint educator evaluation committee;

([~~a~~]b) base the school district's educator evaluation system on the Utah Effective Educator Standards in Rule R277-530;

([~~b~~]c) establish and articulate performance expectations individually for all licensed school district educators;

([e]d) use valid and reliable measurement tools including, at a minimum:

(i) observations of instructional quality;

(ii) evidence of student growth;

(iii) parent and student input; and

(iv) other indicators as determined by the school district[~~.~~];

([~~d~~]e) provide an annual rating of educator performance using uniform statewide terminology and definitions, and include summative and formative components;

([e]f) direct the revision or alignment of all related school district policies, as necessary, to be consistent with the school district Educator Evaluation System; [~~and~~]

([~~f~~]g) use valid, reliable, and research-based measurements that shall:

(i) employ a variety of measurement tools;

(ii) measure student growth for educators;

(iii) provide evaluation for non-instructional licensed educators and administrators; and

([g]h) provide both formative and summative evaluation data.

(3) A school district may consider data gathered from tools to inform decisions about employment and professional learning.

(4) A school district shall discuss[~~, collaborate,~~] and protect the confidentiality of educator data in the evaluation process.

(5)(a) A school district evaluation system shall provide for clear and timely notice to educators of the components, timelines, and consequences of the evaluation process; and

(b) A school district evaluation system shall provide for timely discussion with evaluated educators to include professional growth plans as required in Rule R277-500 and evaluation conferences[~~; and~~].

[~~(c) A school district evaluation system shall protect personal data gathered in the evaluation process.~~]

(6) A school district evaluation system shall provide support for instructional improvement, including:

(a) assessing the professional learning needs of educators; and

(b) identifying educators who do not meet expectations for instructional quality and providing support as appropriate at the school district level, which may include providing educators with mentors, coaches, and specialists in effective instruction, and setting timelines and benchmarks to assist educators toward greater improved instructional effectiveness and student achievement.

(7) A school district evaluation system shall maintain records and documentation of required educator evaluation information.

(8) A school district evaluation system shall require the evaluation of all licensed educators at least once a year in accordance with Section R277-533.

(9) A school district evaluation system shall provide at least an annual rating for each licensed educator, including teachers, school administrators, and other non-teaching licensed positions, using Board-directed statewide evaluation terminology and definitions.

(10) A school district evaluation system shall provide for the evaluation of all provisional educators, as defined by the school district under Section 53A-8a-405, at least twice yearly.

(11) A school district evaluation system shall include the following specific educator performance criteria:

(a) school district-determined instructional quality measures;

(b) complete integration of student growth score; and

(c) other measures as determined by the school district, including data required from student/parent input.

[~~(12) The Board shall determine weightings for specific educator performance criteria to be used in the school district's evaluation system.~~

~~(13) A school district evaluation system shall include a plan for recognizing educators who demonstrate exemplary professional effectiveness, at least in part, by student achievement.~~]

(1[~~4~~]2) A school district evaluation system shall identify potential employment consequences, including discipline and termination, if an educator fails to meet performance expectations.

(1[~~5~~]3) A school district evaluation system shall include a review or appeals procedure for an educator to challenge the process of a summative evaluation that provides for adequate and timely due process for the educator consistent with Section 53A-8a-406(2).

(1[~~6~~]4) A school district may include additional components in its evaluation system.

(1[~~7~~]5) A local board of education shall review and approve its school district's proposed evaluation systems in an open meeting prior to the local board's submission to the Board[~~ for review and approval~~].

(16) A school district shall report educator effectiveness data to the Superintendent annually, on or before June 30.

R277-531-4. Board Support and Monitoring of LEA Evaluation Systems.

[~~(1) The Board establishes a state evaluation advisory committee to provide ongoing review and support for school districts as school districts develop and implement evaluation systems consistent with the law (2) and this rule.~~

~~(2) The Committee, described in Subsection (1), shall:~~

~~(a) analyze school district evaluation data for purposes of:~~

~~(i) reporting;~~

~~(ii) assessing instructional improvement; and~~

~~(ii) assessing student achievement;~~

~~(b) review required Board evaluation components regularly and evaluate their usefulness in providing a consistent statewide framework for educator evaluation, instructional improvement and commensurate student achievement; and~~

~~(c) review school district educator evaluation plans for alignment with Board requirements.~~]

[~~(2)~~]The Superintendent, under supervision of the Board, shall:

(1) develop a model educator evaluation system that includes performance expectations consistent with this rule[~~.~~];

([~~3~~]2) [~~The Superintendent shall~~]evaluate and recommend tools and measures for use by school districts as they develop and initiate their local educator evaluation systems[~~.~~]; and

[~~(4) The Superintendent shall provide professional learning and technical support to school districts to assist in evaluation procedures and to improve educators' ability to make valid and reliable evaluation judgments.~~]

(3) monitor a school district's evaluation system.

R277-531-5. [~~Implementation~~]Compensation.

[~~(1) Each school district shall:~~

~~(a) have an educator evaluation committee;~~

~~(b) design the required evaluation program, including pilot programs as desired; and~~

~~(c) report educator effectiveness data to the Superintendent annually on or before June 30.~~

~~(2) A school district shall implement an employee compensation system no later than the 2016-2017 school year that is aligned with the school district's wage or salary schedule and is consistent with the provisions of Section 53A-8a-601(2).~~]

(1) A school district shall implement an employee compensation system, no later than the 2018-19 school year, that is aligned to the school district's educator evaluation system.

(2) An educator's annual advancement on an adopted salary schedule shall be based primarily upon an evaluation system that differentiates among four levels of performance as described in Section 53A-8a-405 and R277-533, unless the educator:

(a) is a provisional educator; or

(b) is in the first year of an assignment, including a new subject, grade level, or school.

KEY: educators, evaluations, requirements
Date of Enactment or Last Substantive Amendment: [~~October 11 2016~~]2017
Notice of Continuation: August 15, 2016
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(a)(i); 53A-1-401

Education, Administration
R277-533
District Educator Evaluation Systems

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41010
FILED: 11/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-533 is amended to eliminate provisions not required by Utah law and provide updated provisions.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-533 provide updated definitions and provisions and eliminate provisions not required by Utah law.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Title 53A, Chapter 8, Part 4

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The amendments to Rule R277-533 provide updated definitions and provisions and eliminate provisions not required by Utah law, which likely will not result in a cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: The amendments to Rule R277-533 provide updated definitions and provisions and eliminate provisions not required by Utah law, which likely will not result in a cost or savings to local government.
♦ SMALL BUSINESSES: The amendments to Rule R277-533 provide updated definitions and provisions and eliminate provisions not required by Utah law, which likely will not result in a cost or savings to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to Rule R277-533 provide updated definitions and provisions and eliminate provisions not required by Utah law, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-533 provide updated definitions and provisions and eliminate provisions not required by Utah law, which likely will not result in any compliance costs for affected persons.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Stallings by phone at 801-538-7656, by FAX at 801-538-7768, or by Internet E-mail at angie.stallings@schools.utah.gov or mail at PO BOX 144200, Salt Lake City, UT 84114-4200

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

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

R277. Education, Administration.
R277-533. District Educator Evaluation Systems.
R277-533-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Title 53A, Chapter 8a, Part 4, Educator Evaluations, which requires the Board to make rules to establish a framework for the evaluation of educators and set policies and procedures related to educator evaluations; and

(c) 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) specify the requirements for district Educator Evaluation Systems Policies;

(b) describe the required components of district Educator Evaluation Systems; and

(c) establish requirements for how the Annual Summative Educator Evaluation Rating [~~shall be computed and~~]is reported.

R277-533-2. Definitions.

[~~(1) "Attribute" means the process of linking the results of student growth and learning to a specific educator or group of educators using the same SLO.~~]

([~~2~~]1) "Evaluator" means a person who is responsible for an educator's overall evaluation, including:

(a) professional performance;

(b) student growth;

(c) stakeholder input; and

(d) other indicators of professional improvement.

[~~(3) "PEER Committee" means the Public Educator Evaluation Requirements Committee established by the Superintendent.~~]

([~~4~~]2) "Rater" means a person who conducts an observation of an educator related to an educator's evaluation.

([~~5~~]3) "School district" includes the Utah Schools for the Deaf and the Blind.

[~~(6) "Student learning objective" or "SLO" means a content and grade or course specific measurable learning objective that can be used to document student learning over a defined period of time.~~]

([~~7~~]4) "System" means a school district's educator evaluation system.

R277-533-3. School District Educator Evaluation Systems.

(1) A local school board shall adopt a district educator evaluation system in consultation with a joint committee established by the local school board as described in Section 53A-8a-403.

(2) A district educator evaluation system shall:

(a) include the components required in Section 53A-8a-405;

(b) include the following four differentiated levels of performance:

(i) highly effective;

(ii) effective;

(iii) emerging/minimally effective; and

(iv) not effective;

(c) use multiple lines of evidence in evaluation, including:

(i) professional performance, as described in Section R277-533-4;

(ii) student growth, as described in Section R277-533-5;

(iii) stakeholder input, as described in Section R277-533-5; and

(iv) other indicators of professional improvement as required by the school district;

(d) require regular conferences between an educator and an evaluator;

(e) provide a process for an educator to contribute additional information to inform the educator's evaluation at several intervals throughout the process;

(f) measure an educator's professional performance when the educator is working in a professional capacity with students, parents, colleagues, or community members;

(g) provide a process for an educator to:

(i) analyze stakeholder input[~~, including input from parents, students, or teachers~~];

(ii) analyze data related to performance; and

(iii) develop appropriate responses to the information;

(h) provide a procedure to include an educator's response to stakeholder data in the rating calculation;

(i) include a process for an evaluator to give an educator specific, measurable, actionable, and written direction regarding an educator's needed improvement and recommended course of action;

(j) provide a process for an educator to request a review of the implementation of the educator's evaluation, as described in:

(i) Subsection 53A-8a-406(3); and

(ii) Section R277-533-8;

(k) include multiple observations as described in Section R277-533-4; and

(l) provide a description of the methods for gathering, using, and protecting educator data.

(3) To form the school district's system, a local school board may adopt:

(a) the Utah Model Educator Evaluator System established by the Board;

(b) an adapted system; or

(c) a school district-developed system[~~ evaluated by the PEER Committee~~], consistent with Rules R277-530, R277-531, and this rule.

[~~(4) The PEER Committee, as described in Rule R277-531, shall review and evaluate a school district's educator effectiveness system including:~~

~~(a) professional performance;~~

~~(b) rater reliability;~~

~~(c) student growth; and~~

~~(d) stakeholder input.~~

~~(5) The PEER Committee shall review and evaluate a school district's system.~~]

([~~6~~]4) An educator is responsible for:

(a) improving the educator's performance, using resources offered by the school district; and

(b) demonstrating acceptable levels of improvement in any designated area of deficiency.

R277-533-4. Evaluators and Standards for Education Observations.

(1) A school district's system shall include observations.

(2) The school district shall use observation tools that:

(a) are aligned with the Utah Effective Educator Standards described in Rule R277-530 at the indicator level; and

(b) include multiple observations at appropriate intervals.

(3) A school district's evaluation system shall:

(a) include an orientation for all educators conducted by the principal or designee as required in Section 53A-8a-404;

(b) include multiple observation items;

(c) a final rating for each observation item described in Subsection (3)(b); and

(d) include an opportunity for an educator to contribute additional information to inform their rating at several intervals throughout the process.

(4) To ensure a valid evaluation system, a school district shall provide professional development opportunities to all raters and evaluators of licensed educators to:

(a) improve a rater or evaluator's abilities; and

(b) give the rater or evaluator an opportunity to demonstrate the rater's abilities to rate an educator in accordance with the Utah Effective Educator Standards described in Rule R277-530.

(5) A school district shall establish a school district rater reliability plan.

(6) A school district rater reliability plan shall:

(a) require school district to compare a rater's decisions to standardized ratings established by a committee of expert raters;

(b) require a school district to measure a rater's skills and reassess the rater's skills at appropriate intervals to maintain system quality;

(c) designate qualified raters as certified;

(d) assure that an educator is rated by a certified rater;

(e) require a school district to offer a rater opportunities to improve the rater's skills through instruction and practice; and

(f) maintain high standards of rater accuracy.

R277-533-5. Student Growth[~~ Calculations~~] and Stakeholder Input.

[~~(1) A Utah educator's contribution to a student's growth and learning shall be measured using SLOs.~~

~~(2) A school district shall attribute an SLO to an educator as part of an educator's evaluation in accordance with the school district's system policies.~~]

([~~3~~]1) A school district shall[~~:~~

~~(a)~~] ensure that [~~an SLO described in Subsection (1)~~]a student growth measurement includes the following[~~:~~

~~(i)~~] three required components:

([~~A~~]a) learning goals measuring long-term outcomes linked to the appropriate specific content knowledge and skills from the Utah Core Standards;

([~~B~~]b) assessments; and

([~~C~~]c) targets for incremental monitoring of student growth[~~; and~~

~~(ii) learning goals for an educator linked to the appropriate specific content knowledge and skills from the Utah Core Standards;~~

~~(b) provide professional development to an educator for the educator to gain the knowledge and skills necessary to sustain wide-scale implementation of an SLO process;~~

~~(c) establish a local review process to assist the school district in developing comparability and consistency of SLOs at each grade level or span; and~~

~~(d) design a structure and process for providing professional development to the school district's educators and administrators~~].

([~~4~~]2)(a) A school district's system shall include[~~, a component for~~] stakeholder input for educators, principals, and administrators, [~~which includes~~]including annual input from students and parents.

(b) In addition to the stakeholder input described in Subsection (4)(a), stakeholder input for principals and other administrators shall include input from teachers and support professionals.

[~~(c) A school district may attribute stakeholder input to an educator, principal, or other administrator if the data gathered for the stakeholder input is gathered using:~~

~~(i) appropriate methods of gathering data as described in the school district's system plan; and~~

~~(ii) quality practices.~~]

([~~5~~]3) A school district's system shall:

(a) allow an educator to have an opportunity to respond to stakeholder input; and

(b) consider an educator's response described in Subsection (5)(a) as part of the educator's final rating.

R277-533-6. Computing the Annual Summative Rating.

(1) A school district shall base an educator's component ratings on:

(a) actual observations of the educator's performance; and

(b) educator, evaluator, student growth, or other stakeholder data gathered, calculated, or observed that is aligned with standards and rubrics.

[~~(2) A school district shall combine an educator's component ratings using the following formula:~~

~~(a) 70% for professional performance;~~

~~(b) 20% for student growth; and~~

~~(c) 10% for stakeholder input.~~]

([~~3~~]2) A school district shall report summative scores annually for all educators using the following approved terminology for reporting:

(d) highly effective 3;

(c) effective 2;

(b) minimal/emerging effective 1; and

(a) not effective 0.

R277-533-7. Minimal or Emerging Effective Category.

If an evaluator rates an educator's performance within the minimal or emerging effective category, the rater shall:

(1) designate an educator as emerging effective if:

(a) the educator:

(i) holds a Level 1 educator license; or

(ii) is being served by the school district's Entry Years Enhancement (EYE) program described in Rule R277-522; or

(b) the educator:

(i) received a new or different teaching or leadership assignment within the last school year; or

(ii) is developing in that area; or

(2) designate an educator as minimally effective if the educator:

(a) holds a Level 2 educator license; and

(b) is teaching or leading in a familiar assignment.

R277-533-8. Evaluation Reviews.

(1) An educator who is not satisfied with a summative evaluation may request a review in writing of the summative evaluation within 15 calendar days after receiving the written summative evaluation.

(2) A school district shall conduct a review of an educator's summative evaluation:

(a) as described in this section; and

(b) the requirements of Section 53A-8a-406.

(3) A review described in Subsection (2) shall be conducted:

(a) by a certified rater:

(i) with experience evaluating educators; and

(ii) not employed by the school district; and

(b) in accordance with the Utah Effective Educator Standards described in Rule R277-530.

(4) A certified rater described in Subsection (3) shall:

(a) review:

(i) the school district's educator evaluation policies and procedures;

(ii) the evaluation process conducted for the educator; [~~and~~]

(iii) the evaluation data from the professional performance, student growth, and stakeholder input components; and

(iv) an educator's written response, if submitted as described in Subsection 53A-8a-406(1)(b); and

(b) report the certified rater's findings, in writing, to the school district's superintendent for action.

(5) The school district shall determine if the initial educator evaluation was issued in accordance with:

(a) the school district's educator evaluation policies;

(b) the requirements of the performance standards;

(c) Title 53A, Chapter 8a, Public Education Human Resource Management Act;

(d) Rule R277-531; and

(e) this rule.

R277-533-9. Educator Evaluation Data.

[~~(1)~~]A school district shall report to the Board annually on or before June 30 the information necessary for the Board to make the report required by Section 53A-8a-410.

[~~(2) A school district shall maintain confidential records of the educator effectiveness component data of individual educators in accordance with:~~

~~(a) Rule R277-487; and~~

~~(b) state law.~~

~~(3) A school district's system may be monitored by the Board.~~]

KEY: educators, evaluations
Date of Enactment or Last Substantive Amendment: [~~August 11, 2016~~]2017
Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1-401

Environmental Quality, Water Quality
R317-1
Definitions and General Requirements

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40995
FILED: 11/15/2016

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This administrative rule will govern implementation of the new provision passed by the Utah Legislature for Section 19-5-105.3 in the 2016 General Session. Following the passage of S.B. 110, a consortium of 12 organizations made a request to EPA Region 8 that it withdraw its delegation of authority to the Division of Water Quality (DWQ) to administer the federal Clean Water Act programs in Utah. The Environmental Protection Agency (EPA) also registered concerns about the statutory changes resulting from the legislation. Over the last five months, DWQ staff has worked with EPA, POTW managers, and representatives of Western Resource Advocates, who presents the referenced 12 organizations, to craft these administrative rules to satisfy their respective concerns.

SUMMARY OF THE RULE OR CHANGE: The changes are: 1) the inclusion of new definitions in Section R317-1-1, including several terms that were defined or used in Section 19-5-105.3; 2) a new Section R317-1-10 adds a provision for DWQ to initiate an Independent Scientific Review when the Director determines that an issue may have a significant financial impact on stakeholders or when an action may be precedent-setting or controversial; and 3) Section R317-1-10 also includes the process for conducting an Independent Peer Review under Section 19-5-105.3.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-105.3

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The legislature allocated funds to the DWQ to administer the new statute. The associated administrative rules do not change this allocation or its use by DWQ.
♦ LOCAL GOVERNMENTS: The statutory changes to Section 19-5-105.3 would lead to local governmental entities incurring the costs of the peer review process when choosing to challenge proposals from DWQ. The associated rule change does not add any additional costs to local governments.
♦ SMALL BUSINESSES: The statutory changes to Section 19-5-105.3 would lead to businesses or individuals incurring the costs of the peer review process when choosing to challenge proposals from DWQ. The associated rule change does not add any additional costs to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The rule provides for stakeholder input on the Independent Scientific Review process but does not require any action or budgetary commitments from others.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs will vary for affected persons who use this peer review process. The affected persons will be responsible to cover the costs of the process, which will have a predetermined time table, so that costs can be estimated prior to actual implementation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule outlines a clear process for DWQ to engage in independent scientific reviews. DWQ has an interest in ensuring that its decisions are grounded in good science, and the rule provides a clear and fair process for reviews. This rule will have no additional fiscal impacts on businesses beyond those created in the original legislation.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
WATER QUALITY
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov or mail at PO BOX 144870, Salt Lake City, UT 84114-4870

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.
R317-1. Definitions and General Requirements.
R317-1-1. Definitions.
Note that some definitions are repeated from statute to provide clarity to readers.

"Assimilative Capacity" means the difference between the numeric criteria and the concentration in the waterbody of interest where the concentration is less than the criterion.

"Biological assessment" means an evaluation of the biological condition of a water body using biological surveys and other direct measurements of composition or condition of the resident living organisms.

"Biological criteria" means numeric values or narrative descriptions that are established to protect the biological condition of the aquatic life inhabiting waters that have been given a certain designated aquatic life use.

"Board" means the Utah Water Quality Board.

"BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

"Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation of the State.

"Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

"CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

"Challenging Party" means a Person who has or is seeking a permit in accordance with Title 19, Chapter 5, the Utah Water Quality Act and chooses to use the independent peer review process to challenge a Proposal as defined in Subsection 19-5-105.3(1)(a).

"COD" means chemical oxygen demand.

"Conflict of Interest" means a Person who has any financial or other interest which has the potential to negatively affect services to the Division or Challenging Party because it could impair the individual's objectivity or it could create an unfair competitive advantage for any Person or organization.

"Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water rules.

"Digested sludge" means sludge in which the volatile solids content has been reduced [~~to about 50% ~~]by at least 38% using a suitable biological treatment process.

"Director" means the Director of the Division of Water Quality.

"Division" means the Utah State Division of Water Quality.

"Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

"Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

"Existing Uses" means those uses actually attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards.

"Expert" means a person with technical expertise, knowledge, or skills in a subject matter of relevance to a specific water quality investigation, HISA, or Proposal including persons from other regulatory agencies, academia, or the private sector.

"Human-induced stressor" means perturbations directly or indirectly caused by humans that alter the components, patterns, and/or processes of an ecosystem.

"Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

"Highly Influential Scientific Assessment (HISA)" means a Scientific Assessment developed by the Division or an external Person, that has material relevance to a decision by the Division, and the Director determines could have a significant financial impact on either the public or private sector or is novel, controversial, or precedent-setting, and is not a new or renewed permit issued to a Person.

"Independent Peer Review" means scientific review conducted on request from a Challenging Party in accordance with Section 19-5-105.3 and is a subcategory of Independent Scientific Review.

"Independent Scientific Review" means any technical or scientific review conducted by Experts in an area related to the material being reviewed who were not directly or indirectly involved with the development of the material to be reviewed and who do not have a real or perceived conflict of interest. When an Independent Peer Review is conducted, the conditions in Subsection 19-5-105.3(5) shall apply.

"Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

"Influent" means the total wastewater flow entering a wastewater treatment works.

"Great Salt Lake impounded wetland" means wetland ponds which have been formed by dikes or berms to control and retain the flow of freshwater sources in the immediate proximity of Great Salt Lake.

"Large underground wastewater disposal system" means the same type of device as an onsite wastewater system except that it is designed to handle more than 5,000 gallons per day of domestic wastewater, or wastewater that originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other underground wastewater disposal system not covered under the definition of an onsite wastewater system. The Division controls the installation of such systems.

"Onsite wastewater system" means an underground wastewater disposal system for domestic wastewater which is designed for a capacity of 5,000 gallons per day or less and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums and twin homes. It usually consists of a building sewer, a septic tank and an absorption system.

"Operating Permit" is a State issued permit issued to any wastewater treatment works covered under Rules R317-3 or R317-5 with the following exceptions:

A. Any wastewater treatment permitted under Ground Water Quality Protection Rule R317-6.

B. Any wastewater treatment permitted under Underground Injection Control (UIC) Program Rule R317-7.

C. Any wastewater treatment permitted under Utah Pollutant Discharge Elimination System (UPDES) Rule R317-8.

D. Any wastewater treatment permitted under Approvals and Permits for a Water Reuse Project Rule R317-13.

E. Any wastewater treatment permitted by a Local Health Department under Onsite Wastewater Systems Rule R317-4.

"Person" means any individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state[~~company, or body politic, including any agency or instrumentality of the United States government (Section 19-1-103)~~].

"Point source" means any discernible, confined and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

"Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

"Proposal" means any science-based initiative proposed by the division on or after January 1, 2016, that would financially impact a Challenging Party and that would:

A. change water quality standards;

B. develop or modify total maximum daily load requirements;

C. modify wasteloads or other regulatory requirements for permits; or

D. change rules or other regulatory guidance. A Proposal is not an individual permit issued to a Person, nor is it a technology based limit applied in accordance with Effluent limitations, 33 U.S.C. Sec. 1311, National pollutant discharge elimination system, 33 U.S.C. Sec. 1342, and Information and guidelines, 33 U.S.C. Sec. 1314.

"Regulatory requirements" for permits means the methods or policies used by the Division to derive permit limits such as wasteload analyses, reasonable potential determinations, whole effluent toxicity policy, interim permitting guidance, antidegradation reviews, or Technology Based Nutrient Effluent Limit requirements.

"Scientific Assessment" means an evaluation of a body of credible scientific or technical knowledge that synthesizes scientific literature, data analysis and interpretation, and models, and includes any assumptions used to bridge uncertainties in the available information.

"Scientific basis" means empirical data or other scientific findings, conclusions, or assumptions used as the justification for a rule, regulatory guidance, or a regulatory tool.

"Scientifically necessary to protect the designated beneficial uses of a waterbody" as referenced in Subsection 19-5-105.3(8) means a Technology Based Nutrient Effluent Limit that under current and future growth projections, will:

A. prevent circumstances that would cause or contribute to an impairment of any designated or existing use in the receiving water or downstream water bodies based on Utah's water quality standards, Section R317-2-7; or

B. improve water quality conditions that are causing or contributing to any existing impairment in the receiving water or downstream water bodies, as defined by Utah's water quality standards, Section R317-2-7.

"Sewage" is synonymous with the term "domestic wastewater".

"Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

"Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

"SS" means suspended solids.

"Technology Based Nutrient Effluent Limit" means maximum nutrient limitations based on the availability of technology to achieve the limitations, rather than based on a water quality standard or a total maximum daily load.

Total Maximum Daily Load (TMDL) means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources.

"Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

"TSS" means total suspended solids.

"Underground Wastewater Disposal System" means a system for underground disposal of domestic wastewater. It includes onsite wastewater systems and large underground wastewater disposal systems.

"Use Attainability Analysis" means a structured S[**s**]cientific A[**a**]ssessment of the factors affecting the attainment of the uses specified in Section R317-2-6. The factors to be considered in such an analysis include the physical, chemical, biological, and economic use removal criteria as described in 40 CFR 131.10(g) (1-6).

"Wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (Section 19-5-102).

"Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by wastes is not included.

"Waters of the state" means all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

"Water Quality Based Effluent Limit (WQBEL)" means an effluent limitation that has been determined necessary to ensure

that water quality standards in a receiving body of water will not be violated.

R317-1-10. Independent Scientific Review.

10.1 Applicability.

A. Independent Scientific Review may be used to solicit formal evaluations from outside Experts on the strengths and weaknesses of the scientific basis used to support any new Division Proposal or Highly Influential Scientific Assessment (HISA).

B. Independent Peer Reviews for permits shall be limited to modifications to wasteloads used in UPDES discharge permits, or the scientific basis of any other modification to a regulatory requirement used in developing permit limits. Review of individual permits shall follow existing adjudicative processes that govern their issuance or renewal in accordance with Subsection 19-5-105.3(1)(c)(iii).

C. The Director shall initiate an Independent Scientific Review when one of the following conditions is met:

1. A Challenging Party requests an Independent Peer Review on the scientific basis of a Division Proposal under Section 19-5-105.3.

2. The Director makes a determination that a new Scientific Assessment is a Highly Influential Scientific Assessment (HISA) and that sufficient resources are available to support an Independent Scientific Review.

10.2 Independent Scientific Review process.

A. Independent Scientific Reviews shall be conducted in general accordance with the guidance contained in the United States Environmental Protection Agency's Science and Technology Policy Council Peer Review Handbook 4th Edition.

B. Independent Scientific Reviews shall entail development of a scope of work for review; selection of independent Experts; management of the Independent Scientific Reviews; submission by Experts of findings and recommendations; development of a Division response to review findings; finalization of the Proposal or HISA; and publication for public comment.

1. The Director shall prepare a scope of work that defines the objectives of an Independent Scientific Review and provide instructions for the Experts. The Director shall also prepare a schedule for the review. In the case of an Independent Peer Review the Director will seek and incorporate input from the Challenging Party into the development of the scope of work.

a. The scope of work shall include several components:

i. A summary of the Proposal or HISA under consideration and reasons for the review.

ii. The specific charge questions that articulate the issues, areas of concern, or advice sought through the Independent Scientific Review process. Charge questions shall generally focus on the degree of confidence, certainty, and major data gaps with respect to the interpretation or application of the scientific basis of a proposed rule, regulatory guidance, or regulatory tool.

iii. A compilation of data, reports or other scientific information that has a material influence on the scientific basis of the Proposal or HISA under review.

iv. A statement of qualifications and expertise required for Experts that will be considered in conducting the Independent Scientific Review.

v. Other important instructions to Experts such as reporting expectations or communication protocols.

vi. A schedule for accomplishing the review.

b. The scope of work shall be made available for public comment for a minimum of 30 days and no more than 60 days to help identify missing data or missing elements of the charge questions. In the event of a condition which poses hazard to human health or the environment that may increase significantly during a review period, a shorter period may be specified. The Director shall prepare a response to any comments that are received and shall refine the scope of work, as appropriate, before sending the scope of work to the Experts.

2. The Director shall select Experts to conduct Independent Scientific Reviews using the following criteria:

a. Experts shall be selected who have demonstrated expertise in scientific disciplines that are relevant to the scientific basis of the Proposal or HISA.

b. Experts shall not have a conflict of interest that could jeopardize their objectivity or impartiality.

c. An Independent Scientific Review shall be conducted by at least three independent Experts. Additional Experts may be asked to conduct reviews, as needed, to fairly reflect the breadth of scientific perspectives or fields of knowledge related to the scientific basis under review. If the Independent Scientific Review is an Independent Peer Review, the conditions in Section 19-5-105.3 shall apply.

3. Management of Independent Scientific Reviews.

a. Management of Independent Scientific Reviews may be conducted by any of the following:

i. the Division;

ii. the United States Environmental Protection Agency;

iii. an independent contractor; or,

iv. an independent organization such as an editorial board of a relevant scientific journal, appropriate trade organization, or other research institute.

b. From the time they accept the invitation to participate in an Independent Scientific Review, Experts should avoid interaction with the Division, a challenging party, the general public or others that might create a real or perceived Conflict of Interest regarding the Proposal under review to ensure that Expert findings are independent and objective.

4. Compilation of Expert Findings.

a. Each Expert shall submit written comments that include responses to the charge questions and an evaluation of the scientific basis of the Proposal or HISA.

b. The Director shall charge Experts to identify in their written comments any areas of scientific uncertainty or major data gaps that have a reasonable likelihood of altering material provisions of a Proposal or HISA, including descriptions of the nature of the uncertainty, estimates of the relative extent of this uncertainty, and any recommendations for resolving areas of uncertainty.

10.3 Special provisions for Independent Peer Reviews conducted in accordance with Section 19-5-105.3.

A. On request from a Challenging Party, the Director shall conduct an Independent Peer Review of the scientific basis of a Proposal made by the Division on or after January 1, 2016, provided that the following conditions are met:

1. A Challenging Party requests the review, in writing, during the public comment period on a Proposal.

2. The Challenging Party agrees to fund the Independent Peer Review.

3. The Challenging Party would be substantially impacted by the adoption of the Proposal.

B. Funding Independent Peer Reviews.

1. Costs associated with the peer reviews will be incurred by the Division and billed to the Challenging Party and may include management of the peer review process by an independent contractor agreed to by the Director and Challenging Party, honorariums provided to Experts to conduct the reviews, and expenses incurred by the Experts.

2. An estimate of projected costs for conducting an Independent Peer Review, including expenses identified in Subsection R317-1-10.3.B.1, shall be estimated by the Director and provided to the Challenging Party prior to finalization of contracts or other financial agreements with Experts.

3. If there is more than one Challenging Party to the scientific basis of a Proposal, the challenges will be consolidated for the Independent Peer Review. Those requesting the review will be responsible for the costs of the review and allocation of costs between parties.

C. The written request for an Independent Peer Review from a Challenging Party shall be included in the final scope of work and shall include the following as best determined by the Challenging Party:

1. An explanation of the specific scientific elements of the Proposal that the Challenging Party questions and an explanation of why these elements may not be scientifically defensible.

2. If the challenge involves review of whether a Technology Based Nutrient Effluent Limit is scientifically necessary, the Challenging Party should include an explanation of why the limits are or are not necessary, including consideration of:

a. all designated beneficial uses of the receiving water and the uses of downstream, hydrologically connected water bodies;

b. current conditions and projected future conditions with respect to wastewater effluent and receiving water quantity and quality; and

c. any other nutrient sources under current and projected future conditions that it is reasonable to believe may affect the same receiving water and downstream hydrologically connected water bodies.

3. Access to sources of data, reports or other information that can be used to establish a scientific basis to the challenge that the Challenging Party would like to be included as supporting materials in the scope of work.

4. Recommendations for qualified independent Experts, who do not have a conflict of interest and whom the Challenging Party would support as Experts based on their documented expertise in areas of relevance to the technical basis of the Proposal being challenged.

D. The Independent Scientific Review process specified in Subsection R317-1-10.2 shall be followed for Independent Peer Reviews conducted at the behest of a Challenging Party with the exception of several limitations outlined in this subsection that are needed to maintain consistency with Section 19-5-105.3.

1. An Independent Peer Review panel shall consist of at least three Experts who do not have direct association with the Division or Challenging Party in accordance with Subsection 19-5-105.3(1)(b)(iii)and shall be selected by both the Division and Challenging Party as described in Subsection 19-5-105.3(5).

2. The Director shall designate one member of the Independent Peer Review Panel to serve as a chair to develop and oversee the preparation of a final synthesis report. In the event that Experts are selected through Subsection 19-5-105.3(5)(c), then the mutually agreed upon member shall serve as the Independent Peer Review Panel chair.

3. Management of the Independent Peer Review process shall be conducted by an independent contractor, who does not have a conflict of interest with the Division or the Challenging Party.

4. Management responsibilities of Independent Peer Reviews include the following:

a. Estimation of appropriate honorariums for the Experts to complete their individual written reviews with consideration for the breadth of the review identified in the scope of work and volume of supporting materials including additional compensation for the Independent Peer Review Panel chair for overseeing and writing a final written report as described in Subsection R317-1-10.3.D.5.

b. Development of a work timeline and interim progress tracking to ensure timely completion of the Independent Peer Review process.

c. Development and oversight of contracts or other financial agreements with Experts or others identified as integral to the review process.

d. Facilitation of necessary communication among the Division, Challenging Party and Experts throughout the review process, in a way that ensures all parties have access to any additional information, such as clarification to charge questions or charge questions that were not considered in development of the scope of work.

e. Regular progress updates to the Division and Challenging Party.

5. The Director shall charge the Independent Peer Review panel chair with development of a final written report, which:

a. is written by the chair after written independent reviews have been submitted by each Expert;

b. is reviewed by all members of the Independent Peer Review panel;

c. documents areas of consensus and dissention among Experts on elements of the scientific basis of the Proposal that Experts believe to have material influence of the Proposal under review;

d. provides a final recommendation from the Independent Peer Review panel on the scientific defensibility of the Division's Proposal, as specified in Subsection 19-5-105.3(7);

e. includes a determination of scientific necessity for any review that involves an evaluation of the application of a Technology Based Nutrient Effluent Limit; and

f. includes the Experts' written findings of the underlying rationale for making a determination that any element of the scientific basis of a Proposal is not scientifically defensible or is scientifically defensible with conditions, and any applicable and reasonable conditions to remedy their concerns.

E. To avoid inordinate delays in rulemaking or other regulatory decisions, Independent Peer Reviews must be completed within one year following appointment of the Independent Peer Review panel.

10.4 Use of Independent Scientific Review results.

A. The Director shall incorporate as needed recommendations and findings from the Experts in the finalization of the Proposal or HISA under review.

B. The Director shall document how the findings of the Experts were applied to the Proposal or HISA.

C. All materials associated with any review process shall be made available during the public comment period applicable to the HISA or Proposal under review, including:

1. the scope of work used to conduct the peer review;

2. the written independent findings from individual Experts;

3. summary reports that were developed after individual Expert reviews were submitted, if appropriate; and

4. the final decision of the Director and rationale for any modifications to the original agency Proposal or HISA in response to Independent Scientific Review findings and recommendations.

D. In the event that the Proposal or HISA under review does not have an established public comment process that occurs after the Independent Scientific Review Process, the Director shall make peer review material available for public comment for a minimum of 30-days and shall consider all substantive public comments prior to finalization of the Proposal or HISA.

E. The Director shall prepare a responsiveness summary that includes:

1. all substantive public comments related to the Independent Scientific Review,

2. the Director's response to public comments, and

3. any changes to the Proposal or HISA that were made in response to public comments.

F. Incorporation of the Director's decisions into existing Division processes.

1. If the Expert findings result in a decision by the Director to modify any element of any UPDES permit, this decision will be summarized in the Statement of Basis on the next issuance of the permit and all Independent Peer Review materials shall be made available as supporting documentation when the permit is published for public comment. If the Proposal is a wasteload or other regulatory requirements for a permit the results shall be incorporated into the proposed permit on which the wasteload is based.

2. If the Proposal under review is regarding the application of a Technology Based Nutrient Effluent Limit and the Independent Peer Review panel determines that the limit is not scientifically necessary, then this finding shall be included in the Statement of Basis in the new or renewed permit as a justification for not including Technology Based Nutrient Effluent Limits that would otherwise have been required. All materials associated with the Independent Peer Review shall be made available during the public comment period for this permit as support for this determination.

3. The decision to modify any permit element, based upon the results of an Independent Scientific Review, is not final until the permit is actually issued.

4. The decision to modify a rule, based upon the results of an Independent Scientific Review, is not final until the rule is actually modified.

KEY: water pollution, waste disposal, nutrient limits, effluent standards
Date of Enactment or Last Substantive Amendment: [~~February 25, 2016~~]2017
Notice of Continuation: October 2, 2012
Authorizing, and Implemented or Interpreted Law: 19-5

Environmental Quality, Water Quality
R317-1-7
TMDLs

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40987
FILED: 11/10/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to incorporate by reference into the rule the completed Total Maximum Daily Load (TMDL) study for Nine Mile Creek for temperature as approved by the Water Quality Board.

SUMMARY OF THE RULE OR CHANGE: This section incorporates by reference the completed Nine Mile Creek TMDL for temperature into the rule. This TMDL document has been approved by the Water Quality Board to initiate rulemaking to adopt the TMDL.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-104 and Section 19-5-105

MATERIALS INCORPORATED BY REFERENCE:

- Adds Temperature Total Maximum Daily Load (TMDL) for Upper Nine Mile Creek Watershed , published by Division of Water Quality, 10/27/2016

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: There are no anticipated impacts to the state budget. The proposed amendment will be addressed using existing resources.
- LOCAL GOVERNMENTS: All estimated costs for implementing this TMDL are associated with strategies that are voluntary. It is not anticipated that local governments will be affected.
- SMALL BUSINESSES: All estimated costs for implementing this TMDL are associated with strategies that are voluntary. It is not anticipated that small businesses will be affected.
- PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Estimated costs are $680,918 for voluntary strategies and management options for reducing sources of pollution in the TMDL watershed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: All strategies are voluntary; therefore, compliance costs do not apply.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impacts to businesses are anticipated as a result of the TMDL. Potential strategies and management options for reducing non-point sources of pollutants are identified but are not specifically mandated.

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

ENVIRONMENTAL QUALITY
WATER QUALITY
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov or mail at PO BOX 144870, Salt Lake City, UT 84114-4870

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.
R317-1. Definitions and General Requirements.
R317-1-7. TMDLs.

The following TMDLs are approved by the Board and hereby incorporated by reference into these rules:

7.1 Middle Bear River -- February 23, 2010
7.2 Chalk Creek -- December 23, 1997
7.3 Otter Creek -- December 23, 1997
7.4 Little Bear River -- May 23, 2000
7.5 Mantua Reservoir -- May 23, 2000
7.6 East Canyon Creek -- September 14, 2010
7.7 East Canyon Reservoir -- September 14, 2010
7.8 Kents Lake -- September 1, 2000
7.9 LaBaron Reservoir -- September 1, 2000
7.10 Minersville Reservoir -- September 1, 2000
7.11 Puffer Lake -- September 1, 2000
7.12 Scofield Reservoir -- September 1, 2000
7.13 Onion Creek (near Moab) -- July 25, 2002
7.14 Cottonwood Wash -- September 9, 2002
7.15 Deer Creek Reservoir -- September 9, 2002
7.16 Hyrum Reservoir -- September 9, 2002
7.17 Little Cottonwood Creek -- September 9, 2002
7.18 Lower Bear River -- September 9, 2002
7.19 Malad River -- September 9, 2002
7.20 Mill Creek (near Moab) -- September 9, 2002
7.21 Spring Creek -- September 9, 2002
7.22 Forsyth Reservoir -- September 27, 2002
7.23 Johnson Valley Reservoir -- September 27, 2002
7.24 Lower Fremont River -- September 27, 2002
7.25 Mill Meadow Reservoir -- September 27, 2002
7.26 UM Creek -- September 27, 2002
7.27 Upper Fremont River -- September 27, 2002
7.28 Deep Creek -- October 9, 2002
7.29 Uinta River -- October 9, 2002
7.30 Pineview Reservoir -- December 9, 2002
7.31 Browne Lake -- February 19, 2003
7.32 San Pitch River -- November 18, 2003
7.33 Newton Creek -- June 24, 2004
7.34 Panguitch Lake -- June 24, 2004
7.35 West Colorado -- August 4, 2004
7.36 Silver Creek -- August 4, 2004
7.37 Upper Sevier River -- August 4, 2004
7.38 Lower and Middle Sevier River -- August 17,2004
7.39 Lower Colorado River -- September 20, 2004
7.40 Upper Bear River -- August 4, 2006
7.41 Echo Creek -- August 4, 2006
7.42 Soldier Creek -- August 4, 2006
7.43 East Fork Sevier River -- August 4, 2006
7.44 Koosharem Reservoir -- August 4, 2006
7.45 Lower Box Creek Reservoir -- August 4, 2006
7.46 Otter Creek Reservoir -- August 4, 2006
7.47 Thistle Creek -- July 9, 2007
7.48 Strawberry Reservoir -- July 9, 2007
7.49 Matt Warner Reservoir -- July 9, 2007
7.50 Calder Reservoir -- July 9, 2007
7.51 Lower Duchesne River -- July 9, 2007
7.52 Lake Fork River -- July 9, 2007
7.53 Brough Reservoir -- August 22, 2008
7.54 Steinaker Reservoir -- August 22, 2008
7.55 Red Fleet Reservoir -- August 22, 2008
7.56 Newcastle Reservoir -- August 22, 2008
7.57 Cutler Reservoir -- February 23, 2010
7.58 Pariette Draw -- September 28, 2010
7.59 Emigration Creek -- September 1, 2011
7.60 Jordan River -- June 27, 2012
7.61 Colorado River -- December 5, 2013
7.62 Echo Reservoir -- March 26, 2014
7.63 Rockport Reservoir -- March 26, 2014
7.64 Nine Mile Creek -- October 27, 2016

KEY: water pollution, waste disposal, nutrient limits, effluent standards
Date of Enactment or Last Substantive Amendment: [~~February 25, 2016~~|2017
Notice of Continuation: October 2, 2012
Authorizing, and Implemented or Interpreted Law: 19-5

Governor, Economic Development
R357-19
Business Resource Centers

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 40961
FILED: 11/07/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is created in response to H.B. 53 from the 2016 General Session, which created changes to the existing statute and requires rulemaking regarding funding criteria and reporting metrics for the Business Resource Centers.

SUMMARY OF THE RULE OR CHANGE: This rule establishes criteria for matching fund exceptions; criteria for the approval, creation, and oversight of each business resource center and its staff, including a non-state funded satellite business resource center; metrics to report the performance of economic development output in each region serviced by a business resource center; and criteria for approving and overseeing business plans.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63N-3-307(3)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no cost or savings to the state budget because this program is an ongoing base budget item. This rule simply directs how that appropriation is allocated.
♦ LOCAL GOVERNMENTS: There is no cost to local governments because they cannot participate in this program.
♦ SMALL BUSINESSES: There is no cost to small business because they cannot participate in this program.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no direct cost or savings to others; although, it does clarify the matching funds exceptions that could create a possible savings for institutions of higher education that house a Business Resource Center. However, due to not knowing which exceptions an institution of higher education may or may not use, it is not possible to calculate any direct savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs because this rule codifies current practices that have been in place.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact created by this rule on businesses because they cannot participate in the funding structure provided by this program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
GOVERNOR
ECONOMIC DEVELOPMENT
60 E SOUTH TEMPLE
THIRD FLOOR
SALT LAKE CITY, UT 84111
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jeffrey Van Hulten by phone at 801-538-8694, by FAX at 801-538-8888, or by Internet E-mail at jeffreyvan@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Val Hale, Executive Director

R357. Governor, Economic Development.
R357-19. Business Resource Centers.
R357-19-1. Authority.

(1) Subsection 63N-3-307(3) requires the Office to make rules establishing matching fund exceptions; criteria for the approval, creation, and oversight of each business resource center and its staff, including a non-state funded satellite business resource center; metrics to report the performance of economic development output in each region serviced by a business resource center; and criteria for approving and overseeing business plans.

R357-19-2. Definitions.

(1) This rule adopts the definitions found in Utah Code Section 63N-3-303.

R357-19-3. Matching Funds Exceptions.

(1) A Business Resource Center (BRC) must with its annual state funding proposal provide documentation detailing matching funds used to cover the center's operating expenses. This documentation should be in the form of a spreadsheet that details matching funds and lists funding sources and other relative financial information and should include the following:

(a) Past use of funds awarded from the State of Utah.

(b) Budget -- Expected use of funds.

(c) Expenses -- Include sources of matching funds. At a minimum, matching funds should be designated as (1) host institution funding, (2) other State funding, (3) all other funding.

(d) An explanation of whether matching funds will be cash or in-kind. In-kind contributions should listed by type.

(2) Exceptions to the requirement that a host institution contribute 50% of a business resource center's operating costs may be granted in the following circumstances:

(a) The host institution may provide more than 50% of the BRC's operating costs through cash or in-kind contributions.

(b) A host institution may enter into a partnership or agreement with another local entity to contribute cash, employee's services, or facilities for the operation of the BRC where the purposes and goals of the third party are consistent with those of the host institution and the host institution retains control and oversight over the BRC. In this circumstance the contributions of the third party may be considered toward meeting the 50% matching funds requirement.

R357-19-4. Criteria for the Approval, Creation, and Oversight of Business Resource Centers.

(1) An existing Business Resource Center shall:

(a) Be the access point to coordinated business assistance through partnerships with governmental entities, academia and other business resources in a local area;

(b) In rural counties, utilize the connection between the Business Expansion and Retention Initiative (BEAR) and the services of the BRC to initiate, facilitate, and document more referrals to the BRC's associated service providers;

(c) Initiate business education programs, including programs in coordination and collaboration with public, private, and governmental institutions;

(d) Provide research, development, or training programs for new businesses;

(e) Develop programs to aid business clients in finding the resource they need;

(f) Work with the host institution in providing academic resources, including faculty and student participation and support for the programs, events, and daily operations of the BRC, as appropriate;

(g) Develop programs for outreach to entrepreneurs in rural areas of the state as appropriate;

(h) Develop, maintain, and report metrics to determine effectiveness of efforts;

(i) Partner with and house the federal, state, and local business service providers;

i. Potential business service providers are further defined in the BRC's agreement with the Office.

(2) An entity establishing a new Business Resource Center shall:

(a) Provide a physical office space in a regional area or county where no BRC currently exists to serve as an access point to coordinated business assistance through partnerships with governmental entities, academia and other business resources in a local area;

i. Money awarded by the Office cannot be used to lease office space;

(b) In rural counties, utilize the connection between BEAR and the services of the BRC to facilitate, initiate, and document referrals to the BRC's associated service providers;

(c) Initiate and encourage business education programs, including programs in coordination and collaboration with public, private, and governmental institutions;

(d) Provide research, development, or training programs for new businesses;

(e) Develop programs to aid business clients in finding the resource they need;

(f) Work with the host institution in providing academic resources, including faculty and student assistance, as appropriate;

(g) Develop programs for outreach to entrepreneurs in rural areas of the state as appropriate;

(h) Develop, maintain, and report metrics to determine effectiveness of efforts;

(i) Partner with and house on an as-needed or regularly scheduled basis federal, state, and local business service providers, as listed below;

(j) Enter into agreements and provide letters of commitment from service providers that their services will be available at the newly established BRC according to a regular schedule and/or on an as-needed basis. These service providers should include

(3) An existing or new Business Resource Center may:

(a) Provide a needs assessment relating to new or existing businesses in conjunction with other public or private economic development programs or initiatives;

(b) Provide business incubator space or services, or both, to businesses based on criteria established by the Office in consultation with the board;

(c) Participate with local business leaders and government officials to assist in formulating economic development direction or strategy for their communities;

(d) Develop and establish web-based access to virtual business resource center services over the Internet to assist in establishing and growing businesses in the state, and particularly in those situations where traveling to the Business Resource Center site is not possible or practical.

(4) The Office will facilitate a quarterly meeting with all BRC directors to discuss overall goals and progress.

R357-19-5. Metrics.

(1) Each Business Resource Center must report the metrics listed below on a quarterly basis:

(a) Number of businesses/people served. (This will be the primary metric to measure BRC activity. This is the number of unique individuals who were served through the BRC and its partner agencies.)

(b) Total attendance at outreach/networking/training/other events.

(c) Virtual activity/ online tracking/usage, as appropriate

(d) Number of incubator clients

(2) The metrics reports must be received by the Governor's Office of Economic Development on or before the second Friday of each financial quarter at 5pm.

(3) The Office may withhold payment of a BRC's invoiced expenses until required metrics are reported.

(4) The Office will monitor the progress towards all metrics and goals detailed in the annual proposal and established in the contract.

R357-19-6. Criteria for Approving Business Plans and Awarding Funding.

(1) A BRC seeking state funding shall provide an annual proposal with a business plan detailing how that funding will be used during the fiscal year.

(2) BRC funds provided by the Office shall only be used for approved activities and expenses.

(3) The Office shall determine the amount granted to each BRC in the following manner:

(a) larger amounts may be granted to BRCs that serve a larger geographic area.

(b) BRCs that serve a larger population size may receive larger amounts

(c) Award amounts may be determined and influenced by types of services and the overall service packages offered by the BRC. A more comprehensive service model may receive larger award amounts.

i. Examples of a more comprehensive service models would be those that include the following:

A. Diverse programs to help businesses with varying needs;

B. Business education programs, including programs in collaboration with public, private, governmental and educational institutions;

C. Academic resources, including faculty and student assistance

(d) Award amounts may be determined and influenced by the amount the BRC has been utilized when considering overall geographic and population size that the BRC potentially services. BRCs that demonstrate a higher amount of overall use in relation to the service area size and population size may receive larger award amounts.

i. Demonstration of past use can be shown through:

A. Reports highlighting overall economic output for the area serviced;

B. The number of business serviced on a year over year basis;

C. Measured output of businesses serviced;

D. The existence of research, development, or training programs for new or existing businesses, industries, or high technology business located in its region;

E. Needs assessments relating to new or existing businesses, industries, or high technology business in conjunction with other public or private economic development programs or initiatives;

F. Develop and implement with local business leaders sound, coordinated, and measurable economic development programs for their communities;

G. Developing and certifying non-state funded satellite BRCs.

(e) Award amounts may be determined and influenced by how past awards have been used and if past award amounts have not been fully expended.

(f) Award amounts may be influenced by the amount of additional funds from other sources the BRC will receive in the same fiscal year that the award will be used.

(g) Award amounts can be increased for BRCs that demonstrate an expansion of current services into areas not currently served by another BRC.

(h) Consider other criteria in determining the appropriate award amount including the recommendations of an advisory group as established in 63N-3-306.

(4) The Office will establish an agreement via contract with BRCs who are awarded funding during each fiscal year.

(5) The Office will disburse all funds on a post-performance or reimbursement basis only.

(6) Invoice documentation will be reviewed by the Office to verify fidelity to the BRC's business plan.

KEY: Business Resource Center, institution of higher education, economic development
Date of Enactment or Last Substantive Amendment: 2017
Authorizing, Implemented, or Interpreted Law: 63N-3-307(3)

Health, Administration
R380-77
Coordination of Patient Identification and Validation Services

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 40996
FILED: 11/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish the methods in which health care providers, public health entities, and health care insurers may coordinate among themselves to verify the identities of the individuals they serve, as authorized by Subsection 26-1-30(30).

SUMMARY OF THE RULE OR CHANGE: This proposed rule establishes an advisory committee of diverse professionals from health care provider organizations, public health entities, and health care insurers and establishes the duties and responsibilities of the committee with respect to coordination and governance of shared patient identification services. The draft of this rule has been reviewed and approved by the Utah Digital Health Service Commission at its 11/03/2016 meeting and the ThSisU Governance Committee of the State Innovation Grant in September 2016. The draft rule was also shared with the Utah Health Information Network Master Person Index Committee's members for their comments. No feedback was received from this committee.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 26-1-30(30)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: Administrative support for the advisory committee established under this rule will be provided by existing staff in the Health Informatics Program, Center for Health Data and Informatics, and Utah Department of Health, and will not result in additional costs or savings.

♦ LOCAL GOVERNMENTS: This filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule; nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

♦ SMALL BUSINESSES: None--Small businesses are not impacted by this rule change. As a result, the rule will have no effect on small business budgets for costs or savings.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be some personnel costs to the organizations that voluntarily send their representatives to participate in this advisory committee's efforts. The committee's participation is voluntary. Since the committee's work will benefit to all participating organizations and the people of Utah, the

Department believes that the involved business and individual will be willing to make the contributions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no direct or indirect compliance costs for individuals or entities under this rule because this rule simply establishes an advisory committee in which participation is voluntary.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts to businesses as a result of this rule.

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:
♦ Jeff Duncan by phone at 801-538-7023, by FAX at 801-538-7012, or by Internet E-mail at jduncan@utah.gov or mail at PO BOX 141000, Salt Lake City, UT 84114-1000

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R380. Health, Administration.
R380-77. Coordination of Patient Identification and Validation Services.
R380-77-1. Purpose and Authority.

As authorized by Section 26-1-30(30), the purpose of this rule is to establish the methods in which health care providers, public health entities, and health care insurers may coordinate among themselves to verify the identities of the individuals they serve.

R380-1-2. Establishment of Advisory Committee.

(1) The Department shall establish a patient identity and validation service advisory committee to assist the Department in establishing methods as part of the Department's duties under Section 26-1-30(30). The committee serves in a consultative and advisory capacity to the Department.

(2) The committee shall be comprised of individuals knowledgeable in health information technology, health informatics and health care delivery systems, including representatives from the Department, community-based organizations, hospital and clinic administration, health care insurers, professional health care associations, patients, and informatics researchers.

(3) The Utah Digital Health Service Commission established by Section 26-9f may advise the Department to oversee this advisory committee.

R380-1-3. Duties and Responsibilities.

(1) The committee shall:

(a) Promote collaborative efforts among community stakeholders regrading participation in shared patient identification services as a means to reduce duplicate services, improve quality and efficiency of care, and to promote patient safety.

(b) Provide input and guidance to the Department concerning existing community resources and experiences to advance the adoption and implementation of shared patient identification services.

(c) Advise the Department regarding adoption of standards for the electronic exchange of personally identifiable information between health care providers, public health entities, and health care insurers.

(d) Define the minimum amount of personally identifiable information necessary to disambiguate and validate identities across organizational information systems.

(e) Make recommendations on the information technology architecture, hardware, software, application, network configuration, and other technical aspects that allow for the implementation of shared patient identification services and technical compatibility among participants.

(f) Identify, evaluate, and make recommendations on a strategic and sustainable business model.

(g) Provide information and evaluate industry trends on existing information exchanges that link and verify person-centric records across organization boundaries.

(h) Make recommendations and coordinate the creation, dissemination, and implementation of policies and procedures to address participation in and utilization of shared patient identification services.

KEY: identity, validation, health
Date of Enactment or Last Substantive Amendment: 2017
Authorizing, and Implemented or Interpreted Law: 26-1-30(30); 26-1-37

Health, Administration
R380-400
Use of Statistical Sampling and Extrapolation

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 40993
FILED: 11/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Based on its five-year review, the Department has determined that this rule no longer applies to changes in state

law that govern extrapolation procedures in provider audits. The Department, therefore, will repeal this rule in its entirety.

SUMMARY OF THE RULE OR CHANGE: This rule governs the methodology for statistical sampling and extrapolation on services covered by Title XIX of the Social Security Act. Nevertheless, this rule no longer applies to extrapolation procedures, and is therefore repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no impact to the state budget because this rule no longer applies to extrapolation procedures and does not govern provider audits.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they neither reimburse Medicaid providers nor provide Medicaid services to clients.
♦ SMALL BUSINESSES: There is no impact to small businesses because this rule no longer applies to extrapolation procedures and does not govern provider audits.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers because this rule no longer applies to extrapolation procedures and does not govern provider audits. Additionally, there is no impact to ongoing services available to Medicaid clients.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider because this rule no longer applies to extrapolation procedures and does not govern provider audits. Additionally, there is no impact to ongoing services available to a Medicaid client.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because this rule no longer applies to extrapolation procedures that are currently governed by statute.

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:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO BOX 141000, Salt Lake City, UT 84114-1000

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R380. Health, Administration.
[~~R380-400. Use of Statistical Sampling and Extrapolation.~~
~~R380-400-1. Purpose and Authority.~~
~~This rule governs the methodology for statistical sampling and extrapolation on services covered by Title XIX of the Social Security Act. This rule is authorized by Sections 26-1-5, 26-18-3, and 26-18-605.~~

~~R380-400-2. Definitions.~~
~~Definitions for the purposes of this rule are as follows:~~
~~(1) "Billing Codes" means the current codes that may be billed to the Department and may consist of currently used DRG Codes, CPT Codes, HCPC Codes, or other nationally or locally accepted codes.~~
~~(2) "Confidence Interval" means a range of values within which a pattern of error is statistically estimated to lie.~~
~~(3) "Confidence Level" means the probability that the value of a parameter falls within a specified range of values.~~
~~(4) "Cost Effective" means provides the greatest estimated return of recoveries for overpayments relative to cost considering the available alternatives.~~
~~(5) "Diagnostic Related Groups (DRG)" means a group of related medical conditions used to establish reimbursement.~~
~~(6) "Dollar Error Rate" means the percentage of the total dollars in the initial sample found to be overpayments to the total dollars in the initial sample.~~
~~(7) "Error Types" means overpayments with a similar cause or result. For purposes of this rule, error types are limited to the following:~~
~~a. Insufficient or no documentation to support services billed, medical necessity, diagnosis codes, or billing codes.~~
~~b. Upcoding.~~
~~c. Incorrectly Unbundled services.~~
~~d. Incorrect billing code combinations.~~
~~(8) "Extrapolation" means an estimate of overpayments in claims that lie beyond the range of observation taken from a universe of records.~~
~~(9) "Initial Sample" means a statistically valid random sample of claims from the universe of records from a period not less than three months and not more than eighteen months, used to establish a pattern of error.~~
~~(10) "Standard deviation" means a statistical measure of variability that reflects the typical deviation from the mean of a distribution.~~
~~(11) "Overpayment" means any amount paid by the Department to a provider which is in excess of the amount allowed either through fraud, waste or abuse; a mistake; the lack of~~

appropriate documentation; billing errors; errors caused either by the department, Reviewing Agency, provider, or a mechanized claims processing system; or payments not allowed under part 1902 of the Social Security Act or in violation of state rules or federal regulations, or Federally published policies.

(12) "Pattern of Error" means a transaction error rate of 10% or more, or a dollar error rate of 5% or more, found in the initial sample.

(13) "Random Sample" means a statistically valid sample drawn from the universe of records by chance; a sample drawn in such a way that every item in the universe of records has an equal and independent chance of being included in the sample.

(14) "Review" means the process in which the Reviewing Agency will select a universe of records to be sampled to determine the appropriateness of a claim. Factors used to assess appropriateness will include medical necessity; appropriate documentation; compliance with department, state and federal program policies, rules, regulations, statutes, and laws; and adherence to contract requirements.

(15) "Reviewing Agency" means any state agency, or other entity acting on behalf of a state agency, authorized by state or federal law to perform reviews, which include samples of claims filed for a public benefit funded with state or federal funds administered by the Department.

(16) "Sampling Methodology" means the use of the sampling tool, by certified users, developed by the Texas Department of Health and Human Services version 2009, which is hereby incorporated by reference, to select a random sample from a universe of records in order to calculate a dollar error rate for means of extrapolating an overpayment in a universe of records.

(17) "Transaction Error Rate" means the percentage of claims in the sample containing overpayments to the total number of claims in the sample.

(18) "Underpayment" means any amount paid by the Department to a provider which is less than the amount allowed under part 1902 of the Social Security Act or state rules or federal regulations, or federally published policies.

(19) "Universe of Records" means the total number of claims based on a single provider and for services for a single billing code, for dates of service up to 36 months prior to the date of the review.

(20) "Risk Assessment" means the identification of the level of risk of overpayments involved with the universe of records.

R380-400-3. Use of Sampling Methodology.

The Reviewing Agencies' procedures for performing reviews include the use of the sampling methodology.

R380-400-4. Initial Review to Determine Dollar and Transaction Error Rates and Need for Extrapolation.

(1) The Reviewing Agency, based on a review, of the initial sample of claims, will determine whether a pattern of error is present.

(2) Following a review of the initial sample, if a pattern of error was found and the Reviewing Agency, at its sole discretion, concludes it is cost effective, and that the error rate lies within 2.5 standard deviations of the mean, the Reviewing Agency may proceed with extrapolation based on reviewing the results from a random sample. If the error rate of the random sample lies outside 2.5 standard deviations of the mean of the initial sample and the error rate is lower than 2.5 standard deviations from the mean of the initial sample, extrapolation shall not be applied and only those errors discovered will be considered as overpayment.

(3) When extrapolation is applied, sampling methodology will be used to extrapolate the dollar and transaction error rate within the universe of records. The statistical random sample will be of sufficient size to achieve a confidence interval of 95% and a confidence level of plus or minus 5%. The dollar and transaction error rates will be determined based on the results of the statistical sample.

R380-400-5. Initial Sample Size Determination.

(1) Referrals will be processed through any federally-approved fraud and abuse detection software (FADS) tool, when access to such a tool is available.

(2) The Risk Assessment will be considered "moderate" unless the risk assessment is determined to be either "high" or "low."

(3) The Risk Assessment will be considered "high" when any of the following are true:

a. The claims being considered for review are indicated to be aberrant by the use of a FADS tool, when access to such a tool is available, or by the use of any data-mining analysis.

b. The applicable provider type is classified, as of the date of the review, as "high" risk in the CFR for initially categorizing provider risk. See Federal Register/Vol. 76, No. 22/Wednesday, February 2, 2011/Rules and Regulations, pages 5895-5896, which is incorporated by reference.

c. The provider is operating during the first 12 months after signing a provider agreement. If the provider is considered "high" risk during any period of a review, then the provider is considered "high" risk during the entire period of the review.

(4) The Risk Assessment will be considered "low" when the risk assessment has not been determined to be "high" and when all of the following are true:

a. The applicable provider type is classified, as of the date of the review, as "low" risk in the Federal Register for initially categorizing provider risk.

b. The Reviewing Agency, based on any previous review of the same provider, assumes both the dollar and transaction errors in the initial sample are likely to be below the pattern of error.

c. The Reviewing Agency, based on any previous reviews involving the same provider type, assumes both the dollar and transaction errors in the initial sample are likely to be below the pattern of error.

(5) The statistically valid sample size table for initial samples is as follows in Table 1:

TABLE 1

Risk Assessment	Universe of Records > = 250 Claims	Universe of Records < 250 Claims
High	100	80
Moderate	75	60
Low	50	40

R380-400-6. Overpayments and Underpayments.

The dollar amount of the extrapolated overpayment will be computed by applying the dollar error rate of the statistical random sample to the total dollar amount actually paid the provider

~~as documented from the universe of records. If the review establishes that any claims from the universe of records should have been paid at a lesser amount, then only the difference between the total amount actually paid to the provider and the lesser amount that should have been paid to the provider will be used to calculate the dollar error rate. Any underpayments discovered during a review will offset the final total dollar amount of the overpayment. The final total dollar amount of the overpayment will constitute a debt by the provider to the Department.~~

~~R380-400-7. Provider Notification Requirements.~~

~~(1) When extrapolation is not applied after the initial sample, notice will be sent to the provider of the following:~~

~~a. The opportunity to request a hearing.~~

~~b. The criteria used to determine the initial sample.~~

~~c. The dollar and transaction error rates.~~

~~d. The size of the sample.~~

~~e. The specific claims sampled.~~

~~f. The reason(s) for the overpayments.~~

~~g. The actual total dollar amount of the total overpayments specifically identified to be recovered.~~

~~(2) When a statistical sample has been reviewed and extrapolation has been applied, notice will be sent to the provider of the following:~~

~~a. Items (1) a. through f. above in R380-400-7 as applied to the initial sample and the statistical sample.~~

~~b. Total underpayments noted.~~

~~c. The final total dollar amount of the overpayment based on extrapolation.~~

~~R380-400-8. Administrative Hearing Appeals and Burden of Proof.~~

~~If a provider appeals an action of the Department or Reviewing Agency regarding a claim based on statistical sampling using this rule's methodology, the action shall be deemed to satisfy the Department's or Reviewing Agency's burden of providing evidence sufficient to establish the claim, unless rebutted by the provider.~~

~~KEY: Medicaid~~
~~Date of Enactment or Last Substantive Amendment: November 22, 2011~~
~~Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3~~]

Health, Children's Health Insurance Program
R382-10-11
Household Composition and Income Provisions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40997
FILED: 11/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Based on guidance from the Centers for Medicare and Medicaid Services (CMS), this change clarifies how the Department will treat spouses who separate but file a joint tax return and when the Department determines eligibility for the Children's Health Insurance Program (CHIP).

SUMMARY OF THE RULE OR CHANGE: In accordance with the option that CMS granted the Department concerning CHIP eligibility, this amendment clarifies that spouses who separate will be treated as separate households. It also makes other technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Pub. L. No. 111-148 and Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCE:

♦ Updates 42 CFR 457.315, published by Government Printing Office, 10/01/2015

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There is no data to indicate whether there are costs or savings to the state budget. Both options to treat spouses who separate as either a single household or a separate household, may affect household size and countable income depending on individual circumstance.

♦ LOCAL GOVERNMENTS: There is no impact to local governments because they neither fund nor make CHIP eligibility determinations.

♦ SMALL BUSINESSES: There is no data to determine how eligibility outcomes will affect costs or revenue to small businesses, and there are no costs associated with new business requirements.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no data to determine how eligibility outcomes will affect costs or revenue to CHIP providers. Depending on individual circumstance, household members may see either a positive or negative effect on benefits.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no data to determine how eligibility outcomes will affect costs or revenue to a single CHIP provider. Depending on individual circumstance, a household member may see either a positive or negative effect on benefits.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no available data to determine if there is any fiscal impact, either positive or negative on business at this time.

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

HEALTH
CHILDREN'S HEALTH INSURANCE PROGRAM
CANNON HEALTH BLDG
288 N 1460 W

SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO BOX 143109, Salt Lake City, UT 84114-3109

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R382. Health, Children's Health Insurance Program.
R382-10. Eligibility.
R382-10-11. Household Composition and Income Provisions.

(1) The Department adopts and incorporates by reference, 42 CFR 457.315[~~,~~] (October 1, 201[~~2~~]5)[~~—cd.~~], regarding the household composition and income methodology to determine eligibility for CHIP.

(a) The eligibility agency shall count in the household size, the number of unborn children that a pregnant household member expects to deliver.

(b) The Department elects the option in 42 CFR 435.603(f)(3)(iv)(B).

(c) The eligibility agency will treat separated spouses, who are not living together, as separate households.

(2) Any individual described in Subsection R382-10-11(1) who is temporarily absent solely by reason of employment, school, training, military service, or medical treatment, or who will return home to live within 30 days from the date of application, is part of the household.

[~~(3) The household size includes the number of unborn children that a pregnant household member expects to deliver.~~

~~(4) The eligibility agency elects the option in 42 CFR 435.603(f)(3)(iv)(B).~~]

(3[~~5~~]) The eligibility agency may not count as income any payments from sources that federal law specifically prohibits from being counted as income to determine eligibility for federally-funded programs.

(4[~~6~~]) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(5[~~7~~]) The eligibility agency shall count as income cash support received by an individual when:

(a) it is received from the tax filer who claims a tax exemption for the individual;

(b) the individual is not a spouse or child of the tax filer; and

(c) the cash support exceeds a nominal amount set by the Department.

(6[~~8~~]) The eligibility agency determines eligibility by deducting an amount equal to 5% of the federal poverty guideline, as defined in 42 CFR 435.603(d)(4).

KEY: children's health benefits
Date of Enactment or Last Substantive Amendment: [~~July 1, 2016~~]2017
Notice of Continuation: May 9, 2013
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-40

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-304-5
MAGI-Based Coverage Groups

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40998
FILED: 11/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Based on guidance from the Centers for Medicare and Medicaid Services (CMS), this change clarifies how the Department will treat spouses who separate but file a joint tax return when the Department determines eligibility for the Medicaid program.

SUMMARY OF THE RULE OR CHANGE: In accordance with the option that CMS granted the Department concerning Medicaid eligibility, this amendment clarifies that spouses who separate will be treated as separate households. It also makes other technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Pub. L. No. 111-148 and Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCE:
♦ Updates 42 CFR 435.603 , published by Government Printing Office, 10/01/2015

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no data to indicate whether there are costs or savings to the state budget. Both options to treat spouses who separate as either a single household or a separate household, may affect household size and countable income depending on individual circumstance.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they neither fund nor make eligibility determinations for the Medicaid program.

♦ SMALL BUSINESSES: There is no data to determine how eligibility outcomes will affect costs or revenue to small businesses, and there are no costs associated with new business requirements.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no data to determine how eligibility outcomes will affect costs or revenue to Medicaid providers. Depending on individual circumstance, household members may see either a positive or negative effect on benefits.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no data to determine how eligibility outcomes will affect costs or revenue to a single Medicaid provider. Depending on individual circumstance, a household member may see either a positive or negative effect on benefits.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no available data to determine if there is any fiscal impact, either positive or negative, on business at this time.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO BOX 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-304. Income and Budgeting.
R414-304-5. MAGI-Based Coverage Groups.

(1) The Department adopts and incorporates by reference 42 CFR 435.603[~~,~~] (October 1, 201[~~2~~]5)[~~ed.~~], which applies to the methodology of determining household composition and income using the Modified Adjusted Gross Income (MAGI)-based methodology.

(a) The eligibility agency shall count in the household size, the number of unborn children that a pregnant household member expects to deliver.

(b) The [~~eligibility agency~~]Department elects the option in 42 CFR 435.603(f)(3)(iv)(B).

(c) The eligibility agency will treat separated spouses, who are not living together, as separate households.

(2) The eligibility agency may not count as income any payments from sources that federal law specifically prohibits from being counted as income to determine eligibility for federally-funded programs.

(3) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resettlement Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(4) The eligibility agency shall count as income cash support received by an individual when:

(a) it is received from the tax filer who claims a tax exemption for the individual;

(b) the individual is not a spouse or child of the tax filer; and

(c) the cash support exceeds a nominal amount set by the Department.

(5) To determine eligibility for MAGI-based coverage groups, the eligibility agency deducts an amount equal to 5% of the federal poverty guideline for the applicable household size from the MAGI-based household income determined for the individual. This deduction is allowed only to determine eligibility for the eligibility group with the highest income standard for which the individual may qualify.

KEY: financial disclosures, income, budgeting
Date of Enactment or Last Substantive Amendment: [~~July 1, 2016~~]2017
Notice of Continuation: January 23, 2013
Authorizing, and Implemented or Interpreted Law: 26-18-3

Health, Disease Control and Prevention, Laboratory Improvement
R444-11
Rules for Approval to Perform Blood Alcohol Examinations

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 41000
FILED: 11/15/2016

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule was adopted in December 1969 and amended in 1981. Since that time, only grammatical and wording changes have been made. This rule was established in 1969 about the time there was a national movement to shape the quality of laboratory work. The Clinical Laboratory Improvement Act of 1967 was the national response to addressing quality issues with clinical testing. The Clinical

Laboratory Improvement Act was updated in 1988 and is still in place today. Blood Alcohol testing is not an exact fit for clinical testing and this rule was to have been the state's response to improve the quality of testing in this forensic area. Over time, private sector labs have not sought approval status for this work citing various reasons with the most common being court appearance pulling their staff away from "productive work". Currently, no laboratories are registered under this rule. Forensic laboratories in the state of Utah that may do any testing for blood alcohol content are accredited by the American Board of Forensic Toxicology or American Society of Crime Laboratory Directors. The Division sees no need to maintain this rule.

SUMMARY OF THE RULE OR CHANGE: Over time, private sector labs have not sought approval status for this work citing various reasons with the most common being court appearance pulling their staff away from "productive work". Currently, no laboratories are registered under this rule. Forensic laboratories in the state of Utah that may do any testing for blood alcohol content are accredited by the American Board of Forensic Toxicology or American Society of Crime Laboratory Directors. The Division sees no need to maintain this rule. Therefore, this rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 26-1-30(15)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--This rule is outdated and has not been used for many years. There will be no costs or savings from the repeal.
♦ LOCAL GOVERNMENTS: None--This rule is outdated and has not been used for many years. There will be no costs or savings from the repeal.
♦ SMALL BUSINESSES: None--This rule is outdated and has not been used for many years. There will be no costs or savings from the repeal.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This rule is outdated and has not been used for many years. There will be no costs or savings from the repeal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule is outdated and has not been used for many years. There will be no costs from the repeal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Over time, private sector labs have not sought approval status for this work citing various reasons with the most common being court appearance pulling their staff away from "productive work". Currently, no laboratories are registered under this rule. Forensic laboratories in the State of Utah that may do any testing for blood alcohol content are accredited by the American Board of Forensic Toxicology or American Society of Crime Laboratory Directors. The Division sees no need to maintain this rule. There is no fiscal impact on business because no labs are registered under this rule and none were expected.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
DISEASE CONTROL AND PREVENTION,
LABORATORY IMPROVEMENT
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:
♦ Robyn Atkinson by phone at 801-965-2424, by FAX at 801-969-3704, or by Internet E-mail at rmatkinson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R444. Health, Disease Control and Prevention, Laboratory Improvement.

[~~R444-11. Rules for Approval to Perform Blood Alcohol Examinations.~~

~~R444-11-1. Definitions.~~

~~A. "CHEMIST" means any person conducting the blood alcohol determinations and meeting the minimum qualification of this rule.~~

~~B. "DIRECTOR" means the Director of the Division of Epidemiology and Laboratory Services.~~

~~C. "DEPARTMENT" means the Department of Health.~~

~~D. "LABORATORY" means any place in which examinations for the determination of blood alcohol level are performed.~~

~~E. "REVIEW" means a visit to a laboratory by a reviewer for the purpose of determining compliance with R444-11.~~

~~F. "REVIEWER" means a representative of the Director authorized to conduct a review.~~

~~G. "SUPERVISOR" means a person responsible for the performance of blood alcohol determinations, who meets the personnel requirements of this rule.~~

~~R444-11-2. Authorization and Administration.~~

~~A. Department - Powers and Duties~~

~~The Department, under the powers and duties conferred upon it by Section 26-1-30(2)(m), upon being assured that a laboratory wishing to become approved or to maintain approval status has satisfied the requirements for approval, as detailed below, shall approve such a laboratory to conduct examinations for the determinations of blood alcohol levels.~~

~~B. Responsibilities - Department~~

~~It shall be the responsibility of the Department to assist any laboratory in the State which desires to obtain approval to~~

conduct examinations for the determination of blood alcohol levels to gain and maintain approval. Toward this end, the Department will offer training, laboratory reviews, procedure evaluation studies, and reference materials to any laboratory requesting the services.

C. Requirements for Approval

Any laboratory desiring to be approved to provide blood alcohol determinations must have official approval of the Department.

1. Approval is conditional on meeting the herein specified minimum standards for personnel and facilities, as well as the herein specified minimum technical standards for the procedures used to examine specimens submitted to that laboratory for the presence or absence of alcohol in the blood. In addition the laboratory shall:

a. successfully participate in an acceptable proficiency testing program offered or authorized by the Department;

b. report agreement with reference laboratories using the same or similar procedures. Standard methods of evaluation will be used;

c. maintain an on-going quality control program; and

d. agree to a not less than biennial review of the laboratory.

2. A laboratory is approved under this rule if the laboratory is Medicare-approved or holds a Clinical Laboratory Improvement Act of 1967 (CLIA) certificate, under 42 CFR part 493, 1990 edition, which is incorporated by reference, for the specialty or subspecialty associated with the testing covered by this rule.

Failure to meet the minimum requirements, as determined by review or performance evaluation, shall be sufficient grounds for withdrawal of approval until the minimum standards can be met.

D. Initial Approval - Provisional Approval

A laboratory that has not been previously approved but that wishes to be considered for approval must request, in writing, a review of its facilities. The review will be to determine whether the laboratory and the affected personnel meet the minimum standards as established below. The reviewer shall report his findings to the Director and recommend action to be taken.

E. Full Approval - Period During Which Approval is Valid

After evaluation of the report of the reviewer, the Director may grant approval to the laboratory for one calendar year, subject to annual renewal, providing the laboratory continues to meet minimum standards as determined by procedural evaluation or on-site observations of both physical facilities and technical performance.

The approved laboratory shall notify the Director in writing when changes of personnel occur and shall submit a curriculum vitae on new personnel performing duties in the chemistry-toxicology laboratory. This notification shall be submitted within ten days of the status change.

F. Revocation of Approval

Approval of any laboratory may be revoked if:

1. the laboratory changes to a method other than that for which it has been approved without prior approval from the Department;

2. any person other than the person qualified to perform the testing is permitted to perform and report the results of blood alcohol determinations;

3. results of proficiency testing indicate a lack of ability to perform at satisfactory levels;

4. required minimum standards for performance of the examination are not maintained; or

5. safety standards are not maintained for personnel performing these examinations or personnel working in the surrounding laboratory environment.

G. Reinstatement of a Disapproved Laboratory

A laboratory that has lost approval because of a change in procedures or through the loss of qualified personnel may have approval reinstated by:

1. requesting a laboratory review during which processing of specimens and testing procedures will be observed by the reviewer;

2. providing all necessary information for the evaluating of credentials of new personnel assigned to the laboratory section in which blood alcohol determinations are made; and

3. continuing to participate, satisfactorily, in the proficiency testing program.

A laboratory that has lost approval through an unacceptable performance in proficiency testing may request a review to determine the reason for unacceptable performance.

Upon being assured by the reviewer that corrections leading to satisfactory and acceptable performance have been made, the Director may reinstate approval based on compliance with this rule.

H. Publishing Lists of Approved Laboratories - Reports

The Department shall publish at least annually a list of laboratories meeting the minimum standards established under this rule. Included on the list shall be the name and location of the laboratory, the name of the director, supervisor, and the chemist qualified to perform the examinations. This list shall be sent to all municipal, county, and state law enforcement agencies and laboratory directors in the state. The Department may publish semi-annual amendments to the list in a newsletter.

R444-11-3. Minimum Standards - Methods to be Employed.

The following minimum standards are as the basis for approval of a laboratory to conduct examinations for the determination of blood alcohol levels.

A. Personnel Qualifications

Minimum educational requirements for a person performing chemical examinations for the determination of blood alcohol levels shall be a recognized Bachelor of Arts or Bachelor of Science Degree or equivalent degree issued after a full course of resident instruction in one or more established and accredited institutions of higher education, with major work for a degree in one or more fields of chemistry, as shown by a transcript of credits. A Bachelor Degree in the biological sciences may be accepted where related work experience has been acquired, providing that the earned degree includes a minimum of 25 quarter hours of courses in chemistry. In addition to the bachelor degree or equivalent, the supervising chemist shall have demonstrated proficiency in blood alcohol determinations as gained by attendance at pertinent courses or the equivalent in practical clinical chemical laboratory training and experience.

Persons who have successfully completed a regular four year course in an established and accredited college or university, with major work leading to a degree in medical technology,

~~providing the course shall have included not less than 25 quarter hours of chemistry, may also meet the minimum personnel requirements, provided subsequent training has been acquired in the field of clinical chemistry.~~

~~A person who is and who has been performing blood alcohol determinations for not less than two years, but who does not meet the above requirements, may also be qualified providing that, as determined by the Division of Epidemiology and Laboratory Services Advisory Committee, the person has completed not less than one year of pertinent education beyond the high school level, or has received training through a training program, providing the person is shown to be competent to perform these examinations as demonstrated by an examination and satisfactory participation in a proficiency testing program offered or authorized by the Department, and providing that the person is employed under the full-time supervision of a person meeting the qualifications presented in R444-11-3A.~~

~~Registration by nationally recognized certifying boards may be accepted by the Director, on recommendation of the Division of Epidemiology and Laboratory Services Advisory Committee, in lieu of the bachelor degree.~~

~~Technical personnel unable to meet these requirements may assist in the preparation and processing of specimens, but may not be responsible for any of the definitive analyses.~~

~~B. Required and Recommended Minimum Standards for Laboratory Facilities~~

~~The facilities provided for blood alcohol determinations shall meet reasonable standards for the procedure selected. There shall be sufficient space to process and examine the specimens commensurate with the workload of the laboratory. Facilities shall be clean, well-lighted, properly ventilated and with adequate temperature control to meet the requirements for the test performed in the laboratory. Adequate and proper storage facilities shall be available for the reagents used in the testing and shall be convenient to the area in which the tests are performed.~~

~~C. Laboratory Equipment and Supplies~~

~~All equipment, reagents, and glassware necessary for the satisfactory performance of blood alcohol determinations shall be on hand or readily available on the premises. Equipment shall be in good working order. Included in this equipment shall be all items specified for the procedure selected as recorded in techniques published in recognized professional publications.~~

~~KEY: medical laboratories~~
~~Date of Enactment or Last Substantive Amendment: 1992~~
~~Notice of Continuation: January 20, 2012~~
~~Authorizing, and Implemented or Interpreted Law: 26-1-30(2)(m)~~]

Human Services, Child and Family Services
R512-311
Out-of-Home Services. Psychotropic Medication Oversight Panel

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 40933
FILED: 11/02/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being created in response to S.B. 82 (2016 General Session).

SUMMARY OF THE RULE OR CHANGE: This rule is being created in accordance with S.B. 82 (2016) to outline the requirements of the Psycho Medication Review Panel.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-104 and Section 62A-4a-213

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There will be a cost of approximately $218,100 to the ongoing state general fund and a one-time cost of $25,600. This is to fund the child psychiatrist and the advanced practice nurse required to do the psychotropic medication oversight, as well as developmental costs for the program.

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

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

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

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule because these changes are not fiscal in nature.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs or savings on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.
R512-311. Out-of-Home Services. Psychotropic Medication Oversight Panel.
R512-311-1. Purpose and Authority.
(1) The purpose of this rule is to establish and operate a psychotropic medication oversight panel for children in the custody of Child and Family Services to ensure that foster children are being prescribed psychotropic medication consistent with their needs.
(2) This rule is authorized by Sections 62A-4a-102, 62A-4a-104, and 62A-4a-213.

R512-311-2. Definitions.
(1) "Advanced Practice Registered Nurse" is defined in Section 58-31b-102.
(2) "Child" is defined in Section 62A-4a-101.
(3) "Child and Family Services" means the Division of Child and Family Services, Department of Human Services.
(4) "Fostering Healthy Children nurse" is a nurse assigned to each child in foster care through the Fostering Healthy Children program administered by the Department of Health.
(5) "Oversight Panel" means the Psychotropic Medication Oversight Panel.
(6) "Psychotropic medication" is defined in Section 62A-4a-213.

R512-311-3. Composition of the Oversight Panel.
(1) The Oversight Panel shall be comprised, at minimum, of an Advanced Practice Registered Nurse and a child psychiatrist. Other individuals may be added to the panel as resources permit and when Child and Family Services determines it to be necessary.

R512-311-4. Duties of the Oversight Panel.
(1) The Oversight Panel shall monitor foster children:
(a) six years old or younger who are being prescribed one or more psychotropic medication; and
(b) seven years old or older who are being prescribed two or more psychotropic medications.
(2) The children shall be referred to the Oversight Panel by the Fostering Healthy Children nurse.
(3) The Oversight Panel may request information and/or records related to the foster child's health care history, including psychotropic medication history and mental and behavioral health history, including trauma assessment and trauma treatment history, from the foster child's current or past caseworker; the foster child; the foster parents; the natural parents; the legal guardians from whom the child was removed; and/or the foster child's current or past health care provider. The caseworker and/or nurse shall assist in obtaining the information and records requested by the oversight.
(4) The Oversight Panel may review and monitor information about the foster child, make recommendations to the foster child's health care providers concerning the foster child's psychotropic medication or the foster child's mental or behavioral health.
(5) The oversight Panel shall provide these recommendations to the foster child's parent or legal guardians from whom the child was removed, and to the child's caseworker after discussing the recommendations with the foster child's current health care providers.

KEY: child welfare
Date of Enactment or Last Substantive Amendment: 2017
Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105; 62A-4a-213

Human Services, Substance Abuse and Mental Health
R523-4
Screening, Assessment, Prevention, Treatment and Recovery Support Standards for Adults Required to Participate in Services by the Criminal Justice System

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 40934
FILED: 11/02/2016

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add certification requirements for the provision of substance use disorder and mental health treatment to individuals who are required to participate in treatment by the court or the Board of Pardons and Parole, or who are incarcerated.

SUMMARY OF THE RULE OR CHANGE: This amendment adds certification requirements for agencies seeking or maintaining certification to provide mental health and substance use disorder screening, assessment, prevention, treatment, education and recovery supports services. These services are provided for adults who are required to participate in treatment by the court or the Board of Pardons and Parole or who are incarcerated. This includes requirements for: 1) criminogenic screening and assessment; 2) substance use and mental health disorder and criminogenic risk factors program and treatment; 3)

documentation and record management in the Jails and prison; 4) certification procedures; 5) corrective actions, denials, suspensions, and revocations; 6) an appeals process; and 7) the posting of certified treatment sites to the courts.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR Part 2 and Subsection 62A-15-103(h)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget because this rule does not require the Division of Substance Abuse and Mental Health (DSAMH) to expend additional funds for implementation of these requirements.
♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government because this rule does not require DSAMH to expend additional funds for implementation of these requirements.
♦ SMALL BUSINESSES: This amendment will require some small businesses to obtain criminogenic screening tools if they have not done so in the past. The annual cost for the license of the screening tool is estimated at $2,000. So far, DSAMH has been able to determine that there are 65 entities that could be affected. It is believed that many of the affected small businesses already have the license, but in a worst-case scenario, it is anticipated that the annual aggregate cost would be no more than $13,000 statewide.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No entities other than small businesses will be affected by this amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If the affected person does not yet have the license for the screening tool, it is estimated that the annual license will cost them approximately $2,000.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact of this amendment to businesses that do not already have this screening tool license is estimated to be approximately $2,000 per year.

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 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Doug Thomas, Director

R523. Human Services, Substance Abuse and Mental Health.
R523-4. Certification Requirements for Screening, Assessment, Prevention, Treatment and Recovery Support [~~Standards~~] Programs for Adults[~~Required to Participate in Services by the Criminal Justice System~~].
R523-4-1. Authority.

This rule is authorized by Section 62A-15-103(h) and 62A-15-103(2)(a)(v) requiring the Division of Substance Abuse and Mental Health (Division) to establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, minimum standards and requirements for the provision of substance use disorder and mental health treatment to individuals who are required to participate in treatment by the court or the Board of Pardons and Parole, or who are incarcerated and to develop, in collaboration with public and private programs, minimum standards for public and private providers of substance abuse and mental health programs licensed by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities.

R523-4-2. Purpose.

This rule prescribes the minimum standards required for programs that provide mental health and substance use disorder screening, assessment, prevention, treatment, education and recovery supports services for adults[~~required to participate in treatment by the court or the Board of Pardons and Parole, or who are incarcerated~~], and requirements to obtain a quality certification.

R523-4-3. Definitions.

[~~(1) "Assessment" means an in-depth clinical interview with a licensed mental health therapist, used to:~~
~~(a) Determine if an individual is in need of:~~
~~(i) Mental health or substance use disorder treatment services;~~
~~(ii) Educational or Prevention series;~~
~~(iii) Recovery support services;~~
~~(iv) Services to reduce criminogenic risk factors; or~~
~~(v) A combination of Subsection R523-4-3(1)(a)(i) through Subsection R523-4-3(1)(a)(iv).~~
~~(b) Recommend a needed level of care or array of services.~~
~~(2) "Criminogenic Risk" means offender characteristics that are directly related to researched causation of crime.~~
~~(3) "Criminogenic Need" means dynamic or changeable attributes of offenders that are directly linked to criminal behavior that should be targeted to develop a comprehensive treatment plan.~~
~~(4) "Educational or Prevention Series" means a court-ordered and evidence-based instructional series for individuals with low criminogenic risk obtained at a substance use disorder program~~

~~that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105 designed to prevent the onset of substance use and/or mental health disorders and reduce criminogenic risk.~~

~~(5) "Level of Care" means the intensity of either substance use disorder services needed as defined by the American Society of Addiction Medicine (ASAM) or the array of services needed to address an individual's mental health issues.~~

~~(6) "Recovery" means a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.~~

~~(7) "Recovery Support" means social support services or activities provided before, during or after completion of acute treatment services to enhance an individual's ability to either attain or retain their recovery from either mental health or substance use disorders.~~

~~(8) "Screening" means a preliminary appraisal of an individual to determine if further assessment of mental health, substance use or criminogenic needs is needed.~~

~~(9) "Treatment" means the array of therapeutic services, including individual, family, group services, medications and interventions designed to improve and enhance social or psychological functioning and reduce criminogenic risk for individuals identified as having either mental health or substance use disorders. The ultimate goal of treatment services is to engage the individual in a process of recovery.~~]

(1) "Screening" means a preliminary appraisal of an individual to determine if further assessment of mental health, and/or substance use risk and needs is warranted.

(2) "Assessment" means an in-depth clinical interview with a licensed mental health therapist, used to:

(a) Determine if an individual is in need of:

(i) Mental health or substance use disorder treatment services;

(ii) Educational or Prevention series;

(iii) Recovery support services;

(b) Recommend a needed level of care or array of services.

(3) "Criminogenic Risk" means individual characteristics that are directly related to researched causations of crime.

(4) "Level of Care" means the intensity of either substance use disorder services needed as defined by the American Society of Addiction Medicine (ASAM) or the array of services needed to address an individual's mental health issues.

(5) "Treatment" means the array of therapeutic services, including individual, family, group services, medications and interventions designed to improve and enhance social or psychological functioning and reduce criminogenic risk for individuals identified as having either mental health or substance use disorders. The ultimate goal of treatment services is to engage the individual in a process of recovery.

(6) "Educational or Prevention Series" means an evidence-based instructional series for individuals with low criminogenic risk obtained at a substance use disorder program that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105 designed to prevent the onset of substance use and/or mental health disorders.

(7) "Recovery" means a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(8) "Recovery Support" means social support services or activities provided before, during or after completion of acute treatment services to enhance an individual's ability to either attain or retain their recovery from either mental health or substance use disorders.

R523-4-4. Standards for Criminogenic Risk Screening and Assessment for Agencies Treating Justice Involved Individuals.

(1) Prior to participating in educational, preventative or treatment services adults shall be given a brief, validated, risk and needs screen to determine whether the adult is of low, moderate, or high risk to re-offend.

[~~(a) For individuals over the age of eighteen (18), the screening instrument to be used shall be the most current version of the Level of Service Inventory-Revised: Screening Version (LSI-R:SV).~~]

(2) Screenings shall:

(a) Be conducted by an individual that has completed training recommended by the developer of the specific instrument being used and/or approved by the Division;

(b) Collect information about behaviors and characteristics known to predict re-offending including delinquency history, social history, and attitudes/behaviors.

(3) If the screen indicates a high or moderate likelihood of re-offending the adult shall be given an in-depth assessment of criminogenic risk and need with an instrument that has been evaluated and found reliable and valid by the scientific community for the purpose of identifying specific criminogenic risks and needs.

[~~(a) The Level of Service/Risk, Need, Responsivity (LS/RNR) shall be used for males.~~

~~(b) The Women's Risk Needs Assessment (WRNA) shall be used for females.~~]

(4) The criminogenic assessment shall examine a wide variety of factors related to the adult's strengths and challenges including: criminal history, school, employment, relationships, environment, current living arrangements, alcohol and drugs, mental health, attitudes, behaviors, and skills.

(5) The criminogenic assessment shall also identify protective factors that are related to the reduced likelihood of re-offending and risk factors that are related to the increased likelihood of re-offending.

R523-4-5. Standards for Substance Use and Mental Health Disorder Screenings.

(1) Adults shall be screened using an instrument(s) that has been evaluated and found reliable and valid by the scientific community to determine whether the adult is in need of a comprehensive assessment.

(2) Screenings shall be:

(a) Conducted by an individual that has completed training recommended by the developer of the specific instrument being used and/or approved by the Division;

(b) Trauma-sensitive, developmentally appropriate, and culturally sensitive[~~, short, simple, and easy to administer and interpret by a wide variety of professionals who work with adults.~~].

(3) The individual shall be referred for an assessment if the screening identifies[~~a~~] potential substance use and/or mental health disorders.

(4) Screenings shall not be used to determine diagnosis but may assist in determining the need for further assessment.

R523-4-6. Standards for [~~and~~]Substance Use and Mental Health Disorder Assessments.

(1) Assessments shall be conducted by a licensed mental health therapist using a standardized process/instrument(s) that has been evaluated by the scientific community and determined to be reliable and valid for the purpose of assessing individuals.

(2) Assessments shall identify the individual's level of motivation for treatment and implement strategies to increase engagement and need for clinically appropriate Mental Health Disorder services and/or Substance Use Disorder [~~or Mental Health~~]services in the following modified ASAM Patient Placement Criteria dimensions:

(a) Risk of acute psychosis, intoxication/withdrawal;

(b) Biomedical conditions or complications;

(c) Emotional, behavioral, or cognitive conditions;

(d) Readiness to change;

(e) Relapse, continued use or continued problem potential; and

(f) Recovery environment.

(3) The assessment shall include relevant information on:

(a) The individual's psychosocial function, substance use including tobacco/nicotine, mental and physical health, and other factors, such as educational experiences, trauma history, cultural issues, legal involvement, [~~risk to criminally re-offend~~]and family relationships that are relevant to the purpose of the assessment;

(b) Strengths, resiliencies, natural supports, interests of the individual, and an evaluation of the individual's unique abilities;

(c) Developmental and functional levels, social, emotional, communication abilities and strengths, and independent living skills;

(d) Cognitive, social, and affective development; family, peer, and intimate relationships; trauma; current or past emotional, physical or sexual abuse; suicidality; and safety;

(e) Collateral information from other sources that are relevant to the individual's situation and provides insight into the issues in Subsection R523-4-6(2)(a) through (2)(d).

(4) The assessment [~~will~~]shall include a diagnosis when clinically indicated.

(5) Based on the screening and the assessment, the assessor shall make recommendations regarding the needed level of care and services to address the identified clinical [~~and criminogenic~~]needs.

(6) The levels of care and array of services shall be based on the ASAM or equivalent Mental Health criteria.

R523-4-7. Standards for Providers of Educational or Prevention Series.

(1) Entities wishing to provide an intervention, program, activity or curriculum to [~~fulfill the legal requirements of court-referred individuals set forth in Subsection 62A-15-103(h)~~]individuals with a substance use disorder shall:

(a) Obtain and maintain an outpatient or residential facility license from the Department of Human Services, Office of Licensing.

[~~(b) Submit an application to the Division for review that includes a description of how their proposed intervention, activity, or curriculum:~~]

[~~(i)~~](b) [~~Meets~~]Use only educational and prevention material that meets the requirements for listing on Utah's registry of evidence-based practices identified in Section R523-9 that:[~~;~~]

[~~(ii)~~](i) Address[~~es~~] the substance use, and mental health[~~ and criminogenic~~] needs of the targeted population;

(ii) Provides accurate information that is designed to promote compliance with Utah laws; and

(iii) Meet[~~s~~] the requirements set forth in Subsection 62A-15-103(h) and Subsection R523-4-7(1)(b) through 1(f).[~~-~~]

(c) Not implement any educational programs until approved by the Division.

(d) Maintain records documenting the individual's attendance and course completion or failure to attend and/or complete.[~~-~~]

(e) [~~Shall not~~]Not include minors in adult groups.

(f) Serve low criminogenic risk individuals and high criminogenic risk individuals separately.

(g) Provide accurate information and be designed to promote compliance with Utah laws.

R523-4-8. Program Standards for Community-[~~b~~]Based Treatment Programs.

(1) All programs shall maintain the appropriate license from the Department of Human Services Office of Licensing for the type(s) of services being provided.

[~~(2) All programs shall submit Treatment Episode Data (TEDs) admission and discharge data as outlined in the Division's most current Division Directives.~~

~~(3) Programs shall evaluate all participants for criminogenic risk and need, and deliver services that target the specific risk and needs identified.~~

~~(4) Individuals with high risk and individuals with low risk to re-offend shall be treated separately.~~

~~(5) Programs shall coordinate and communicate with Adult Probation and Parole, county sheriff's offices, or other necessary criminal justice agencies on a regular and consistent basis as agreed.~~

~~(6) Programs shall provide multi-dimensional treatment that targets the validated criminogenic risk factors.~~

~~(7) Treatment participation and length shall be of sufficient dosage/duration to affect stable behavioral change.~~

~~(8) Treatment intensity, duration and modality shall be based on the current ASAM or comparable mental health criteria and medical necessity determined by the ongoing assessment process.~~

~~(9) The Division shall develop performance metrics to evaluate the ability of programs to engage and retain adults in the appropriate intensity and modality of service.~~]

[~~(10)~~](2) Treatment programs shall:

(a) [~~ensure~~]Ensure that public funds are the payor of last resort and:[~~-~~]

[~~(a)~~](i) [~~Treatment programs shall coordinate~~]Coordinate or refer individuals to the Department of Workforce Services or healthcare navigators for assistance with eligibility for public or private insurance plans.

[~~(b)~~](ii) [~~Treatment programs may~~]May negotiate and assess usual and customary fees to adults.

(b) All substance use providers complete and submit the National Survey on Substance Abuse Treatment Services (N-SSATS), and all mental health providers complete the National Mental Health Services Survey (N-MHSS).

(4) All public substance use providers, including the Local Substance Abuse Authorities and their contracted providers, shall submit Treatment Episode Data (TEDs) admission and discharge data as outlined in the Division's most current Division Directives.

(5) Programs seeking a quality certification that provides services to justice involved individuals shall:

(a) Evaluate all participants for criminogenic risk and need, and deliver services that target the specific risk and needs identified;

(b) Ensure individuals with high risk and individuals with low risk to re-offend are treated separately;

(c) Provide multi-dimensional treatment that targets the validated criminogenic risk factors; and

(d) Coordinate and communicate with Adult Probation and Parole, county sheriff's offices, or other necessary criminal justice agencies on a regular and consistent basis as agreed.

[~~(11) Treatment programs shall:~~

~~(a) First assess level of motivation for treatment and implement strategies to increase engagement;~~

~~(b) Assess individuals for mental health, substance use disorder and other criminogenic risks using validated instruments and protocols;~~

~~(c) Diagnose, treat or ensure treatment for co-occurring conditions;~~

~~(d) Develop an individualized treatment plan that identifies a comprehensive set of tools and strategies that address the client's identifiable strengths as well as her or his problems and deficits;~~

~~(e) Provide comprehensive treatment services;~~

~~(f) As appropriate and with consent, involve families and support persons in the treatment and recovery process;~~

~~(g) Use developmentally appropriate and informed treatments;~~

~~(h) Monitor drug use through drug testing and other means;~~

~~(i) Individuals testing positive for drugs or alcohol shall not be denied entry or removed from treatment from a program solely for positive drug tests.~~

~~(ii) Programs shall comply with all Division Directives for Drug testing as published in the Annual DSAMH Division Directives.~~

~~(j) Have qualified staff licensed and capable of assessing individuals for both mental health and substance use disorders;~~

~~(j) Recognize gender, cultural, linguistic, and other individual differences in their treatment approach;~~

~~(k) Provide or link to ongoing chronic disease management, recovery support, monitoring and aftercare services;~~

~~(l) Ensure all individuals with alcohol and/or opioid disorders shall be educated and screened for the potential use of medication-assisted treatment; and~~

~~(m) Develop strategies to screen for, prevent, and refer to treatment adults with serious chronic conditions such as HIV/AIDS, Hepatitis B and C, and tuberculosis.~~

~~(n) Complete and submit the National Survey on Substance Abuse Treatment Services (N-SATTS);~~

~~(12) Treatment programs shall work with individuals to identify needed and desired recovery supports.~~

~~(a) Participation in recovery support shall be voluntary.~~

~~(b) Whenever possible, individuals shall be encouraged and given a choice of potential recovery support services and a choice of programs.~~

~~(c) Services such as case management, housing, employment training, transportation, childcare, healthcare, and peer support may be provided before, during or after the completion of acute treatment services.~~]

R523-4-9. Treatment Standards for Community-Based Treatment Programs.

(1) Treatment intensity, duration and modality for:

(a) Substance use disorders shall be based on the current ASAM criteria; and

(b) Mental health disorders shall be determined by the clinical assessment process and medical necessity.

(2) Treatment programs shall:

(a) Have qualified staff licensed and capable of assessing individuals for both mental health and substance use disorders;

(b) Develop strategies to screen for, prevent, and refer to treatment adults with serious chronic conditions such as, but not limited to, HIV/AIDS, Hepatitis B and C, and tuberculosis;

(c) Ensure that assessment is an ongoing component of treatment;

(d) Diagnose, treat or ensure treatment for co-occurring conditions;

(e) Ensure treatment participation and length shall be of sufficient dosage/duration to affect stable behavioral change and long term recovery supports;

(f) Develop an individualized treatment plan that identifies a comprehensive set of tools and strategies that address the client's identifiable strengths as well as their problems and deficits;

(g) Provide comprehensive treatment services that includes but is not limited to:

(i) Developmentally appropriate and informed treatments;

(ii) Recognition of gender, cultural, linguistic, and other individual differences in the treatment approach;

(iii) Ensuring all individuals with alcohol and/or opioid disorders are educated and screened for the potential use of medication-assisted treatment;

(iv) Monitoring drug use through drug testing and other means;

(v) Individuals testing positive for drugs or alcohol shall not be denied entry or removed from treatment from a program solely for positive drug tests;

(vi) All public substance use providers, including the Local Substance Abuse Authorities and their contracted providers shall comply with all Division Directives for Drug testing as

published in the annual DSAMH Division Directives and/or preferred practice guidelines;

(vii) As appropriate and with consent, involve families and support persons in the treatment and recovery process; and

(viii) Provide Naloxone education, training and assistance to individuals with opiate use disorders and when possible to their families, friends, and significant others.

(2) Treatment programs shall work with individuals to identify needed and desired recovery supports and ensure that:

(a) Participation in recovery support shall be voluntary; and

(b) Whenever possible, individuals are encouraged and given a choice of potential recovery support services and a choice of programs.

(3) Services such as case management, housing, employment training, transportation, childcare, healthcare, peer support and other social supports shall be strongly considered and implemented if appropriate before, during and after the completion of acute treatment services.

R523-4-[9]10. Standards for Jail or Prison Treatment Programs.

(1) [~~Individuals should~~]All individuals shall be screened for criminogenic risk, mental health, substance use disorders and substance withdrawal syndromes as part of the intake process.

(2) Individuals with signs and symptoms of withdrawal [~~should~~]shall receive timely medical care or a transfer to a more appropriate facility that can provide standard detoxification services.

(3) Jail or prison-based treatment service providers shall coordinate care with community-based treatment providers so that individuals may transition to treatment services in the community.

(4) Treatment programs shall:

(a) First assess level of motivation for treatment and implement strategies to increase engagement;

(b) Assess individuals for mental health, substance use disorders and criminogenic risk using scientifically validated instruments and protocols;

(c) Diagnose and treat or ensure treatment for co-occurring conditions;

(d) Provide comprehensive treatment services;

(e) As appropriate and with consent, involve families and support persons in the treatment process;

(f) Use developmentally appropriate and informed treatments;

(g) Monitor drug use through drug testing and other means;

(i) Programs shall comply with all Division Directives for drug testing as published in the annual DSAMH Division Directives;

(h) Have qualified staff licensed and capable of assessing individuals for both mental health and substance use disorders;

(i) Recognize gender, cultural, linguistic, and other individual differences in their treatment approach;

(j) Provide ongoing chronic disease management, recovery support, monitoring and link to needed community supports;

(k) All individuals with alcohol and/or opioid disorders shall be educated and screened for the potential use of medication-assisted treatment;

(l) Treatment providers shall develop strategies to screen for, prevent, and refer to treatment adults with serious chronic conditions such as HIV/AIDS, Hepatitis B and C, and tuberculosis;

(m) Work with individuals to identify needed and desired recovery supports;

(i) Recovery supports may include preparation/planning for housing, employment, health care, peer support or other services upon release;

(ii) Recovery supports may be provided before, during or after the completion of acute treatment services[~~;~~

~~(n) Complete and submit the National Survey on Substance Abuse Treatment Services (N-SATTS)~~].

R523-4-[~~10~~](11). Documentation Standards for Community and Jail/Prison Based Treatment Services.

(1) A complete and accurate record of all clinical services shall be kept for each individual served that contains the following information:

(a) Any and all screenings and assessments completed;

(b) Any and all consent forms or required disclosures;

(c) A comprehensive treatment plan;

(d) Progress notes;

(e) Continuing recovery recommendations upon discharge; and

(f) Record reflects cultural and gender specificity in treatment.

(2) The individual record is maintained in a manner so as to protect confidentiality and comply with 42 CFR Part 2 and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) documentation/privacy standards. The record is organized, clear, complete, current and legible.

(a) Consent forms for any release of information shall be found in the file.

(b) Consent forms shall be complete, and contain a statement that consent is subject to revocation, and shall be signed and dated by the patient.

(c) Each file shall contain a signed and witnessed Acknowledgement of Receipt of Privacy Statement.

(3) The individual record shall contain documentation of the initial assessment/engagement session.

(a) The assessment/engagement session identifies presenting problems[~~,~~] and individual goals[~~and http://useonlyasdirected.org/get-help-now/initial-diagnosis~~].

(b) The assessment/engagement session includes a statement of the individual's presenting problem(s) and:

(i) Identification and documentation of acute psychosis, intoxication/withdrawal relevant to the presenting problem.

(ii) Identification and documentation of biomedical conditions and complications relevant to the presenting problem.

(iii) Identification and documentation of emotional, behavioral, cognitive conditions, and/or complications relevant to the individual's current situation and presenting problem.

(iv) Identification, evaluation and documentation of readiness to change relevant to presenting problem.

(v) Identification and documentation of relapse, or continued problem potential relevant to presenting problem.

(vi) Identification and documentation of the individual's recovery environment relative to presenting problem.

(vii) Identification of recovery support services needed relevant to presenting problem.

(viii) An assessment/engagement session summary includes recommendations for level of care and intensity of services needed.

(ix) Documentation of an assignment for the individual to complete for their next session.

[~~(4) Any and all screenings and assessments shall be documented in the individual file.~~

~~(a) The assessment information is current and includes the justification for the assessed level of care and array of services, as well as justification if level of care is being substituted.~~

~~(b) Assessment dimensions are current and are updated as new information is received, new goals are identified, and as the individual progresses or regresses.~~]

[~~(c)~~](4) Assessment process is ongoing and changes to assessment information are reflected throughout the record.

[~~(d)~~](5) Level of care and intensity of services are supported by ongoing assessment information, or [~~difference is~~]differences are clinically justified.

[~~(e)~~](6) Assessment shall be signed and include the title of a person licensed in the State of Utah to diagnose, assess and treat people with mental health and substance use disorders.

[~~(5)~~](7) A treatment plan that contains the following:

(a) Specific, individualized, long-range goals;

(b) Behaviorally measurable, short-term objectives that support long-range goals;

(c) Evidence of the individual's participation in development of the plan;

(d) Evidence that the plan is based on the individual's goals and other needs identified in the screening and assessments;

(e) Objectives that are measurable, achievable within a specified time frame and reflect developmentally appropriate activities that support progress towards achievement of individual goals;

(f) Substance use disorder treatment plans should be based on the six ASAM Patient Placement Dimensions and shall address critical areas identified in each dimension. Mental Health Recovery Plans shall be organized in a similar manner;

(g) Interventions designed to help the patient complete the objectives; and

(h) Signature and title of a person licensed in the State of Utah to diagnose, assess and treat people with mental health and substance use disorders.

(6) The individual file shall include documentation of the individual's status throughout the individual record including:

(a) Changes in types, schedule, duration and frequency of therapeutic interventions to facilitate individual progress as well as changes in individual objectives and goals;

(b) Each contact shall be documented in a timely manner;

(c) Progress notes shall be kept that identify the date, duration and type of intervention;

(d) Progress notes shall document progress or lack of progress on the individual's goals as well as the clinician's assessment of the individual's changes in behaviors, attitudes and beliefs;

(e) Progress notes shall reflect clinician's assessment of the effectiveness of the therapeutic interventions and plans for future interventions, which is ideally accomplished through the use of standardized evidence based tools;

(f) Notes shall be legible and signed by a qualified staff indicating appropriate credentials;

(g) No-shows, cancellations or gaps in service such as vacation, incarceration or home visits shall be documented;

[~~(h) Individual and group notes shall be specific and document progress towards achievement of the objectives identified in the recovery plan and as each objective is completed, identify a new objective;~~

~~(i) Lack of progress toward treatment/recovery plan goals and resulting adjustments to the recovery plan shall also be documented;~~]

[~~(j)~~](h) Notes shall reflect behavioral changes as well as changes in attitudes and beliefs;

[~~(k)~~](i) Other group activities such as psychosocial rehabilitation, psychoeducation, life skills, case management,[~~and~~] recreational therapy and recovery[~~may be summarized and dated with the date the activity occurred;~~

~~(l) Recovery~~] support services are documented to the extent required for clinical continuity and in order to meet financial requirements;[

~~(m) Changes in assessment information, current level of care and treatment plan;~~] and

[~~(n)~~](k) Upon discharge, recommendations for ongoing services include the extent to which established goals and objectives were achieved, what ongoing services are recommended, and a description of the individual's recovery support plan.

R523-4-[~~11~~]12. Quality Certification Procedures for Educational Series and Community-Based Treatment Provider[s] Sites That Do Not Provide Opioid Replacement Treatment.

(1) Programs seeking first-time approval or re-approval shall make application to the Division at least 60 days prior to delivering services.

(2) Each treatment site seeking certification shall submit a completed and signed application and assurances form to the Division.

[~~(2)~~](3) All application forms shall be reviewed by the Division.

[~~(3)~~](4) The Division shall determine if the application is complete and demonstrates compliance with this rule.

[~~(4)~~](5) The Division approves the application and determines the program has met all other requirements, the Division shall provisionally certify the program for a period of [~~two years~~]one year.

[~~(5)~~](6) The Division shall notify in writing all applicants within 30 days of submission of an application, whether the application is:

(a) Approved,

(b) Denied, or

(c) Requires additional information.

(7) A final certification shall:

(a) Be completed within the one year provisional certification period of time, according to the procedures established by the Division; and

(b) The final certification may last up to two years from the end date of the provisional certification.

[~~(6)~~](8) If an application for re-approval requires additional information, a previously certified program may continue to provide services for 30 days from the date of notification unless notified by the Department of Human Services to cease and desist.

R523-4-[~~12~~]13. Corrective Action.

(1) When the Division becomes aware that a provider is in violation of this rule the Division shall:

(a) Identify in writing the specific areas in which the provider is not in compliance; and

(b) Send written notice to the provider within 30 days after becoming aware of the violation.

(2) The provider shall submit a written plan for achieving compliance within 30 days of notification of noncompliance.

R523-4-[~~13~~]14. Suspension and Revocation.

(1) The Division may suspend the approval of a provider when a provider fails to:

(a) Respond in writing to areas of noncompliance identified in writing by the Division within the defined period;

(b) Comply with corrective action as agreed upon in its written response to the Division; or

(c) Allow the Division access to information or records necessary to determine the provider's compliance under this rule.

(2) The Division may revoke approval if a provider:

(a) Continues to provide the educational series after suspension;

(b) Fails to comply with corrective action while under a suspension; or

(c) Commits a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

(3) The Division shall notify the Administrative Office of the Courts, the Utah Department of Corrections, the Department of Human Services, Office of Licensing and county local authorities when a certification is suspended or revoked.

R523-4-[~~14~~]15. Procedure for Denial, Suspension, or Revocation.

(1) If the Division has grounds for action under this rule and intends to deny, suspend or revoke approval of a provider, the Division shall notify the applicant or provider of the action to be taken.

(2) A notice to deny, suspend or revoke approval shall contain the reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.

(3) The provider may request a meeting with the Director or their designee within ten calendar days of receipt of notification.

(4) A request for a meeting for this purpose shall be in writing.

(5) Within ten days following the close of the meeting the Division shall inform the provider or applicant in writing of the decision of the Director or Designee of the Division.

R523-4-[~~15~~]16. Posting of Certified Providers.

(1) The Division shall maintain and make public a list of all certified educational or prevention series and treatment programs.

(2) The list shall include agency contact information, service location address, and target population[~~, information on cost and reimbursement policies, and a brief description of the program~~].

KEY: offender substance abuse screenings, offender substance abuse assessments, offender substance abuse education series, offender substance abuse treatments

Date of Enactment or Last Substantive Amendment: [~~December 22, 2015~~]2017

Authorizing, and Implemented or Interpreted Law: 62A-15-103(h); 42 CFR Part 2

Human Services, Substance Abuse and Mental Health

R523-11-3

Certification Requirements for DUI Educational Providers

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 40999
FILED: 11/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add clarification and to correct a typographical error.

SUMMARY OF THE RULE OR CHANGE: In Subsection R523-11-3(3), clarification is added to the curriculum requirement to include a reference to Rule R523-9. It also clarifies a staff requirement. Typographical errors are also corrected in Subsection R523-11-3(3).

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: There is no anticipated cost or savings to the state budget since this amendment is merely adding a clarification to the curriculum requirement and correcting typographical errors.

♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to the local governments since this amendment is merely adding a clarification to the curriculum requirement,

clarifying a staff requirement, and correcting typographical errors.
♦ SMALL BUSINESSES: There is no anticipated cost or savings to the small businesses since this amendment is merely adding a clarification to the curriculum requirement, clarifying a staff requirement, and correcting typographical errors.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities since this amendment is merely adding a clarification to the curriculum requirement, clarifying a staff requirement, and correcting typographical errors.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons since this amendment is merely adding a clarification to the curriculum requirement, clarifying a staff requirement, and correcting typographical errors.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment does not have a fiscal impact on businesses because it is just adding a clarification to the curriculum requirement, clarifying a staff requirement, and correcting typographical errors.

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 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

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.
R523-11-3. 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;

(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 approved curriculum, in accordance with R523-9, with no more than 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 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 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.

([~~4~~]5) A participant's participation in the DUI Educational Program shall not be a substitute for treatment as determined by a screening and assessment.

([~~5~~]6) The Division shall issue the Provider a certificate after determination has been made that the agency is in compliance with these standards.

([~~6~~]7) The Division Director or designee has the authority to grant exceptions to any of the certification requirements.

KEY: DUI programs, certification of instructors
Date of Enactment or Last Substantive Amendment: [~~2016~~]2017
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

Insurance, Administration
R590-70
Insurance Holding Companies

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 40954
FILED: 11/04/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule change enhances the financial solvency monitoring of holding company impacts on insurers.

SUMMARY OF THE RULE OR CHANGE: The revised Utah Insurance Holding Company rule is aimed at assessing the "enterprise risk" within the entire insurance holding company system (including the risk caused by non-insurer affiliates) and determining the impact of such risk upon the solvency of insurers within the insurance group. To accomplish this goal, the revised model law enhances insurance regulators' authority to supervise the insurance group by mandating reporting of information regarding the solvency and risk of an insurer's noninsurer affiliates and allowing examination of such entities. Importantly, the NAIC Financial Regulation Standards and Accreditation Committee has determined that the adoption of certain revisions and significant elements of the revised model law and regulation is now required as part of the national accreditation standards for insurance departments, ensuring adoption nationwide.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-16-116 and Section 31A-2-201

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be no direct impact on the state budget. No new appropriation was requested or received as a result of this rule. The rule will require Utah Insurance Department financial analysts to perform approximately 80 hours of additional work per FTE per year on holding company analysis. However, this difference will be addressed by improving the efficiency and adjusting the emphasis of the analysis process.
♦ LOCAL GOVERNMENTS: There will be no impact on local government because the rule does not address the domain of local government and no local government employees perform functions related to the holding company rule.
♦ SMALL BUSINESSES: In general, there will be no impact on small businesses. In the case where a small business may be in the holding company structure of an insurance company, the small business may need to produce financial information related to the Utah Insurance Department's financial analysis of the insurance company's financial condition. The cost of compliance would generally be assumed by the insurance company itself and impacts to related small businesses will likely be incidental and not significant.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The rule applies only to regulated insurance companies and related companies within the insurance company's holding company structure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Insurance companies and their holding company organizations are already subject to costs associated with holding company insurance laws and regulations. These costs include providing various financial reports and answering questions from financial analysts in their annual and quarterly financial reviews; and providing documents to and answering questions from financial examiners every three to five years when a financial examination is performed. The impact of the rule depends on the financial condition of entities within the holding company structure. The rule requires the production by the insurer of a new enterprise risk report. The cost of producing the report should be minimal, especially for companies who already have enterprise risk processes. Otherwise, the level of the increased cost of compliance with the new sections of the rule is dependent on the level of complexity of the holding company structure and the financial condition of the holding company. In general, the additional costs should represent only a small incremental increase in the cost of compliance compared with the costs before the amended rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact that arises as a result of this rule will be negligible. The rule only requires additional reporting on the part of insurance holding companies and will result in no great deal of extra work on their part. In general, the additional costs should represent only a small incremental increase in the cost of compliance compared with the costs before the amended rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Steve Gooch, Information Specialist

R590. Insurance, Administration.
R590-70. Insurance Holding Companies.
[~~R590-70-1. Authority.~~

~~This rule is adopted pursuant to Section 31A-2-201, Utah Code Annotated, which authorizes rules to implement the Insurance Code.~~

~~R590-70-2. Definitions.~~

~~A. "Executive officer" means any individual charged with active management and control, in an executive capacity, including a president, vice president, treasurer, secretary, controller, and any other individual performing for a person, whether incorporated or unincorporated, functions corresponding to those performed by the foregoing officers.~~

~~B. "Ultimate controlling person" means that person within an insurance holding company system which is not controlled by any other person.~~

~~C. All other terms used herein shall have the same meanings prescribed in Section 31A-1-301 of the Utah Code.~~

~~R590-70-3. Acquisition of Control - Statement Filing.~~

~~A. A person required to file a statement pursuant to Section 31A-16-103 shall furnish the required information on Holding Company Form A, entitled "Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer."~~

~~B. The applicant shall promptly advise the commissioner of any changes in the information so furnished arising subsequent to the date upon which such information was furnished but prior to the commissioner's disposition of the application.~~

~~R590-70-4. Registration of Insurers - Statement Filing.~~

~~A. An insurer required to file a statement pursuant to Section 31A-16-105 U.C.A., shall furnish the required information on Holding Company Form B, entitled "Insurance Holding Company System Registration Statement."~~

~~B. An amendment to Holding Company Form B shall be filed within 15 days after the end of any month in which the following occurs:~~

~~1. There is a change in the control of the registrant, in which case the entire form shall be made current;~~

~~2. There is a material change in the information given in Item 5 or Item 6 of the form, in which case the respective item shall be made current;~~

~~C. An amendment to Holding Company Form B shall be filed by May 1 of each year. Such amendment shall make current all information in Holding Company Form B.~~

~~R590-70-5. Alternative and Consolidated Registrations.~~

~~A. Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under Section 31A-16-105 U.C.A. A registration statement may include information regarding any insurer to the insurance holding company system even if such insurer is not authorized to do business in this State. In lieu of filing a registration statement on Holding Company Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its State of domicile, provided:~~

~~1. the statement or report contains substantially similar information required to be furnished on Holding Company Form B; and~~

~~2. the filing insurer is the principal insurance company in the insurance holding company system.~~

~~B. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Holding Company Form B on behalf of an affiliated insurer, shall set forth a simple statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.~~

~~C. With the prior approval of the commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under paragraph (a) above.~~

~~R590-70-6. Disclaimers and Termination of Registration.~~

~~A disclaimer of affiliation pursuant to Section 31A-16-105(10) U.C.A., or a request for termination of registration pursuant to Section 31A-16-105(6) U.C.A., claiming that a person does not, or will not upon the taking of some proposed action, control any other person (hereinafter referred to as the "subject") shall contain the following information:~~

~~A. the number of authorized, issued and outstanding voting securities of the subject;~~

~~B. with respect to the person whose control is denied and all affiliates of such person:~~

~~1. The number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of such shares concerning which there is a right to acquire, directly or indirectly,~~

~~2. Information as to all transactions in any voting securities of the subject which were effected during the past six months by such persons.~~

C. All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person.

D. A statement explaining why such person should not be considered to control the subject.

R590-70-7. Extraordinary Dividends and Other Distributions.

Requests for approval of extraordinary dividends or any other extraordinary distribution shall include the following:

A. the date established for payment of the dividend;

B. a statement as to whether the dividend is to be in cash or other property and, if in property, the fair market value of such property together with an explanation of the basis for valuation;

C. the amounts and dates of dividends paid in the last 12 month period (including the date proposed for payment of the dividend for which approval is sought);

D. a balance sheet and statement of income for the period intervening from the last annual statement filed with the commissioner and the end of the month preceding the month in which the request for dividend approval is submitted;

E. a brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

R590-70-8. Forms - General Requirements.

A. Forms A, B, C, and D are intended to be guides in the preparation of the statements required by Sections 31A-16-103, 31A-16-105, and 31A-16-106. They are not intended to be blank forms which are to be filled in. These statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

B. Three complete copies of each statement including exhibits and all other papers and documents filed as a part thereof, shall be filed with the commissioner by personal delivery or mail addressed to: Insurance Commissioner of the State of Utah. A copy of Form C shall be filed in each state in which an insurer is authorized to do business, if the commissioner of that state has notified the insurer of its request in writing, in which case the insurer has 14 days from receipt of the notice to file such form. At least one of the copies shall be manually signed in the manner prescribed on the form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.

C. Statements should be prepared on paper 8 1/2"x 11" in size and preferably bound at the top or the top left-hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements, or exhibits shall be clear, easily readable and suitable for photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

D. Forms A, B, C, and D can be obtained from the Utah State Insurance Department.

R590-70-9. Forms - Incorporation by Reference, Summaries and Omissions.

A. Information required by any item of Form A, Form B or Form D may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B or Form D provided such document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the commissioner which were filed within three years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

B. Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the commissioner which was filed within three years and may be qualified in its entirety by such reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of such documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which such documents differ from the documents a copy of which is filed.

R590-70-10. Forms-Information Unknown or Unavailable and Extension of Time to Furnish.

A. Information required need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions:

(1) The person filing shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof; and

(2) The person filing shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

~~B. If it is impractical to furnish any required information, document or report at the time it is required to be filed, there may be filed with the commissioner as a separate document:~~

~~(1) identifying the information, document or report in question;~~

~~(2) stating why the filing thereof at the time required is impractical; and~~

~~(3) requesting an extension of time for filing the information, document or report to a specified date. The request for extension shall be deemed granted unless the commissioner within 60 days after receipt thereof enters an order denying the request.~~

~~R590-70-11. Forms - Additional Information and Exhibits.~~

~~In addition to the information expressly required to be included in Form A, Form B, Form C and Form D, there shall be added such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C or D shall include on the top of the cover page the phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the date of the original filing.~~

~~R590-70-12. Summary of Registration - Statement Filing.~~

~~An insurer required to file an annual registration statement pursuant to Section 31A-16-105, Utah Code is also required to furnish information required on Form C, hereby made a part of these regulations. An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the commissioner of that state.~~

~~R590-70-13. Separability.~~

~~If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.~~]**R590-70-1. Authority.**

This rule is adopted pursuant to:

(1) Section 31A-2-201, which authorizes the commissioner to make rules to implement the Insurance Code; and

(2) Section 31A-16-116, which authorizes the commissioner to make rules pertaining to an insurer subject to Title 31A, Chapter 16.

R590-70-2. Purpose.

The purpose of this regulation is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of the National Association of Insurance Commissioners, NAIC, Insurance Holding Company System Regulatory Act and Sections 31A-16-101 through 31A-16-119, hereinafter referred to as "the Act". The information called for by these regulations is hereby declared to be necessary and appropriate in the public interest and for the protection of the policyholders in the State of Utah.

R590-70-3. Definitions.

The definitions in Section 31A-1-301 and Title 31A, Part 16 apply to this rule.

(1) "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

(2) "Ultimate controlling person" means that person which is not controlled by any other person.

R590-70-4. Forms -- General Requirements.

(1)(a) Form A, Form B, Form C, Form D, Form E and Form F are intended to be guides in the preparation of the statements required by Sections 31A-16-103, 31A-16-105, and 31A-16-106.

(b) They are not intended to be blank forms which are to be filled in.

(c) The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items.

(d) All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted.

(e) Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(2)(a) Each statement including exhibits and all other papers and documents filed as a part thereof, shall be filed with the commissioner in electronic form by secure means.

(b) Each statement shall be signed in the manner prescribed on the form. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.

(3) If an applicant requests a hearing on a consolidated basis under Subsection 31A-16-103(10), in addition to filing the Form A with the commissioner, the applicant shall file a copy of Form A with the NAIC in electronic form.

(4)(a) Statements should be prepared electronically.

(b) Statements shall be easily readable and suitable for review and reproduction.

(c) Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable.

(d) Statements shall be in the English language. Monetary values shall be stated in United States currency. If any exhibit or other document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

(5) Forms A, B, C, D, E, and F can be obtained from the Utah Insurance Department's website at www.insurance.utah.gov.

R590-70-5. Forms -- Incorporation by Reference, Summaries and Omissions.

(1)(a) Information required by any item of Form A, Form B, Form D, Form E or Form F may be incorporated by reference in answer or partial answer to any other item.

(b) Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, Form

D, Form E or Form F, provided the document is filed as an exhibit to the statement.

(c) Excerpts of documents may be filed as exhibits if the documents are extensive.

(d) Documents currently on file with the Utah Insurance Department which were filed within three (3) years need not be attached as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case where the incorporation would render the statement incomplete, unclear or confusing.

(2)(a) Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made as to the pertinent provisions of the document. In addition to the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the commissioner which was filed within three years and may be qualified in its entirety by such reference.

(b) In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects, except as to the parties thereto, the dates of execution, or other details, a copy of only one of the documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which the documents differ from the documents, a copy of which is filed.

R590-70-6. Forms -- Information Unknown or Unavailable and Extension of Time to Furnish.

(1) If it is impractical to furnish any required information, document or report at the time it is required to be filed, there shall be filed with the commissioner a separate document:

(a) identifying the information, document or report in question;

(b) stating why the filing thereof at the time required is impractical; and

(c) requesting an extension of time for filing the information, document or report to a specified date.

(2) The request for extension shall be deemed granted unless the commissioner within 60 days after receipt thereof enters an order denying the request.

R590-70-7. Forms -- Additional Information and Exhibits.

(1) In addition to the information expressly required to be included in Form A, Form B, Form C, Form D, Form E and Form F, the commissioner may request such further material information, if any, as may be necessary to make the information contained therein not misleading.

(2) The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. The exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

(3) Changes to Form A, Form B, Form C, Form D, Form E and Form F shall include on the top of the cover page the phrase: "Change No. (insert number) to" and shall indicate the date of the change and not the date of the original filing.

R590-70-8. Subsidiaries of Domestic Insurers.

The authority to invest in subsidiaries under Subsection 31A-16-102.5(2) is in addition to any authority to invest in subsidiaries which may be contained in any other provision of Title 31A.

R590-70-9. Acquisition of Control -- Statement Filing (Form A).

(1) A person required to file a statement pursuant to Section 31A-16-103, shall furnish the required information on Form A.

(2) Such person shall also furnish the required information on Form E, as described in R590-70-13.

R590-70-10. Amendments to Form A.

The applicant shall promptly advise the commissioner of any changes in the information furnished on Form A arising subsequent to the date upon which the information was furnished but prior to the commissioner's disposition of the application.

R590-70-11. Acquisition of Section 31A-16-103(1)(f)(i) Insurers.

(1) If the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of Subsection 31A-16-103(1)(f)(i), the name of the domestic insurer on the cover page should be indicated as "ABC Insurance Company, a subsidiary of XYZ Holding Company."

(2) Where a Subsection 31A-16-103(1)(f)(i) insurer is being acquired, references to "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

R590-70-12. Pre-acquisition Notification (Form E).

(1) If a domestic insurer, including any person controlling a domestic insurer, is proposing a merger or acquisition pursuant to Subsection 31A-16-103(1), that person shall file a pre-acquisition notification form, Form E.

(2) If a non-domiciliary insurer licensed to do business in this state is proposing a merger or acquisition pursuant to Section 31A-16-104.5, that person shall file a pre-acquisition notification form, Form E. No pre-acquisition notification form need be filed if the acquisition is beyond the scope of Section 31A-16-104.5 as set forth in Subsection 31A-16-104.5(2)(b).

(3) In addition to the information required by Form E, the commissioner may wish to require an expert opinion as to the competitive impact of the proposed acquisition.

R590-70-13. Annual Registration of Insurers -- Statement Filing (Form B).

An insurer required to file an annual registration statement pursuant to Section 31A-16-105 shall furnish the required information on Form B.

R590-70-14. Summary of Registration -- Statement Filing (Form C).

An insurer required to file an annual registration statement pursuant to Section 31A-16-105 is also required to furnish information required on Form C.

R590-70-15. Amendments to Form B.

(1) An amendment to Form B shall be filed within fifteen days after the end of any month in which there is a material change to the information provided in the annual registration statement.

(2) Amendments shall be filed in the Form B format with only those items which are being amended reported. Each amendment shall include at the top of the cover page "Amendment No. (insert number) to Form B for (insert year)" and shall indicate the date of the change and not the date of the original filings.

R590-70-16. Alternative and Consolidated Registrations.

(1)(a) Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under Section 31A-16-105. A registration statement may include information not required by the Act regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this state.

(b) In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile, provided:

(i) the statement or report contains substantially similar information required to be furnished on Form B; and

(ii) the filing insurer is the principal insurance company in the insurance holding company system.

(2) The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a brief statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

(3) With the prior approval of the commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under R590-70-16(1).

(4) Any insurer may take advantage of the provisions of Subsections 31A-16-105(8) or 31A-16-105(9) without obtaining the prior approval of the commissioner. The commissioner, however, reserves the right to require individual filings if the commissioner deems such filings necessary in the interest of clarity, ease of administration, or the public good.

R590-70-17. Disclaimers and Termination of Registration.

(1) A disclaimer of affiliation pursuant or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control any other person, hereinafter referred to as the "subject", shall contain the following information:

(a) the number of authorized, issued and outstanding voting securities of the subject;

(b) with respect to the person whose control is denied and all affiliates of such person:

(i) the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of such shares concerning which there is a right to acquire, directly or indirectly; and

(ii) information as to all transactions in any voting securities of the subject which were effected during the past six months by such persons.

(c) all material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person; and

(d) a statement explaining why such person should not be considered to control the subject; and

(2) A request for termination of registration shall be deemed to have been granted unless the commissioner, within thirty days after receipt of the request, notifies the registrant otherwise.

R590-70-18. Transactions Subject to Prior Notice -- Notice Filing.

(1) An insurer required to give notice of a proposed transaction pursuant to Section 31A-16-106 shall furnish the required information on Form D.

(2) Agreements for cost sharing services and management services shall at a minimum and as applicable:

(a) identify the person providing services and the nature of such services;

(b) set forth the methods to allocate costs;

(c) require timely settlement, not less frequently than on a quarterly basis, and in compliance with the requirements in the Accounting Practices and Procedures Manual;

(d) prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

(e) state that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

(f) define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;

(g) specify that all books and records of the insurer are and remain the property of the insurer and are subject to control of the insurer;

(h) state that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;

(i) include standards for termination of the agreement with and without cause;

(j) include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;

(k) specify that, if the insurer is placed in receivership or seized by the commissioner under Title 31, Chapter 27a:

(i) all of the rights of the insurer under the agreement extend to the receiver or commissioner; and,

(ii) all books and records will immediately be made available to the receiver or the commissioner, and shall be turned over to the receiver or commissioner immediately upon the receiver or the commissioner's request;

(l) specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership pursuant to Title 31, Chapter 27a; and

(m) specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the commissioner under Title 31, Chapter 27a, and will make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.

R590-70-19. Enterprise Risk Report.

The ultimate controlling person of an insurer required to file an enterprise risk report pursuant to Subsection 31A-16-105(12) shall furnish the required information on Form F.

R590-70-20. Extraordinary Dividends and Other Distributions.

(1) Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

(a) the amount of proposed dividend;

(b) the date established for payment of the dividend;

(c) a statement as to whether the dividend is to be in cash or other property and if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;

(d) a copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:

(i) the amounts, date and form of payment of all dividends or distributions, including regular dividends but excluding distributions of the insurer's own securities, paid within the period of twelve consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;

(ii) surplus as regards policyholders, total capital and surplus, as of the 31st day of December next preceding;

(iii) if the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;

(iv) if the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-month periods; and

(v) if the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two calendar years;

(e) a balance sheet and statement of income for the period intervening from the last annual statement filed with the commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and

(f) a brief statement as to the effect of the proposed dividend upon the insurer's surplus and reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

(2) Subject to Subsection 31A-16-106(2), each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen business days following the declaration thereof, including the same information required by R590-70-20(1)(d).

590-70-21. Adequacy of Surplus.

(1) The factors set forth in Subsection 31A-16-106(4) are not intended to be an exhaustive list.

(2) In determining the adequacy and reasonableness of an insurer's surplus no single factor is necessarily controlling. The commissioner instead will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer.

(3) In comparing the surplus maintained by other insurers, the commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

R590-70-22. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance law
Date of Enactment or Last Substantive Amendment: [~~1992~~]2017
Notice of Continuation: January 10, 2012
Authorizing, and Implemented or Interpreted Law: 31A-2-201

Insurance, Administration
R590-173
Credit for Reinsurance

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 40955
FILED: 11/04/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being changed to improve regulation for insurers and to maintain uniformity of regulation with other states. The rule is being changed as a result of H.B. 36, Insurance Revisions, which was passed during the 2016 General Session.

SUMMARY OF THE RULE OR CHANGE: Revisions to the Credit for Reinsurance rule serve to reduce reinsurance consumer protection collateral requirements for certified reinsurers that are licensed and domiciled in "Qualified Jurisdictions". Under the previous version of the Credit for Reinsurance Models, in order for U.S. ceding insurers to receive reinsurance credit, the reinsurance was required to be ceded to U.S.-licensed reinsurers or secured by collateral representing 100% of U.S. liabilities for which the credit is recorded. Utah does not currently have any domestic insurance companies or reinsurance companies that are impacted by the revisions to this rule. The revisions ensure uniformity with the NAIC model law and regulation and with other state jurisdictions that have adopted the revisions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be no direct impact on the state budget. No new appropriation was requested or received as a result of this rule. The rule will also not impact Utah Insurance Department financial analysts or financial examiners because it will not add additional work. Currently, Utah does not have any domestic insurers or reinsurers who are impacted by the rule.
♦ LOCAL GOVERNMENTS: There will be no impact on local government because the rule does not address the domain of local government and no local government employees perform functions related to the credit for reinsurance rule.
♦ SMALL BUSINESSES: The revisions will not impact small businesses because this rule only applies to insurance companies and reinsurance companies. Currently, there are no domestic insurers or reinsurers who will be impacted by the revisions to this rule.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The rule revisions only apply to regulated insurance companies and reinsurance companies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Insurance companies and reinsurance companies are already subject to compliance costs associated with credit for reinsurance rule. The revisions to this rule will not create additional costs for Utah insurers and reinsurers because they are not subject to the revisions. If Utah insurers and reinsurers were subject to the revisions to this rule, their costs would stay the same or decrease because they may no longer be required to post 100% collateral for U.S. liabilities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Insurance companies and reinsurance companies are already subject to compliance costs associated with this rule. If Utah insurers and reinsurers were subject to the revisions to this rule, their costs would stay the same or decrease. The revisions ensure uniformity with the NAIC model law and regulation and with other state jurisdictions that have adopted the revisions.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
\♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Steve Gooch, Information Specialist

R590. Insurance, Administration.
R590-173. Credit For Reinsurance.
R590-173-1. Authority.

This rule is promulgated pursuant to the authority granted by Section 31A-2-201 of the Insurance Code.

R590-173-2. Purpose.

The purpose of this rule is to set forth requirements the commissioner deems necessary to carry out the provisions of Section 31A-17-404. The actions and information required by this rule are necessary and appropriate to the public interest and for the protection of the ceding insurers in this state.

R590-173-3. Definitions.

A. "Accredited Reinsurer" means an insurer that has, by order of the commissioner, been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied in that it is an authorized insurer in at least one state as provided for in Subsection 31A-17-404(3)(e).

B. "Beneficiary" means the entity for whose benefit a trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver, including conservator, rehabilitator or liquidator.

C. "Grantor" means the entity that has established a trust for the benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited, untrusteed assuming insurer.

D. "Liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are [~~not~~]otherwise secured by acceptable means and includes:

(1) For business ceded by domestic insurers authorized to write accident and health or property and casualty insurance:

(a) losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer:

(b) reserves for losses reported and outstanding;

(c) reserves for losses incurred but not reported;

(d) reserves for allocated loss expenses; and

(e) unearned premiums.

(2) For business ceded by domestic insurers authorized to write life, accident and health or annuity insurance:

(a) aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums:

(b) aggregate reserves for accident and health policies;

(c) deposit funds and other liabilities without life or accident and health contingencies; and

(d) liabilities for policy and contract claims.

E. "Mortgage-related security" means an obligation that is rated AA or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the

National Association of Insurance Commissioners (NAIC) and that either:

(1) represents ownership of one or more promissory notes or certificates of interest or participation in the notes, including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation, that:

(a) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S. C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(b) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S. C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S. C.A. Section 1703; or

(2) is secured by one or more promissory notes or certificates of deposit or participations in the notes, with or without recourse to the insurer of the notes, and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Items (1)(a) and (1)(b) of this subsection.

F. "Obligations," means:

(a) reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(b) reserves for reinsured losses reported and outstanding;

(c) reserves for reinsured losses incurred but not reported; and

(d) reserves for allocated reinsured loss expenses and unearned premiums.

G. "Promissory note," when used in connection with a manufactured home, includes a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

H.(1) "Qualified United States financial institution" for the purposes of Section R590-173-7 and Subsection R590-173-[~~8~~]9.A.(3) means an institution that:

(a) is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(b) is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) has been determined by either the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(2) "Qualified United States financial institution," for general purposes of this rule, means an institution that is eligible to act as a fiduciary of a trust that:

(a) is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state of the United States and has been granted authority to operate with fiduciary powers; and

(b) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

I. "Trusteed Reinsurer" means an alien insurer which by order of the commissioner has been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied through a trust fund provided for in Subsection 31A-17-404(3)(d).

R590-173-4. Credit for Reinsurance - Reinsurer Licensed in this State.

The commissioner shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers authorized to do business in this state as of the date of the ceding insurer's statutory financial statement.

R590-173-5. Credit for Reinsurance - Accredited and Trusteed Reinsurers.

The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been granted accredited or trusteed reinsurer status in this state as of the date of the ceding insurer's statutory financial statement.

R590-173-6. Credit for Reinsurance - Reinsurer Domiciled and Licensed in Another State.

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which as of the date of the ceding insurer's statutory financial statement:

(1) is domiciled and licensed in a state which employs standards regarding credit for reinsurance substantially similar to those applicable under Section 31A-17-404 and this rule;

(2) maintains total adjusted capital above the Company Action Level RBC; and

(3) files a properly executed Certificate of Assuming Insurer, Form AR-1, with the commissioner as evidence of its submission to this state's authority to examine its books and records.

B. The provisions of this section relating to surplus as regards policyholders will not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same insurance holding company system.

R590-173-7. Credit for Reinsurance - Reinsurers Maintaining Trust Funds.

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of the date of the ceding insurer's statutory financial statement maintains a trust fund in an amount prescribed below in a qualified United States financial institution, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the NAIC annual statement form by

licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

B. The following requirements apply to the following categories of assuming insurer:

(1) the trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business written in the United States, and in addition, a trusteed surplus of not less than $20,000,000, except as provided in paragraph (2) of this subsection. For purposes of this section, liabilities attributable to business written in the United States means the liabilities attributable to reinsurance ceded by United States domiciled insurers.

(2) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

(3)(a) The trust fund for a group of incorporated and individual unincorporated underwriters shall consist of:

(i) for reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after [~~August 1, 1995~~]January 1, 1993, funds in trust in an amount not less than the [~~group's~~]respective underwriters' aggregate liabilities attributable to business ceded by United States domiciled ceding insurers to any [~~member~~]underwriter of the group;

(ii) for reinsurance ceded under reinsurance agreements with an inception date on or before [~~July 31, 1995~~]December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the [~~group's~~]respective underwriters' aggregate insurance and reinsurance liabilities attributable to business written in the United States; and

(iii) in addition to these trusts, the group shall maintain a trusteed surplus of which $100,000,000 shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of account.

(b) The incorporated members of the group will not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:

(i) an annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(ii) if a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

([~~3~~]4)(a) The trust fund for a group of incorporated insurers under common administration shall:

(i) consist of funds in trust in an amount not less than the assuming insurers' aggregate liabilities attributable to business ceded by United States domiciled insurers to any members of the group pursuant to reinsurance contracts issued in the name of the group and;

(ii) maintain a joint trusteed surplus of which $100,000,000 shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and

(iii) file a properly executed Certificate of Assuming Insurer, Form AR-1, as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined shall bear the expense of any such examination.

(b) Within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C.(1) Credit for reinsurance will not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

(a) contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;

(b) legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest;

(c) the trust shall be subject to examination as determined by the commissioner;

(d) the trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and

(e) no later than February 28 of each year the trustee of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(2)(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under

the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(b) The assets shall be distributed by and claims of United States trust beneficiaries shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(c) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part of the trust fund are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part of the assets, to the trustee for distribution in accordance with the trust agreement.

(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

D. Assets deposited in the trust shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a qualified United States financial institution, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust will not exceed 5% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under Subsection R590-173-7.D.(1)(e), (3), (5)(b) or (6), and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. A depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust shall be invested only as follows:

(1) government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

(a) the United States or by any agency or instrumentality of the United States;

(b) a state of the United States;

(c) a territory, possession or other governmental unit of the United States;

(d) an agency or instrumentality of a governmental unit referred to in Subsections R590-173-7.D.(1)(b) and (c) if the obligations shall be by law payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but will not be obligations eligible for investment under this subsection if payable solely out of special assessments on properties benefited by local improvements; or

(e) the government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(2) obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution, other than an insurance company, or that are assumed or guaranteed by a solvent United States institution, other than an insurance company, and that are not in default as to principal or interest if the obligations:

(a) are rated A or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

(b) are insured by at least one authorized insurer, other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer, licensed to insure obligations in this state and, after considering the insurance, are rated AAA, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(c) have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

(3) obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(4) an investment made pursuant to the provisions of Subsection R590-173-7.D. (1), (2) or (3) shall be subject to the following additional limitations:

(a) an investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities will not exceed 5% of the assets of the trust;

(b) an investment in any one mortgage-related security will not exceed 5% of the assets of the trust;

(c) the aggregate total investment in mortgage-related securities will not exceed 25% of the assets of the trust; and

(d) preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under Subsections R590-173-7.D.(2)(a) and (2)(c), but will not exceed 2% of the assets of the trust.

(5) Equity interests

(a) Investments in common shares or partnership interests of a solvent United States institution are permissible if:

(i) its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(ii) the equity interests of the institution, except an insurance company, are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S. C. Sections 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the [~~National Association of Securities Dealers, Inc~~]Financial Industry Regulatory Authority, or successor organization. A trust will not invest in equity interests under this subsection an amount exceeding 1% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

(b) investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(i) all its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(ii) the equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

(c) an investment in or loan upon any one institution's outstanding equity interests will not exceed 1% of the assets of the trust. The cost of an investment in equity interests made pursuant to this subsection, when added to the aggregate cost of other investments in equity interests then held pursuant to this subsection, will not exceed 10% of the assets in the trust;

(6) obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(7) Investment companies

(a) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S. C. Section 802, are permissible investments if the investment company:

(i) invests at least 90% of its assets in the types of securities that qualify as an investment under Subsection R590-173-7.D. (1), (2) or (3) or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in Subsection R590-173-7.D.(1), (2) or (3); or

(ii) invests at least 90% of its assets in the types of equity interests that qualify as an investment under Subsection R590-173-7.D.(5)(a);

(b) investments made by a trust in investment companies under this subsection will not exceed the following limitations:

(i) an investment in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(i) will not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies will not exceed 25% of the assets in the trust; and

(ii) investments in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(ii) will not exceed 5% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to Subsection R590-173-7.D.(5)(a).

E. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section [~~8~~]9 of this rule shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

R590-173-8. Credit for Reinsurance--Certified Reinsurers.

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of Administrative Rule R590-114, Letters of Credit, or Sections 10, or 11 of this Regulation. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

TABLE

Ratings	Security Required
Secure - 1	0%
Secure - 2	10%
Secure - 3	20%
Secure - 4	50%
Secure - 5	75%
Vulnerable - 6	100%

(1) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(2) The commissioner shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(3) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

(a) Line 1: Fire

(b) Line 2: Allied Lines

(c) Line 3: Farmowners multiple peril

(d) Line 4: Homeowners multiple peril

(e) Line 5: Commercial multiple peril

(f) Line 9: Inland Marine

(g) Line 12: Earthquake

(h) Line 21: Auto physical damage

(4) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(5) Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this Section.

B. Certification Procedure.

(1) The commissioner shall promptly post notice upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at

least thirty (30) days after posting the notice required by this paragraph.

(2) The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with Subsection A of this section. The commissioner shall publish a list of all certified reinsurers and their ratings.

(3) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(a) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the commissioner pursuant to Subsection C of this section.

(b) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than $250,000,000 calculated in accordance with Subparagraph (4)(h) of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least $250,000,000 and a central fund containing a balance of at least $250,000,000.

(c) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(i) Standard & Poor's;

(ii) Moody's Investors Service;

(iii) Fitch Ratings;

(iv) A.M. Best Company; or

(v) any other nationally recognized Statistical rating organization.

(d) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.

(4) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited, to the following:

(a) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification;

TABLE
Financial Strength Ratings by Rating Agency

Ratings	Best	S&P	Moody's	Fitch
Secure - 1	A++	AAA	Aaa	AAA
Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure - 3	A	A+, A	A1, A2	A+, A
Secure - 4	A-	A-	A3	A-
Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable - 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

(b) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(c) For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

(d) For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) available from the commissioner upon request;

(e) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

(f) Regulatory actions against the certified reinsurer;

(g) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph (h) below;

(h) For certified reinsurers not domiciled in the U.S., audited financial statements, (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor). Upon the initial application for certification, the commissioner will consider audited financial statements for the last 3 years filed with its non-U.S. jurisdiction supervisor;

(i) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(j) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

(k) Any other information deemed relevant by the commissioner.

(5) Based on the analysis conducted under subparagraph 4(e) of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is

required to post by one rating level under subparagraph (4)(a) if the commissioner finds that

(a) more than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more which are not in dispute and which exceed $100,000 for each cedent; or

(b) the aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by 90 days or more exceeds $50,000,000.

(6) The assuming insurer must submit a properly executed Form CR-1 (available from the commissioner upon request) as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(7) The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

(a) Notification within 10 days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

(b) Annually, Form CR-F or CR-S, as applicable;

(c) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (d) below;

(d) Annually, audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last 3 years filed with the certified reinsurer's supervisor;

(e) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

(f) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(g) Any other information that the commissioner may reasonably require.

(8) Change in Rating or Revocation of Certification.

(a) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of paragraph (4)(a).

(b) The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(c) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(d) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with Section 9 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section 7, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of 3 months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

C. Qualified Jurisdictions.

(1) If, upon conducting an evaluation under this Section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of such recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(2) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non- U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non- U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The commissioner shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the

discretion of the commissioner, include but are not limited to the following:

(a) The framework under which the assuming insurer is regulated.

(b) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

(c) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

(d) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

(e) The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular.

(f) The history of performance by assuming insurers in the domiciliary jurisdiction.

(g) Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(h) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

(i) Any other matters deemed relevant by the commissioner.

(3) A list of qualified jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under subsections 8.C(2)(a) to (i).

(4) U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

D. Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

(1) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 and such additional information as the commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

(2) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this State as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within 10 days after receiving notice of the change.

(3) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with Subparagraph B(7)(a) of this section.

(4) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with Subparagraph B(7)(b) of this section, the certified reinsurer's certification shall remain in good standing in this State for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this State.

E. Mandatory Funding Clause. Reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

F. The commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified juridictions.

R590-173-9. Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections 4 Through 7.

A. The commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of any of the following:

(1) cash;

(2) securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(3) clean, irrevocable, unconditional and "evergreen" letters of credit that comply with Rule R590-114 issued or confirmed by a qualified United States financial institution; or

(4) any other form of security acceptable to the commissioner.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of R590-114, Letters of Credit and the applicable portions of Sections R590-173-[~~9~~]10 and 1[~~0~~]1 of this rule have been satisfied.

R590-173-[~~9~~]10. Trust Agreements Qualified under Section [~~8~~]9.

A. Required conditions

(1) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified United States financial institution.

(2) The trust agreement shall create a trust account into which assets shall be deposited.

(3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

(4) The trust agreement shall provide that:

(a) the beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(b) no other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(c) it is not subject to any conditions or qualifications outside of the trust agreement; and

(d) it will not contain references to any other agreements or documents except as provided for in Subsections R590-173-[~~9~~]10.A.(11) and (12).

(5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

(a) receive assets and hold all assets in a safe place;

(b) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary may, whenever necessary, negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(c) furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(d) notify the grantor and the beneficiary within 10 days, of any deposits to or withdrawals from the trust account;

(e) upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(f) allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(7) The trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(10) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith.

(11) Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(a) to pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(b) to make payment to the assuming insurer any amounts held in the trust account that exceed 102 % of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(c) where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in Subsections R590-173-9.A.(11)(a) and (b) as may remain executory after such withdrawal and for any period after the termination date.

(12) Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of Section R590-173-[~~8~~]9. in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(a) to pay or reimburse the ceding insurer for:

(i) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(ii) the assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(b) to pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(c) where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in Subsections R590-173-[~~9~~]10.A.(12)(a) and (b) as may remain executory after withdrawal and for any period after the termination date.

(13) [~~The reinsurance agreement may, but need not, contain the provisions required in Subsection R590-173-9.C.(1)(b), so long as these required conditions are included in the trust agreement.~~]Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist

only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this paragraph must be included in their insurance agreement.

(14) Notwithstanding any other provisions in the trust instrument, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that all or part of the trust assets are not necessary to satisfy claims of the United States beneficiaries of the trust, all, or any part of the assets shall be returned to the trustee for distribution in accordance with the trust agreement.

B. Permitted conditions.

(1) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(2) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in Subsection R590-173-[~~9~~]10.C.(1)(b).

(4) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(5) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered to the grantor.

C. Additional conditions applicable to reinsurance agreements:

(1) A reinsurance agreement may contain provisions that:

(a) require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specify what the agreement is to cover;

(b) [~~stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust will not exceed 5% of total investments. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this subsection in lieu of including such provisions in the reinsurance agreement;~~

~~(c)~~]require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

([~~d~~]c) require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

([~~e~~]d) stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) to pay or reimburse the ceding insurer for:

(I) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(II) the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(III) any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(ii) to make payment to the assuming insurer, amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(2) The reinsurance agreement also may contain provisions that:

(a) give the assuming insurer the right to seek approval from the ceding insurer, which will not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(i) the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the current fair market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(ii) after withdrawal and transfer, the current fair market value of the trust account is no less than 102 % of the required amount;

(b) provide for the return of any amount withdrawn in excess of the actual amounts required for Subsection R590-173-[~~9~~]10.C.(1)(e), and for interest payments at a rate not in excess of the prime rate of interest on [~~the~~]such amounts held[~~ pursuant to Subsection R590-173-9.C.(1)(e)~~]; and

(c) permit the award by any arbitration panel or court of competent jurisdiction of:

(i) interest at a rate different from that provided in Subsection R590-173-[~~9~~]10.C.(2)(b);

(ii) court or arbitration costs;

(iii) attorney's fees; and

(iv) any other reasonable expenses.

[~~(3)~~]D. Financial reporting

(1) A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction will be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

[~~(4)~~]E. Existing agreements

(1) Any trust agreement or underlying reinsurance agreement in existence prior to the effective date of this rule shall continue to be acceptable until January 1, 1999, at which time the agreements must fully comply with this rule for the trust agreement to be acceptable.

[~~(5)~~]F. Identification of a beneficiary

(1) The failure of any trust agreement to specifically identify the beneficiary will not be construed to affect any actions or rights that the commissioner may take or possess pursuant to the provisions of the laws of this state.

R590-173-1[~~0~~]1. Other Security.

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

R590-173-1[~~1~~]2. Contracts Affected.

All new and renewal reinsurance transactions entered into after the effective date of this rule shall conform to the requirements of this rule if credit is to be given to the ceding insurer for such reinsurance.

R590-173-1[~~2~~]3. Severability.

If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons or circumstances are not affected.

KEY: insurance
Date of Enactment or Last Substantive Amendment: [~~July 16, 1997~~]2017
Notice of Continuation: June 27, 2012
Authorizing, and Implemented or Interpreted Law: 31A-2-201

Insurance, Administration
R590-273
Continuing Care Provider Rule

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 40953
FILED: 11/04/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This is a new rule required by Title 31A, Chapter 44, which was created by H.B. 323, Continuing Care Retirement Community Amendments, passed during the 2016 General Session. It creates protections for residents of continuing care facilities.

SUMMARY OF THE RULE OR CHANGE: Because of the substantial payments that residents make to Continuing Care Retirement Communities (CCRCs), combined with recent bankruptcies and the potential risk of financial loss to residents, the Utah Legislature has created Title 31A, Chapter 44, to regulate the financial stability and market conduct practices of CCRCs seeking to do business in the state. The rule outlines standards for monitoring CCRCs through periodic disclosure and reporting requirements. Additionally, the rule outlines registration and annual renewal procedures for CCRCs, including disclosure of the CCRC's finances, fees, and refund provisions. The rule requires independent actuarial reviews for CCRCs offering "insurance like" future care. The rule addresses minimum refunds in the event of contract rescission or early withdrawal by the resident.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-44-314 and

Subsection 31A-44-202(2) and Subsection 31A-44-203(4) and Subsection 31A-44-401(3) and Subsection 31A-44-402(2) and Subsection 31A-44-502(2)(d) and Subsection 31A-44-503(4)(d) and Subsection 31A-44-601(6)(f) and Subsection 31A-44-602(2)(b)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will be no direct impact on the state budget. No new appropriation was requested or received as a result of this rule. The rule does prescribe a fee paid by the CCRC at initial registration and with the required annual renewal. This fee is intended to defray the costs of regulating the CCRC.
♦ LOCAL GOVERNMENTS: There will be no impact on local government because the rule does not address the domain of local government and no local government employees perform functions related to the CCRC rule.
♦ SMALL BUSINESSES: The revisions will not impact small businesses because this rule only applies to CCRCs. Currently, there is only one CCRC operating in Utah.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The rule only applies to CCRCs and not to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A CCRC will incur regulatory costs associated with filing financial statements, registration and renewal statements, and associated fees. A CCRC is also required to bear the cost of periodic financial examinations and any possible fines or forfeitures for noncompliance with the Title 31A, Chapter 44, and this rule. The cost of the regulation of a CCRC in Utah is estimated to be similar or less than the cost a CCRC would incur in other state jurisdictions. Annual licensure and renewal fees are currently set at $6,900 per year. Additional costs may be in the range of $5,000 to $20,000 year, including the cost of internal employee compliance time and the cost of periodic financial examinations performed by the Utah Insurance Department.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The $6,900 annual fee that will be paid by continuing care providers will represent a minimal cost in their ongoing budgets. However, the protections it will provide for residents of such facilities will be significant.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 12/01/2016 10:00 AM, State Office Building, 450 N State St, Room 3110, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Steve Gooch, Information Specialist

R590. Insurance Administration.
R590-273. Continuing Care Provider Rule.
R590-273-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to:

(1) Section 31A-2-201, which authorizes the commissioner to make rules to implement the provisions of Title 31A;

(2) Subsection 31A-44-202(2) for the registration process;

(3) Subsection 31A-44-203(4) for the annual renewal process;

(4) Section 31A-44-314 for the establishment of registration and renewal fees;

(5) Subsection 31A-44-401(3) to define financial hardship in the case of resident dismissal contract exceptions;

(6) Subsection 31A-44-402(2) to determine when actuarial reserves will be required;

(7) Subsection 31A-44-502(2)(d) to determine market value of land and infrastructure improvements in rehabilitation;

(8) Subsection 31A-44-503(4)(d) to determine market value of land and infrastructure improvements in liquidation;

(9) Subsection 31A-44-601(6)(f) to determine the conditions under which a lien will be superior to a property lease; and

(10) Subsection 31A-44-602(2)(b) to establish financial disclosure and market conduct rules including conditions for enforcement.

R590-273-2. Purpose and Scope.

(1) The purpose of this rule is to outline the responsibilities of a provider of continuing care where required by Title 31A, Chapter 44.

(2) Pursuant to Subsection 31A-44-104(5), a provider that begins marketing a continuing care facility project:

(a) on or before May 10, 2016, will not be subject to the provisions of this rule until May 10, 2017; or

(b) after May 10, 2016 will be subject to this rule 45 days after the effective date of the rule.

R590-273-3. Definitions.

(1) The definitions in Sections 31A-1-301 and 31A-44-102 apply to this rule.

(2) "Qualified actuary" means a member of the American Academy of Actuaries or the Society of Actuaries or a person

recognized by the commissioner as having comparable training or experience.

R590-273-4. Registration.

Thirty days prior to entering into a continuing care contract or reservation agreement, a provider must complete and submit to the commissioner:

(1) the initial registration form, supporting documentation, and attachments, which shall be filed electronically with the commissioner; and

(2) payment of the initial registration fee in accordance with Rule R590-102 through the online payment portal at https://secure.utah.gov/ips/uidrenewal.

R590-273-5. Registration Renewal.

(1) A registered provider must complete and submit to the commissioner:

(a) the renewal registration form and attachments, which shall be filed electronically with the commissioner by September 30 of each year; and

(b) payment of the renewal registration fee in accordance with Rule R590-102 through the online payment portal at https://secure.utah.gov/ips/uidrenewal.

(2) Registration forms are posted at the department's webpage at https://insurance.utah.gov/agent/agent-other/CCRC.php.

R590-273-6. Financial Hardship Refund.

A continuing care facility resident is in a condition of financial hardship for purposes of Subsection 31A-44-401(3) if:

(1) the resident's regular monthly expenses exceed his or her regular monthly income; and

(2) the resident has net assets, over and above his or her entrance fee at the continuing care facility, of less than $25,000.

R590-273-7. Additional Actuarial Reserve.

(1) Pursuant to Subsection 31A-44-402(2) the commissioner may require the additional reserve fund described in Subsection 31A-44-402(1) if the department determines it is necessary pursuant to Subsection 31A-44-204(1)(a).

(2) The additional reserve fund shall be determined by:

(a) a qualified actuary; or

(b) a person recognized by the commissioner as having comparable training or experience.

(3) The commissioner may require an independent actuarial review to determine the adequacy of the additional actuarial reserve.

(4) The provider will pay the reasonable costs of the actuarial review described in Subsection (3) pursuant to Subsection 31A-44-603(3).

R590-273-8. Market Value of Land and Infrastructure Improvements in Rehabilitation.

In determining the market value of land and infrastructure improvements under an order of rehabilitation pursuant to Section 31A-44-502(2)(d), the commissioner shall:

(1) Consider the most probable price as of a specified date, for which the land and infrastructure improvements owned in fee by the ground lessor should sell:

(a) after reasonable exposure in a competitive market;

(b) under all conditions requisite to a fair sale;

(c) with the buyer and seller each acting prudently, knowledgeably and for self-interest; and

(d) assuming neither buyer or seller is acting under duress.

(2) Disregard the existence or terms of the ground lease.

(3) Determine if a commercial appraisal is required to assign the market value.

R590-273-9. Market Value of Land and Infrastructure Improvements in Liquidation.

In determining the market value of land and infrastructure improvements under an order of liquidation pursuant to Subsection 31A-44-502(2)(d), the commissioner shall:

(1) Consider the most probable price as of a specified date, for which the land and infrastructure improvements owned in fee by the ground lessor should sell:

(a) after reasonable exposure in a competitive market;

(b) under all conditions requisite to a fair sale;

(c) with the buyer and seller each acting prudently, knowledgeably and for self-interest; and

(d) assuming neither buyer or seller is acting under duress.

(2) Disregard the existence or terms of the ground lease.

(3) Determine if a commercial appraisal is required to assign the market value.

R590-273-10. Lien Held by the Commissioner in Favor of a Resident or a Group of Residents.

Pursuant to Subsection 31A-44-601(6)(f), the amount of a lien on a provider's property that is superior to the lien created by Subsection 31A-44-601(1) includes:

(1) all amounts used to pay fees and costs for architectural and engineering for the design of the Facility;

(2) all amounts paid for engineering, environmental and similar studies, reports and surveys with respect to the facility;

(3) all amounts paid for appraisals, marketing and other reports and surveys in connection with the construction, acquisition or improvement of the facility;

(4) fees and costs paid to contractors, developers, brokers, salespersons and other employees and agents, including affiliates of provider;

(5) all fees, charges, assessments, taxes charged or imposed by any governmental unit, district or similar body having jurisdiction over the facility; and

(6) reimbursements to a provider or other owner of the facility for expenditures that would otherwise qualify under Subsection 31A-44-601(1) or this rule if paid directly from loan proceeds.

R590-273-11. Enforcement.

(1) Pursuant to Subsection 31A-44-602(2)(b) the commissioner may conduct an examination or investigation of a provider to determine compliance with Title 31A, Chapter 44, Part 6:

(a) to determine the financial solvency of a facility;

(b) to determine the adequacy of the additional actuarial reserve under R590-273-7;

(c) to verify a statement contained in a disclosure or actuarial statement;
(d) to act on a complaint against a provider or a facility;
(e) to obtain all documents requested by the commissioner; or
(f) to take any corrective action to enforce compliance.
(2) The commissioner may request corrective actions, including but not limited to:
(a) counsel to suggest correct behavior;
(b) restrict or prohibit behavior by the provider that is misleading, unfair or abusive;
(c) issue a cease and desist from committing any further violation;
(d) suspend, revoke, or refuse issuance or renewal of the person's registration;
(e) provide transparent information to compare continuing care contracts, providers, or facilities;
(f) disclosure of all terms and conditions of continuing care contracts and agreements;
(g) disclosure of any financial risks;
(h) promote certain communications between the residents and the provider;
(i) employ or hire examiners, hearing officers, clerks, and others to perform the department's duties in this chapter;
(j) judicially, foreclose a lien as described in Section 31A-44-601; or
(k) appoint a receiver.
(3)(a) The commissioner shall have free access to all the books and papers relating to the business and affairs of the provider.
(b) The books and records required under Subsection 31A-44-603(2)(a) shall be available for the inspection by the commissioner during normal business hours from the date of the transaction for no less than three years, plus the current calendar year.
(4) Nothing in this section prohibits the commissioner from billing to the provider, the reasonable costs of any examination or investigation, including the cost of the review by an actuary.
(5) Nothing in this section prohibits the issuance of administrative forfeitures calculated under R590-273-12.
(6) Nothing in this section prohibits the destruction of books and records past the required records and books retention in R590-273-11(3).

R590-273-12. Penalties.
(1) A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.
(2) The issuance of administrative forfeitures shall be calculated at an amount not greater than $1,000 per violation, and with an aggregate maximum of $30,000 per calendar year.

R590-273-13. Enforcement Date.
The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-273-14. Severability.
If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, continuing care facility
Date of Enactment or Last Substantive Amendment: 2017
Authorizing, and Implemented or Interpreted Law: 31A-44-202(2); 31A-2-201; 31A-44-314; 31A-44-401(3); 31A-44-402(2); 31A-44-502(2)(d); 31A-44-503(4)(d); 31A-44-601(6)(f); 31A-44-602(2)(b); 31A-44-203(4)

Natural Resources; Forestry, Fire and State Lands
R652-1
Definition of Terms

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41012
FILED: 11/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule implements Subsection 65A-1-4(2), which authorizes the Division of Forestry, Fire and State Lands to provide definitions which apply to all rules promulgated by the division unless otherwise provided.

SUMMARY OF THE RULE OR CHANGE: This rule is being amended to include new definitions of the terms found in the wildland fire regulations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 65A-1-4(2)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no aggregate anticipated costs or savings to state budget with regard to this rule amendment, as this rule is only being amended to include new definitions with regard to wildland fire policy.
♦ LOCAL GOVERNMENTS: There are no aggregate anticipated costs or savings to local government with regard to this rule amendment, as this rule is only being amended to include new definitions with regard to wildland fire policy.
♦ SMALL BUSINESSES: There are no aggregate anticipated costs or saving to small businesses with regard to this rule amendment, as this rule is only being amended to include new definitions with regard to wildland fire policy and does not affect small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There should be no persons affected by the amendment of this rule, as this rule is only being amended to include new definitions with regard to wildland fire policy.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this rule amendment, as this rule is only being amended to include new definitions with regard to wildland fire policy.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no fiscal impacts on businesses, as this rule does not apply to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE STE 3520
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov or mail at PO BOX 146301, Salt Lake City, UT 84114-6301

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Brian Cottam, Director

R652. Natural Resources; Forestry, Fire and State Lands.
R652-1. Definition of Terms.
R652-1-100. Authority.

This rule implements Section 65A-1-4(2) which authorizes the Division of Forestry, Fire and State Lands to provide definitions which apply to all rules promulgated by the division unless otherwise provided.

R652-1-200. Definitions.

1. Animal unit (AU): is equal to one cow and calf or their equivalent.

2. Beneficiaries: the citizens of the state of Utah.

3. Beds of navigable lakes and streams: the lands lying under or below the "ordinary high water mark" of a navigable lake or stream.

4. Carrying capacity: the acreage required to adequately provide forage for an animal unit (AU) for a specified period without inducing range deterioration.

5. Commercial gain: compensation, in money, in services, or other valuable consideration rendered or products provided.

6. Comprehensive Management Plans: plans prepared for sovereign lands that guide the implementation of sovereign land management objectives.

7. Cooperative Agreement: an agreement between the Division and an eligible entity wherein the eligible entity agrees to meet a Participation Commitment and provide Initial Attack for wildland fire, and FFSL agrees to pay for wildland fire suppression costs following a Delegation of Fire Management Authority as found in Utah Code Section 65A-8-203.1, as well as all aviation asset costs charged to the incident.

8[~~7~~]. Cultural Resources: prehistoric and historic materials, features, artifacts.

9[~~8~~]. Cultural Resource Survey:

(a) Class I: literature and site files search.

(b) Class II: sample field surface survey or inspection.

(c) Class III: intensive field surface survey.

10[~~9~~]. Director: the director of the Division of Forestry, Fire and State Lands

11[~~0~~]. Division: Division of Forestry, Fire and State Lands

12[~~1~~]. Easements: a right to use or restrict use of land or a portion of a real property interest in the land for a particular purpose granted by the division to a qualified applicant including but not limited to transmission lines, canals and ditches, pipelines, tunnels, fences, roads and trails.

13. Eligible entity: a county, a municipality, or a special service district, local district or service area with:

(a) wildland fire suppression responsibility as described in Section 11-7-1; and

(b) wildland fire suppression cost responsibility and taxing authority for a specific geographic jurisdiction; or

(c) upon approval by the director, a political subdivision established by a county, municipality, special service district, local district, or service area that is responsible for:

(i) providing wildland fire suppression services; and

(ii) paying for the cost of wildland suppression services.

14. Initial attack: actions taken by the first resources to arrive at a wildland fire incident, including size-up, patrolling, monitoring, holding action, or aggressive suppression action.

15[~~2~~]. Management Plans: Comprehensive Management Plans, Resource Plans and Site-Specific Plans.

16. Municipality: a city, town, or metro township.

17[~~3~~]. Ordinary high water mark: the high water elevation in a lake or stream at the time of statehood, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes or other tests as may be applied by the courts. This "ordinary high water mark" may not have been adjudicated in the courts.

18[~~4~~]. Paleontological Resources (fossils): the remains or traces of organisms, plant or animal, that have been preserved by various means in the earth's crust.

19[~~5~~]. Paleontological Resource Survey: an evaluation of the scientific literature or previous paleontological survey reports to assess the potential for discovery or impact to fossils by a proposed development, followed by a pedestrian examination of the exposed geological formations suspected of containing fossils of significance.

20[~~16~~]. Paleontological Site: an exposure of a geologic formation having fossil evidence of scientific value as determined by professional consensus.

21. Participation Commitment: prevention, preparedness, and mitigation actions and expenditures approved by the Division

undertaken by a participating entity to reduce the risk of wildland fire.

22. Participating Entity: an eligible entity with a cooperative agreement.

23[~~17~~]. Planning Unit: the geographical basis of a general or comprehensive management plan; a consolidated block of state land, or a group of isolated state land sections or parts thereof, or a combination of blocks and isolated sections which provide common management opportunities or which have common commercial gain, natural or cultural resource concerns.

24[~~18~~]. Preliminary Development Plan: the submittal, both of maps and written material, which shall identify and determine the extent and scope on a proposed unit development of the entire acreage under application. It shall illustrate, in phases, the development of the entire acreage and include a time table of the estimated schedule of development. The preliminary development plan shall identify density, open space, environmental reserves, site features, services and utilities, land ownerships, local master planning, zoning compliance and basic engineering feasibility.

25[~~19~~]. Preliminary Development Plat: a plat which shall outline and specify the number of dwelling units, the type of dwelling units, the anticipated location of the transportation systems and description of water and sewage systems for the developed area on a Unit Development Lease.

26. State lands: all lands administered by the division.

27[~~0~~]. Range condition: the relation between current and potential condition of the range site.

28[~~1~~]. Record of Decision: a written finding describing a division action, relevant facts, and the basis upon which the decision for action was made.

29[~~2~~]. Resource Plans: a plan prepared for a specific resource, such as mining, timber, grazing or real estate.

30[~~23~~]. Rights-of-Entry: a right to a specific, non-depleting land use granted by the division to a qualified applicant that is temporary in nature, generally not to exceed one year in duration, including but not limited to seismic and land surveys, research sites, access across sovereign lands, and other temporary types of land uses.

31[~~24~~]. Significant site: any site which is designated by the Division of State History as scientifically worthy of specific management.

32[~~25~~]. Site: archaeological and cultural sites are places of prehistoric and historic human activity including aboriginal mounds, forts, buildings, earth works, village locations, burial grounds, ruins, caves, petroglyphs, pictographs, or other locations which are the source of prehistoric cultural features and specimens.

33[~~26~~]. Site Specific Plans: plans prepared for sovereign lands which provide direction for specific actions. Site-specific plans shall include Records of Decision in either narrative or summary form.

34[~~27~~]. Sovereign lands: those lands lying below the ordinary high water mark of navigable bodies of water at the date of statehood and owned by the state by virtue of its sovereignty or land received in exchange for sovereign lands.

35[~~28~~]. Survey Report: report of the various site files and field surveys or inspections.

36. Wildland: an area where:

(a) development is essentially non-existent, except for roads, railroads, power line or similar transportation facilities; and

(b) structures, if any, are widely scattered.

37. Wildland fire: a fire that consumes:

(a) wildland; or

(b) Wildland-urban interface, as defined in Section 65A-8a-102.

KEY: administrative procedures, definitions
Date of Enactment or Last Substantive Amendment: [~~1993~~]2017
Notice of Continuation: April 2, 2012
Authorizing, and Implemented or Interpreted Law: 65A-1-4(2)

Natural Resources; Forestry, Fire and State Lands
R652-120
Wildland Fire

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41011
FILED: 11/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is adopted pursuant to the authority of Subsection 65A-1-4(2), which requires the Division to promulgate rules, and by Section 65A-8-101 et seq., which requires the Division to determine and execute the best method for fire control and the preservation of forest, watershed, and other lands and to enter into agreements related to fire protection.

SUMMARY OF THE RULE OR CHANGE: This rule is amended to include the wildland fire responsibilities of the division, counties, and municipalities. Further, this rule requires the Division to determine and execute the best method for fire control and preservation of forest, watershed, and other lands and to enter into agreements related to fire protection.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 65A-8-101 and Subsection 65A-1-4(2)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: With the implementation of S.B. 122 and S.B. 212 from the 2016 General Session from which this rule is derived, it is anticipated over time that wildfire risks and suppression and management costs should be reduced, resulting in a cost savings to the state, citizens, and taxpayers. The cost saving to state budget is unknown since the participation commitment has not yet been determined.
♦ LOCAL GOVERNMENTS: It is anticipated there could be a cost savings to eligible local government entities that enter into a cooperative agreement, as they may be eligible to have catastrophic wildfire suppression costs paid by the state. The

cost saving to local government is unknown since the participation commitments has not yet been determined.
♦ SMALL BUSINESSES: Small businesses are not affected by this amendment, as this rule does not apply to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Eligible entities, meaning a county, municipality, special service district, local district or service area, may be affected by this amendment as the division will determine a participation commitment, which is derived from historic jurisdictional fire suppression cost averages and a jurisdictional Wildland Fire Risk Assessment, for each eligible entity with a cooperative agreement participating in the Wildland Fire Suppression Fund. The cost to affected persons is unknown since the participation commitment has not yet been determined.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division will determine a participation commitment, which is derived from historic jurisdictional fire suppression cost averages and a jurisdictional Wildland Fire Risk Assessment, for each eligible entity with a cooperative agreement participating in the Wildland Fire Suppression Fund. The cost to affected persons is unknown since the participation commitment has not yet been determined.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no fiscal impacts to businesses, as this rule does not apply to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE STE 3520
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov or mail at PO BOX 146301, Salt Lake City, UT 84114-6301

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Brian Cottam, Director

R652. Natural Resources; Forestry, Fire and State Lands.
R652-120. Wildland Fire Responsibilities.
R652-120-100. Authority and Purpose.

[~~This rule implements Article XVIII of the Utah Constitution and provides for the issuance of burning permits, the establishment of limited suppression areas, and conduct of prescribed burns under the authority of Sections 65A-8-101 and 65A-8-211.~~]This rule is adopted pursuant to the authority of Subsection 65A-1-4(2), which requires the Division to promulgate rules, and by Section 65A-8-101 et seq., which requires the Division to determine and execute the best method for fire control and the preservation of forest, watershed, and other lands, and to enter into agreements related to fire protection.

R652-120-200. Responsibilities of Division.

1. The division in consultation with local authorities, the division shall determine and execute the best method for protecting private and public property by:

(a) except as provided by Subsection (1), preventing, preparing for, or mitigating the origin and spread of fire on nonfederal forest, range, watershed or wildland urban interface land in the state;

(b) encouraging a private landowner to conserve, protect, and manage forest or other land throughout the state;

(c) taking action the division considers appropriate to manage wildland fire and protect life and property on the non-federal forest, range, watershed, or wildland urban interface land within the state.

(d) implementing a limited fire suppression strategy, including allowing a fire to burn within limited or modified suppression, if the division determines the strategy is appropriate for a specific area or circumstance.

(e) the state forester shall make certain that appropriate action is taken to control wildland fires on unincorporated non-federal forest, range, watershed and wildland urban interface lands.

2. The division may enter into a cooperative agreement with a county, municipality, or other eligible entity to provide financial and wildland fire management assistance.

R652-120-300. Responsibilities of Counties.

1. A county shall abate the public nuisance caused by wildfire on unincorporated, privately owned or county owned forest, range, watershed, and wildland urban interface lands within its boundaries.

(a) reduce the risk of wildfire to unincorporated, privately owned or county owned forest, range, watershed, and wildland urban interface land within the county's boundaries, with private landowner permission, through appropriate wildfire prevention, preparedness, and mitigation actions; and

(b) ensure effective wildfire initial attack on unincorporated privately owned or county owned forest, range, watershed, and wildland urban interface land within the county's boundaries.

(c) a county may assign the responsibilities described in Subsections (a) and (b) to a fire service provider or an eligible entity through delegation, contract, interlocal agreement or another method.

2. In a county that has not entered into a cooperative agreement as described in Section 65A-8-203 the county sheriff shall take appropriate action to suppress wildfires on state or private lands.

3. In all cases the sheriff shall:

(a) report, as prescribed by the state forester, on wildland fire control action;

(b) investigate and report wildfire causes; and

(c) enforce the provisions of this rule either independently or in cooperation with the state forester.

4. A county that has entered into a cooperative agreement, as described in 65A-8-203 and R652-120-600, the primary responsibility for wildfire management is the division, upon the delegation of fire management authority as described in 65A-8-203.1 and R652-120-1200.

5. The county sheriff and the county sheriff's organization shall maintain cooperative support with the fire management organization.

6. Each county that participates in a cooperative agreement with the division as described in 65A-8-203 and R652-120-600(5), shall be represented by a county fire warden at minimum during the closed fire season, as described in Section 65A-8-211, except as provided in Subsections (1)(b) and (c).

7. A county may enter into a cooperative agreement with the division to receive financial and wildland fire management cooperation and assistance.

R652-120-400. Responsibilities of Municipalities.

1. A municipality shall abate the public nuisance caused by wildfire on forest, range, watershed, and wildland urban interface lands within the boundaries of the municipality if the land is privately owned or owned by the municipality.

(a) reduce the risk of wildfire to unincorporated, privately owned or municipality owned forest, range, watershed, and wildland urban interface land, with private landowner permission, through appropriate wildfire prevention, preparedness, and mitigation actions; and

(b) ensure effective wildfire initial attack on unincorporated privately owned or municipality owned forest, range, watershed, and wildland urban interface land within the municipality's fire protection boundaries.

(c) a municipality may assign the responsibilities described in Subsections (a) and (b) to a fire service provider or an eligible entity through delegation, contract, interlocal agreement or another method.

2. A municipality may enter into a cooperative agreement with the division to receive financial and wildland fire management cooperation and assistance.

R652-120-5[2]00. Burning Permits.

1. Burning permits shall be issued only by the following authorized officials: state forester, his staff, and persons designated by the state forester. Burning permits are required for open fires during the closed fire season as specified in Section 65A-8-211 and during any extension of the closed fire season proclaimed by the state forester.

2. The permit form, provided by the state forester, shall be filled out completely and in accordance with instructions determined and furnished by his office.

3. Permittees shall comply with any written restrictions or conditions imposed with the granting of the permit.

4. The permittee shall sign the permit form.

5. Burning permits will be issued only when in compliance with the Utah Air Conservation Regulations. The following requirements must be met with each burning permit issued:

(a) The permit is not valid and operative unless the Clearing Index is 500 or above. The clearing index is determined daily by the U.S. Weather Bureau and available from county health offices, the State Forester's Office or Area Offices of the Utah State Department of Health.

(b) A permit may be extended one day at a time, without inspection upon request to the issuing officer. The request must be made before the expiration of the permit.

6. Agriculture has a limited exemption to open burning restrictions for the Division of Forestry, Fire and State Lands rules as indicated in Section 65A-8-211 and the Utah Air Conservation Regulations as outlined in Section 19-2-114.

7. Burning permits shall not be issued when red flag conditions exist or are forecasted by the National Weather Service. Every permittee is required to contact the National Weather Service to assure that a red flag condition does not exist or is not forecasted. Permits are not valid or operative during declared red flag conditions.

R652-120-6[3]00. Limited Suppression Areas.

1. The division may establish fire management areas where the level and degree of suppression activities are to be commensurate with the value of the resources within the fire management area.

2. Fire management plans shall be available for public review and comment prior to implementation.

3. County commission approval is required for any fire management plan that provides for limited fire suppression action on private lands within a fire management area.

R652-120-7[4]00. Prescribed Fire.

1. All prescribed burns utilizing division assistance other than permitting must have a written burn plan that has been reviewed and approved by the division. Burn plans shall include at a minimum information to determine management objectives and procedures to attain the objectives. Data will be provided to deal with safety concerns and smoke management. The burn plan will detail needs to insure the prescribed burn occurs within prescription.

2. A private landowner or state lessee/permittee receiving assistance on a prescribed fire shall supply resources specified in the burn plan.

3. Fire-fighting equipment placed by the division in any county for fire protection purposes cannot be required to assist or be fully committed to a prescribed fire, but may be utilized as available.

R652-120-8[5]00. Management for Cultural Resources and Threatened and Endangered Species.

Cultural resources, paleontological resources, and threatened and endangered species which may be affected by a proposed prescribed fire or within a fire management plan will be considered, protected or mitigated, as may be required and practical.

KEY: administrative procedures, burns, permits, endangered species
Date of Enactment or Last Substantive Amendment: [1989]2017
Notice of Continuation: November 11, 2014

Authorizing, and Implemented or Interpreted Law: 65A-8-101; 65A-8-211

Natural Resources; Forestry, Fire and State Lands
R652-121
Wildland Fire Suppression Fund

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41013
FILED: 11/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule implements Article XVIII of the Utah Constitution and Section 65A-8-204 and provides for administration of the Wildland Fire Suppression Fund under the authority of Section 65A-8-207.

SUMMARY OF THE RULE OR CHANGE: This rule is amended to implement changes to the Wildland Fire Suppression Fund pursuant to S.B. 212 and S.B. 122 from the 2016 General Session, which creates a source of funding for the Wildland Fire Suppression Fund, modifies the structure of the fund, and authorizes entities to enter into cooperative agreements for wildland fire suppression.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 65A-8-204 and Section 65A-8-207

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: With the implementation of S.B. 122 and S.B. 212 (2016) from which this rule is derived, it is anticipated over time that wildfire risks and suppression and management costs should be reduced, resulting in a cost savings to the state, citizens and taxpayers. The cost savings to state budget is unknown since the participation commitment has not yet been determined.
♦ LOCAL GOVERNMENTS: It is anticipated there could be a cost savings to eligible local government entities that enter into a cooperative agreement, as they may be eligible to have catastrophic wildfire suppression costs paid by the state. The cost savings is unknown since the participation commitment has not yet been determined.
♦ SMALL BUSINESSES: Small businesses are not affected by this amendment, as this rule does not apply to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Eligible entities, meaning a county, municipality, special service district, local district, or service area, may be affected by this amendment as the division will determine a participation commitment, which is derived from historic jurisdictional fire suppression cost averages and a jurisdictional Wildland Fire Risk Assessment, for each eligible entity with a cooperative agreement participating in the Wildland Fire Suppression Fund. The cost to affected persons is unknown since the participation commitment has not yet been determined.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division will determine a participation commitment, which is derived from historic jurisdictional fire suppression cost averages and a jurisdictional Wildland Fire Risk Assessment, for each eligible entity with a cooperative agreement participating in the Wildland Fire Suppression Fund. The cost to affected persons is unknown since the participation commitment has not yet been determined.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no impacts to businesses, as this rule does not apply to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE STE 3520
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov or mail at PO BOX 146301, Salt Lake City, UT 84114-6301

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Brian Cottam, Director

R652. Natural Resources; Forestry, Fire and State Lands.
R652-121. Wildland Fire Suppression Fund.
R652-121-100. Authority.

This rule implements Article XVIII of the Utah Constitution and Section 65A-8-204 and provides for administration of the Wildland Fire Suppression Fund under the authority of Section 65A-8-207.

R652-121-200. [~~Normal Fire Suppression Costs~~]Wildland Supression Fund.

1. [~~Under the terms of a cooperative fire protection agreement, the state forester shall file an annual budget for operation of a cooperative district with each participating county. The county shall budget an amount for actual fire suppression costs determined to be normal by the state forester.~~]The Wildland Fire Suppression Fund may be used to pay the costs of wildland fire suppression on state-owned land and for wildland fire suppression

costs except initial attack costs on non-federal land within the jurisdiction of a county, municipality, or other eligible entity that has entered into a cooperative agreement with the Division and is complying with the terms of the cooperative agreement.

2. [~~Normal fire suppression costs are defined as the actual costs identified by annual audits of a participating county's financial records and costs paid by the state in the county's behalf under the terms of Sections 65A-8-203 and 65A-8-205. The most recent seven-year record will be used. The highest year and lowest year will be deducted and the remaining five years averaged.~~]A county, municipality, or other eligible entity without a cooperative agreement or one with a revoked cooperative agreement shall be responsible to pay for all wildland fire suppression costs on non-federal land within its jurisdiction within 90 days after receiving a bill from the Division for such costs, subject to a right to an informal appeal to the State Forester. Any appeal must be submitted to the Division in writing within 90 days of receiving the bill. The State Forester may conduct an investigation, hold an informal hearing, or request additional information before making a final decision.

[~~3. The seven years of fire suppression costs will be in constant dollars, which allows for the effect of inflation.~~

~~4. The minimum county budget for fire suppression costs shall be $5,000. The effect of inflation will be considered every three years. An amount equal to the accumulated inflation over this period will be added to this base budget for fire suppression. This time period began January 1, 1999.~~]

R652-121-300. [~~Annual Sign Up, Effective Payment Period, Annual Assessment Payments and Capitalization.~~]Payment of Wildland Fire Suppression Fund Costs.

1. [~~The annual sign up period will be from November 1 through January 10 of the following year.~~]After an eligible entity has entered into a cooperative agreement with the Division, all wildland fire suppression costs beyond initial attack within the jurisdiction of the eligible entity will be paid by the Wildland Fire Suppression Fund.

2. [~~The effective period for payments out of the Wildland Fire Suppression Fund will be June 1 through October 31 of each year. Should the state forester determine the need to extend the fire season as specified in Section 65A-8-211 due to fire severity, all suppression costs incurred during that extension period will be eligible. A participating county may petition the state forester in writing requesting use of the Wildland Fire Suppression Fund to cover wildland fire suppression costs incurred outside the normal fire season.~~]Area managers will verify to the state forester in writing that an eligible entity has a cooperative agreement.

3. [~~A participating county shall make its assessment fee and any required equity payment by March 15 of each year.~~]Each participating entity must make a good faith effort to recover suppression costs for negligently-caused wildland fires. If the participating eligible entity refuses to make a good faith effort to recover suppression costs from a negligent party for a wildland fire without approval from the State Forester, the suppression costs for that fire shall not be eligible for payment from the Wildland Fire Suppression Fund. The State Forester will determine if a good faith effort has been made to recover suppression cost.

4. Wildland fire suppression costs recovered under Section 65A-3-3 will be repaid to the Wildland Fire Suppression Fund.

[~~R652-121-400. Determination of Unincorporated Acreage.~~

~~1. The unincorporated acreage to be used in determining a portion of the assessment fee for participation in the Wildland Fire Suppression Fund will be the private acreage provided by the county from its ownership records. The acreage figure will be updated by the county every three years.~~

~~2. A county shall report all of the unincorporated private acreage within the county in order to participate in the Wildland Fire Suppression Fund.~~

~~R652-121-500. Determination of Property Values.~~

~~1. The taxable value of property in the unincorporated area of a county will be the locally assessed value of real property provided by the county to the Utah State Tax Commission, Property Tax Division on an annual basis.~~

~~2. Value of real property means:~~

~~(a) the value of real estate, including patented mining claims as reported pursuant to Section 59-2-322.~~

~~(b) the value of improvements as reported pursuant to section 59-2-322.~~

~~3. The county must adhere to Utah State Tax Commission policy for periodic reassessment of property. A county that is found to be in arrears on meeting this requirement will be penalized by increasing the current taxable value of property by 25% in determining the county's assessment fee.~~

~~R652-121-600. Determination of Equity Payments.~~

~~1. Unless waived by the legislature, an equity payment is required if a county elects to participate in the Wildland Fire Suppression Fund after the initial sign up period or to reestablish participation in the fund after a county's participation was terminated at the county's choice or for revocation by the state forester. The initial sign up period ended on May 31, 1998.~~

~~2. The equity payment is based on what the county's annual assessment fee would have been for the previous three years. In no case will the equity payment exceed three years of assessment.~~

~~3. If a county elects to join the suppression fund for the first time after May 31, 2000, an equity payment will be required that is equal to the previous three years' assessment fees.~~

~~4. If a county elects to withdraw from the fund or participation is revoked by the state forester, the county may request permission in writing to re-establish participation. Upon acceptance, the county must make an equity payment equal to what its assessment fees would have been for each year it was out of the fund, not to exceed three years.~~

~~R652-121-700. Definition of Eligible Suppression and Presuppression Costs.~~

~~1. After the County's approved fire suppression budget has been depleted, all fire suppression costs that occur during the fire season, as defined in R652-121-300, directly related to the control of wildfires on forest, range and watershed lands within the~~

~~unincorporated area of a participating county are eligible for coverage by the Wildland Fire Suppression Fund. The costs of resources directly involved in fire suppression efforts that are paid from the county's wildland fire suppression account are eligible. The county must notify the state forester in writing when the county's budget for normal fire suppression costs has been expended. Area managers will verify to the state forester in writing that a county's fire suppression budget has been depleted.~~

~~2. A good faith effort must be made by the counties to recover suppression costs for human caused fires. If the county has evidence that indicates a responsible party for a fire and chooses not to proceed, suppression cost for that fire is not eligible for reimbursement from the Wildland Fire Suppression Fund. After consultation between the county and state, the state forester will determine if a good faith effort has been made to recover suppression cost.~~

~~3. Wildland Fire suppression costs recovered under Section 65A-3-4 will be repaid to the Wildland Fire Suppression Fund.~~

~~4. Presuppression projects may be funded from the Wildland Fire Suppression Fund when approved in advance by the state forester.~~

~~R652-121-900. Clarification of The State's Financial Obligation For Suppression Costs.~~

~~If the Wildland Fire Suppression Fund is not adequate to pay all eligible fire suppression costs, prorated expenditure payments will be made to affected counties. The remaining county liability will be shared between the county and state as provided by the current agreement.~~

~~R652-121-1000. Agreement For County Participation in Fund.~~

~~Pursuant to Section 65A-8-205 a county legislative body may enter into a written agreement with the state forester to participate in the Wildland Fire Suppression Fund. The written agreement to authorize a county's participation in the fund may be an addendum to the current cooperative wildland fire agreement between a county and the state forester.~~]

R652-121-~~400[1100]~~400. Revocation of Participation in Fund.

1. [~~A county's eligibility to p~~]Participation[e] in the Wildland Fire Suppression Fund may be revoked for failure to:

(a) enter into a cooperative agreement with the Division, [~~pay the required assessment or equity fees when due after being notified by the state forester as specified in Subsection R652-121-1100(2).~~]

(b) [~~provide documented unincorporated acreage figures for assessment determination~~]comply with the terms of the cooperative agreement with the Division; or

(c) [~~provide total taxable value of unincorporated property as provided annually to the Utah State Tax Commission, Property Tax Division for the assessment determination~~]fulfill its participation commitment.

2. The division[~~state forester~~] will [~~apprise~~]notify a participating entity[~~county~~] in writing of any [~~deficiency~~]breach of the cooperative agreement[~~ in Subsection R652-121-1100(1) within 30 days following the due date. Deficiencies not remedied~~]

3. Failure to remedy a breach may [~~within 60 days shall~~] result in revocation of [~~a county's~~]the entity's cooperative agreement pursuant to the terms of the cooperative agreement which shall preclude participation in the Wildland Fire Suppression Fund.

4. The revocation decision may be informally appealed to the State Forester within 30 days of the notice. The State Forester may conduct an investigation, hold an informal hearing, or request additional information. The final decision of the State Forester will be sent to the entity.

R652-121-500. Withdrawal from Participation in Fund.

1. An entity may withdraw from participation in the fund by revoking its cooperative agreement the end of the agreement's term by:

(a) informing the division, in writing, of the eligible entity's intention to revoke the cooperative agreement; or

(b) failing to sign and return it annual financial statement as described in R652-120-400(5)(e), unless an extension has been granted by the Division.

R652-121-600. Reinstatement of Participation in Fund.

1. An eligible entity that voluntarily withdrew participation in the Wildland Fire Suppression Fund pursuant to R652-121-500 may enter into a new cooperative agreement with the Division and become a participating entity.

2. An eligible entity whose participation in the Wildland Fire Suppression Fund was revoked by the division pursuant to R652-121-400 may enter into a new cooperative agreement with the Division and become a participating entity only after remedying the breach that resulted in the revocation. If the revocation was due to failure to fulfill the participation commitment for one or more years, the eligible entity shall agree to fulfill the previous participation commitments during the first three-year term of the new cooperative agreement in addition to the participation commitments for each year of the cooperative agreement.

[~~R652-121-1200. Definition of Presuppression Activities.~~

~~Presuppression activities are those activities related to wildfire prevention, preparedness and mitigation to reduce hazard or risk on eligible lands. Presuppression activities include fuel treatment, fuel breaks, defensible space, codes and ordinances, presuppression plans, wildland fire protection capability, wildland fire suppression training and other practices which reduce hazards or risks in the eligible areas.~~

~~R652-121-1300. Application Process For Presuppression Projects.~~

~~1. Presuppression project proposals must be submitted to the state forester in writing prior to implementation. The written proposal shall detail:~~

~~(a) the location of the project,~~

~~(b) the purpose of the project,~~

~~(c) the methods of accomplishing the project,~~

~~(d) the time line for completion of the project,~~

~~(e) the resources needed and their availability,~~

~~(f) itemized estimated cost for the project, and~~

~~(g) other data required by the state forester.~~

~~2. Presuppression project proposals may be submitted by the counties to the state forester from March 1 through April 1 and August 1 through September 1 of each year. The counties will be notified by May 1 or October 1 of the state forester's decision on the proposed projects.~~

~~R652-121-1400. Limitation on Presuppression And Fire Management Incentives.~~

~~1. The cost of a county's approved presuppression projects shall not exceed 75% of that county's annual assessment fee for the Wildland Fire Suppression Fund.~~

~~2. Presuppression projects may be cost shared at a rate between 25% and 75% of the total cost of the project. The cost share rate will be determined by the state forester for each project category on an annual basis. These cost share rates will be communicated to the counties by January 30 of each year~~

~~3. Presuppression projects may be proposed for multi-year funded projects. These multi-year funded projects may not exceed three years. Annual cost share payments to a county for a multi-year project may not exceed 75% of that county's annual assessment fee. Project proposals will be developed to reflect annual work plans and payments to complete the project over a specified number of years.~~

~~4. The costs that may be reimbursed for presuppression projects may be limited by legislative appropriation. The Division shall not authorize payments for presuppression projects that exceed 75% of the total annual assessment fees paid into the fund by participating counties.~~

~~R652-121-1450. Payment for Presuppression Projects.~~

~~1. Cost share payment for presuppression projects will be made to the counties when:~~

~~(a) the project is completed, inspected and certified by the area manager; and~~

~~(b) the county makes a written request for reimbursement with documented costs.~~

~~R652-121-1600. State Land Exclusion.~~

~~Wildland fire suppression costs on state-owned lands are not eligible to be covered from the Wildland Fire Suppression Fund.~~]

KEY: administrative procedures, wildland fire fund
Date of Enactment or Last Substantive Amendment: [~~January 4, 2002~~]2017
Notice of Continuation: September 25, 2012
Authorizing, and Implemented or Interpreted Law: 65A-8-207

Natural Resources; Forestry, Fire and State Lands
R652-122
County Cooperative Agreements with State for Fire Protection

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41014
FILED: 11/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule implements Subsection 65A-8-203(5)(b), which authorizes the Division to make rules concerning cooperative agreements; Subsection 65A-8-203(43)(a) and Subsection 65A-8-203(3)(b), which require the Division to establish minimum standards for a county wildland fire ordinance and to specify minimum standards for wildland fire training, certification, and wildland fire suppression equipment; Subsection 65A-8-203.1, which defines delegation of fire management authority; and Section 65A-8-203.2, which concerns billing for costs of wildland fire suppression for counties or municipalities that do not have a cooperative agreement with the Division.

SUMMARY OF THE RULE OR CHANGE: This rule is amended to implement changes made by S.B. 122 (2016) with regard to cooperative agreements, responsibilities, and participation commitment.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 65A-8-203

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: With the implementation of S.B. 122 and S.B. 212 (2016) from which this rule is derived, it is anticipated over time that wildfire risks and suppression and management costs should be reduced resulting in a cost savings to the state, citizens, and taxpayers. The cost savings to state budget is unknown since the participation commitment has not yet been determined.
♦ LOCAL GOVERNMENTS: It is anticipated there could be a cost savings to eligible local government that enter into a cooperative agreement as they may be eligible to have catastrophic wildfire suppression costs paid by the state. The cost savings to local government is unknown since the participation commitment has not yet been determined.
♦ SMALL BUSINESSES: Small businesses are not affected by this amendment, as this rule does not affect small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Eligible entities, meaning a county, municipality, special service district, local district, or service area, may be affected by this amendment as the division will determine a participation commitment, which is derived from historic jurisdictional fire suppression cost averages and a jurisdictional Wildland Fire Risk Assessment, for each eligible entity with a cooperative agreement participating in the Wildland Fire Suppression Fund. The cost to affected persons is unknown since the participation commitment has not yet been determined.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division will determine a participation commitment, which is derived from historic jurisdictional fire suppression cost averages and a jurisdictional Wildland Fire Risk Assessment, for each eligible entity with a cooperative agreement participating in the Wildland Fire Suppression Fund. The compliance cost is unknown since the participation commitment has not yet been determined.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impacts on businesses, as this rule does not apply to businesses.

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE STE 3520
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov or mail at PO BOX 146301, Salt Lake City, UT 84114-6301

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Brian Cottam, Director

R652. Natural Resources; Forestry, Fire and State Lands.
R652-122. [~~County~~]Cooperative Agreements[~~ with State for Fire Protection~~].
R652-122-100. Authority.

This rule implements subsection 65A-8-203(5)(b), which authorizes the Division to make rules concerning cooperative agreements; subsection 65A-8-203(4[~~3~~])(a) and subsection 65A-8-203(3)(b) which require the D[~~d~~]ivision to establish minimum standards for a county wildland fire ordinance and to specify minimum standards for wildland fire training, certification, and wildland fire suppression equipment;[~~. This rule is promulgated under general rulemaking authority of subsection 65A-1-4(2).~~] subsection 65A-8-203.1, which defines delegation of fire management authority, and Section 65A-8-203.2, which concerns billing for costs of wildland fire suppression for counties or municipalities that do not have a cooperative agreement with the Division.

R652-122-200. Cooperative Agreements.

1. The governing body of any eligible entity, as defined in R652-1-200(13), may enter into a cooperative agreement with the division to receive financial and wildfire management cooperation and assistance, as described in 65A-8-2, Fire Control.

2. The Division shall determine the provisions of the cooperative agreement consistent with statutory requirements.

3. A cooperative agreement shall last for a term of no more than five years and be renewable if the eligible entity continues to meet the requirements.

4. An eligible entity may not receive financial cooperation or financial assistance until the cooperative agreement is executed by the eligible entity and the division.

(a) the state shall assume an eligible entity's cost of suppressing catastrophic wildfire as defined in the cooperative agreement if the eligible entity has entered into, and is in full compliance with the cooperative agreement with the division.

5. A county or municipality that has not entered into a cooperative agreement with the division, as described herein, or whose Cooperative Agreement has been revoked shall be responsible for wildland fire costs within the county or municipality jurisdiction as outlined in R652-120-1000.

6. In order to enter into a cooperative agreement an eligible entity shall:

(a) if the eligible entity is a county, adopt and enforce unincorporated land and wildland fire ordinance based upon minimum standards established by the division or Uniform Building Code Commission.

(b) agree to require that the fire department or equivalent fire service provider under contract with, or delegated by, the eligible entity on unincorporated land meet the minimum standards for wildland fire training, certification and suppression equipment based upon nationally accepted standards as specified by the division;

(c) agree to a participation commitment which requires investment in prevention, preparedness, and mitigation efforts as agreed to with the division intended to reduce the eligible entity's risk of catastrophic wildfire;

(d) agree to file with the division an annual accounting of wildfire prevention, preparedness, mitigation actions, and associated costs.

(e) agree to return the financial statement described in Subsection (6), signed by the chief executive officer of the eligible entity, to the division on or before the date set by the division.

(f) if the eligible entity is a county, agree to have a designated fire warden as described in 65A-8-209.1.

7. The division shall:

(a) send an Annual Statement to each eligible entity that details the eligible entity's participation commitment for the coming fiscal year, including the preparedness, prevention, and mitigation actions agreed to in Subsection 6(c).

(b) financial statements shall be effective for one calendar year, beginning on the date set by the division.

R652-122-300. Determination of Participation Commitment.

1. The Division shall determine a participation commitment for each entity with a cooperative agreement participating in the wildland fire suppression fund.

2. The participation commitment will be calculated by adding the Risk Assessment by Acres to the Historic Fire Cost Average in each jurisdiction.

3. An entity may appeal the participation commitment determination to the State Forester by informing the division in

writing of the entity's disagreement with the Division's determination and stating the reasons for the disagreement.

4. The State Forester may hold an informal hearing or request additional information. After deliberation, the State Forester shall make a final determination of the participation commitment and communicate it to the entity.

R652-122-400. Determination of Risk Assessment by Acres.

1. The Risk Assessment by Acres is calculated using the Division's "Utah Wildfire Risk Assessment Portal" (UWRAP).

(a) county "high risk" (red) acres are assessed at $0.40/acre and county "medium risk" (yellow) acres are assessed at $0.30/acre.

(b) municipal "high risk" (red) acres are assessed at $3.50/acre and municipal "medium risk" (yellow) acres are assessed at $2.00/acre

2. UWRAP will be updated every two years by FFSL, as data sources and technology allow, to maintain the most current and defensible risk assessment.

R652-122-500. Determination of Historic Fire Cost Average.

1. Only wildfire suppression costs that are accrued and paid by the State on behalf of a participating entity are counted toward that entity's Historic Fire Cost Average, this includes State-paid costs after a Delegation of Fire Management Authority and Transfer of Fiscal Responsibility has occurred.

2. The historic fire cost average is calculated on a rolling ten-year average, dropping the highest and lowest cost years and adjusting for inflation (using the CPI); therefore, each ten-year average will have eight data points.

3. The historic fire cost average includes only suppression costs for which that entity who has fire suppression responsibility and taxation authority.

4. A county's historic fire cost average will only include state-paid suppression costs on all unincorporated land other than federal and state.

5. A municipality's historic fire cost average will only include state-paid suppression costs on all incorporated land other than federal and state.

6. An entity with both county and municipality responsibilities will include state paid suppression costs on all unincorporated land other than federal, within a county and state paid suppression costs on all incorporated land other than federal, within their jurisdiction.

R652-122-600. Annual Participation Commitment Report.

1. An entity may meet its participation commitment requirement either through direct expenditure of funds, or by "in-kind" expenditures in support of prevention, preparedness, or mitigation efforts including, but not limited to, prevention material costs, fuels crew labor costs, and other expenditures determined by the Division to be eligible towards the participation commitment.

2. The participating entity is responsible to record and account for its participation commitment actions and expenditures and to provide an annual accounting to the Division for review and approval.

3. The participating entity shall provide an annual participation commitment report to the Division detailing the actual expenditures and activities in compliance with the participation commitment during the fiscal year.

4. The Division may request additional information related to participation expenditures and actions.

R652-122-700. Participation Commitment Carry Over.

1. The value of Participation Commitment actions may, in certain instances, "carry-over" to the next fiscal year with the approval of the respective FFSL Area Manager.

2. It is the responsibility of the Participating Eligible Entity to receive approval from their respective FFSL Area Manager in advance of pursuing a carry-over and account for, track and report the carry-over from year to year.

3. Decisions of the Area Manager may be appealed to the State Forester. The State Forester may hold a hearing or request additional information before making a final decision.

R652-122-800. Annual Participation Commitment Statement.

1. Every year, after the fire business and accounting for the prior year is finalized, the Division will send to each participating eligible entity an Annual Financial Statement containing the determination of the calculated Participation Commitment for the entity's coming fiscal year.

2. The Participating Eligible entity's chief executive officer must then sign and return the Annual Participation Commitment Statement to the Division by a due date determined by the Division, thereby acknowledging the entity's participation for the coming fiscal year.

3. Unless the division has approved an extension, if an entity fails to return the signed Annual Participation Commitment Statement to the Division by the due date, the cooperative agreement shall be considered revoked and the entity shall be withdrawn from participation in the wildland fire suppression fund.

R652-122-900. Revocation of Cooperative Agreement.

1. An eligible entity may revoke a cooperative agreement before the end of the agreement's term by:

(a) informing the division, in writing, of the eligible entity's intention to revoke the cooperative agreement; or

(b) failing to sign and return it annual participation commitment statement as described in R652-120-400(5)(e), unless an extension has been granted by the division.

2. A cooperative agreement may not be revoked before the end of the fiscal year if the participating entity signed an returned an Annual Participation Commitment Statement. The revocation will be effective the next fiscal year.

3. The Division may revoke a cooperative agreement only pursuant to Division rules and the terms of the cooperative agreement.

4. An eligible entity whose cooperative agreement has been revoked shall be responsible for the costs of wildfire suppression within in its jurisdiction for any time period during which the entity failed to meet the requirements of the cooperative agreement.

R652-122-1000. Allocation of Wildland Fire Suppression Costs to Entity Without Valid Cooperative Agreement.

1. The division shall bill an entity that has not entered into a cooperative agreement with the division as described in

Section 65A-8-203, or whose agreement has been revoked pursuant to R652-121-900, for the cost of wildfire suppression accrued by the state within the jurisdiction of that entity.

2. The cost of wildfire suppression to an entity that has not entered into a cooperative agreement with the division as described in Section 65A-8-203, or whose agreement has been revoked pursuant to R652-121-900, shall be calculated by determining the number of acres burned within the borders of the entity, dividing that number by the total number of acres burned by a wildfire, and multiplying the resulting percentage by the state's total cost of wildfire suppression for that wildfire.

3. An entity that receives a bill from the division, pursuant to these rules, shall pay the bill, or make arrangements to pay the bill, within 90 days of receipt of the bill, subject to the entity's right to appeal, as described in Subsection 65A-8-203(5)(b)(vi).

R652-122-1100. Accounting System for Determining Suppression Costs.

Suppression costs for a wildland fire shall be calculated by determining the number of acres burned within the jurisdictional boundary of the entity, dividing that number by the total number of acres burned by a wildfire, and multiplying the resulting percentage by the state's total cost of wildfire suppression for that wildfire.

R652-122-1200. Delegation of Fire Management Authority.

1. Delegation of Fire Management Authority occurs when:

(a) State or Federally owned lands are involved in the incident; or,

(b) firefighting resources are ordered through an Interagency Fire Center (beyond "pre-planned dispatch"); or,

(c) at the request of the participating entity (local fire official on scene) having jurisdiction; or,

(d) at the discretion of the State Forester after consultation with local authorities.

R652-122-13[2]00. Minimum Standards for County Wildland Fire Ordinance.

(1) The division uses the International Urban Wildland Interface Code as a basis for establishing the minimum standards discussed in this document.[~~A county ordinance that at least meets the minimum standards should be in place by September 2006.~~]

(2) The Division incorporates by reference the 2003 International Code Council Urban-Wildland Interface Code as the minimum standard for wildland fire ordinance with these exceptions:

(a) Section 101.1 Delete

(b) Section 101.3 Delete "The extent of this regulation is intended to be tiered commensurate with the relative level of hazard present."

(c) Section 101.3 Second paragraph, substitute "development and" for "unrestricted"

(d) Section 101.4 Delete Exception

(e) Section 101.5 In the Exception, delete "section 402.3"

(f) Section 105.2 Delete "For buildings or structures erected for temporary uses, see Appendix A, Section A108.3, of this code"

(g) Section 105.2 Add a number 15 to the list of activities that need a permit to read "Or other activities as determined by the code official"

(h) Section 202 Delete "Critical Fire Weather, Ignition-Resistant Construction Class 1,2 and 3, Urban-Wildland Interface area"

(i) Section 202 "See Critical Fire Weather" from Fire Weather definition

(j) Section 202 Replace Fuel, Heavy definition with "Vegetation consisting of round wood 3 inches (76 mm) or larger in diameter. The amount of fuel (vegetation) would be 6 tons per acre or greater."

(k) Section 202 Replace Fuel, Light definition with "Vegetation consisting of herbaceous and round wood less than 1/4 inch (6.4 mm) in diameter. The amount of fuel (vegetation) would be 1/2 ton to 2 tons per acre."

(l) Section 202 Replace Fuel, Medium definition with "Vegetation consisting of round wood 1/4 to 3 inches (6.4mm to 76 mm) in diameter. The amount of fuel (vegetation) would be 2 to 6 tons per acre."

(m) Section 202 Add the term Legislative Body with the following definition: "The governing body of the political jurisdiction administering this code"

(n) Section 202 Add the term Brush, Tall with the following definition: "Arbor-like varieties of brush species and/or short varieties of broad-leaf trees that grow in compact groups or clumps. These groups or clumps reach heights of 4 to 20 feet. In Utah, this includes primary varieties of oak, maples, chokecherry, serviceberry and mahogany, but may also include other species."

(o) Section 202 Add the term Brush, Short with the following definition: "Low-growing species that reach heights of 1 to 3 feet. Sagebrush, snowberry, and rabbitbrush are some varieties"

(p) Section 202 Add the term Wildland Urban Interface with the following definition "The line, area or zone where structures or other human development (including critical infrastructure that if destroyed would result in hardship to communities) meet or intermingle with undeveloped wildland or vegetative fuel."

(q) Section 301 Delete

(r) Section 302.1 Replace with " The legislative body shall declare the urban-wildland interface areas within the jurisdiction. The urban wildland interface areas shall be based on the maps created through Section 302."

(s) Section 302.2 Replace with " In cooperation, the code official and the Division of Forestry, Fire and State Lands (FFSL) wildfire representative (per participating agreement between county and FFSL) will create or review Wildland Urban Interface area maps, to be recorded and field with the clerk of the jurisdiction. These areas shall become effective immediately thereafter."

(t) Section 302.3 Add "and the FFSL wildfire representative" between "official" and "shall".

(u) Section 402.3 Delete

(v) Section 403.2 Delete Exception

(w) Section 403.3 Replace "typically used to respond to that location" to "to protect structures and wildlands"

(x) Section 403.7 Add "It will be up to the code official to ascertain the standard based on local fire equipment, grade not to exceed 12%"

(y) Section 404.1 Delete "or as required . . . with Section 402.1.2"

(z) Section 404.1 Delete Exception

(aa) Section 404.3 Delete "The draft site shall have emergency . . . with Section 402."

(bb) Section 404.5 Replace "as follows: determined" with "by the local jurisdiction. NFPA 1142 may be used as a reference."

(cc) Section 404.5.1 Delete entire section including Exception

(dd) Section 404.5.2 Delete entire section including Exception

(ee) Section 404.6 Replace with "The water system required by this code can only be considered conforming for purposes of determining the level of ignition-resistant construction (see Table 503.1)."

(ff) Section 404.8 Delete the words "and hydrants"

(gg) Section 404.9 After " . . . periodic tests as required by the code official." add the sentences "Code official shall establish a periodic testing schedule. Costs are to be covered by the water provider."

(hh) Section 404.9 After the last sentence, add "Mains and appurtenances shall be installed in accordance with NFPA 24. Water tanks for private fire protection shall be installed in accordance with NFPA 22. Costs are to be covered by the water provider."

(ii) Section 404.10.3 After ". . . dependent on electrical power" add "supplied by power grid" and after " . . . demands shall provide . . . " add "functional"

(jj) Section 404.10.3 Replace "Exceptions" in its entirety with "When approved by the code official, a standby power supply is not required where the primary power service to the stationary water supply facility is underground or on-site generator."

(kk) Section 405 Before Section 405.1 Add "The purpose of the plan is to provide a basis to determine overall compliance with this code, for determination of Ignition Resistant Construction (IRC) (see Table 503.1) and for determining the need for alternative materials and methods."

(ll) Section 405.1 After "When required by a code official, a fire protection plan shall be prepared" add the words "and approved prior to the first building permit issuance or subdivision approval."

(mm) Chapter 5, Delete Table 502

(nn) Section 505.2 Replace "Class B roof covering" with "Class A roof covering"

(oo) Section 506.2 replace "Class C roof covering" with "Class A roof covering"

(pp) Section 602 Delete

(qq) Section 603.2 Replace "for the purpose of Table 503.1" with "for individual buildings or structures on a property"

(rr) Section 603.2 Replace "10 feet or to the property line" with "30 feet or to the property line"

(ss) Section 603.2 replace "along the grade" with "on a horizontal plane"

(tt) Section 603.2 replace "may be increased" with "may be modified"

(uu) Section 603.2 Delete "crowns of trees and structures"

(vv) Add new Section 603.3 titled "Community fuel modification zones" with the following text: Fuel modification zones to protect new communities shall be provided when required by the code official in accordance with Section 603 in order to reduce fuel loads adjacent to communities and structures.

(ww) Add new Section 603.3.1 titled "Land ownership" with the following text: Fuel modification zone land used to protect a community shall be under the control of an association or other common ownership instrument for the life of the community to be protected.

(xx) Add new Section 603.3.2 titled "Fuel modification zone plans" with the following text: Fuel modification zone plans shall be approved prior to fuel modification work and shall be placed on a site grading plan shown in plan view. An elevation plan shall also be provided to indicate the length of the fuel modification zone on the slope. Fuel modification zone plans shall include, but not be limited to the following:

(i) Plan showing existing vegetation

(ii) Photographs showing natural conditions prior to work being performed

(iii) Grading plan showing location of proposed buildings and structures, and set backs from top of slope to all buildings or structures

(yy) Section 604.1 Add "annually, or as necessary" after "maintained"

(zz) Section 604.4 First sentence should read "Individual trees and/or small clumps of trees or brush crowns extending to within . . . "

(aaa) Section 607 change "20 feet" to "30 feet"

(bbb) Chapter 7 Delete

(ccc) Appendix A is included as optional recommendations rather than mandatory

(ddd) Appendix B Last sentence changed to "Continuous maintenance of the clearance is required."

(eee) Appendix C Below title, add "This appendix is to be used to determine the fire hazard severity."

(fff) Appendix C-A1. Change to "One-lane road in, one-lane road out" and points change to 1, 10 and 15.

(ggg) Appendix C-A2. Points change to 1 and 5

(hhh) Appendix C-A3 Change to 3 entries: Road grade 5% or less, road grade 5-10% and road grade greater than 10%, with points at 1,5 and 10, respectively.

(iii) Appendix C-A4. Points are now 1, 5, 8 and 10

(jjj) Appendix C-A5 Change to "Present but unapproved" for 3 points, and "not present" for 5 points

(kkk) Appendix C-B1. Fuel Types change to "Surface" and "Overstory". Surface has 4 categories -- Lawn/noncombustible, Grass/short brush, Scattered dead/down woody material, Abundant dead/down woody material; and the points are 1, 5, 10 and 15, respectively. Overstory has 4 categories -- Deciduous trees (except tall brush), Mixed deciduous trees and tall brush, Clumped/scattered conifers and/or tall brush, Contiguous conifer and/or tall brush; and the points are 3, 10, 15 and 20, respectively.

(lll) Appendix C-B2. The 3 categories are changed to "70% or more of lots completed", "30% to 70% of lots completed" and "Less than 30% of lots completed" and the points would be 1, 10 and 20, respectively.

(mmm) Appendix C-C Replace first category with "Located on flat, base of hill, or setback at crest of hill"; Replace second category with "On slope with 0-20%grade"; Replace third category with "On slope with 21-30% grade"; Replace fourth category with "On slope with 31%grade or greater"; Add fifth category that reads "At crest of hill with unmitigated vegetation below"; replace the points with 1, 5, 10, 15 and 20 for the five categories.

(nnn) Appendix C-E. Change the points to 1, 5, 10, 15 and 20.

(ooo) Appendix C-F. Drop down the second and third categories to third and fourth and insert new second category to read "Combustible siding/no deck"; The points for the four categories are 1, 5, 10 and 15.

(ppp) The new totals for "Moderate Hazard" are 50-75; "High Hazard" are 76-100; "Extreme Hazard" are 101+.

(qqq) Appendices D-H Delete

R652-122-14[3]00. Minimum Standards for Wildland Fire Training.

[~~(1) These standards apply to fire departments representing those counties who have cooperative wildland fire protection agreements with the State of Utah or other fire departments which are contracted with the counties to provide fire protection on private wildland.~~

~~(2) All members of the fire department engaged in responding to private and state wildland fires within the county's jurisdiction will be certified by the Utah Fire Certification Council as Wildland Firefighter I. The standard must be obtained by June 1, 2007. For purposes of this rule, "engaged in private and state wildland fires"~~

~~(a) means firefighters who are directly involved in the suppression of a wildland fire; firefighters, on scene, who have supervisory responsibility or decision-making authority over those involved in the suppression of a wildland fire; or individuals who have fire suppression responsibilities within close proximity of the fire perimeter.~~

~~(b) does not mean a person used as a courier; driver of a vehicle not used for fire suppression; or a person used in a non-tactical, support or other peripheral function not in close proximity to a wildland fire.~~

~~(3) Fire Department personnel who supervise other firefighters on private and state wildland fires within the county's jurisdiction will be certified by the Utah Fire Certification Council as Wildland Firefighter II. This standard must be obtained June 1, 2014.~~]

1. At a minimum, the Participating Entity will ensure that firefighters providing Initial Attack to wildland fire within the Participating Entity's jurisdiction will be trained in NWCG S130 Firefighter Training and S190 Introduction to Wildland Fire Behavior. FFSL also recommends S215 Wildland Urban Interface Firefighting Operations.

(a) This includes firefighters who are directly involved in the suppression of a wildland fire; firefighters on scene who have supervisory responsibility or decision-making authority over those involved in the suppression of a wildland fire; or individuals who have fire suppression responsibilities within close proximity of the fire perimeter.

(b) This does not include a person used as a courier, driver of a vehicle not used for fire suppression, or a person used in a non-tactical support or other peripheral function not in close proximity to a wildland fire.

(c) Upon the Delegation of Fire Management Authority, Firefighters not certified by the Utah Fire Certification Council as Wildland Firefighter I will be released from Initial Attack or reassigned to other firefighting duties.

R652-122-15[4]00. Minimum Standards for Wildland Firefighting Equipment.

(1) The following standards are applicable to equipment used by fire departments representing those counties who have cooperative wildland fire protection agreements with the State of Utah. This includes county fire departments and other fire departments which are contracted with the counties to provide fire protection on private wildland. The Utah Division of Forestry, Fire and State Lands has determined that this standard be met by June 1, 2006.

(2) Engines and water tenders used on private wildland fires within the county's jurisdiction will meet the standard for the type of equipment plus appropriate hand tools and water handling equipment as determined by the National Wildfire Coordinating Group.

TABLE 1
Engines

Component	Type 1	Type 2	Type 3
Pump Rating (gpm)	1,000+ @ 150 psi	250+ @ 150 psi	150+ @ 250 psi
Tank Capacity (gal)	400+	400+	500+
Hose 2.5 inch	1,200 ft	1,000 ft	--
Hose 1.5 inch	400 ft	500 ft	500 ft
Hose 1 inch	--	--	500 ft
Ladders	48 ft	48 ft	--
Master Stream (gpm)	500	--	--
Personnel (minimum)	4	3	2

Component	Type 4	Type 5	Type 6
Pump Rating (gpm)	50 @ 100 psi	50 @ 100 psi	30 @ 100 psi
Tank Capacity (gal)	750+	400 - 750	150 - 400
Hose 2.5 inch	--	--	--
Hose 1.5 inch	300 ft	300 ft	300 ft
Hose 1 inch	300 ft	300 ft	300 ft
Ladders	--	--	--
Master Stream (gpm)	--	--	--
Personnel (minimum)	2	2	2

TABLE 2
Water Tenders

Component	Type 1	Type 2	Type 3
Tank Capacity (gal)	5,000+	2,500+	1,000+
Pump Capacity (gpm)	300+	200+	200+
Off Load Capacity (gpm)	300+	200+	200+
Max Refill Time (min)	30	20	15
Personnel tactical/nontactical	2/1	2/1	2/1

KEY: minimum standards, wildland urban interface, cooperative agreements
Date of Enactment or Last Substantive Amendment: [~~April 28, 2011~~]2017
Notice of Continuation: April 14, 2016
Authorizing, and Implemented or Interpreted Law: 65A-8-203

Natural Resources; Forestry, Fire and State Lands
R652-123
Exemptions to Wildland Fire Suppression Fund

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 41015
FILED: 11/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule implemented Subsection 65A-8-207(1), which authorizes the Division of Forestry, Fire and State Lands to make rules to administer the Wildland Fire Suppression Fund, including rules to determine whether acres or real property is eligible for exemptions. This rule will now be repealed as it is no longer needed with the implementation of S.B. 122 and S.B. 212 from the 2016 General Session and the regulations implemented from these bills.

SUMMARY OF THE RULE OR CHANGE: This rule is no longer needed with the implementation of S.B. 122 and S.B. 212 (2016) and the regulations implemented from these bills. Exemptions, if any, have been outlined in the new regulations. Therefore, this rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 65A-8-207(1)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings by repealing this rule because the repeal will not affect state budget. Exemptions are still outlined in the fire policy rules.
♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government with regard to this rule repeal, as this rule does not affect local government costs or savings. Exemptions, if any, are outlined in the new rules.
♦ SMALL BUSINESSES: Small businesses have no associated costs or savings, as they are not affected by this repeal, and there will be no impacts to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons as defined are not affected by the repealing of this rule; therefore, there is no associated costs or savings to affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs subject to this repeal, as there are no impacts to affected persons or any requirements for affected persons that would incur costs or require compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no fiscal impacts on businesses, as this rule does not apply to businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE STE 3520
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jamie Phillips-Barnes by phone at 801-538-5421, by FAX at 801-533-4111, or by Internet E-mail at jamiebarnes@utah.gov or mail at PO BOX 146301, Salt Lake City, UT 84114-6301

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Brian Cottam, Director

R652. Natural Resources; Forestry, Fire and State Lands.
[~~R652-123. Exemptions to Wildland Fire Suppression Fund.~~
~~R652-123-100. Authority.~~

~~This rule implements Subsection 65A-8-207(1) which authorizes the Division of Forestry, Fire and State Lands to make rules to administer the Wildland Fire Suppression Fund, including rules to determine whether an acres or real property is eligible for the exemption provided in Subsection 65A-8-205(2)(b).~~

~~R652-123-200. Definitions.~~

~~1. "Accessible" - an area is considered accessible if the roads are paved, and are 20 feet wide, and has a overhead clearance of 13 1/2 feet and has a maximum slope of 10%. A Type I fire engine, as defined in this rule, must be able to access and negotiate the roads and work safely throughout the entire area.~~

~~2. "Hydrant system" - A water distribution system consisting of pipes, hydrants, and pumps used for fire suppression, with the following specifications:~~

~~a. A six inch supply feed~~

~~b. A capacity of delivering 1000 gallons per minutes at 20 pounds per square inch for two hours at each hydrant. Flow will be verified with flow test documentation.~~

~~c. Maximum hydrant spacing is no greater than 500 lineal feet.~~

~~3. "Fire Barrier" - continuous, delineated, unbroken separation of land between the wildland and the nominated area, clear of wildland vegetation where wildland fire will not carry, and that is a permanent, definable, and substantial separation. Such barriers can include but is not limited to irrigated golf courses, lakes, highways, rivers and others deemed adequate by the Division.~~

~~4. "Predominant Vegetation" - type of vegetation that provides the majority of plant cover in an area such as woody shrubs, grass, trees.~~

~~5. "Type I fire engine" - A vehicle used for fire suppression that meets National Fire Protection Association (NFPA) 1901 Standard for Automotive Fire Apparatus.~~

~~6. "Urban Vegetation" - vegetation that is managed, maintained, and irrigated in a manner that will not allow for the propagation and spread of a fire over the landscape during anytime of the year.~~

~~7. "Wildland" - an area in which development is essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities. Structures, if any, are widely scattered.~~

~~8. "Wildland Vegetation" - naturally occurring vegetation that is not managed, maintained and irrigated or vegetation that when cured (low live foliar moisture content), may be capable of carrying fire over the landscape.~~

~~9. "Wildland Urban Interface" -A geographical area where structures and other human development meets or intermingles with undeveloped wildland.~~

~~R652-123-300. Nomination of Exempt Areas.~~

~~For the covered year of 2007, a county may request that an area be exempt from its assessed payment into the Wildland Fire Suppression Fund by petitioning the Division on a Division approved form (Petition for Area Exemption) by September 1, 2006. For all subsequent years, the county's petition must be filed by July 1 of the year prior to the March 15 payment date. The petition shall include:~~

~~a. A description of the area including:~~

~~i. an ortho-photo quad of the area to be considered~~

~~ii. A topographic map of the area to be considered~~

~~b. An explanation with supporting documentation indicating the area meets the criteria to be exempt, with fuels, response time, access, and water availability addressed.~~

~~c. Detailed documentation of the taxable value of real property in the area to be exempt.~~

~~d. A signature of a county commissioner.~~

~~R652-123-400. Qualifying and Evaluating Exempt Areas.~~

~~1. The Division shall check for completeness of the Petition for Area Exemptions and acknowledge the receipt of the petition by date stamp.~~

~~2. The Division shall inspect the area in the petition and evaluate the nomination using the following criteria:~~

~~a. The area must be in the unincorporated area of the county, and~~

~~b. The predominant vegetation in the area is considered urban vegetation or if the predominant vegetation is wildland vegetation, there exists a fire barrier as defined in this rule between the nominated area and the wildlands, and~~

~~c. The response time of the local fire department having jurisdiction is fifteen minutes or less, and~~

~~d. The area is accessible as defined in this rule throughout the entire area such that a Type I fire engine can maneuver and work safely anywhere in the nominated area, and~~

~~e. The area is serviced by a hydrant system as defined in this rule.~~

~~R652-123-500. Notification of Exempt Areas.~~

~~1. The Division will make a final determination of exempt areas.~~

~~2. For all requests made by September 1, 2006 for the following year, the Division will notify the county commission by November 30, 2006 of those areas that were determined to be exempt, and which areas were determined to be non-exempt. For all subsequent years, the Division will give such notification by September 30.~~

~~3. The county may appeal the decision as defined in R652-8 Adjudicative Proceedings.~~

~~4. County expenditures for fire suppression that occur within areas that have been designated as exempt, are not considered Normal Fire Suppressions Costs as defined in R652-121-200(2) and will not be calculated as part of the county's approved fire suppression budget.~~

~~R652-123-600. Reporting.~~

~~Counties shall provide an annual report to the Division by March first listing:~~

~~a. A detailed listing of the taxable value of real property (land and buildings) in the exempt area of the county,~~

~~b. The total acreage of unincorporated land and the total exempt acreage of unincorporated land.~~

~~c. Any annexations of unincorporated lands by a town or city~~

~~d. County expenditures for fire suppression that occur within areas that have been approved by the Division as exempt~~

~~e. Existing exemptions from previous years~~

~~KEY: exemptions to wildland fire suppression fund, administrative procedures~~
~~Date of Enactment or Last Substantive Amendment: August 28, 2006~~
~~Notice of Continuation: January 14, 2016~~
~~Authorizing, and Implemented or Interpreted Law: 65A-8-207(1); 65A-8-205(2)(b)~~]

Public Safety, Emergency Management
R704-3
Local Government Emergency Response Loan Program

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 40956
FILED: 11/04/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is required under Section 53-2a-509 to establish procedures for administering the Local Government Emergency Response Loan Program.

SUMMARY OF THE RULE OR CHANGE: The rule establishes the following: 1) the form, content, and procedure for loan applications; 2) criteria and procedures for prioritizing loan applications; 3) procedures for making loans; 4) procedures for administering and ensuring repayment of loans; and 5) procedures for recovering on defaulted loans.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-2a-607 and Section 53-2a-608 and Section 53-2a-609

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There will not be an anticipated cost or savings to the state budget as a result of this rule because the rule sets forth procedures and requirements for administering the Local Government Emergency Response Loan Program that the Division of Emergency Management and the Division of Finance are required to administer under Section 53-2a-608.
♦ LOCAL GOVERNMENTS: There may be an anticipated cost to local governments that are granted a loan from the Local Government Emergency Response Loan Program because if the local government makes a payment more than 15 days after the payment is due, they will be assessed a late fee in the amount of 10% of the payment due. In addition, if the local government defaults on the loan, they may be assessed a penalty fee and be liable for attorney's fees and collection costs if applicable. The exact cost to local governments cannot be estimated because the cost is based on a percentage of the loan and will only be applied in cases of late payment.
♦ SMALL BUSINESSES: There will not be an anticipated cost or savings to small businesses associated with this rule because the rule outlines procedures for the Division of Emergency Management to administer a loan program that provides for loans to be granted to local government entities in an effort to recover losses as a result of a disaster.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will not be an anticipated cost or savings to persons associated with this rule because the rule outlines procedures for the Division of Emergency Management to administer a loan program that provides for loans to be granted to local government entities in an effort to recover losses as a result of a disaster.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are not any compliance costs for affected persons associated with this rule because the rule outlines procedures for the Division of Emergency Management to administer a loan program that provides for loans to be granted to local government entities in an effort to recover losses as a result of a disaster.

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
EMERGENCY MANAGEMENT
ROOM 1110 STATE OFFICE BUILDING
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
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
♦ Tara Behunin by phone at 801-538-3426, by FAX at 801-538-3770, or by Internet E-mail at tarabehunin@utah.gov or mail at PO BOX 141710, Salt Lake City, UT 84114-1710

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Kris Hamlet, Director

R704. Public Safety, Emergency Management.
R704-3. Local Government Emergency Response Loan Program.
R704-3-1. Authority.
This rule is authorized by Section 53-2a-609.

R704-3-2. Purpose.
The purpose of this rule is to establish criteria, procedures, and requirements for the administration of the Local Government Emergency Response Loan Fund described in Section 53-2a-607.

R701-3-3. Definitions.
(1) Terms used in this rule are defined in Sections 53-2a-102, 53-2a-203, and 53-2a-602.
(2) In addition to the terms referenced in Subsection R701-3-3(1):
(a) "fund" means the Local Government Emergency Response Loan Fund;
(b) "loan" means a loan provided by the Division from the Local Government Emergency Response Loan Fund to an eligible local government entity for costs incurred for providing emergency disaster services as defined in Section 53-2a-602.

R701-3-4. Application.

(1) A local government entity wishing to apply for a loan from the fund shall submit to the Division:

(a) an application on a form approved by the Division;

(b) documentation that establishes a local disaster declaration for which the loan is being requested;

(c) documentation certified by the entity's chief financial officer stating that the entity has:

(i) established a local government disaster fund; and

(ii) deposited a minimum average of 5% of total estimated revenues into a local government disaster fund established in accordance with Section 53-2a-605 for at least five fiscal years previous to the date the disaster is declared; and

(d) documentation that establishes costs incurred by the local government entity for disaster recovery and supports the dollar amount of the loan being requested.

R701-3-5. Eligibility Review.

(1) The Division shall determine if the applicant:

(a) has fulfilled the application requirements in Section R701-3-4; and

(b) meets the eligibility criteria in Sections 53-2a-607 and 53-2a-608.

R701-3-6. Prioritization of Awards for Loan Applications.

(1) In accordance with Subsection 53-2a-609(2), the Division will consider the following criteria in prioritizing and awarding loans:

(a) the total account balance available in the fund;

(b) the severity or scale of the disaster or emergency that has been declared;

(c) the severity of the impact to local government entities that have submitted loan applications; and

(d) other sources of funding that might be available to the local government entity for the purpose of disaster recovery; and

(e) the likelihood the loan amount will be paid repaid in accordance with Section 53-2a-608 based on the local government entity's bond rating.

R701-3-7. Making Loans.

(1) Loan funds shall be obligated after all documents to secure a loan are complete, processed, approved, and appropriately signed by the applicant and the director.

(2) Disbursement of loan proceeds to the borrower will take place within 10 business days of the closing date of the loan.

R701-3-8. Servicing the Loans, Loan Repayment and Late Penalties.

(1) Loans will be serviced by the Division of Finance.

(2) Loan repayment schedules are outlined in Section 53-2a-608.

(3) The initial installment payment is due on a date established by the Division.

(4) Subsequent installment payments are due on the tenth day of each month.

(5) Loan payments may be made in advance or the remaining principal balance of the loan may be paid in full at any time without penalty.

(6) Penalties for late loan payments shall be:

(a) ten percent of the payment due;

(b) assessed and payable on payments received by the Division more than 15 days after the due date;

(c) assessed only once per scheduled payment; and

(d) noticed to the borrower with the amounts of penalty and the total payment due.

(7) Payments shall be considered received the day of the U.S. Postal Service post mark date or receipted date for payments delivered to the Division by methods other than the U.S. Postal Service.

(8) 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.

(9) Notice of loans paid in full shall be sent after all penalties, interest, and principal have been paid.

R701-3-9. Recovering on Defaulted Loans.

(1) Loans may be considered in default when two consecutive payments are past due by 30 days or more.

(2) If the loan is determined to be in default under Subsection R701-3-9(1), the Division or the Division of Finance may declare the full amount of the defaulted loan, penalty and interest immediately due.

(3) The Division or Division of Finance need not give notice of default prior to declaring the full amount due and payable.

(4) The borrower shall be liable for attorney's fees and collection costs for defaulted loans, whether incurred before or after court action.

KEY: disaster recovery loans, local government disaster loans
Date of Enactment or Last Substantive Amendment: 2017
Authorizing, and Implemented or Interpreted Law: 53-2a-607; 53-2a-608; 53-2a-609

Transportation, Operations, Aeronautics
R914-3
Aircraft Registration Enforcement

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 40937
FILED: 11/02/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide procedures for the enforcement of state aircraft registration laws and the administration of penalties as required by Section 72-10-112.

SUMMARY OF THE RULE OR CHANGE: This rule provides procedures for enforcing provisions of the Uniform Aeronautical Act that require an owner or owners of aircraft based in Utah to have a certificate of registration issued by the state for each such aircraft. The rule also includes

procedures the Department must follow to penalize those owners who do not maintain current certificates of registration for their aircraft, and procedures owners so penalized may follow to appeal their penalties.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 72-10-112(3)(b)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The fiscal note that accompanied S.B. 74, which passed during the 2016 General Session, states that, "Enactment of this bill requires the Division of Aeronautics to conduct compliance audits and inspections to enforce proper registration of aircraft. The estimated cost for this new position is approximately $80,000 per year for a full-time, benefited employee, which would be paid from the Aeronautics Restricted Account."
♦ LOCAL GOVERNMENTS: This rule likely will not result in direct, measurable costs for local governments because this rule only applies to the state of Utah and aircraft owners.
♦ SMALL BUSINESSES: The fiscal note that accompanied S.B. 74 (2016) also stated that, "Businesses, including small businesses, or individuals that fail to register an aircraft in the State of Utah may pay a penalty of 10% of the registration fee for the first month and 5% of the registration fee for each subsequent month until the aircraft is properly registered. It is anticipated that new penalties assessed will amount to at least $80,000 annually. The amount will vary based on the year, make, and model of the aircraft and the amount of time it is out of compliance."
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities that own aircraft based in Utah who fail to register their aircraft annually as required by statute may be required to pay a penalty of 10% of the registration fee for the first month and 5% of the registration fee for each subsequent month until the aircraft is properly registered. It is not possible to determine with precision what those costs will be in the aggregate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As set forth under small businesses impact above, the fiscal note that accompanied S.B. 74 (2016) also stated that, "Businesses, including small businesses, or individuals that fail to register an aircraft in the State of Utah may pay a penalty of 10% of the registration fee for the first month and 5% of the registration fee for each subsequent month until the aircraft is properly registered. It is anticipated that new penalties assessed will amount to at least $80,000 annually. The amount will vary based on the year, make, and model of the aircraft and the amount of time it is out of compliance."

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule may have a fiscal impact on those businesses that own aircraft based in Utah if they fail to obtain certificates of registration annually. Those businesses that properly register their Utah-based aircraft every year will suffer no fiscal impact because of this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
OPERATIONS, AERONAUTICS
135 N 2400 W
SALT LAKE CITY, UT 84116-2982
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 01/03/2017

THIS RULE MAY BECOME EFFECTIVE ON: 01/10/2017

AUTHORIZED BY: Carlos Braceras, Executive Director

R914. Transportation, Operations, Aeronautics.
R914-3. Aircraft Registration Enforcement.
R914-3-1. Purpose and Authority.

The purpose of this rule is to provide procedures for the enforcement of state aircraft registration laws and the administration of penalties as required by Utah Code Section 72-10-112.

R914-3-2. Definitions.

(1) "Based" means aircraft that is hangared, tied down, or parked at an airport located in the state of Utah for a plurality of the year, which is a total of six months and a day, minimum.

(2) "Tax Commission" means the Utah State Tax Commission.

(3) "Department" means the Utah Department of Transportation, Division of Aeronautics.

R914-3-3. Procedure for Enforcement.

(1) Airport operators shall semi-annually, no later than March 1 and September 1, provide to the Department a report containing a list of aircraft Based at the airports they operate. The list shall contain:

(a) The Federal Aviation Administration tail number of each aircraft, and;

(b) The name and address of the owner or owners and the person responsible for payment of the Utah aircraft registration fee, if different.

(2) In addition to the semi-annual reports, airport operators shall coordinate with the Department, or its agent, and

provide information as requested by the Department, or its agent, to determine and verify aircraft Based in the state.

(3) The Department, or its agent, shall conduct compliance audits and inspections as needed to enforce applicable state laws related to the registration of aircraft.

(4) In addition to annually submitting to the Tax Commission the statewide database of aircraft Based in the state as required under Section 72-10-110, the Department shall advise the Tax Commission of aircraft Based in the state that were not included in the annual submission.

(5) The Department shall send a Late Notice by certified mail to all aircraft owners who have failed to pay annual registration fees by January 31 each year.

(6) Aircraft owners who fail to pay annual registration fees within 30 days after receiving a Late Notice from the Department shall be penalized as provided by R914-3-4.

R914-3-4. Notice of Agency Action -- Penalties.

(1) The Department may commence an adjudicative proceeding pursuant to rule R907-2 to administer a penalty for failure of an owner or owners of an aircraft to register and pay required registration fees for an aircraft Based in the state by serving a Notice of Agency Action upon the owner or owners of the aircraft accused of the violation.

(2) The Department may impose a penalty of 10% of the registration fee for the first month and 5% of the registration fee for each subsequent month an aircraft is operated in violation of Section 72-10-109.

(3) In addition to other penalties and as authorized in 72-10-112, the owner or owners of the aircraft may also be subject to penalties levied by the Tax Commission authorized by Section 41-1a-1101, providing for seizure of the aircraft, and Section 41-1a-1301, placement of a lien, seizure and sale of the aircraft.

(4) Administrative Hearings initiated under this provision shall be designated as informal hearings under the Utah Administrative Procedures Act and conducted as set forth in Utah Code Section 63G-4-203.

R914-3-5. Appeals of Department Action.

(1) Penalized persons may appeal penalties imposed by the Department under this rule and pursuant to the Notice of Agency Action.

(2) Appeals shall be considered by a steering committee created by the Department. The steering committee shall have the powers granted to the Deputy Director, or the Deputy Director's designee, in R907-1-3 for appeals from failure to pay required aircraft registration fees for aircraft based in the state of Utah.

(3) The committee's decision shall be considered a final agency order pursuant the Administrative Procedures Act.

KEY: certificate of registration, Utah-based aircraft, aircraft, penalties
Date of Enactment or Last Substantive Amendment: 2017
Authorizing, Implemented, or Interpreted Law: 72-10-112(3)(b)

End of the Notices of Proposed Rules Section

NOTICES OF
CHANGES IN PROPOSED RULES

After an agency has published a **Proposed Rule** in the *Utah State Bulletin*, it may receive comment that requires the **Proposed Rule** to be altered before it goes into effect. A **Change in Proposed Rule** allows an agency to respond to comments it receives.

As with a **Proposed Rule**, a **Change in Proposed Rule** is preceded by a **Rule Analysis**. This analysis provides summary information about the **Change in Proposed Rule** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **Change in Proposed Rule**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **Changes in Proposed Rules** published in this issue of the *Utah State Bulletin* ends January 3, 2017.

Following the **Rule Analysis**, the text of the **Change in Proposed Rule** is usually printed. The text shows only those changes made since the **Proposed Rule** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them ([~~example~~]). A row of dots in the text between paragraphs (**. . . . . .**) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **Change in Proposed Rule** is too long to print, the Office of Administrative Rules may include only the **Rule Analysis**. A copy of rules that are too long to print is available from the agency or from the Office of Administrative Rules.

From the end of the 30-day waiting period through March 31, 2017, an agency may notify the Office of Administrative Rules that it wants to make the **Change in Proposed Rule** effective. When an agency submits a **Notice of Effective Date** for a **Change in Proposed Rule**, the **Proposed Rule** as amended by the **Change in Proposed Rule** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **Change in Proposed Rule**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **Change in Proposed Rule** in response to additional comments received. If the Office of Administrative Rules does not receive a **Notice of Effective Date** or another **Change in Proposed Rule** by the end of the 120-day period after publication, the **Change in Proposed Rule** filing, along with its associated **Proposed Rule**, lapses.

Changes in Proposed Rules are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

Environmental Quality, Environmental Response and Remediation
R311-203
Underground Storage Tanks: Technical Standards

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 40755
FILED: 11/10/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During public comment for proposed changes to Rule R311-203, a comment was received that indicated that Subsection R311-203-7(c) contains language that may conflict with requirements for Utah to maintain state program approval of its underground storage tank (UST) regulatory program. The conflicting language provides for underground storage tank operator inspections to be performed less frequently than every 30 days in situations where it is impractical to conduct the inspections every 30 days. The conflicting language is now removed from the rule to eliminate the possibility that it could cause Utah to lose state program approval.

SUMMARY OF THE RULE OR CHANGE: Subsection R311-203-7(c) is removed from the rule. (DAR NOTE: The original proposed amendment upon which this change in proposed rule (CPR) was based was published in the October 1, 2016, issue of the Utah State Bulletin, on page 60. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-6-105 and Section 19-6-403 and Section 19-6-408

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no anticipated cost or savings. The state, as an owner of USTs, has not been approved for a reduced inspection schedule for any of its UST facilities, so there will be no change in the state's inspections costs.
♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings. No local governments that own USTs have been approved for a reduced inspection schedule for any of their UST facilities, so there will be no change in their inspections costs.
♦ SMALL BUSINESSES: There is no anticipated cost or savings. No small businesses that own USTs have been approved for a reduced inspection schedule for any of their UST facilities, so there will be no change in their inspections costs.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings. No UST owners have been approved for a reduced inspection schedule for any of their UST facilities, so there will be no change in their inspections costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs. No UST owners have to date been approved for a reduced schedule of operator inspections, so there will be no cost for them to continue to perform inspections as they are already doing them. If a UST owner had received approval for a reduced inspection schedule, the cost required to begin performing the inspections every 30 days would depend on the number of additional inspections required. The most likely scenario would be a UST facility in a mountainous area that is not easily accessed during the winter. If four additional inspections were required for the winter months, the increased cost would be approximately $500 to $700 per year, depending on the individual characteristics of the UST site and the available resources of the UST owner to provide access to the UST facility.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact of this rule change will be minor. There are a handful of UST sites in the state that are likely to be inaccessible or have another situation where a monthly inspection would be impractical. No tank owners have been granted an exemption from doing the inspections each month. Removing the ability to grant the exemption will only mean that UST owners and operators will continue to do the inspections monthly, so fiscal impacts to tank owners will be minimal.

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

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 overfill prevention systems are installed, changed or upgraded.

(b) All notifications shall be submitted on the current approved notification form.

(c) 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.

(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;

(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 overfill 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(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)(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 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) 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.

(e) Cathodic protection testing. Cathodic protection tests shall meet the inspection criteria outlined in 40 CFR 280.31(b), 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.

(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-[~~d~~]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~~]d) 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: [~~2016~~]2017

Notice of Continuation: April 10, 2012

Authorizing, and Implemented or Interpreted Law: 19-6-105; 19-6-403; 19-6-408

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **Proposed Rule**; continue the rule as it is by filing a **Five-Year Notice of Review and Statement of Continuation (Review)**; or amend the rule by filing a **Proposed Rule** and by filing a **Review**. By filing a **Review**, the agency indicates that the rule is still necessary.

A **Review** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at http://www.rules.utah.gov/publicat/code.htm. The rule text may also be inspected at the agency or the Office of Administrative Rules. **Reviews** are effective upon filing.

Reviews are governed by Section 63G-3-305.

Administrative Services, Facilities Construction and Management
R23-32
Rules of Procedure for Conduct of Utah State Building Board Meetings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40945
FILED: 11/03/2016

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: Subsections 63A-5-102(2) and 63A-5-103(1)(e) require that the Building Board make rules which allow the discharge of its duties, establish standards and requirements for capital development project requests for the operations and maintenance of state-owned facilities, and establish procedures of conduct for its meetings.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Justification for the continuation of the rule is that such a rule is required by Subsections 63A-5-102(2) and 63A-5-103(1)(e).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
♦ Jeff Reddoor by phone at 801-971-9830, or by Internet E-mail at jreddoor@utah.gov
♦ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

AUTHORIZED BY: Ned Carnahan, Building Board Chair

EFFECTIVE: 11/03/2016

Commerce, Administration
R151-3
Americans with Disabilities Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40948
FILED: 11/03/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Americans with Disabilities Act (ADA), 42 USC 12201, provides that no qualified individual with a disability may be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination. This rule provides procedures for the prompt and equitable resolution of ADA complaints filed with the agency and is adopted pursuant to 42 USC 12201, Section 13-1-6, and Subsection 63G-3-301(2).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any comments 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: The rule should be continued because it is required by federal law and regulations, and it provides necessary procedures for the resolution of ADA complaints.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Masuda Medcalf by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

AUTHORIZED BY: Francine Giani, Executive Director

EFFECTIVE: 11/03/2016

Commerce, Administration
R151-35
Powersport Vehicle Franchise Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40949
FILED: 11/03/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Powersport Vehicle Franchise Act (PVFA), Section 13-35-101 et seq., governs the distribution and sales of powersport vehicles through franchise agreements and regulates the relationship between franchisors and franchisees. Section 13-35-104 authorizes the Utah Powersport Vehicle Franchise Advisory Board and the Department of Commerce to promulgate rules regarding the administration of the PVFA.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received regarding this rule in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to administer the registration of franchisees and franchisors and to conduct adjudicative proceedings before the Board. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Masuda Medcalf by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

AUTHORIZED BY: Francine Giani, Executive Director

EFFECTIVE: 11/03/2016

Commerce, Occupational and Professional Licensing
R156-28
Veterinary Practice Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40943
FILED: 11/03/2016

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 28, provides for

the licensure and regulation of veterinarians and veterinarian interns. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-28-201(3) provides that the Veterinary 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 28, with respect to veterinarians and veterinarian interns.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in November 2011, the Division has received no 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 28, with respect to veterinarians and veterinarian interns. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jana Johansen by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at janajohansen@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 11/03/2016

Commerce, Occupational and Professional Licensing
R156-40a
Athletic Trainer Licensing Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40941
FILED: 11/03/2016

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 40a, provides for the licensure and regulation of athletic trainers. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-40a-201(3) provides that the Athletic Trainers 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 40a, with respect to athletic trainers.

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 the rule was last reviewed in 2011, it has been amended two times. The Division has received no 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 40a, with respect to athletic trainers. 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:
♦ Suzette Farmer by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at sfarmer@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 11/03/2016

Commerce, Occupational and Professional Licensing
R156-41
Speech-Language Pathology and Audiology Licensing Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40942
FILED: 11/03/2016

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 41, provides for the licensure and regulation of speech-language pathologists and audiologists. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-41-6(3) provides that the Speech-Language Pathologist and Audiologist 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 41, with respect to speech-language pathologists and audiologists.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in November 2011, the Division has received no 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 41, with respect to speech-language pathologists and audiologists. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jana Johansen by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at janajohansen@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 11/03/2016

Commerce, Occupational and Professional Licensing
R156-70a
Physician Assistant Practice Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40944
FILED: 11/03/2016

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 70a, provides for the licensure and regulation of physician assistants. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-70a-201(3) provides that the Physician Assistant 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 70a, with respect to physician assistants.

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 December 2011, no written comments have been received by the Division.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY

DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: 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 70a, with respect to physician assistants. 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 lmarx@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 11/03/2016

Corrections, Administration
R251-108
Adjudicative Proceedings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40994
FILED: 11/14/2016

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: Sections 63G-4-202, 63G-4-203, and 64-13-10 authorizes the department to establish adjudicative proceedings by 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: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to establish a procedure by which informal adjudicative proceedings shall be conducted as a result of a notice of agency action, or a request by a person for agency action regarding Department rules, orders, policies, or procedures. Therefore, this rule should be continued. This rule shall not apply to internal personnel actions conducted within the Department.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CORRECTIONS
ADMINISTRATION
14717 S MINUTEMAN DR
DRAPER, UT 84020-9549
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Lucy Ramirez by phone at 801-545-5616, or by Internet E-mail at lramirez@utah.gov

AUTHORIZED BY: Rollin Cook, Executive Director

EFFECTIVE: 11/14/2016

Education, Administration
R277-503
Licensing Routes

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41001
FILED: 11/15/2016

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-1-402 directs the Utah State Board of Education (Board) to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student services; 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 R277-503 continues to be necessary

because it provides minimum eligibility requirements for applicants for teacher licenses; and provides criteria and procedures for teacher licensing routes and for licensed teachers to earn endorsements. 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, Deputy Superintendent, Policy and Communication

EFFECTIVE: 11/15/2016

Education, Administration
R277-507
Driver Education Endorsement

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41002
FILED: 11/15/2016

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)(a) directs the Utah State Board of Education (Board) to make rules regarding the certification of educators; 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 Section 53A-13-208 directs the Board to establish procedures and standards to certify teachers of driver education classes as driver license examiners.

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 R277-507 continues to be necessary because it provides standards and procedures for secondary teachers to qualify for a driver education endorsement. 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, Deputy Superintendent, Policy and Communication

EFFECTIVE: 11/15/2016

Education, Administration
R277-512
Online Licensure

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 41003
FILED: 11/15/2016

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)(a) directs the Utah State Board of Education (Board) to make rules regarding the certification of educators; 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 R277-512 continues to be necessary because it provides procedures to ensure that consistency, quality, and fairness are maintained for online license

transaction processes. 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, Deputy Superintendent, Policy and Communication

EFFECTIVE: 11/15/2016

Health, Disease Control and Prevention, Environmental Services
R392-100
Food Service Sanitation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40958
FILED: 11/07/2016

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: Rule R392-100 is authorized under Sections 26-1-5, 26-1-30, and 26-15-2. Section 26-1-5 gives the department rulemaking authority to carry out the provisions of Title 26, and Subsection 26-1-30(4) charges the department to create rules to protect the public health or to prevent disease and illness. Subsection 26-1-30(23)(f) specifically charges the department with creating rules for minimum sanitary standards for the operation and maintenance of restaurants and all other places where food is handled for commercial purposes, sold, or served to the public. This requirement is mirrored in Subsection 26-15-2(1).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Two commenters submitted written comments outside of discussions within advisory committees. This rule was recently amended to adopt the 2013 FDA Food Code by reference. The first comment was from Utah State University concerning the requirement in the 2013 FDA Food Code stating that "at least one employee…shall be a certified food protection manager…through passing a test that is part of an accredited program". An accredited program, as defined in the 2013 FDA Food Code, is an agency which conforms to national standards. The commenter was worried that those food safety manager certification providers in Utah approved by UDOH (Rule R392-101) would no longer be valid if UDOH was not an approved provider. The second commenter was Davis County Health Department (DCHD), which submitted two comments. DCHD was concerned over "non-debitable" items in the 2013 FDA Food Code being adopted. DCHD was concerned over the requirement for all food establishments to have a pre-opening inspection before beginning operations, which would include all temporary events. This could become overly burdensome to regulators and operators alike.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of Rule R392-302 is recommended as it is required by statute and creates a uniform standard for sanitation at swimming pools statewide. To USU: UDOH has statutory authority to be the accrediting agency for food safety manager certification programs in Utah, as per Title 26, Chapter 15a, and Rule R392-101. A clarification will be added to Rule R392-100 to clarify this when adopting the next iteration of the FDA Food Code. Those currently approved by UDOH to provide food safety manager certifications will continue to be approved. To DCHD: Concerning the "non-debitable" items in the FDA Food Code, these items refer to requirements outside of actual food inspections. The term "non-debitable" only applies to items most often making requirements of inspectors or the regulatory agency, which would be inappropriately addressed on an inspection form. Concerning the pre-operational inspection requirement for temporary events, this is a requirement in previous and current versions of Rule R392-100. This concern is being taken under advisement and will be discussed in advisory committees and with the local health departments.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Chris Nelson by phone at 801-538-6739, or by Internet E-mail at chrisnelson@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/07/2016

Health, Disease Control and Prevention, Environmental Services
R392-200
Design, Construction, Operation, Sanitation, and Safety of Schools

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40960
FILED: 11/07/2016

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: The authorizing statute listed in Rule R392-200 is Subsection 26-15-2(5). This statute states that "the department shall establish and enforce, or provide for the enforcement of minimum rules of sanitation necessary to protect the public health. Such rules shall include, but not be limited to, rules necessary for the design, construction, operation, maintenance or expansion of: (5) schools which are publicly or privately owned or operated;". This is mirrored in Subsection 26-1-30(23)(j).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received either in favor or in opposition to Rule R392-200.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of Rule R392-200 is recommended as it is required by statute and creates a uniform standard for sanitation at schools statewide.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Chris Nelson by phone at 801-538-6739, or by Internet E-mail at chrisnelson@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/07/2016

Health, Disease Control and Prevention, Environmental Services
R392-300
Recreation Camp Sanitation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40964
FILED: 11/08/2016

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: Rule R392-300 is authorized under Sections 26-1-5, 26-1-30, and 26-15-2. Section 26-1-5 gives the department rulemaking authority to carry out the provisions of Title 26, and Subsection 26-1-30(4) charges the department to create rules to protect the public health or to prevent disease and illness. Subsection 26-1-30(23)(s) specifically charges the department with creating rules for minimum sanitary standards for the operation and maintenance of recreational resorts and camps. This requirement is mirrored in Subsection 26-15-2(6).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received either in favor or in opposition to Rule R392-300. The local health departments in conjunction with the Utah Department of Health are currently working on updating this rule, since many references and requirements are out of date. This will include updating the authorizing statutes in 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: Continuation of Rule R392-300 is recommended as it is required by statute and creates a uniform standard for sanitation at campgrounds within the jurisdiction of the state.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Chris Nelson by phone at 801-538-6739, or by Internet E-mail at chrisnelson@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/08/2016

Health, Disease Control and Prevention, Environmental Services
R392-301
Recreational Vehicle Park Sanitation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40962
FILED: 11/08/2016

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: Rule R392-301 is authorized under Sections 26-1-5, 26-1-30, and 26-15-2. Section 26-1-5 gives the department rulemaking authority to carry out the provisions of Title 26, and Subsection 26-1-30(4) charges the department to create rules to protect the public health or to prevent disease and illness. Subsection 26-1-30(23)(g) specifically charges the department with creating rules for minimum sanitary standards for the operation and maintenance of tourist and trailer camps. This requirement is mirrored in Subsection 26-15-2(6).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received either in favor or in opposition to Rule R392-301. The local health departments in conjunction with the Utah Department of Health are currently working on updating this rule, since many references and requirements are out of date. This will include updating the authorizing statutes in 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: Continuation of Rule R392-301 is recommended as it is required by statute and creates a uniform standard for sanitation at recreational vehicle parks statewide.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Chris Nelson by phone at 801-538-6739, or by Internet E-mail at chrisnelson@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/08/2016

Health, Disease Control and Prevention, Environmental Services
R392-302
Design, Construction and Operation of Public Pools

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40959
FILED: 11/07/2016

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: Rule R392-302 is authorized under Sections 26-1-5, 26-1-30, and 26-15-2. Section 26-1-5 gives the department rulemaking authority to carry out the provisions of Title 26, and Subsection 26-1-30(4) charges the department to create rules to protect the public health or to prevent disease and illness. Subsection 26-1-30(23)(t) specifically charges the department with creating rules for minimum sanitary standards for the operation and maintenance of swimming pools, public baths, and bathing beaches. This requirement is mirrored in Subsection 26-15-2(2).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: A concern was expressed by the Utah National Parks Council, BSA, concerning pool construction standards prompting a change to the rule which made clear that above ground pools are allowable. Further concerns were about other construction and operation requirements, specifically decking and pool wall material requirements.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of Rule R392-302 is recommended as it is required by statute and creates a uniform standard for sanitation at swimming pools statewide. The Utah Department of Health (UDOH) is not in favor of lowering its standards for construction or operation of a public pool as it would unnecessarily increase risk to the public. A committee composed of pool operators, designers, builders, and regulators meets regularly to work on and propose changes to the rule addressing deficiencies and to update the rule in accordance with current science and national standards. This committee reviewed the aforementioned concerns and made recommendations to UDOH.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Chris Nelson by phone at 801-538-6739, or by Internet E-mail at chrisnelson@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/07/2016

Health, Disease Control and Prevention, Environmental Services
R392-401
Roadway Rest Stop Sanitation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40957
FILED: 11/07/2016

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: Rule R392-401 is authorized under Sections 26-1-5, 26-1-30, and 26-15-2. Section 26-1-5 gives the department rulemaking authority to carry out the provisions of Title 26, and Subsection 26-1-30(4) charges the department to create rules to protect the public health or to prevent disease and illness. Subsections 26-1-30(23)(i) and (v) specifically charge the department with creating rules for minimum sanitary standards for the operation and maintenance of public stations and any other facilities in public buildings or on public grounds. This requirement is more specifically stated in Subsection 26-15-2(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 comments have been received either in favor or in opposition to Rule R392-401. The local health departments in conjunction with the Utah Department of Health (UDOH) are currently working on updating this rule, since many references and requirements are out of date. This will include updating the authorizing statutes in 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: Continuation of Rule R392-401 is recommended as it is required by statute and creates a uniform standard for sanitation at rest stops statewide. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Chris Nelson by phone at 801-538-6739, or by Internet E-mail at chrisnelson@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/07/2016

Health, Disease Control and Prevention, Environmental Services
R392-402
Mobile Home Park Sanitation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40965
FILED: 11/08/2016

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: Rule R392-402 is authorized under Sections 26-1-5, 26-1-30, and 26-15-2. Section 26-1-5 gives the department rulemaking authority to carry out the provisions of Title 26, and Subsection 26-1-30(4) charges the department to create rules to protect the public health or to prevent disease and illness. Subsection 26-15-2(8) specifically charges the department with creating rules for minimum sanitary standards for the operation and maintenance of mobile home parks.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received either in favor or in opposition to Rule R392-402. The local health departments in conjunction with the Utah Department of Health are currently working on updating this rule, since many references and requirements are out of date. This will include updating the authorizing statutes in 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: Continuation of Rule R392-402 is recommended as it is required by statute and creates a uniform standard for sanitation at campgrounds within the jurisdiction of the state.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Chris Nelson by phone at 801-538-6739, or by Internet E-mail at chrisnelson@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/08/2016

Health, Disease Control and Prevention, Environmental Services
R392-501
Labor Camp Sanitation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40963
FILED: 11/08/2016

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: Rule R392-501 is authorized under Sections 26-1-5, 26-1-30, and 26-15-2. Section 26-1-5 gives the department rulemaking authority to carry out the provisions of Title 26, and Subsection 26-1-30(4) charges the department to create rules to protect the public health or to prevent disease and illness. Subsection 26-15-2(9) specifically charges the department with creating rules for minimum sanitary standards for the operation and maintenance of labor camps. This is mirrored in Subsection 26-1-30(23)(r).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received either in favor or in opposition to Rule R392-501. The local health departments in conjunction with the Utah Department of Health are currently working on updating this rule, since many references and requirements are out of date. This will include updating the authorizing statutes in 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: Continuation of Rule R392-501 is recommended as it is required by statute and creates a uniform standard for sanitation at labor camps statewide.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:
♦ Chris Nelson by phone at 801-538-6739, or by Internet E-mail at chrisnelson@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/08/2016

Health, Center for Health Data, Health Care Statistics
R428-1
Health Data Plan and Incorporated Documents

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40988
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is required by Subsection 26-33a-104(2), which reads in part: "The committee shall: (a) with the concurrence of the department and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, develop and adopt by rule, following public hearing and comment, a health data plan...."

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 Office of Health Care Statistics has not received any written comments since the last five-year review of the rule from interested persons supporting or opposing the rule. Only general inquires have been made and responded to by the Office. On 11/08/2016, the Health Data Committee (HDC) voted, with unanimous consent, to extend Rule R428-1.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R428-1 establishes the basic operational requirement for the HDC to manage the data collection, analysis, and distribution, which is to adopt a health data plan through a public process. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
CENTER FOR HEALTH DATA, HEALTH CARE STATISTICS
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:
♦ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov
♦ Norman Thurston by phone at 801-538-7052, by FAX at 801-237-0787, or by Internet E-mail at nthurston@utah.gov
♦ Stephanie Saperstein by phone at 801-538-6430, or by Internet E-mail at stephaniesaperstein@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/10/2016

Health, Center for Health Data, Health Care Statistics
R428-2
Health Data Authority Standards for Health Data

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40989
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 26-33a-104, which provides for data collection activities and rulemaking to carry out these activities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Office of Health Care Statistics has not received any written comments since the last five-year review of the rule from interested persons supporting or opposing the rule. Only general inquires have been made and responded to by the Office. On 11/08/2016, the Health Data Committee (HDC) voted with unanimous consent to extend Rule R428-2.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R428-2 establishes the reporting standards which apply to data suppliers and the classification, control, use, and release of data received by the HDC pursuant to Title 26, Chapter 33a. Continuation of Rule R428-2 will assure the data definitions, standards, security, and disclosure under the Health Data Authority Act are consistent across all data suppliers, data users, and public inquiries. Therefore, this rule should be continued.

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

HEALTH
CENTER FOR HEALTH DATA,
HEALTH CARE STATISTICS
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:
♦ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov
♦ Norman Thurston by phone at 801-538-7052, by FAX at 801-237-0787, or by Internet E-mail at nthurston@utah.gov
♦ Stephanie Saperstein by phone at 801-538-6430, or by Internet E-mail at stephaniesaperstein@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/10/2016

Health, Center for Health Data, Health Care Statistics
R428-5
Appeal and Adjudicative Proceedings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40990
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is allowed by Section 26-33a-104 and Title 63G, Chapter 4, Utah Administrative Procedures Act. It is necessary to clarify administrative adjudicative procedures under the Utah Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Office of Health Care Statistics has not received any written comments since the last five-year review of the rule from interested persons supporting or opposing the rule. Only general inquires have been made and responded to by the Office. On 11/08/2016, the Health Data Committee (HDC) voted with unanimous consent to extend Rule R428-5.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R428-5 outlines the formal adjudicative procedures for administrative adjudicative actions of the HDC. The Utah Administrative Procedures Act allows administrative agencies to adopt certain procedures by rule if the agency conducts formal administrative adjudicative proceedings. This rule provides appropriate administrative procedures to handle a disagreement, if any, in the new data collection process. Therefore, this rule should be continued.

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

HEALTH
CENTER FOR HEALTH DATA,
HEALTH CARE STATISTICS
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:
♦ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov
♦ Norman Thurston by phone at 801-538-7052, by FAX at 801-237-0787, or by Internet E-mail at nthurston@utah.gov
♦ Stephanie Saperstein by phone at 801-538-6430, or by Internet E-mail at stephaniesaperstein@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/10/2016

Health, Center for Health Data, Health Care Statistics
R428-10
Health Data Authority Healthcare Facility Data Reporting Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40991
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 26-33a-104(3), which states "In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the committee, with the concurrence of the department, may adopt rules to carry out the provisions of this chapter."

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 Office of Health Care Statistics has not received any written comments since the last five-year review of the rule from interested persons supporting or opposing the rule. Only general inquires have been made and responded to by the Office. On 11/10/2016, the Health Data Committee (HDC) voted with unanimous consent to extend Rule R428-10.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R428-10 establishes the reporting standards and procedures for discharge and encounter data submitted by licensed hospitals, ambulatory surgery centers, and emergency departments in the state of Utah. Continuation of the rule will assure that the state of Utah continuously carries out its activities in developing and using the statewide healthcare facility database to improve healthcare cost, quality, and access. There is widespread use of nearly 25 years of data within many programs at the Department of Health for planning and reports on hospitalization trends. Also public use data files have been purchased by many individuals in the healthcare industry, researchers, and the Federal Agency for Healthcare Research and Quality. Therefore, this rule should be continued.

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

HEALTH
CENTER FOR HEALTH DATA,
HEALTH CARE STATISTICS
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:

♦ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov

♦ Norman Thurston by phone at 801-538-7052, by FAX at 801-237-0787, or by Internet E-mail at nthurston@utah.gov

♦ Stephanie Saperstein by phone at 801-538-6430, or by Internet E-mail at stephaniesaperstein@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/10/2016

Health, Center for Health Data, Health Care Statistics

R428-12

Health Data Authority Survey of Enrollees in Health Plans

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40992
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 26-33a-104(3), which states "In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the committee, with the concurrence of the department, may adopt rules to carry out the provisions of this chapter."

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 Office of Health Care Statistics has not received any written comments since the last five-year review of the rule from interested persons supporting or opposing the rule. Only general inquires have been made and responded to by the Office. On 11/10/2016, the Health Data Committee (HDC) voted with unanimous consent to extend Rule R428-12.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R428-12 allows monitoring of satisfaction with the quality and access of care provided by participating Utah health plans. Continuation of the rule will assure that health plans are monitored using nationally-recognized standards. Therefore, this rule should be continued.

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

HEALTH
CENTER FOR HEALTH DATA,
HEALTH CARE STATISTICS
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:
♦ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov
♦ Norman Thurston by phone at 801-538-7052, by FAX at 801-237-0787, or by Internet E-mail at nthurston@utah.gov
♦ Stephanie Saperstein by phone at 801-538-6430, or by Internet E-mail at stephaniesaperstein@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 11/10/2016

Tax Commission, Administration
R861-1A
Administrative Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40966
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 10-1-405 requires the Tax Commission to follow the same procedures for the enforcement of the municipal telecommunications tax that it follows for the enforcement of sales taxes. Section 41-1a-209 requires the Motor Vehicle Division to supply automobile registration forms; specifies what the forms shall include. Section 41-3-209 requires the Motor Vehicle Enforcement Division to notify the public if a license issued by that division is no longer valid. Section 52-4-207 provides that a public body may not hold an electronic meeting unless it has adopted a rule governing those proceedings; and provides criteria an agency must follow in drafting those rules. Section 59-1-205 requires the governor to appoint one member of the Commission as chairperson; three members of the commission constitute a quorum for the transaction of business; requires that Commission be in session during regular business hours; allows Commission to hold sessions or conduct business at any place in the state. Section 59-1-207 requires Tax Commission to prepare and implement a plan for the administration of the divisions and other offices in the Tax Commission, that do not report directly to the Commission; duties and responsibilities to be delegated to the executive director. Section 59-1-210 defines powers and duties of Tax Commission; includes power to adopt rules and policies consistent with the Constitution and laws of the State of Utah. Section 59-1-301 allows a taxpayer to pay under protest and outlines the actions to recover the taxes paid under protest. Section 59-1-304 places limitations on when a class action may be maintained on an action that relates to a tax or a fee; indicates who may be included in the class action; and places limitations on the recovery by members of a class. Section 59-1-401 establishes penalties for failure to file a tax return or failure to pay tax, including criminal penalties, and allows a waiver for reasonable cause. Section 59-1-403 sets forth prohibitions on disclosure of taxpayer information by the commission and provides exceptions to that general prohibition. Section 59-1-404 defines commercial information and limits the disclosure of commercial information obtained from a property taxpayer. Section 59-1-405 requires the Commission to promulgate a rule to establish procedures for a meeting not open to the public, including requirements for minutes and a recording of meetings not open to the public. Section 59-1-501 allows any taxpayer in the state to file a request for agency action, petitioning the Commission for redetermination of a deficiency. Section 59-1-502.5 requires an initial hearing to be held at least 30 days before any formal hearing is held; outlines procedures of initial hearing. Section 59-1-611 requires a taxpayer who is seeking judicial review of a Commission decision to post a bond or deposit the full amount of the taxes, interest, and penalties with the Commission unless the taxpayer meets certain requirements that satisfy a waiver of this requirement. Section 59-1-705 provides that penalties and interest shall be assessed and collected in the same manner as taxes. Section 59-1-1404 provides that the commission may make rules designating delivery services the commission or a person may use to mail a document, and providing procedures for determining the date a delivery service records or marks a document as having been received by the delivery service for delivery. Section 59-1-1410 requires the commission to refund taxes that have been paid in error; and provides the time frame within which a taxpayer may request a refund. Section 59-2-212 requires the Tax Commission to equalize and adjust the valuation of all taxable property in the state; allows Tax Commission to reassess any property it feels has been under or over assessed. Section 59-2-704 requires Commission to publish studies designed to determine the relationship between the market value shown on the assessment roll and the market value of property in each county; Commission to order each county to factor or adjust assessment rates using the most current Commission studies, provides penalties if a county fails to properly implement adjustments; allows Commission to establish procedures for factor order hearings. Section 59-2-1004 sets guidelines for appeals of property tax assessments to the county board of equalization. Section 59-2-1006 provides that persons who are not satisfied with the decision of the board of equalization concerning the assessment and equalization of property may appeal that decision to the Tax Commission; provides procedures for appealing the board of equalization decision; indicates the Tax Commission duties in such an appeal. Section 59-2-1007 sets guidelines for appeals of property tax assessments; requires Tax Commission to provide adequate notice to the county when adjusting an assessment. Section 59-5-104 requires producers of oil or gas within the state to

file an annual statement with the Tax Commission. Section 59-5-204 requires those engaged in mining or extracting metalliferous minerals to file an annual statement with the Tax Commission. Section 59-6-104 applies provisions of Title 59, Chapter 10, Part 4, individual income tax withholding, to withholding of mineral production taxes. Section 59-7-505 requires returns to be signed by a responsible officer of the corporation. Section 59-7-506 requires corporations to keep records relating to corporate franchise and income tax. Section 59-7-517 allows the Tax Commission to send a notice of deficiency if the commission determines that there is a deficiency in a taxpayer's corporate franchise tax. Section 59-8-105 requires a semiannual return from those upon whom the gross receipts tax is imposed. Section 59-8a-105 requires a semiannual return from electrical corporations that are subject to the gross receipts tax. Section 59-10-501 requires individual taxpayers to maintain records of income tax liability. Section 59-10-512 requires returns to be signed in accordance with forms or rules prescribed by the Tax Commission; requires partnership returns to be signed by any one of the partners. Section 59-12-107 provides guidelines for collection, remittance, and payment of sales and use tax. Section 59-12-110 provides the time frame within which a person may apply to the commission for a sales tax refund. Section 59-12-111 requires all those who possess a license to keep records of all sales made; provides a penalty for those without a sales tax license or use tax registration who have a liability, but do not file a sales and use tax return. Section 59-12-114 permits a taxpayer to object to a notice of deficiency or notice of assessment. Section 59-12-118 provides that the Commission has exclusive authority to administer and enforce the state and local sales taxes, including the promulgation of rules to administer and enforce these taxes. Section 59-13-206 outlines monthly statements to be filed by every distributor of motor fuel; provides a penalty for failure to file the monthly statement. Section 59-13-210 allows Tax Commission to promulgate rules to administer motor fuel tax; also allows the examination of monthly reports filed by motor fuel distributors. Section 59-13-211 requires distributors to keep a record of all purchases, receipts, sales, and distribution of motor fuel. Section 59-13-307 requires suppliers of special fuel to file a monthly report with the tax commission; provides a penalty for non-filers. Section 59-13-312 requires users, suppliers, and any other person importing, manufacturing, refining, dealing in, transporting, or storing special fuel to keep records to substantiate all activity of that fuel; records to be kept for a period of three years. Section 59-13-403 applies all administrative and penalty provisions of Part 2, Motor Fuel to Part 4, Aviation Fuel. Section 59-14-303 requires quarterly returns and payment of tax on all tobacco products; provides penalties for failure to file return or pay tax. Section 59-15-105 requires monthly returns to be filed by all those importing beer for sales, use, or distribution in the state of Utah; also requires those filing returns to keep records of activity relating to beer imports for three years. Section 63G-3-201 indicates when rulemaking is required. Section 63G-4-102 defines the scope and applicability of the administrative procedures act. Section 63G-4-201 requires all adjudicative proceedings to be commenced by a notice of agency action, or a request for agency action. Law also provides procedures for filing and serving agency action notices. Section 63G-4-202 gives rulemaking power to agencies to designate adjudicative proceedings as formal and informal. Section 63G-4-203 requires an agency that enacts a rule designating one or more category of adjudicative proceedings as informal adjudicative proceedings, to prescribe by rule procedures for the informal adjudicative proceedings. Section 63G-4-204 through 63G-4-209 outline procedures for agency formal and informal adjudicative proceedings. Section 63G-4-205 establishes procedures for discovery in formal adjudicative proceedings if an agency has not enacted rules on discovery. Section 63G-4-206 establishes procedures to be followed when conducting a formal adjudicative proceeding, including the use of evidence. Section 63G-4-208 establishes procedures an agency must follow when conducting a formal adjudicative proceeding; including the signing and issuance of orders. Section 63G-4-302 allows an individual to file a request for reconsideration within 20 days of a final agency action. Section 63G-4-401 allows a party to obtain judicial review of a final agency action; requires exhaustion of administrative remedies prior to seeking judicial review, with exceptions. Section 63G-4-503 allows any person to file a request that the agency issue a declaratory order; outlines agency action when issuing a declaratory order. Section 68-3-7 provides that when computing the time in which an act provided by law is to be done, the last day is included unless the last day is a holiday. Section 68-3-8.5 provides when a report or payment to the government is considered to be filed or made. Section 69-2-5 requires the Commission to follow the same procedures for the enforcement of the 911 emergency telecommunications service charge that it follows for the enforcement of sales taxes. Section 76-8-502 allows a person to be found guilty of a second-degree felony for making a false or inconsistent material statement under oath. Section 76-8-503 allows a person to be found guilty of a class B misdemeanor for making a false statement under oath if the false statement occurs in an official proceeding or is made to mislead a public servant in performing his official functions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R861-1A-2 clarifies the process by which the Tax Commission makes rules, including notice, hearing, and publication of rules. Section R861-1A-3 allows persons or parties affected by a commission action the right to a division conference and a prehearing conference for the purpose clarifying and narrowing the issues and encouraging settlement. Section R861-1A-9 clarifies duties and responsibilities of the commission when acting as the Utah State Board of Equalization; provides procedures for a person

to file an appeal of a county board of equalization determination with the commission. Section R861-1A-10 provides instructions concerning: 1) rights of parties; 2) effect of partial invalidation of rules; 3) enactment of inconsistent legislation; and 4) presumption of familiarity. Section R861-1A-11 clarifies the process of appealing a corrective action. Section R861-1A-12 outlines the policies and procedures of the commission regarding disclosure of and access to documents, work papers, decisions, and other information prepared by the commission. Section R861-1A-13 outlines the manner by which disabled persons may request reasonable accommodations to services, programs, activities, or a job or work environment at the Tax Commission. Section R861-1A-15 requires all taxpayers to provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission. Section R861-1A-16 outlines the management plan of the Utah State Tax Commission. Section R861-1A-18 indicates how remittances received by the Tax Commission shall be allocated to penalty, interest and tax. Section R861-1A-20 provides guidelines on the timeliness of requests for a hearing to correct a centrally assessed property tax assessment, a petition for redetermination, and those seeking judicial review. Section R861-1A-22 clarifies the time a petition for adjudicative action may be filed and the contents of the petition; does not allow the Tax Commission to reject a petition because of nonconformance, but allows the Tax Commission to require an amended or substitute petition be filed. Section R861-1A-23 requires all matters to be designated as formal proceedings and set for a prehearing conference, initial hearing, or scheduling conference; and allows matters to be diverted to mediation. Section R861-1A-24 provides guidelines for a formal adjudicative proceeding, including the initial hearing. Section R861-1A-26 outlines procedures to be followed in a formal adjudicative proceeding. Section R861-1A-27 establishes discovery procedures in a formal proceeding. Section R861-1A-28 authorizes formal proceedings to be conducted the same as in judicial proceedings in the state court; and allows every party the right to introduce evidence, and provides guidelines on testimonies. Section R861-1A-29 clarifies that the presiding officer shall submit all written decisions and orders to the Tax Commission for agency review before issuing the order; authorizes any party to file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence. Section R861-1A-30 prohibits any party from having an ex parte communication with a commissioner or administrative law judge; and provides guidelines if relevant ex parte communications are received by a commissioner or administrative law judge. Section R861-1A-31 provides for situations when a petition for a declaratory order may be filed; and authorizes the Tax Commission to refuse to render the order under certain circumstances. Section R861-1A-32 authorizes the use of mediation to obtain a settlement agreement. Section R861-1A-33 defines "settlement agreement"; and outlines procedures to be followed for submitting and approving settlement agreements. Section R861-1A-34 defines private letter rulings; provides procedures for requesting a private letter ruling; and indicates the weight afforded a private letter ruling, as well as actions that may be taken if the ruling leads to the denial of a claim, audit assessment, or other agency action. Section R861-1A-35 defines "database management system," "electronic data interchange," "hard copy," "machine-sensible record," "storage-only imaging system," and "taxpayer"; and provides guidelines for storage of records in various media. Section R861-1A-36 clarifies what constitutes a signature for taxpayers who submit a vehicle registration over the internet, or a tax return through an authorized web site. Section R861-1A-37 defines "assessed value of the property," "disclosure," and "published decision;" and indicates property tax information that may be disclosed, in general, during an action or proceeding, or in a published decision. Section R861-1A-38 indicates the actions the Tax Commission may take to expedite exhaustion of administrative remedies for purposes of determining the persons who may be included in a class action. Section R861-1A-39 defines "failure to file a tax return" and "unpaid tax" for purposes of imposing the penalty for failure to file a tax return. Section R861-1A-40 indicates how a taxpayer that seeks judicial review of a final commission determination of a deficiency may apply for a waiver of the requirement to post a bond with the Tax Commission. Section R861-1A-42 provides the circumstances that constitute reasonable grounds for waiver of a penalty. Section R861-1A-43 provides the conditions under which a tax commissioner may participate electronically in a public meeting. Section R861-1A-44 for purposes of determining the date on which a document has been mailed, sets forth delivery services, and the date a delivery service receives a document. Section R861-1A-45 sets forth the procedures the Tax Commission shall follow when the Tax Commission holds a meeting that is not open to the public, including procedures for written and recorded minutes. Section R861-1A-46 defines a purchaser refund request; indicates the information that must be submitted to the commission when submitting a purchaser refund request; and provides procedures for the Tax Commission to verify the accuracy of the purchaser refund request. Therefore, this rule should be continued.

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

TAX COMMISSION
ADMINISTRATION
210 N 1950 W
SALT LAKE CITY, UT 84134-0002
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

AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Auditing
R865-3C
Corporation Income Tax

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40967
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 59-7-204 indicates how a corporation shall determine the portion of Utah taxable income derived from or attributable to sources within this 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: Section R865-3C-1 indicates how a corporation subject to the corporation income tax shall determine the net income attributable to Utah. Therefore, this rule should be continued.

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

AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Auditing
R865-4D
Special Fuel Tax

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40968
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 59-13-102 provides definitions relating to the motor and special fuel taxes. Section 59-13-301 imposes a tax on special fuels and provides for exemptions to the tax. Section 59-13-302 requires a license of a person required to collect special fuel tax and provides that the license is valid until the person ceases to do business or changes business address. Subsection 59-13-305(1) requires the user to file a report with the Tax Commission showing the fuel purchased and used in the state. Section 59-13-307 requires the supplier to file a report with the Tax Commission showing fuel delivered to or removed from the state. Section 59-13-312 requires users and user-dealers to keep records in a form prescribed by the commission of all purchases, receipts, and sales. Section 59-13-313 requires the Commission to enforce special fuels tax laws and prescribe rules as necessary to enforce those laws. Section 59-13-501 allows the commission to enter into cooperative agreements with other states for the exchange of information and auditing of fuels used by fleets of interstate vehicles.

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: Section R865-4D-1 defines "motor vehicle" and "user" for the purposes of imposing the special fuels tax. Section R865-4D-2 provides guidance on when the fee for the special fuel tax exemption certificate shall be paid; clarifies when the special fuel tax exemption applies; and outlines the formula for calculating fuel use. Section R865-4D-6 sets forth the record-keeping requirements for special fuel user-dealers. Section R865-4D-18 sets forth the record-keeping requirements for special fuel users. Section R865-4D-19 outlines how a government entity is to obtain a refund for special fuel taxes paid and indicates records needed to support the refund. Section R865-4D-20 indicates the conditions under which the exemption or refund for exported undyed diesel fuel shall apply. Section R865-4D-21 defines "gross gallon" and "net gallon;" requires suppliers to calculate tax liability on a consistent gross gallon or net gallon basis; and specifies that both gross and net amounts must be on all

invoices, bills of lading, and special fuel tax returns. Section R865-4D-22 provides procedures for administering the reduction of special fuel tax on fuel that is subject to a tax imposed by the Navajo Nation. Section R865-4D-23 indicates that the commission entered into the International Fuel Tax Agreement, effective 01/01/1990. Section R865-4D-24 provides the conditions under which the commission may determine that a special fuels tax licensee has ceased doing business or changed address and provides procedures for the commission to then invalidate that license. Therefore, this rule should be continued.

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

TAX COMMISSION
AUDITING
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

AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Auditing
R865-6F
Franchise Tax

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40969
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 16-10a-1501 through 16-10a-1533 establish guidelines by which a business may receive authority to become qualified or incorporated to transact business in Utah, and the penalties for transacting business without authority. Requirements for establishing a legal place of business for foreign corporations operating in the state are addressed, as well as requirements for the withdrawal of a foreign corporation. These sections provide guidelines for revocation. Also outlines procedures for a foreign company to become domesticated. Section 53B-8a-112 gives the Tax Commission permission to establish rules to implement the corporate franchise and individual income tax imposed on the Utah Educational Savings Plan Trust property and income. Sections 59-1-1301 through 59-1-1309 create the Reportable Transactions Act which include defining "material advisor" and "reportable transaction," requiring the disclosure of reportable transactions and lists maintained by a material advisor, and providing penalties. Section 59-6-102 requires that each producer of minerals in Utah deduct an amount equal to 5% of the amount that would be paid to the person entitled to the payment. Any person filing an income tax return is entitled to a credit against this tax if the amount withheld is greater than the tax due on the return. Section 59-7-101 defines terms used in the corporate tax code. Section 59-7-102 provides exemptions from the corporate tax. Section 59-7-104 requires all foreign and domestic corporations to pay an annual corporate franchise or income tax. Section 59-7-105 provides additions to unadjusted income for computing adjusted income. Section 59-7-106 provides subtractions from unadjusted income for computing adjusted income. Section 59-7-108 provides guidelines on the treatment of distributions made by corporations. Section 59-7-112 provides for the governance of installment sales. Sections 59-7-302 through 59-7-321 require allocation and apportionment of income for corporations earning income both within and without the state. These sections also establish a three-part formula for apportionment of business income based on the property factor, payroll factor, and sales factor, as well as a double-weighted sales factor formula, and single sales factor formula for the apportionment of business income. Section 59-7-317 provides instructions for computing sales factor with regard to corporate franchise tax. Section 59-7-321 provides that the purpose of Title 59, Chapter 7, Part 3, is to make uniform the law of those states that enact its provisions. Section 59-7-402 indicates when corporations must file a water's edge combined report and gives direction on who may elect to file the report. Section 59-7-403 provides unitary groups with the option of filing a worldwide combined report; if this report is elected, they must continue to file this report unless they have consent from the Tax Commission to file on another basis. Section 59-7-501 provides guidelines for taxable period and accounting method to be used in computing Utah taxable income. Section 59-7-502 states that if a corporation changes its taxable year for federal tax purposes or changes its accounting period, the new taxable year or accounting period shall become the corporation’s taxable year for Utah corporate franchise and income tax. Section 59-7-505 establishes requirements for filing returns, including combined returns, and states when they are due. Section 59-7-609 provides a corporate franchise tax credit equal to 20% of the qualified rehabilitation expenditures made in connection with the restoration of a residential certified historic building. Section 59-7-614 provides a corporate franchise tax credit for renewable energy systems. Section 59-13-202 creates a corporate franchise tax credit against fuel tax for persons using stationary farm engines, and self-propelled nonhighway farm machinery. Section 59-13-301 imposes a special fuels tax on special fuels; provides for transactions exempt from the tax; and requires exemptions to be taken in the form of a tax refund. Sections 63N-2-201 through 63N-2-215 establishes the Enterprise Zone Act, which provides state assistance to businesses operating in rural parts of the state and provides

state tax credits for certain businesses operating within the enterprise zone.

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: Section R865-6F-1 clarifies franchise tax responsibilities of foreign corporations, and also, clarifies the manner in which a foreign corporation terminates its corporate franchise tax responsibilities. Section R865-6F-2 establishes taxable year for purposes of the corporate franchise tax and clarifies when first return period begins. Section R865-6F-6 sets forth guidelines to determine whether nexus has been established for purposes of subjecting a corporation to the Utah corporation franchise tax. Section R865-6F-8 classifies all business income as either "business" or "nonbusiness," provides rules to determine whether income is business or nonbusiness, defines and establishes criteria for apportionment of tax, and defines the three elements of the apportionment formula: the property factor, payroll factor, and sales factor. Section R865-6F-14 states the tax commission policy to follow federal law as closely as possible in determining net income for Utah corporate franchise tax. The section lists items normally followed in conformity with federal law and items requiring different state tax treatment. Section R865-6F-15 clarifies that the installment method of reporting corporate income is a postponement of tax, not an exemption from tax. The section states when the privilege of installment reporting is terminated. The section also states that installment income is subject to the same allocation and apportionment provisions as all other corporate income. Section R865-6F-16 provides a methodology for apportioning income from long-term construction projects when a taxpayer elects to use the percentage-of-completion method of accounting or the completed contract method of accounting. Section R865-6F-18 defines "member" and "producer" for purposes of the corporate franchise and income tax exemption for a farmers' cooperative; provides procedures for qualifying for and applying the exemption. Section R865-6F-19 provides a methodology for apportioning trucking company income to Utah. Section R865-6F-22 defines "worldwide year" and "water's edge year" in treatment of carrybacks and carry forwards and notes criteria and penalties for switching from worldwide method to water's edge or from water's edge method to worldwide method. Section R865-6F-24 provides that, in the case of a unitary group, nexus created by any member of the group creates nexus for the entire unitary group. Section R865-6F-26 provides instructions for applying for and receiving historic preservation tax credit and any subsequent carryforwards of that credit. Section R865-6F-27 provides that the order of deducting credits against the corporate franchise tax is: 1) nonrefundable credits; 2) nonrefundable credits with a carryforward; and 3) refundable credits. Section R865-6F-28 provides guidance on what investments qualify for the enterprise zone franchise tax credits and how a business should calculate its base number of employees. The section also outlines the effect on tax credits if a county loses its designation as an enterprise zone. Section R865-6F-29 provides a methodology for apportioning railroad income to Utah. Section R865-6F-30 sets forth the information a trustee of the Utah Educational Savings Plan Trust must provide to the Tax Commission and the forms necessary to provide this information to the Tax Commission. Section R865-6F-31 defines "outer-jurisdictional property," "print," "printed materials," "purchaser," "subscriber," and "terrestrial facility"; and provides a methodology for apportioning income of publishing companies to the state for franchise tax purposes. Section R865-6F-32 provides a methodology for apportioning the income of financial institutions to the state for franchise tax purposes; and defines terms related to financial institutions. Section R865-6F-33 defines terms related to telecommunications corporations; and provides a methodology for apportioning and allocating income for telecommunications corporations to the state for purposes of franchise tax. Section R865-6F-36 defines terms for registered securities or commodities brokers or dealers; and provides a methodology for apportioning the income of registered securities or commodities brokers or dealers to the state for corporate franchise and income tax purposes. Section R865-6F-37 indicates how a taxpayer shall disclose a reportable transaction to the Tax Commission and how a material advisor shall disclose a reportable transaction to the Tax Commission. Section R865-6F-38 provides that, in the absence of fraud, the amount certified as qualifying for the renewable energy systems tax credit shall be the amount allowed by the Tax Commission as a credit. Section R865-6F-39 defines captive real estate investment trust for purposes of the addition to unadjusted income required to compute the taxable income of a captive real estate investment trust. Section R865-6F40 indicates that the activities of a partnership are taken into consideration in determining whether a corporation qualifies as a foreign operating company. Therefore, this rule should be continued.

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

TAX COMMISSION
AUDITING
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

AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Auditing
R865-7H
Environmental Assurance Fee

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40970
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-6-410.5 establishes an Environmental Assurance Program and an Environmental Assurance Fee for owners and operators using petroleum storage tanks. This section sets the environmental assurance fee on the first sale or use of petroleum products, which shall be collected by the Utah State Tax Commission and deposited in the Petroleum Storage Tank Trust Fund, and requires the USTC to make rules to administer the fee.

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: Section R865-7H-1 sets the guidelines for owners or operators of tanks, including above-ground storage tanks, to obtain an exemption from the Environmental Assurance Fee if they do not participate in the Environmental Assurance Program. Section R865-7H-2 sets the guidelines for exemptions from the Environmental Assurance Fee on packaged petroleum products or bulk petroleum products which are brought into Utah and subsequently repackaged; and provides guidelines for qualified individuals to obtain a refund of Environmental Assurance Fees no more often than on a monthly basis. Section R865-7H-3 sets guidelines for an exemption from the Environmental Assurance Fee for petroleum products exported from a refinery directly out-of-state or for petroleum products not stored in a tank covered by the Environmental Assurance Program which are subsequently exported from the state; and explains that qualified individuals may apply for a refund of those fees paid no more often than on a monthly basis. Therefore, this rule should be continued.

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AUDITING
210 N 1950 W
SALT LAKE CITY, UT 84134
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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

AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Auditing
R865-9I
Income Tax

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40971
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-32a-106 authorizes the Tax Commission to adopt rules necessary to implement the medical care savings account tax deduction. Section 53B-8a-112 authorizes the Tax Commission to adopt rules necessary to implement the educational saving plan tax deduction. Section 59-1-1301 through Section 59-1-1309 creates the Reportable Transactions Act, which includes defining "material advisor" and "reportable transaction," requiring the disclosure of reportable transactions and lists maintained by a material advisor and providing penalties. Section 59-1-1406 requires a person to keep tax records and books in a form prescribed by the commission; and prescribes Tax Commission authority examine a person's books and records. Sections 59-2-1201 through 59-2-1220 provide general property tax relief for certain persons who own or rent their places of residence through a series of tax credits, refunds, and appropriations from the general fund. Section 59-6-102 requires that each producer of minerals in Utah deduct an amount equal to 5% of the amount that would be paid to the person entitled to the payment. Any person filing an income tax return is entitled to a credit against this tax if the amount withheld is greater than the tax due on the return. Section 59-10-103 defines individual income tax terms. Section 59-10-114 provides for additions to and subtractions from the federal taxable income of an individual in order to determine state taxable income. Section 59-10-116 levies an income tax on nonresidents with income from Utah. This tax shall be based on federal adjusted gross income from Utah sources. Section 59-10-117 lists items includable in federal adjusted gross income from Utah sources. Section 59-10-118 states that any taxpayer having

business income which is taxable within and without this state shall allocate and apportion the taxpayer's net income to the state. Statute then provides guidelines for allocation. Section 59-10-119 requires that a husband and wife shall file joint or separate returns with Utah based on how they filed federal returns and provides an exception if one spouse is a Utah resident and the other is a nonresident. Section 59-10-120 requires individuals who change status from resident to nonresident or nonresident to resident during the taxable year to file one return for their resident status and one for their nonresident status, and provides guidance on determining taxable income in this case. Section 59-10-121 states that if two returns must be filed because of a change of status from resident to nonresident, or vice versa, the personal exemptions and standard deductions shall be prorated between the returns based on the Tax Commission rule. Section 59-10-122 establishes that the state taxable year for an individual will coincide with the individual's federal taxable year. Section 59-10-124 states that the Tax Commission shall have the authority to create rules to prevent over or under taxation when an individual switches accounting methods from one taxable year to the next. Section 59-10-136 provides tests for determining when an individual has Utah domicile for income tax purposes; and indicates when an individual is not considered to have domicile. Section 59-10-401 defines terms relating to withholding tax. Section 59-10-402 requires each employer to withhold from wages an amount to be determined by Tax Commission rule; provides an exemption from withholding; and provides that amounts withheld shall be a credit to the tax of the individual from whom they were withheld. Section 59-10-403 provides a withholding exemption for an employee who presents to their employer a certificate stating that the employee incurred no tax liability for the preceding year and does not expect to incur tax liability in the current year. Statute gives rulemaking power to the Tax Commission to implement this section. Section 59-10-405.5 requires a person who withholds income taxes to obtain a withholding tax license from the commission; indicates when a license applicant must post a bond with the Tax Commission and how the bond amount shall be calculated; and provides that a withholding tax license is valid until the person ceases to do business or changes that person’s business address. Section 59-10-406 sets forth requirements for employers on due dates and filing requirements for withholding; gives Tax Commission rulemaking authority to prescribe the manner by which an employer shall notify employees of amounts withheld on their behalf; and provides that employers hold withheld amounts in trust for the Tax Commission. Section 59-10-407 requires employers to make monthly payments of withholding tax to the Tax Commission if their withholding tax liability averages an amount designated in rule by the Tax Commission. Section 59-10-408 allows the Tax Commission to make agreements with the United States government to make provisions necessary to provide for deduction and withholding of tax from wages of federal employees in Utah; and gives the Tax Commission rulemaking authority to administer withholding. Section 59-10-501 requires all persons liable for tax to keep records, render statements, make returns, and comply with the rules that the Tax Commission may from time to time prescribe. Section 59-10-503 provides that a husband and wife may file a joint return with some exceptions. Section 59-10-504 requires that any fiduciary or receiver required to file a federal return must file a state return as well. Section 59-10-507 requires that any partnership receiving income in the state of Utah shall make a return for the taxable year. Section 59-10-512 requires that any return, statement, or other document submitted to the Tax Commission must be signed in accordance with forms or rules prescribed by the Tax Commission. Section 59-10-514 indicates when an individual income tax return, trust and estates tax return, and partnership tax return must be filed with the Tax Commission; and allows the Tax Commission to make rules prescribing what constitutes a filing with the Tax Commission. Section 59-10-516 provides instructions for gaining an extension of time for filing returns. Law states that certain prepayments must be made by original due date or penalties will be assessed on the filing extension. Section 59-10-517 deems the U. S. postmark date as the delivery date; and allows the Tax Commission to provide by rule for postmarks by entities other than the U.S. Post Office. Section 59-10-522 allows the Tax Commission to extend the time for paying tax due on a return under the Tax Commission rules, and for paying tax deficiencies. Section 59-10-536 provides a statute of limitations on the assessment and collection of tax by the Tax Commission. Section 59-10-1003 prevents overtaxation by providing a credit against income tax otherwise due to the state of Utah for the amount of tax imposed on the taxpayer in another state. Section 59-10-1006 provides a Utah resident an income tax credit for an amount equal to 20 percent of qualified rehabilitation expenditures when restoring a historic building. Section 59-10-1014 authorizes the Tax Commission to promulgate rules to address the certification of a nonrefundable renewable energy system tax credit by the Office of Energy Development. Section 59-10-1017 provides an individual income tax credit for a qualified investment made in the Utah Educational Savings Plan. Section 59-10-1021 provides a nonrefundable income tax credit for certain contributions made to a medical care savings account. Section 59-10-1023 provides a nonrefundable income tax credit for certain amounts paid under a health benefit plan. Section 59-10-1106 provides a refundable income tax credit for certain amounts spent for the purchase of a renewable commercial energy system. Section 59-10-1403 provides that a pass-through entity is not subject to an income tax but must file a return; and classifies a pass-through entity that transacts business in the same manner as the pass-through entity is classified for federal income tax purposes. Section 59-10-1403.2 requires a pass-through entity to withhold Utah income tax on the entity's business income and Utah-derived non-business income for anyone other than a resident individual; and provides an exception to the withholding requirement. Section 59-10-1405 indicates how a pass-through entity's additions and subtractions to income shall be allocated among the pass-through entity taxpayers. Section 59-13-202 entitles any person who purchases motor fuel for the use of stationary or self-propelled machinery used for nonhighway farm operation to an income tax refund, and

provides methods for obtaining the credit. Section 59-13-301 imposes a special fuels tax on special fuels; provides for transactions exempt from the tax; and requires exemptions to be taken in the form of a tax refund. Sections 63N-2-201 through 63N-2-215 create the Enterprise Zone Act, which provides various nonrefundable income tax credits to certain businesses in an enterprise zone.

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: Section R865-9I-2 defines "resident," "resident taxpayer," "nonresident," "nonresident taxpayer," "part year resident," and "domicile" and clarifies domicile for the purposes of a person in active military service. Section R865-9I-3 provides instructions on how to file for an income tax credit for income taxes paid to another state. Section 865-9I-6 provides instructions for a husband and wife, if either one is a nonresident, to file separate returns even though they filed a joint federal return; provides a method to determine each spouse's Federal Adjusted Gross Income (FAGI) when they qualify to file separate state returns. Section R865-9I-7 provides definitions of "part year resident" and "FAGI", provides instructions for determining the FAGI of a part-year resident and a business with income from within and without Utah. Section R864-9I-8 provides that two returns are not required when an individual changes status as resident or nonresident, except in unusual circumstances. Section R865-9I-9 provides instructions for calculating a taxpayer's taxable state income when required to convert income from a period of less than a year to an annual basis for federal tax purposes. Section R865-9I-10 states that a taxpayer must include a statement setting forth all differences when an alternate method of accounting is used to compute income from the method used the previous year. Section R865-9I-13 provides guidance for pass-through entity required withholding of Utah income tax from certain taxpayers. Section R865-9I-14 requires withholding only on Utah income, and allows credit for withholding paid to another state and provides instructions to employers regarding withholding of wages, including income subject to withholding, the number of exemptions that may be claimed, and use of tables published by the Tax Commission. Section R865-9I-15 states that an employer need not withhold wages from an employee with a federal withholding certificate. Section R865-9I-16 prescribes the forms necessary to file withholding returns and sets forth penalties incurred by employers not filing properly. The section also prescribes information that must be on W-2 form. Section R865-9I-17 establishes conditions for employers to file withholding returns on a monthly basis and directions for filing monthly. Section R865-9I-18 clarifies taxpayer responsibility to keep and store adequate records for income tax purposes. Section R865-9I-19 clarifies whether a joint return or a separate return should be filed in a year in which one spouse dies. Section R865-9I-20 clarifies when a fiduciary is required to file a return and the information required to be on the fiduciary return, and establishes liability for payment of the estate's or trust's taxes. Section R865-9I-21 provides income tax filing instructions for individuals involved in a partnership; and clarifies method of filing if one member of partnership is a nonresident and the partnership has income from inside and outside the state. Section R865-9I-22 clarifies that any return filed with the Tax Commission is not valid unless the sender signs the return, and also clarifies the conditions a taxpayer must satisfy to file returns on reproduced or facsimile copies of state tax returns. Section R865-9I-23 provides information for prepaying income tax, and indicates when interest shall be charged on a return filed pursuant to an extension, and the amount of extension Utah residents in military service stationed outside the U.S. have to file their return. Section R865-9I-24 clarifies that provisions relating to prima facie evidence of delivery and the postmark date on registered mail from the United States postal system apply to certified mail as well. Section R865-9I-30 provides for a taxpayer to waive the statute of limitations in order to determine whether an activity is engaged in for profit. Section R865-9I-33 states that all Utah residents keeping forms for reporting rents, royalties, interest, and remuneration from Utah sources not subject to federal withholding must make them available to authorized representatives of the Tax Commission or submit them to the Tax Commission upon request. Section R865-9I-34 states that, for property tax relief purposes, individuals living in an owned trailer home situated on rented land must complete two computations: 1) for property taxes on the mobile home; and 2) for the rental of the land, excluding charges for utilities, services, or furnishings supplied by the landlord; and also states what portions of renter-received assistance may be included in rent paid. Section R865-9I-37 provides definitions for the enterprise zone tax credit and indicates when an investment is a qualifying investment for purposes of the credit. The section provides guidance on how an employer shall determine its base number of employees for purposes of the credit, maintenance of records, and revocation of county's designation as an enterprise zone. Section R865-9I-41 provides instructions for applying for and receiving historic preservation tax credit, and any subsequent carryforwards of that credit. Section R865-9I-42 provides that the order of deducting credits against individual income tax is: 1) nonrefundable credits; 2) nonrefundable credits with a carryforward; and 3) refundable credits. Section R865-9I-44 defines "professional athletic team", "member of a professional athletic team," and "duty days" for purposes of apportioning income subject to Utah tax for all professional athletes performing in the state of Utah; and provides that a professional athletic team is an employer required to withhold state income tax from the team members. Section R865-9I-46 requires medical savings account administrators to file information on each account they administer, along with a reconciliation, with the Tax Commission on an annual basis. The section outlines the content of the form, along with record keeping requirements and the necessity of each account

holder to attached the form to their state return. Section R865-9I-47 states that combat pay is excluded from withholding requirements and provides an extension of time to pay income taxes for individuals receiving combat pay. Section R865-9I-49 requires the trustee of the Utah Educational Savings Plan Trust to provide trust participants and the Tax Commission with certain information on the status of the participant's account with the trust. Section R865-9I-50 indicates when the addition to federal taxable income for interest on certain bonds shall apply. Section R865-9I-51 provides conditions under which a withholding tax licensee will be considered to have changed the licensee's business address or ceased to do business. Section R865-9I-52 provides that a credit for health benefit plan insurance shall be determined in the manner that provides the greatest possible credit. Section R865-9I-53 indicates how a taxpayer shall disclose a reportable transaction to the Tax Commission and how a material advisor shall disclose a reportable transaction to the Tax Commission. Section R865-9I-54 provides that, in the absence of fraud, the amount certified as qualifying for the renewable energy systems tax credit shall be the amount allowed by the Tax Commission as a credit. Section R865-9I-55 provides that a qualified subchapter S subsidiary shall be treated in the same manner for Utah taxes as it is for federal taxes. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
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210 N 1950 W
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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

AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Auditing
R865-11Q
Self-Insured Employer Assessment

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40972
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 34A-2-202 requires an annual assessment of employers who are authorized to pay compensation direct; and indicates how that assessment shall be calculated.

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: Section R865-11Q-1 clarifies when employers need to obtain the experience modification factor and provides direction for those who fail to obtain the factor within the specified time. Therefore, this rule should be continued.

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210 N 1950 W
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AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Auditing
R865-12L
Local Sales and Use Tax

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40973
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 59-1-403 requires that all individuals with access to information from tax returns maintain strict confidentiality with regard to that information. and also provides instances when information may be disclosed or shared. Section 59-12-202 states purpose and

intent of local sales and use tax. Section 59-12-204 allows local governments to impose a local sales and use tax and sets forth the provisions that must be included in the ordinance imposing the local sales and use tax. Section 59-12-205 provides that the distribution of local sales and use taxes to local governments shall be based on location where the transaction is consummated and population. Section 59-12-210 requires that the commission provide each county with sales and use tax collection data in order to verify the revenues the commission distributes to them. Section 59-12-210.1 limits a redistribution of sales tax and provides criteria and procedures for an allowed redistribution of sales tax. Section 59-12-602 defines "convention facility," "cultural facility," "recreation facility," and "restaurant," all terms necessary for the administration of the tourism, recreation, cultural, and convention facilities tax. Section 59-12-603 provides for the creation of a tourism, recreation, cultural, and convention facilities tax: 1) not to exceed 3% on all short-term rentals of motor vehicles not exceeding 30 days; 2) not to exceed 0.5% of the rent for every occupancy of a suite room or rooms; and 3) not to exceed 1% of all sales of prepared foods and beverages sold by restaurants. Section 69-2-5.8 limits a redistribution of telecommunications charges and provides criteria and procedures for an allowed redistribution of telecommunications charges.

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: Section R865-12L-1 provides that all rules made with respect to the state sales and use tax shall apply to the local sales and use tax. Section R865-12L-3 permits use of sales tax rate charts to determine sales tax due on a taxable sale. Section R865-12L-4 requires that the local sales and use tax be reported to the Tax Commission on a combined return with the state sales and use tax. Section R865-12L-11 outlines the sales tax liability of a person who purchases a motor vehicle from someone other than a licensed dealer. Section R865-12L-14 provides procedures for local governing bodies' review of local sales and use taxes remitted by businesses located within that political subdivision. The section also provides procedures for corrections for firms omitted from the list of a particular political subdivision or firms listed but not doing business in the jurisdiction of the political subdivision and defines "de minimis" and "extraordinary circumstances" for purposes of a redistribution of sales tax revenues. Section R865-12L-17 defines "primary business," and "retail establishment," and provides guidance necessary to administer the restaurant tax. Section R865-12L-18 clarifies the Tax Commission's exclusive authority to administer and enforce the local sales and use tax, and lists the circumstances under which local governments: 1) shall have access to the Tax Commission records; and 2) may intervene in or appeal from a proposed final Tax Commission action. Therefore, this rule should be continued.

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

TAX COMMISSION
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210 N 1950 W
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DIRECT QUESTIONS REGARDING THIS RULE TO:
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AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Auditing
R865-13G
Motor Fuel Tax

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40974
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 59-13-201 imposes a motor fuel tax at the rate of 12% of the statewide average rack price of a gallon of motor fuel on all motor fuel sold, used, or received for sale in the state and provides tax exemptions for motor fuel distilled from coal, oil shale, rock asphalt, bituminous sand, or hydrocarbons located in this state; deliveries to government agencies; and for exports. The section also provides instructions for the distribution of funds. Section 59-13-202 entitles any person who purchases motor fuel for the use of stationary or self-propelled machinery used for nonhighway farm operation to a refund of motor fuel tax paid and provides methods for obtaining the refund. Section 59-13-203.1 requires that any individual desiring to distribute motor fuel in the state of Utah obtain a license from the Tax Commission; sets forth requirements of the form of the license application; requires bonding as a prerequisite for a license; indicates how the amount of the bond shall be determined; and provides that a motor fuels tax license is valid until the person ceases to do business or changes the person’s business address. Section 59-13-204 states that licensed distributors who receive motor fuel are liable for motor fuel tax and shall compute the tax on the total

taxable amount of motor fuels received. Also provides a method for distributors to sell motor fuel tax exempt to other distributors. Section 59-13-208 requires that every carrier delivering fuel within the state of Utah from outside the state shall report in writing all deliveries made during the past month. Section 59-13-210 allows the Tax Commission to create rules to enforce the motor fuel laws; and requires the Commission to examine returns and recompute monthly reports of sales as necessary; estimate the amount of tax due, collect delinquent tax, refund overpayments, and provide for judicial review of dissatisfied taxpayer claims.

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: Section R865-13G-1 defines "carrier" with regard to motor fuel deliveries and requires that every carrier delivering motor fuels within this state submit written reports concerning all deliveries from outside Utah. Section R865-13G-3 provides criteria for determining whether a sale of motor fuel meets the export exemption from motor fuels tax. This section also requires that each export sale of motor fuel be supported by records. Section R865-13G-5 allows motor fuel dealers that sell motor fuel in wholesale quantities to become a licensed distributor. This section also allows licensed distributors to purchase motor fuel tax exempt if they satisfy certain conditions. Section R865-13G-6, upon Tax Commission approval, exempts from motor fuel tax volatile or inflammable liquids that qualify as motor fuels, but are not useable in their present state in internal combustion engines. Section R865-13G-8 clarifies the definition of "agricultural purposes" for purposes of allowing tax refund for persons engaged in commercial agricultural work. Section R865-13G-9 clarifies exemption from motor fuel tax for motor fuels refined in Utah from solid hydrocarbons. Section R865-13G-10 provides procedures for distributors that make sales to government agencies to claim the fuel tax exemption for sales to government agencies. This section also clarifies the exemption from motor fuel tax for sale of motor fuel to Indian tribes and government agencies. Section R865-13G-11 defines "gross gallon" and "net gallon" for use in calculating motor fuel tax liability. This section also requires that all licensed distributors calculate motor fuel tax using either gross gallon or net gallon basis and requires distributors to inform the Tax Commission of choice then exclusively use this basis of calculation for 12 months without alternating. Section R865-13G-13 sets procedure for government entities to apply for a refund for motor fuel taxes paid and lists the records required to be maintained for purchases on which the refund is claimed. Section R865-13G-15 provides procedures for administering the reduction of motor fuel tax authorized under Section 59-13-201. Section R865-13G-17 sets forth the parameters under which a motor fuels tax licensee will be considered to have changed the licensee's business address or ceased to do business. Section R865-13G-18 defines the statewide average rack price of a gallon of motor fuel as the average of the Salt Lake City and Cedar City terminal prices of the average daily average net closing price of a gallon of branded regular, 10% ethanol, 9.0 Reid Vapor Pressure unleaded motor fuel for each terminal. Therefore, this rule should be continued.

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

TAX COMMISSION
AUDITING
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

AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Auditing
R865-14W
Mineral Producers' Withholding Tax

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40975
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 59-6-101 defines terms used in this chapter. Section 59-6-102 requires a producer to withhold an amount equal to 5% of payments made for the production of minerals in this state and provides for a credit for a person from whom payment has been withheld. Section 59-6-103 requires producers to file a return with the commission on forms prescribed by the commission. Section 59-6-104 provides that the provisions of the income tax withholding, Title 59, Chapter 10, Part 4, shall apply to this chapter.

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: Section R865-14W-1 defines "working interest owner," "first purchaser," "person," and "producer" with regard to the state mineral producer's withholding tax. This section also clarifies withholding requirements; who is responsible to pay tax, including unpaid tax; and how claims for credits against the withholding tax should be made. Therefore, this rule should be continued.

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AUDITING
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Rebecca Rockwell by phone at 801-297-3906, or by Internet E-mail at rrockwell@utah.gov

AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Auditing
R865-15O
Oil and Gas Tax

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
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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 59-5-101 defines terms related to the oil and gas severance tax. Section 59-5-102 imposes a severance tax on oil and gas; provides an annual exemption from the tax for the first $50,000 in gross value of each well; provides an exemption from the tax for stripper wells; subjects each owner to the tax in proportion to his ownership interest in the well; and requires producers who take oil or gas in kind pursuant to an agreement on behalf of the owner to report and pay the tax. Section 59-5-104 requires producers engaged in the production of oil or gas from wells within the state to file an annual return with the Tax Commission prior to June 1.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R865-15O-1 defines terms necessary to administration of the severance tax on oil and gas; and indicates who must file returns when working interest owners engage in a business arrangement in which someone other than themselves is conducting the operations of an oil or gas lease. Section R865-15O-2 indicates how the stripper well exemption applies to a well that produces oil and gas; states that the consecutive 12-month requirement need not fall within one calendar year; and indicates how average daily production shall be calculated. Therefore, this rule should be continued.

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SALT LAKE CITY, UT 84134
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DIRECT QUESTIONS REGARDING THIS RULE TO:
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AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Auditing
R865-16R
Severance Tax

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
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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 59-5-203 indicates how taxable value shall be determined for purposes of imposing

the mining severance tax of 2.6% of taxable value. The section requires the Tax Commission to establish a rule setting forth an established authority for market prices of metals and a process for determining the value of metals sold between affiliated companies where a bona fide sale has not taken place.

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: Section R865-16R-1 establishes authority and promulgates processes both required by statute and necessary in the determination of fair market value. The section is necessary to ensure that the measurement of taxable value is consistent among the different taxpayers, thereby ensuring that all pay their fair share of tax. Therefore, this rule should be continued.

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AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Auditing
R865-19S
Sales and Use Tax

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40979
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 10-1-303 defines terms used in the Municipal Energy Sales and Use Tax Act. Section 10-1-306 grants Tax Commission rulemaking power to establish the delivered value and the point of sale of taxable energy. Section 10-1-307 establishes a method for collection of municipal energy sales and use tax by the Tax Commission; and provides circumstances under which an energy supplier shall pay the tax directly to a municipality. Section 10-1-405 requires the Tax Commission to collect the municipal telecommunications license tax pursuant to a uniform interlocal agreement between the municipalities that impose the tax and the Tax Commission; and requires the Tax Commission to develop the uniform interlocal agreement by rule. Section 19-6-808 provides guidelines for payment of the waste tire recycling fee. Section 59-12-102 defines terms used in the Sales and Use Tax Act. Section 59-12-103 establishes a sales and use tax base, the state sales tax rate, and earmarking of certain sales tax revenues. Section 59-12-104 lists sales and uses that are exempt from sales and use tax. Section 59-12-104.1 exempts sales made by or to religious or charitable organizations from sales and use tax law; the law also provides that the exemption shall, with exceptions, be administered as a refund; and requires the Tax Commission to promulgate refund procedures by rule. Section 59-12-104.6 authorizes the Tax Commission to promulgate rules providing procedures for applying for a refund of sales tax for certain lodging-related purposes, the standards for determining and verifying the amount of a lodging related purchase by an exempt purchaser, and procedures for claiming a refund on a monthly basis. Section 59-12-105 requires certain exempt sales to be reported to the Tax Commission by the owner or purchaser; and also provides penalties for failure to report these exempt sales and gives the Tax Commission the right to waive, reduce, or compromise the penalties. Section 59-12-106 requires all persons required by law to collect sales and use tax to have a license issued by the Tax Commission, prior to the collection of tax; and requires vendors to obtain an exemption certificate at the time of sale to evidence the sale qualifies for an exemption. Section 59-12-107 requires each vendor with nexus in this state to collect and remit sales and use tax to the Tax Commission, on forms prescribed by the Tax Commission; and allows Tax Commission to require security. The law also provides credits for prepaid sales and use tax, and provides penalties for violation of law; and provides the Tax Commission rulemaking authority to determine the amount of tax due when a purchase is made in specie legal tender and the London fixing price is not available for a particular day. Section 59-12-108 requires any vendor whose annual tax liability exceeds $50,000 for the previous year to file with the Tax Commission on a monthly basis; requires vendors whose annual tax liability exceeds $96,000 for the previous year to file monthly tax returns by electronic funds transfer; allows vendors required to file monthly to retain a portion of the sales tax they collect; and gives the Tax Commission rulemaking power for the procedures necessary to determine tax liability for purposes of this section. Section 59-12-109 establishes that confidentiality of sales and use tax returns and other information filed with the Tax Commission is governed by Section 59-1-403. Section 59-12-111 requires all Utah vendors holding a state sales tax license to keep

accurate records of all sales made for a period of three years. The law requires them to be accessible to authorized the Tax Commission employees upon request. Section 59-12-112 creates a tax lien on any unpaid sales taxes when a business is sold; and clarifies the liability of the purchaser of the business when the previous owner has not paid the sales tax. Section 59-12-118 grants the Tax Commission exclusive authority to administer, operate, and enforce the provisions of Chapter 12, Sales and Use Tax Act; and includes a grant of rulewriting authority to enforce the chapter. Section 59-12-211 requires the Tax Commission to promulgate a rule that indicates how to determine the location of a transaction for the use of computer software at more than one location. Section 59-12-301 allows a county legislative body to impose a transient room tax for every occupancy of public accommodations. Section 59-12-352 allows a municipality to impose a municipal transient room tax for every occupancy of public accommodations. Section 59-12-353 allows a municipality to impose an additional transient room tax for every occupancy of public accommodations to repay bonded or other indebtedness. Section 59-12-1102 allows a county to impose an additional sales and use tax on all taxable transactions; and sets forth the procedures a county must follow in order to impose the tax; and provides for the distribution of the revenue collected from the imposition of this tax.

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: Section R865-19S-1 distinguishes between sales and use taxes. Section R865-19S-2 describes sales and use taxes as transaction taxes rather than taxes on articles sold; and explains that the purchaser pays the tax, not the vendor. The vendor merely remits the tax to the state. Section R865-19S-4 indicates that, unless otherwise provided by statute, an invoice or receipt shall show sales tax as a separate line item or in the underlying books and records kept in the vendor's ordinary course of business. If vendors collect an excess amount of tax, they must refund the tax to customers or remit excesses to the Tax Commission. This section also indicates circumstances under which an over collection of taxes may be offset against an under collection of taxes. Section R865-19S-7 explains sales tax license requirements for businesses; and outlines rules for business address changes and business closures. Section R865-19S-12 prescribes the basic form for vendor tax returns; outlines Tax Commission rules for timely filing and extensions; distinguishes between annual filing status and quarterly filing status requirement; and explains alternative sales tax deposits (daily, weekly, or monthly) if necessary for the remittance of tax. Section R865-19S-13 explains confidentiality of returns and states that persons requesting a copy of their own tax returns must present proper identification. Section R865-19S-16 clarifies vendor procedure when vendor has collected excess taxes. Section R865-19S-20 defines the term "total sales" for sales tax purposes; and enumerates the circumstances under which the Tax Commission will give adjustments and credits. Vendor commissions are not deductible. Section R865-19S-22 describes the proper method of sales and use tax record keeping for retailers, lessees, and lessors; discusses proper microfilm and microfiche methods and ADP accounting system records; and explains the Tax Commission prerogatives if records are not prepared and maintained in the prescribed manner. Section R865-19S-23 describes the exemption certificate requirement for vendors of exempt tangible personal property. Section R865-19S-25 requires sales tax license holders to return tax licenses for cancellation upon sales of business; and requires sales tax license holders to retain business records for three years after discontinuation of business. Section R865-19S-30 lists the evidence required for calculating sales and use tax for vehicle sales with or without a trade-in vehicle used as partial payment. Section R865-19S-31 states that the time and place of sale determined by contract between seller and buyer; and the intent of the parties is subject to generally accepted contract law. Section R865-19S-32 explains sales tax implications for leases, rentals, and conditional sales leases; and provides examples of taxable leases. Section R865-19S-33 defines "admissions," "annual membership dues," and "season passes;" clarifies what is not an admission; and states that amounts paid for activities that are not admissions must be separately stated on the invoice. Section R865-19S-34 defines "place of amusement" as a definite location; and admission is subject to tax even though the charge includes the right to participate in an activity. Section R865-19S-35 clarifies definition of "residential use" to include nursing homes; definition of "fuels" does not include explosives; and taxable status of fuel furnished through a single meter is determined by its predominant use. Section R865-19S-37 defines "commercials," "audio tapes," "video tapes," "motion picture exhibitor," and "distributor." Section R865-19S-38 clarifies definition of "isolated or occasional" sales. Section R865-19S-40 sales tax exemption for agricultural produce/agricultural products exchanges explained. Section R865-19S-41 clarifies, for purposes of the sales tax exemption for the U. S. government, when a sale is made to the U. S. government. Section R865-19S-42 clarifies when a sale is made to "state of Utah" for exemption purposes; and indicates the procedures a state or local government must follow to receive a refund of sales tax paid on lodging related purchases that are exempt from sales tax, including the records the state or local government must retain. Section R865-19S-43 outlines exemption qualification requirements for religious or charitable institutions. Section R865-19S-44 explains meaning of "sales made in interstate commerce." Section R865-19S-48 explains that returnable containers are not exempt from sales tax (although non-returnable containers are). Containers sold for final use to the consumer are not exempt. Deposits on containers are subject to sales tax; retailer may take tax credit if deposit

refund is made to customer. Section R865-19S-49 defines "farming operations" for purposes of the agricultural exemption; food, medicine, and supplies for animals in agricultural use exempt from sales tax. Furbearing animals raised for fur are exempt agricultural products. These exemptions are only applicable to commercial farming operations. Purchaser must supply exemption certificate to vendor. This section explains that poultry, eggs, and dairy products are not seasonal products under Subsection 59-12-104(21). Section R865-19S-50 defines flowers, trees, bouquets, plants, etc. as agricultural products. This section also explains tax rules for florist telegraphic deliveries; and florists receiving the order from the buyer must collect tax. Section R865-19S-51 clarifies tax rules for manufacturing and assembling labor on tangible personal property. Sale of the personal property itself is not exempt unless specifically exempted. Section R865-19S-53 sales by finance companies of tangible personal property acquired by repossession or foreclosure are subject to tax. Section R865-19S-56 explains that sales by employers to employees are generally subject to sales tax. Section R865-19S-57 retail sales of ice are taxable. Ice to be re-sold is not taxable. Contract sales of ice to railroads or freight lines are taxable; and no deduction for services is allowed. Section R865-19S-58 explains that construction materials are taxable to contractor or repairman if contractor or repairman converts them to real property; defines "construction materials;" sales of materials to contractors are taxable; and sale of completed real property is not. Contractor is the final consumer when contractor converts tangible personal property to real property; defines conditions under which sales of construction materials to religious or charitable institutions are exempt; and provides examples of items that remain tangible personal property even when attached to real property (and hence are taxable). Section R865-19S-59 defines sales of tangible personal property to repair persons or renovators as "for resale" sales, and therefore exempt. Sales of supplies consumed by repair persons or renovators are taxable. Section R865-19S-60 explains that items sold to businesses for use in carrying on business are taxable; and gives examples of office supplies, trade fixtures, etc. that are subject to tax. Section R865-19S-61 clarifies definition of tax exempt meal sales; states that meals available to general public not exempt; and defines "available to general public." Section R865-19S-62 meal tickets, coupon books, and merchandise cards, sold by persons engaged in selling those items, are taxable; and explains collection procedure. Section R865-19S-63 defines tombstones and grave markers as improvements to real property; and defines tax rules for sales of these items. Section R865-19S-65 clarifies tax rules for newspaper sales; defines "newspaper" for tax exemption purposes; and explains rules for advertising inserts. Section R865-19S-66 distinguishes between services rendered and tangible personal property sold by optometrists, ophthalmologists, and opticians; and states services are not taxable, but sales of the tangible personal property are taxable. Section R865-19S-68 defines premiums, gifts, rebates, and coupons as taxable tangible personal property; and explains tax rules for donations of these items. Section R865-19S-70 defines persons who render services (doctors, dentists, barbers, or beauticians) as the consumers of the tangible personal property dispensed during their services. Section R865-19S-72 explains sales tax exemption for trade-ins and exchanges of tangible personal property. Section R865-19S-73 explains the responsibility of trustees, receivers, executors, administrators, etc. of collecting and remitting sales tax on all taxable sales, including those made at liquidation. Section R865-19S-74 defines vending machine operators as retailers; defines "cost" for the purposes of the 150% cost formula in Subsection 59-12-104(3); and requires vending machine operators to secure a sales tax license and to display license number on each vending machine. Section R865-19S-75 defines sales by photographers, photofinishers, and photostat producers as sales of tangible personal property; and requires these persons to collect tax on their services and on sales of related tangible personal property. Section R865-19S-76 defines charges for painting, polishing, washing, cleaning, and waxing tangible personal property as subject to tax, with no deduction allowed for the service involved; and explains that sales of items used in providing these services are subject to tax. Section R865-19S-78 explains that labor charges for installation, repair, renovation, and cleaning of tangible personal property are taxable; and states that labor charges for installation of tangible personal property that becomes real property are not subject to tax (clarifies Subsection 59-12-103(1)(g)). Section R865-19S-79 defines "tourist home," "hotel," "motel," "trailer court," "trailer," and "accommodations and service charges." Section R865-19S-80 defines "pre-press materials" and "printer"; and describes sales tax liability for sales and purchases made by printers. Section R865-19S-81 explains that the sale of artwork is taxable; and states that the purchase of art supplies that become part of the finished product may be purchased tax free. Section R865-19S-82 outlines sales tax rules for items used for display, trial, or demonstration; and states that the tangible personal property used for display, trial, or demonstration is not subject to tax. Demonstration items used primarily for company or personal use are subject to tax. Section R865-19S-85 defines "establishment," "machinery and equipment" and "manufacturer," for the purpose of the exemption for new and expanding operations and normal operating replacements; and indicates when different activities performed at a single location constitute a separate and distinct establishment. Section R865-19S-86 outlines procedures for mandatory filers, defines "mandatory filer" and related terms; describes criteria for vendor reimbursement of the cost of collecting and remitting sales taxes; and delineates procedures for Electronic Funds Transfer (EFT) remittance of sales taxes. Section R865-19S-87 defines "tooling," "special tooling," "support equipment," and "special test equipment" for purposes of the aerospace or electronics industry contract exemption set forth in Section 59-12-104. Section R865-19S-90 defines "interstate," "intrastate," and "two-way transmission" for purposes of Section 59-12-103; and enumerates taxable telephone services and gives examples of nontaxable charges. Section R865-19S-91 explains that sales to government contractors are subject to sales tax if the contractor uses or consumes the property; and

lists criteria for qualification as a purchasing agent for a government entity. Section R865-19S-92 defines "computer generated output;" indicates that prewritten computer software is subject to sales tax regardless of the form in which it is transferred; indicates that custom computer software is exempt from sales tax regardless of the form in which it is transferred; and indicates how a transaction involving computer software is sourced if the transaction does not include a copy of the software to the purchaser and the purchaser uses the software at more than one location. Section R865-19S-93 describes procedure for payment of waste tire recycling fees and clarifies what sales of tires are subject to the fee. Section R865-19S-94 distinguishes between taxable and non-taxable tips, gratuities, and cover charges at restaurants, cafes, and clubs. Section R865-19S-96 outlines assessment of the transient room tax. Section R865-19S-98 defines "use" for purposes of vehicle sales tax exemption for nonresidents; describes qualifications for nonresident status; and describes qualifications for vehicles deemed not used in this state. Section R865-19S-99 explains that vehicles purchased in another state are exempt from Utah sales tax if sales tax has been paid in another state; and states that the registration card from another state serves as evidence of such payment. Section R865-19S-100 explains procedures for sales tax exemptions and refunds for religious and charitable organizations. Section R865-19S-101 explains that document preparation fees assessed for motor vehicle sales are exempt from sales tax if separately identified and not included in the vehicle sale price. Section R865-19S-102 states that ski resorts that do not have a separate meter for their exempt purchases shall determine a methodology to calculate exempt electricity purchases, and to receive Tax Commission approval prior to using that methodology. Section R865-19S-103 defines "gas" and "supplying taxable energy" for purposes of the municipal energy sales and use tax. This section also defines "delivered value" and "point of sale" of taxable energy and sets forth responsibilities of an energy supplier and a user of taxable energy. Section R865-19S-104 clarifies that the annual distribution of the county option sales tax shall be based on a calendar year; and states that the adjustments shall be reflected in the February distribution. Section R865-19S-108 defines "user fee" for purposes of sales and use tax on admission or user fees. Section R865-19S-109 distinguishes between the taxable and non-taxable status of purchases and sales made by a veterinarian; and provides that if a sale by a veterinarian includes both taxable and nontaxable items, the nontaxable items must be separately stated or the entire invoice is subject to tax. Section R865-19S-110 defines "advertiser"; clarifies taxable status of purchases and sales made by advertisers. Section R865-19S-111 clarifies when a graphic design service is non-taxable; provides that a vendor who provides both nontaxable graphic design services and taxable tangible personal property must separately state nontaxable amounts or the entire sale is taxable. Section R865-19S-113 defines "federal airway;" indicates when amounts paid for aircraft or watercraft tours are exempt from sales tax; indicates when sales tax shall be collected in Utah for a service that occurs in Utah and another state. Section R865-19S-114 defines items that constitute clothing in accordance with the Streamlined Sales and Use Tax Agreement. Section R865-19S-115 defines items that constitute protective equipment in accordance with the Streamlined Sales and Use Tax Agreement. Section R865-19S-116 defines items that constitute sports or recreational equipment in accordance with the Streamlined Sales and Use Tax Agreement. Section R865-19S-117 provides guidelines for rounding the computation of sales tax. Section R865-19S-118 provides the terms of the uniform interlocal agreement that governs the commission's administration of the municipal telecommunications license tax. Section R865-19S-120 defines terms for the sales tax exemption relating to film, television, and video; indicates transactions that do not qualify for the sales tax exemption. Section R865-19S-121 defines terms for purposes of the sales tax exemption for certain purchases by a mining facility; and indicates the items the exemption applies to. Section R865-19S-122 defines terms for purposes of the sales tax exemption for certain purchases by a web search portal establishment; and indicates the items the exemption applies to. Section R865-19S-123 indicates the London fixing price that a seller shall use to determine the amount of sales tax due in specie legal tender and in dollars when the London fixing price is not available for the day on which a purchase is made in specie legal tender. Therefore, this rule should be continued.

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AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Auditing
R865-20T
Tobacco Tax

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40980
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 59-14-102 defines terms for purposes of cigarette and tobacco tax and licensing. Section 59-14-201 provides that it is unlawful to manufacture, import, or sell cigarettes without a license; and requires a bond for all licensees. Section 59-14-202 requires that cigarette licenses be issued only to a person owning or operating the place where cigarette vending machine sales are made; requires a separate license for each location sales are made; and provides instructions pertaining to license issuance. Section 59-14-204 imposes a cigarette tax, provides the rates of the tax imposed, and states that the tax shall be imposed upon the first purchase of cigarettes in the state. Section 59-14-205 provides that the cigarette tax shall be paid by affixing stamps on cigarettes, unless otherwise provided in rule by the Tax Commission; requires that all cigarettes sold in the state of Utah be stamped within 72 hours of their receipt in the state and prior to sale in Utah; and allows the Tax Commission to draft rules allowing cigarettes to remain unstamped in the hands of the wholesaler or distributor under certain conditions. Law also gives the Tax Commission authority to create rules aiding in the enforcement and collection of cigarette tax. Section 59-14-212 requires all manufacturers, distributors, or retailers that affix a stamp to imported cigarettes to provide certain information to the Tax Commission regarding those imported cigarettes; indicates that the required information shall be reported on a quarterly basis; and provides a penalty for failure to comply. Section 59-14-301 requires all manufacturers, distributors, and retailers of tobacco products to register with the Tax Commission and requires persons subject to this section to post a bond as a prerequisite to registering. Section 59-14-302 imposes a tax on the sale, use, or storage of tobacco products in Utah. The tax is imposed on the first purchase of the product in Utah. Section 59-14-401 allows a refund of cigarette tax on cigarettes and tobacco products sold outside of the state of Utah to a regular dealer in these articles. Section 59-14-404 gives Tax Commission authority to enter on the premises of a taxpayer to examine books and papers pertaining to the cigarette or tobacco products tax, or to secure any information directly or indirectly concerned with the enforcement of Chapter 14. Section 59-14-603 requires the commission to publish in its website a directory of cigarettes approved for stamping and sale in the state. Section 59-14-607 authorizes the Tax Commission to promulgate rules to enforce the Cigarette and Tobacco Tax and Licensing Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: 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: Section R865-20T-1 clarifies that the cigarette tax and tobacco products tax are imposed upon the first purchase, use, storage, or consumption in the state; and clarifies that no tax is due from a nonresident or tourist who purchases cigarettes outside the state for use, storage, or consumption inside the state. Section R865-20T-3 states that each vending machine selling tobacco is to be licensed as a separate place of business. The license will be posted in a conspicuous place on the machine. Rule also provides guidelines for application for license and to change the place of business. Section R865-20T-5 states that sellers of tobacco products are not required to post bond if previous seller has paid the tax on the products; and indicates how the amount of the bond shall be calculated. Section R865-20T-7 clarifies that sales of cigarettes and tobacco products to vendors outside the state are not subject to this tax. This section also provides guidelines on records that must be maintained to evidence this exemption. Section R865-20T-8 requires manufacturers, jobbers, distributors, wholesalers, retailers, users, or consumers of tobacco products or cigarettes to keep records necessary to determine the amount of tax due on the sale and consumption of these products for a period of three years. Section R865-20T-9 allows inventories of cigarettes held by manufacturers to be delivered to wholesalers or jobbers without being stamped. Records of those deliveries must be kept with information provided in the rule and made available to the Tax Commission. Section R865-20T-11 allows manufacturers, distributors, wholesalers, and retailers that are required to provide on a quarterly basis a copy of the importer's federal import permit and customs form, to exclude those items from enclosure with their quarterly report so long as that information is kept in their records, and provided to the Tax Commission upon request. Section R865-20T-12 defines a "counterfeit stamp" for purposes of the definition of a "counterfeit cigarette". Section R865-20T-13 indicates how the moisture content of a tobacco product shall be measured and how the tax on moist snuff shall be calculated. Section R865-20T-14 indicates how the directory of cigarettes approved for stamping and sale in the state shall be updated. Therefore, this rule should be continued.

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

TAX COMMISSION
AUDITING
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

AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Auditing
R865-21U
Use Tax

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40981
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 59-12-103 imposes a tax on sales and uses of tangible personal property and services but leaves unclear how the two taxes work together. Section 59-12-107 places responsibility for collecting use tax upon vendors but does not provide adequate detail to determine if a taxable use has occurred and is silent on the issue of whether the vendor should collect use tax on goods purchased in interstate commerce but stored, used, or consumed within the state. Section 59-12-107 also imposes a use tax upon users if a sales or use tax was not collected by the vendor, but does not provide detail on how the user should pay or account for those payments. Section 59-12-118 gives the Tax Commission rule making authority to administer the sales and use tax.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section R865-21U-1 clarifies the purpose of the use tax and when the use tax applies. Section R865-21U-2 clarifies that all rules promulgated for sales taxes are applicable to use taxes. Section R865- 21U-6 sets forth a purchaser's responsibilities with regard to payment of and accounting for use tax. Section R865-21U-16 clarifies that use tax is required on goods sold in interstate commerce but stored, used, or consumed within the state. Therefore, this rule should be continued.

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

AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Collections
R867-2B
Delinquent Tax Collection

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40982
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 59-1-302 allows the Tax Commission to impose a penalty upon the officers/director of a corporation for unpaid tax. The rule clarifies that the Tax Commission may impose a lien for those penalties if they remain unpaid. Section 59-1-703 provides that property seized under a jeopardy assessment may be sold prior to the close of appeals on the assessment if certain conditions are met.

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: Section R867-2B-1 clarifies that certain individuals may be subject to a tax lien. Section R867-2B-3 clarifies the procedures the Tax Commission follows prior to sale of property seized under a jeopardy assessment. Therefore, this rule should be continued.

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

AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Motor Vehicle
R873-22M
Motor Vehicle

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40983
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 41-1a-104 grants the Tax Commission power to enter into agreements with other jurisdictions concerning the registration, administration, and enforcement of motor vehicle laws. Section 41-1a-108 requires the Motor Vehicle Division to examine and determine the genuineness of application for registration, titling, and plating of vehicles, vessels, or outboard motors. Section 41-1a-116 allows the Tax Commission to disclose protected motor vehicle records for purposes of advisory notices; and allows the Tax Commission by rule, to provide for telephone access to records. Section 41-1a-211 allows the Motor Vehicle Division to grant a temporary permit for vehicles that are in the process of registration. Section 41-1a-214 requires owner of a vehicle to sign the registration card, keep it in the vehicle at all times, and to display the card to authorized state personnel upon request. Section 41-1a-215 states general rule that all registrations shall be for a 12-month period beginning with the day of registration, and provides exemptions. Section 41-1a-401 requires vehicles to have two license plates, and requires the Motor Vehicle Division to set specifications for license plate materials and manufacture. Section 41-1a-402 license plates shall be in colors selected by the Tax Commission and shall display the name of the state, a designation of the county in which the vehicle is registered, the date of expiration, the registration number assigned to the vehicle, and a slogan. Section 41-1a-411 requires individuals to apply for personalized license plates; and provides that the Tax Commission may refuse a personalized plate in certain circumstances. Section 41-1a-413 persons who have been issued personalized plates must either apply to display the plates on another vehicle, or surrender the plates to the Motor Vehicle Division upon sale, trade, or release of ownership on the original vehicle. Section 41-1a-414 requires that persons with disabilities qualifying under the Tax Commission rules carry an appropriately marked license plate or windshield placard in order to take advantage of parking space for disabled. Section 41-1a-416 allows individuals owning vehicles built before 1973 to apply for an original issue license plate of the format and type issued by the state in the year as the model year of the vehicle. Section 41-1a-418 lists the special group license plates authorized by law. Section 41-1a-419 indicates how the Motor Vehicle Division shall design special group license plates; and allows the owner of a vehicle that is forty years or older with a horseless carriage plate issued prior to 07/01/1992 the privilege of exchanging it for a vintage vehicle special group license plate issued after 07/01/1992. Section 41-1a-420 requires the Motor Vehicle Division to issue a disability special group license plate or windshield placard in accordance with federal law; and indicates where a removable placard shall be placed on the vehicle. Section 41-1a-421 lists the honor special group license plates and criteria necessary to qualify for these plates. Section 41-1a-422 provides a definition of "private institution of higher education," and "standard collegiate degree" for purposes of collegiate license plates. Section 41-1a-522 requires the Tax Commission to establish a record of a nonconforming vehicle and print "manufacturer buy back nonconforming vehicle" clearly on the new certificate of title. Section 41-1a-701 provides that when a vehicle is sold, its registration expires; and requires that a vehicle owner remove the license plates and either forward them to the Motor Vehicle Division for destruction, or have them transferred to another vehicle when the owner relinquishes ownership of the vehicle. Section 41-1a-801 provides a state vehicle inspection number (VIN) if the original VIN is altered or destroyed; and requires owner to apply for state-issued VIN with information required by the Tax Commission. Section 41-1a-1001 provides definitions necessary for implementation of salvage vehicle unbranding laws. Section 41-1a-1002 provides requirements for obtaining an unbranded title to a salvage vehicle, including interim inspections; and requires damage to be repaired pursuant to standards set by the Motor Vehicle Enforcement Division. Section 41-1a-1004 states that if a vehicle is branded as rebuilt or restored to operation, in a flood, or not restored to operation, before a transfer of ownership, the new title to the vehicle should mirror the existing brand. Section 41-1a-1005 requires the Tax Commission to promulgate rules establishing the requirements for an insurance company to prove it has complied with the criteria necessary to issue a salvage certificate for a vehicle. Section 41-1a-1005.5 requires the Tax Commission to promulgate rules establishing the requirements for an insurance company to prove it has complied with the criteria necessary to issue a non-repairable certificate for a vehicle. Sections 41-1a-1009 through 41-1a-1011 provide a definition of “abandoned vehicle”, and the process that the Tax Commission must take to dispose of vehicles meeting the criteria. Section 41-1a-1010 requires a person to obtain a permit to scrap, dismantle, destroy, or change a vehicle; allows the Tax Commission to collect a fee for inspection of vehicles for which the permit has been obtained; and indicates when a permit to dismantle may be rescinded. Section 41-1a-1011 provides the use of a vehicle

dismantling permit. Section 41-1a-1101 authorizes the division or any peace officer to take possession of any vehicle without a warrant under certain circumstances; and authorizes the tax commission to make rules for establishing standards for impound lots, impound yards, and public garages. Section 41-1a-1211 sets fees for license plates, personalized license plates, and special group license plates. Section 53-8-205 requires a safety inspection to be performed on motor vehicles, with some exceptions; and indicates frequency of required safety inspection. Section 72-10-102 defines terms under the uniform aeronautical regulatory act. Section 72-10-109 requires that persons operating, piloting, or navigating an aircraft in Utah have proper registration; and indicates instances when registration is not required. Section 72-10-110 allows the Tax Commission to define, by rule, the contents of the database the Utah Division of Aeronautics is required to maintain containing all aircraft based within the state. Section 72-10-112 subjects persons who fail to properly register aircraft to the same penalties provided for failure to register motor vehicles.

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: Section R873-22M-2 clarifies documentation necessary for registration or titling of vehicles under unique circumstances. Section R873-22M-7 specifies procedures for transfer of license plates from one vehicle to another; and provides a method for determining additional registration fees if the gross laden weight of a vehicle registered by gross laden weight increases during the registration year. Section R873-22M-8 clarifies when a registration issued for a period of three, six, or nine calendar months expires. Section R873-22M-11 allows a driver to carry a copy of the original registration card in lieu of the original in state-owned or state-leased vehicles. Section R873-22M-14 clarifies positioning of decals on license plates. Section R873-22M-15 sets forth procedures for applying for a state-issued vehicle identification number (VIN) if the original VIN has been removed or altered or if one never existed; the section also states where a state-issued VIN shall be placed on the vehicle. This section also sets forth specifications for state-issued VIN. Section R873-22M-16 establishes requirements for: 1) a lien holder who repossesses a motor vehicle to obtain title on that vehicle; 2) recording a new lien; and 3) issuing a new certificate of title showing the assignee as lienholder. Section R873-22M-17 provides criteria that an impound lot must meet to be used by the state of Utah. Section R873-22M-20 defines "aircraft"; provides that aircraft subject to FAA registration shall be registered in Utah; provides a registration period; states that aircraft assessed as part of an airline by the Tax Commission are exempt from registration; requires a decal to be placed on a registered aircraft; and sets forth the contents of the database maintained by the Utah Division of Aeronautics on all aircraft based within the state. Section R873-22M-22 allows an out-of-state branded vehicle to be issued a comparable Utah branded title; states that Utah registration expires when a vehicle qualifies for a title brand; and defines "cost to repair or restore a vehicle for safe operation" for purposes of unbranding a vehicle. Section R873-22M-24 provides definitions of "cosmetic repairs" and "collision estimating guide recognized by the Motor Vehicle Enforcement Division" for purposed of unbranding salvage vehicles. Section R873-22M-25 requires written notification that a vehicle has been issued a salvage certificate or branded title to a prospective buyer on a form provided by the Motor Vehicle Enforcement Division; and states where the form must be displayed if the seller is a dealer. Section R873-22M-26 states that a certified vehicle inspector shall determine if an interim inspection is needed; states that vehicles repaired beyond the point of a required interim inspection may not be unbranded if the interim inspection has not been performed; and provides guidelines on when a repair may qualify a vehicle to receive an unbranded title. Persons performing the inspection must have an I-CAR certification. Section R873-22M-27 sets forth requirements individuals must meet to qualify for special group license plates. Section R873-22M-28 allows the owner of a vehicle that is forty years or older with a horseless carriage plate issued prior to 07/01/1992 the privilege of exchanging it for a vintage vehicle special group license plate issued after 07/01/1992. Section R873-22M-29 details what a removable and a temporary removable disabled windshield placard shall look like; and provides when the windshield placard may be issued and where it must be placed in the vehicle. Section R873-22M-30 defines the term "series" with regard to the issuance of an original issue license plate; and states that the numeric code on the original issue plate cannot mirror a numeric code on a license plate already in existence. Section R873-22M-32 defines certificate of title with regard to Section 41-1a-1010; and requires an applicant with a vehicle eligible for retitling under Section 41-1a-1010 to receive a title consistent with the title at the time of application for a permit to dismantle. Section R873-22M-33 provides a definition of "private institution of higher education" and "standard collegiate degree" for purposes of collegiate license plates. Section R873-22M-34 states conditions under which a personalized license plate may not be issued; allows an applicant the right to request a review of the denial; and provides procedures for review. Section R873-22M-35 if the user of a personalized plate fails to renew the plate within one year of the expiration, the plate will be considered surrendered to the division, and the plate may be reissued to a new requestor. Section R873-22M-36 defines "advisory notice" and provides the procedures necessary to access protected motor vehicle records by telephone or in person. Section R873-22M-40 provides a method to determine the age of a vehicle for purposes of determining the frequency of the state safety inspection required under Section 53-8-205. Section R873-22M-41 indicates when the commission shall issue a salvage certificate for a vehicle to an insurance

company. Section R873-22M-42 indicates when the Tax Commission shall issue a nonrepairable certificate for a vehicle to an insurance company. Therefore, this rule should be continued.

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

TAX COMMISSION
MOTOR VEHICLE
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

AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Motor Vehicle Enforcement
R877-23V
Motor Vehicle Enforcement

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40984
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 41-3-105 gives rulemaking authority to motor vehicle enforcement administrators to carry out the purposes of the chapter; details information that a license application shall contain; gives administrators rulemaking authority to require signs; and sets forth duties of the administrator and the division. Section 41-3-201 requires that all dealers, salespersons, manufacturers, transporters, dismantlers, distributors, factory branch distributors, distributor branch and representative, crushers, remanufactures, and body shops operating in Utah have a license issued by the administrator. Section 41-3-202 establishes the scope of operation allowed to businesses that receive and operate under licenses issued by the Motor Vehicle Enforcement Division. Section 41-3-209 provides for denial, suspension, and revocation of a license for reasonable cause and provides a list of situations included in reasonable cause. Section 41-3-210 sets forth a list of prohibitions for license holders and requires licensees to maintain records. Section 41-3-301 requires dealers to submit a title within 45 days of sale to the Motor Vehicle Enforcement Division; requires dealers to provide certain information to the Motor Vehicle Enforcement Division within 45 days of issuance of a temporary permit. Section 41-3-302 allows a dealer to issue a temporary registration permit to persons purchasing a vehicle, pursuant to Tax Commission rule. Permits are good for 45 days. Dealers are responsible and liable for registration of each motor vehicle for which a permit is issued. Section 41-3-305 states that if an applicant meets criteria established in rule by the Tax Commission, law allows the Motor Vehicle Enforcement Division to issue in-transit permits for the use of highways for a time period not to exceed 96 hours. Section 41-3-507 requires license holders to keep a written record of special plates they issue; states what must be included in the record; and requires that lost or stolen special plates be reported immediately to the Motor Vehicle Enforcement Division. Section 41-3-704 allows the Tax Commission, upon making a record of its actions and upon reasonable cause, to waive, reduce, or compromise any civil penalties imposed under the chapter.

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: Section R877-23V-3 prohibits holders of a dealer license from working as a salesperson for another dealer. The rule does allow dealership owners to engage as no-fee salespersons for their own dealerships. Section R877-23V-5 establishes guidelines for issuance, placement, and records of temporary motor vehicle registration permits and extension permits issued by dealers. Section R877-23V-6 clarifies issuance of in-transit permits for piggybacked semitractors. Section R877-23V-7 sets forth standards of practice for advertising and sale of motor vehicles. Section R877-23V-8 requires all dealers, dismantlers, manufacturers, remanufactures, transporters, crushers, and body shops to post a legible sign at principal and additional places of business; and requires these entities to identify their vehicles through signage on the vehicles. Section R877-23V-10 requires all automobile manufacturers licensed in Utah, to comply with federal vehicle identification number (VIN) requirements. Section R877-23V-11 requires all persons licensed under Section 41-3-202 to notify the Motor Vehicle Enforcement Division immediately of any change in ownership, address, or circumstance relating to its fitness to be licensed. Section R877-23V-12 establishes criteria that must be met before the issuance of a motor vehicle-related license. Section R877-23V-14 requires a dealer issuing temporary permits to segregate and identify state-mandated fees. This section also requires a dealer to post a visible and prominent sign if the dealer charges a customer a dealer documentary service fee. Section R877-23V-16 provides that a lost or stolen special plate may be replaced only after it has

expired; and requires a replaced special plate to be included in the calculation of special plates under Section 41-3-503. Section R877-23V-18 outlines qualifications for a salvage vehicle buyer license and evidence needed to support those qualifications. Section R877-23V-20 provides circumstances under which there is a rebuttable presumption that reasonable cause to deny, suspend, or revoke a license exists. Section R877-23V-22 indicates when reasonable cause to waive, reduce, or compromise a civil penalty does and does not exist. Therefore, this rule should be continued.

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

TAX COMMISSION
MOTOR VEHICLE ENFORCEMENT
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

AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Tax Commission, Property Tax
R884-24P
Property Tax

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40985
FILED: 11/10/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 11-13-302 requires a project entity created under the Interlocal Cooperation Act to pay a fee to each taxing jurisdiction in lieu of ad valorem property tax. This section also provides methods for calculation, collection, and distribution of the fee and is renumbered. Section 41-1a-301 provides procedures for apportioned registration and licensing of interstate commercial vehicles. Section 59-2-102 provides definitions relating to property tax. Section 59-2-103 requires that all residential property be assessed at a uniform and equal rate on the basis of its fair market value; and provides for a residential exemption. Section 59-2-103.5 provides procedures for a property owner to obtain an exemption from property tax for residential property. Section 59-2-201 requires the Tax Commission to determine the fair market value of specified property; provides a methodology for determining fair market value of productive mining property; and requires the Tax Commission to notify the property owner and the assessor of the assessment. Section 59-2-210 indicates how tax on mining property shall be collected; and allows withholding of royalty payments as detailed in the Tax Commission rule. Section 59-2-211 states that to ensure payment and collection of ad valorem property tax, law allows the Tax Commission to collect a security, in an amount determined by the Tax Commission, from firms mining uranium and vanadium. Section 59-2-301 requires the county assessor to assess all property in the county that is not lawfully assessed by the Tax Commission. Section 59-2-301.3 defines "low-income housing covenant" and requires a county assessor to include in a property assessment, any effects a low-income housing covenant may have on the fair market value of a property subject to the covenant. Section 59-2-302 provides that assessments made by the county assessor or the Tax Commission are the only basis of property taxation for political subdivisions of the state. Section 59-2-303 requires the assessor to assess all property subject to taxation to the owner of the property as of January 1. Section 59-2-303.1 defines terms; requires the county assessor to annually update property values based on a systematic review of market data; requires counties to use a computer assisted mass appraisal system to perform the annual update; and requires that a county assessor must also complete a detailed review of each property every five years or be subject to corrective action. Section 59-2-305 requires county assessor to list all property according to its fair market value; and allows the Tax Commission to proscribe procedures and formats that will provide uniformity to property listing. Section 59-2-306 authorizes a county assessor to require a signed statement regarding real and personal property that may be assessed, and the county in which the property is located. Section 59-2-402 requires that a proportional assessment be made to property tax if a piece of taxable transitory personal property is brought into the state after the assessment date; gives the Tax Commission rulemaking authority to implement proportional assessment; and exempts certain property from proportional assessment. Section 59-2-405 imposes a statewide uniform fee of 1.5% of the fair market value of motor vehicles not subject to Section 59-2-405.1, and to watercraft, recreational vehicles, and all other tangible personal property; and requires the Tax Commission to establish fair market value. Section 59-2-405.1 imposes a statewide uniform fee for vehicles under 12,000 pounds based on the age of the vehicle. Section 59-2-406 requires the Tax Commission to enter into a contract with each county; pursuant to this contract, either the Tax Commission or the county will collect all state and local fees due on the vehicles; requires the contract to contain performance standards; and gives rulemaking authority to the Tax Commission. Subsection 59-2-508(2) outlines the application process to have land valued, assessed, and taxed as land in agricultural use. Section 59-2-514 creates the State Farmland Evaluation Advisory Committee; sets forth the membership and duties of that committee; and grants the Tax Commission rulemaking authority as necessary for purposes

of Title 59, Chapter 2, Part 5. Section 59-2-515 allows the Tax Commission rulemaking authority to effectively administer the valuation of agricultural property. Section 59-2-701 requires that all persons conducting appraisals of property for fair market value of real property for the assessment roll in Utah hold an appraisers certificate or registration issued by the Division of Real Estate; and allows the Tax Commission to prescribe qualifications for persons performing appraisals. Section 59-2-702 requires the Tax Commission to conduct training and continuing education programs to educate appraisers and county assessors. Section 59-2-704 requires the Tax Commission to conduct and publish studies to determine the relationship between market value shown on the assessment role and the market value of real property in each county. The Tax Commission shall order counties to adjust assessment rates to coincide with the studies; and allows Tax Commission to conduct appraisals in a county with insufficient sales data. Section 59-2-704.5 requires the Tax Commission to adopt, by rule, standards for determining acceptable assessment levels and valuation deviations within each county. Section 59-2-705 requires the Tax Commission to provide qualified personal property appraisers to the county to aid in the audit of taxable personal property in the county. Section 59-2-801 provides a methodology for the Tax Commission to apportion the assessment of property assessed by it. Section 59-2-918.5 prohibits a taxing entity from imposing a judgment levy without advertising that intent and holding a public hearing on the matter; and provides a required format for the advertisement. Section 59-2-918.6 defines a new school district and remaining school district and sets forth the advertisement and public hearing requirements for the new school district and remaining school district to impose a property tax. Section 59-2-919 prohibits a tax rate in excess of the certified tax rate unless the taxing entity approves a resolution after first advertising that intent; provides a required format for the notice of the proposed tax increase; requires the county auditor to notify all owners of real property, prior to July 22, of a hearing on the proposed increase; and sets forth guidelines for the hearing. Section 59-2-919.1 requires a county auditor to provide a notice by mail to each property owner, on or before July 22, and prescribes the form and content of that notice. Section 59-2-919.2 allows the county auditor to publish a consolidated advertisement for a public hearing on a proposed tax increase when multiple taxing entities notify a county auditor prior to July 22 of a proposed property tax increase. Section 59-2-920 requires a county to forward to the Tax Commission any resolution to exceed the certified tax rate. Section 59-2-921 requires the county board of equalization and the Tax Commission to annually notify before September 15 each taxing entity of any changes they made in the taxing entity's assessment roll or adopted tax rate; and exempts a taxing entity from notice and public hearing provisions in certain instances. Section 59-2-922 requires a county to adopt a replacement resolution, after meeting notice and public hearing requirements, if after approving an initial tax rate, a taxing entity determines that a greater tax rate is required. Section 59-2-923 allows a taxing entity to, before adopting a final budget or tax rate, spend money on the basis of the entity's approved tentative budget or the prior year's adopted budget. Section 59-2-924 requires the county assessor to report the valuation of property within the county to the county auditor and the Tax Commission, and requires the county auditor to report that information, along with the certified tax rate, to each taxing entity; defines certified tax rate and indicates how the certified tax rate shall be determined; and requires the county auditor to notify all property owners of any intent to exceed the certified tax rate. Section 59-2-1004 allows a taxpayer dissatisfied with a valuation or equalization to appeal to the board of equalization; requires the county board of equalization to hold public hearings; and allows a taxpayer to appeal the decision of the board of equalization to the Tax Commission. Section 59-2-1101 exempts the owner of certain property from taxation; and requires an owner to file an affidavit, if required by the Tax Commission, in order to receive exempt status for the property value. Subsection 59-2-1101(d) provides that property owned by a nonprofit entity and used exclusively for religious purposes is exempt from tax. Section 59-2-1102 provides the manner in which a county board of equalization shall determine whether certain property within the county is exempt from taxation. Section 59-2-1104 defines "residence"; and exempts from property tax certain property owned by disabled veterans or their unmarried surviving spouses and minor orphans. Section 59-2-1106 exempts from property tax certain property owned by blind persons or their unmarried surviving spouses or minor orphans; and authorizes county to provide refunds for those qualifying for this exemption. Sections 59-2-1107 through 59-2-1109 authorize a county to defer or abate taxes paid by indigent persons. Section 59-2-1113 exempts household furnishings, furniture, and equipment that are used exclusively by the owner at the owner's place of residence from property tax. Section 59-2-1115 indicates tangible personal property that is exempt from taxation, and allows the Tax Commission to make rules to implement the section. Subsection 59-2-1202(5) defines "household income" for purposes of the homeowner's and renter's property tax credits. Section 59-2-1308.5 allows the Tax Commission to enter into agreements for equal property tax payments over a reasonable period not to exceed 20 years under certain conditions; and grants the Tax Commission authority to promulgate rules to ensure that tax revenue derived from these agreements do not affect the calculation of the certified tax rate. Section 59-2-1317 requires the treasurer to collect the taxes and furnish tax notices to taxpayers; and indicates the information that shall be included on the notice. Section 59-2-1328 requires the payment of refunds and interest if a tax paid under protest was unlawfully collected; and allows a taxing entity to impose a judgment levy to pay its share of eligible judgments. Section 59-2-1330 provides that if a board of equalization, court, or the Tax Commission orders a reduction in the tax on a property, the taxpayer shall receive a refund of that tax, plus interest; provides an interest rate for refunds and sets a time within which the refund and interest must be paid; and allows a taxing entity to impose a judgment levy to pay its share of eligible judgments. Section 59-2-1347 allows the county legislative body and the Tax Commission the right to defer or adjust the property tax of an individual if it

is determined that it is in the best interest of the state or the county; provides procedures for applying for deferral; and requires county legislative body or the Tax Commission to post notice of any deferrals or adjustments. Section 59-2-1351.1 provides procedures for sale of personal property seized as a result of failure to pay property tax; and includes notice requirements for sale of the property.

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: Section R884-24P-5 defines "household income" with regard to property tax abatements or deferrals for indigent persons; and states that absence from residence due to vacation, confinement to hospital, or other temporary situations shall not be deducted from the 10-month residency requirement of Section 59-2-1109. Section R884-24P-7 defines terms; and provides a methodology for assessment of mining properties. Section R884-24P-10 defines terms and provides methodology necessary for taxation of underground rights in land that contains deposits of oil or gas; and also provides for withholding of these taxes. Section R884-24P-14 requires assessor to consider preservation easements when valuing historically significant real property and structures; and also requires property owners to inform the assessor of the preservation easement. Section R884-24P-16 defines terms and provides a methodology for valuing Interlocal Cooperation Act project entity properties; and refers to Section 11-13-25 which is renumbered. Section R884-24P-19 sets forth the ad valorem training and designation program. Section R884-24P-20 defines terms concerning the appraisal of property under construction and provides methodology for valuing that property. Section R884-24P-24 sets forth form county auditor must use to notify real property owners of property valuation and tax changes; and provides guidelines to be used in determining new growth, the certified tax rate, and increase in property tax revenues. Section R884-24P-27 defines terms related to the standards of assessment performance; sets forth standards of assessment performance regarding assessment level and uniformity; states when corrective action is necessary; and provides an alternate performance evaluation. Section R884-24P-28 sets forth a procedure for reporting heavy equipment leased or rented during the tax year. Section R884-24P-29 states situations when household furnishings, furniture, and equipment are subject to property tax. Section R884-24P-32 clarifies that leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property unless the underlying real property is owned by an exempt entity. Section R884-24P-33 defines terms; and provides percent good schedules for all personal property to be used to arrive at the property's taxable value. Section R884-24P-35 requires the owner of property receiving a property tax exemption based on exclusive use for religious, charitable, or educational purposes to file an annual affidavit. Section R884-24P-36 sets forth items that must appear on the real property tax notice, in addition to items required in Section 59-2-1317. Section R884-24P-37 requires the county assessor to maintain an appraisal record of all real property subject to assessment by the county; indicates what information shall be included in the record; requires the value of the land and improvements be shown separately. Section R884-24P-38 provides definitions and a methodology for assessing nonoperating railroad properties. Section R884-24P-40 clarifies when parsonages, rectories, monasteries, homes, and residences are used exclusively for religious purposes; and states that vacant land not actively used by the religious organization is not exempt from property tax. Section R884-24P-42 provides procedures an assessor must follow upon Tax Commission completion of audits of personal property and land subject to the Farmland Assessment Act. Section R884-24P-44 indicates who is the owner for purposes of the property tax exemption for the owner of equipment and machinery used for agricultural purposes; and clarifies when machinery and equipment are not used for farming purposes. Section R884-24P-49 defines terms and provides a methodology for valuating a private rail car company apportioned to Utah. Section R884-24P-50 defines terms and provides a methodology for apportioning the Utah portion of commercial aircraft. Section R884-24P-52 defines terms and establishes criteria necessary for the determination of whether a residence is a primary residence in Utah. Section R884-24P-53 provides valuation tables for the valuation of land subject to the Farmland Assessment Act. Section R884-24P-55 requires each county to establish a written ordinance for real property sale procedures and indicates what issues the ordinance must address; the section also requires that the ordinance be displayed in a public place and be available to all interested parties. Section R884-24P-56 provides a formula to calculate the previous year's statewide rate; apportions vehicles assessed under Section 41-1a-301 at the same percentage filed with the Customer Service Division of the Tax Commission; and defines "principal route." Section R884-24P-57 defines terms related to a judgment levy; provides guidelines on a judgment levy public hearing and advertisement; and requires taxing entities to file with the Tax Commission a statement certifying that they meet the qualifications for imposing a judgment levy. Section R884-24P-58 indicates how the one-time decrease in the certified rate based on the county option sales tax shall be determined. Section R884-24P-59 indicates how the one-time decrease in the certified rate based on resort community sales tax shall be determined. Section R884-24P-60 excludes motorcycles from the definition of "motor vehicle"; and provides additional guidelines on the calculation of the age-based uniform fee on tangible personal property. Section R884-24P-61 defines "recreational vehicle" and excludes motorcycles from the definition of "motor vehicle"; and clarifies what types of personal property the uniform fee applies to; provides a formula to determine the fair market value of tangible personal property. Section R884-24P-62

defines terms related to state-assessed utility and transportation properties; and provides a methodology for valuation of state-assessed utility and transportation properties. Section R884-24P-63 requires a written customer service performance plan to be developed by the party contracting to collect both state registration fees and county property taxes on vehicles; and requires county offices and the Tax Commission to provide training. Section R884-24P-64 provides a formula for determining the taxable value of vehicles owned by disabled veterans and the blind for purposes of the property tax exemptions for the disabled veterans and the blind. Section R884-24P-65 defines "transitory personal property" and clarifies when this type of property is subject to a proportional assessment of property tax. Section R884-24P-66 defines "factual error;" indicates when a board of equalization must accept a property tax appeal that is filed beyond the period allowed under the statute of limitations; and sets forth criteria for county board of equalization hearing procedures. Section R884-24P-67 provides an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects. Section R884-24P-68 provides guidance in determining whether a taxpayer qualifies for the property tax exemption for tangible personal property with a total aggregate fair market value of $3,500 or less. Section R884-24P-70 provides that county mass appraisal systems shall use accepted valuation methodologies to perform the annual update of all residential parcels and defines "accepted valuation methodologies"; and indicates what a detailed review of property characteristics includes. Section R884-24P-71 indicates how the Tax Commission will ensure that an equal property tax payment agreement does not impact the certified tax rate; and indicates the period for which an agreement is effective. Section R884-24P-72 allows a member of the State Farmland Evaluation Advisory Committee to participate electronically in a meeting of that committee. Therefore, this rule should be continued.

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

AUTHORIZED BY: Rebecca Rockwell, Commissioner

EFFECTIVE: 11/10/2016

Transportation, Preconstruction
R930-2
Public Hearings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 40938
FILED: 11/02/2016

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: Federal law requires that the Department establish a public hearing process for all projects that receive federal funds, see 23 CFR 771, 40 CFR Parts 1500-1508, and 23 USC 128. This rule establishes that hearing process.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received from interested persons during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should remain in effect so the department can continue to promote public involvement in the highway program through public hearings and to provide procedures for conducting public hearings. Therefore, this rule should be continued.

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

TRANSPORTATION
PRECONSTRUCTION
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: 11/02/2016

Transportation, Preconstruction
R930-5
Establishment and Regulation of At-Grade Railroad Crossings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40939
FILED: 11/02/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under Sections 54-4-14, 54-4-15, 72-1-201, and 41-6a-1205 to improve the safety for all users of at-grade railroad crossings and provide for the efficient operation of trains, vehicles, and pedestrians through those crossings.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments from interested persons received during and 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: The laws authorizing this rule remain in effect, and the department complies with those laws by having this rule in place to improve the safety for all users of at-grade railroad crossings and provide for the efficient operation of trains, vehicles, and pedestrians through those crossings. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
PRECONSTRUCTION
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: 11/02/2016

Transportation, Preconstruction
R930-6
Access Management

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40940
FILED: 11/02/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under Sections 72-3-109, 72-6-116, 72-7-102, and 72-7-108, which authorize or require the department to make rules governing approach roads and driveways; in-state rights-of-way; the installation, construction, maintenance, repair, renewal, system upgrade, and relocation of utilities; and the excavation and installation of other facilities, including telecommunication 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 comments from interested persons received during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary for the department to govern approach roads and driveways; in-state rights-of-way, the installation, construction, maintenance, repair, renewal, system upgrade, and relocation of utilities; and the excavation and installation of other facilities, including telecommunication facilities, as authorized or required by Sections 72-3-109, 72-6-116, 72-7-102, and 72-7-108. This rule is also necessary to ensure the safe use and protection of federal-aid highways. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
PRECONSTRUCTION
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: 11/02/2016

Transportation, Preconstruction, Right-of-way Acquisition
R933-2
Control of Outdoor Advertising Signs

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40935
FILED: 11/02/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under Section 72-7-501. The purpose of the rule is to implement the Utah Outdoor Advertising Act per the Utah Federal/State Agreement dated 01/18/1968 (Rule R933-5).

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 received a limited amount of written comments from interested parties when the rule was last updated, 09/23/2015. Those comments were related to the public hearing that was held in advance of the rule update and the customary 30-day public comment period prior to rule enactment. No other comments on this rule have been received other than when the Department completed the public involvement portions of the rule update process.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law requiring effective control of outdoor advertising remains in force, and the Department is required to comply with the law by having this rule in place. Without this rule, the state could incur a recurring $30,000,000 penalty that would come out of the state's apportionment of federal highway funding monies. Therefore, this rule should be continued. The few public comments received during the last substantive update in 2015 were addressed as part of the customary rule update process. Beyond the feedback solicitations associated with the 2015 update process, no other comments have been received.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
PRECONSTRUCTION,
RIGHT-OF-WAY ACQUISITION
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: 11/02/2016

Transportation, Preconstruction, Right-of-way Acquisition
R933-5
Utah-Federal Agreement for the Control of Outdoor Advertising

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 40936
FILED: 11/02/2016

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: The Utah-Federal Agreement was executed by the governor of Utah and the secretary of the United States Department of Transportation's Federal Highway Administrator on 01/18/1968. It sets out the parameters by which Utah agrees to manage and regulate outdoor advertising along the federal highway system.

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 has been in place for almost four and a half decades. No specific written comments were received during and since the last five-year review in support of or opposition 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: The Utah-Federal Agreement is derived from the Federal Highway Beautification Act, which compels the states to "effectively control" outdoor advertising. Ten percent of all federal highway funding in the state of Utah is tied to the continuation of Rule R933-5. Failing to continue this rule would place the state of Utah in default violation of the Federal Highway Beautification Act, which would result a ten percent reduction of all available federal highway funding. Therefore, this rule should be continued.

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

TRANSPORTATION
PRECONSTRUCTION,
RIGHT-OF-WAY ACQUISITION
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:

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♦ 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: 11/02/2016

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. 40763 (AMD): R156-3a. Architect Licensing Act Rule
Published: 10/01/2016
Effective: 11/07/2016

No. 40762 (AMD): R156-55b-302c. Qualifications for Licensure - Examination Requirements
Published: 10/01/2016
Effective: 11/07/2016

No. 40764 (AMD): R156-76-502. Unprofessional Conduct
Published: 10/01/2016
Effective: 11/07/2016

Education
Administration
No. 40788 (AMD): R277-109. Legislative Reporting and Accountability
Published: 10/01/2016
Effective: 11/07/2016

No. 40789 (AMD): R277-116. Audit Procedure
Published: 10/01/2016
Effective: 11/07/2016

No. 40790 (NEW): R277-513. Teacher Leader
Published: 10/01/2016
Effective: 11/07/2016

No. 40791 (AMD): R277-600. Student Transportation Standards and Procedures
Published: 10/01/2016
Effective: 11/07/2016

No. 40792 (AMD): R277-603. Autism Awareness Restricted Account Distribution
Published: 10/01/2016
Effective: 11/07/2016

No. 40793 (AMD): R277-611. Certified Volunteer Instructors and Material Approval Requirements and Process for Firearm Safety in the Public Schools
Published: 10/01/2016
Effective: 11/07/2016

No. 40794 (AMD): R277-708. Enhancement for At-Risk Students Program
Published: 10/01/2016
Effective: 11/07/2016

No. 40795 (NEW): R277-715. Out-of-School Time Program Standards
Published: 10/01/2016
Effective: 11/07/2016

No. 40796 (AMD): R277-914. Career and Technical Student Organizations
Published: 10/01/2016
Effective: 11/07/2016

Rehabilitation
No. 40797 (REP): R280-150. Adjudicative Proceedings Under the Vocational Rehabilitation Act
Published: 10/01/2016
Effective: 11/07/2016

No. 40798 (REP): R280-200. Rehabilitation
Published: 10/01/2016
Effective: 11/07/2016

No. 40799 (REP): R280-202. USOR Procedure for Individuals with the Most Significant Disabilities
Published: 10/01/2016
Effective: 11/07/2016

No. 40800 (REP): R280-203. Certification Requirements for Interpreters and Transliterators for the Hearing Impaired
Published: 10/01/2016
Effective: 11/07/2016

No. 40801 (REP): R280-204. Utah State Office of Rehabilitation Employee Background Check Requirement
Published: 10/01/2016
Effective: 11/07/2016

Health
Disease Control and Prevention, Health Promotion
No. 40709 (NEW): R384-205. Opiate Overdose Outreach Pilot Program
Published: 09/15/2016
Effective: 11/07/2016

Disease Control and Prevention, Epidemiology
No. 40765 (NEW): R386-900. Special Measures for the Operation of Syringe Exchange Programs
Published: 10/01/2016
Effective: 11/07/2016

Human Resource Management
Administration
No. 40774 (AMD): R477-101-18. Training
Published: 10/01/2016
Effective: 11/07/2016

Human Services
Substance Abuse and Mental Health
No. 40768 (AMD): R523-11. Utah Standards for Approval of Alcohol and Drug Educational Providers and Instructors for Court-Referred DUI Offenders
Published: 10/01/2016
Effective: 11/07/2016

Natural Resources
Wildlife Resources
No. 40758 (AMD): R657-11. Taking Furbearers
Published: 10/01/2016
Effective: 11/07/2016

Public Safety
Driver License
No. 40759 (AMD): R708-41. Requirements for Acceptable Documentation, Storage and Maintenance
Published: 10/01/2016
Effective: 11/08/2016

Tax Commission
Property Tax
No. 40747 (AMD): R884-24P-33. 2016 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301
Published: 10/01/2016
Effective: 11/07/2016

Transportation
Operations, Construction
No. 40772 (AMD): R916-5. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation
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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 November 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).

Editor's Note: Due to publishing constraints, the Keyword Index is not included in this Bulletin.

Questions regarding the index and the information it contains should be addressed to the Office of Administrative Rules (801-538-3003).

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RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)
CPR = Change in Proposed Rule
EMR = 120-Day (Emergency) Rule
EXD = Expired Rule
EXP = Expedited Rule
EXT = Five-Year Review Extension
GEX = Governor's Extension
LNR = Legislative Nonreauthorization
NEW = New Rule (Proposed Rule)
NSC = Nonsubstantive Rule Change
R&R = Repeal and Reenact (Proposed Rule)
REP = Repeal (Proposed Rule)
5YR = Five-Year Notice of Review and Statement of Continuation

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R277-512	Online Licensure	41003	5YR	11/15/2016	Not Printed
R277-513	Teacher Leader	40790	NEW	11/07/2016	2016-19/12
R277-515	Utah Educator Standards	40510	AMD	08/12/2016	2016-13/41
R277-516	Background Check Policies and Required Reports of Arrests for Licensed Educators, Volunteers, Non-licensed Employees, and Charter School Governing Board Members	40511	AMD	08/12/2016	2016-13/46
R277-530	Utah Effective Teaching and Educational Leadership Standards	40667	5YR	08/15/2016	2016-17/91
R277-530	Utah Effective Teaching and Educational Leadership Standards	40673	AMD	10/11/2016	2016-17/15
R277-531	Public Educator Evaluation Requirements (PEER)	40668	5YR	08/15/2016	2016-17/92
R277-531	Public Educator Evaluation Requirements (PEER)	40674	AMD	10/11/2016	2016-17/18
R277-533	District Educator Evaluation Systems	40512	AMD	08/11/2016	2016-13/49
R277-600	Student Transportation Standards and Procedures	40784	5YR	09/15/2016	2016-19/103
R277-600	Student Transportation Standards and Procedures	40791	AMD	11/07/2016	2016-19/13
R277-603	Autism Awareness Restricted Account Distribution	40785	5YR	09/15/2016	2016-19/104
R277-603	Autism Awareness Restricted Account Distribution	40792	AMD	11/07/2016	2016-19/19
R277-604	Private School, Home School, Electronic High School (EHS), and Bureau of Indian Affairs (BIA) Student Participation in Public School Achievement Tests	40881	5YR	10/14/2016	2016-21/75
R277-605	Coaching Standards and Athletic Clinics	40882	5YR	10/14/2016	2016-21/75
R277-606	Dropout Recovery Program	40675	AMD	10/11/2016	2016-17/21
R277-609	Standards for LEA Discipline Plans and Emergency Safety Interventions	40883	5YR	10/14/2016	2016-21/76
R277-611	Certified Volunteer Instructors and Material Approval Requirements and Process for Firearm Safety in the Public Schools	40793	AMD	11/07/2016	2016-19/20
R277-616-3	Criteria for Determining Where a Homeless or Emancipated Student Shall Attend School	40251	NSC	03/29/2016	Not Printed
R277-700	The Elementary and Secondary School General Core	40363	AMD	06/21/2016	2016-10/25
R277-700-7	Student Mastery and Assessment of Core Standards	40252	NSC	03/29/2016	Not Printed
R277-702-4	Eligibility for GED Testing	40253	NSC	03/29/2016	Not Printed
R277-705	Secondary School Completion and Diplomas	39936	AMD	01/07/2016	2015-23/17
R277-707	Enhancement for Accelerated Students Program	40428	5YR	05/16/2016	2016-11/63
R277-707	Enhancement for Accelerated Students Program	40429	AMD	07/11/2016	2016-11/21
R277-708	Enhancement for At-Risk Students Program	40786	5YR	09/15/2016	2016-19/104
R277-708	Enhancement for At-Risk Students Program	40794	AMD	11/07/2016	2016-19/22
R277-710	Intergenerational Poverty Interventions in Public Schools	40513	AMD	08/11/2016	2016-13/53
R277-711	High Quality School Readiness Expansion	40676	NEW	10/11/2016	2016-17/24
R277-712	Competency-based Grant Programs	40677	NEW	10/11/2016	2016-17/25
R277-713	Concurrent Enrollment of High School Students in College Courses	40514	R&R	08/11/2016	2016-13/55
R277-715	Out-of-School Time Program Standards	40795	NEW	11/07/2016	2016-19/25
R277-716	Alternative Language Services for Utah Students	40211	5YR	02/16/2016	2016-5/25

R277-716	Alternative Language Services for Utah Students	40212	AMD	04/07/2016	2016-5/3
R277-726	Statewide Online Education Program	39996	AMD	02/08/2016	2016-1/15
R277-726	Statewide Online Education Program	40515	AMD	08/11/2016	2016-13/61
R277-750	Education Programs for Students with Disabilities	40669	5YR	08/15/2016	2016-17/92
R277-750	Education Programs for Students with Disabilities	40678	AMD	10/11/2016	2016-17/27
R277-752	Adult Students with Disabilities and Informed Consent	40274	EMR	03/18/2016	2016-8/87
R277-911	Secondary Career and Technical Education	40516	AMD	08/11/2016	2016-13/66
R277-914	Career and Technical Student Organizations	40787	5YR	09/15/2016	2016-19/105
R277-914	Career and Technical Student Organizations	40796	AMD	11/07/2016	2016-19/26
R277-920	Implementation of the School Turnaround and Leadership Development Act	39789	NEW	02/08/2016	2015-20/70
R277-920-3	Superintendent's Designation of Low Performing Schools and Waiver Authority	39997	AMD	02/08/2016	2016-1/20
R277-920-4	Implementation of the School Turnaround and Leadership Development Act	40286	NSC	04/05/2016	Not Printed
R277-922	Digital Teaching and Learning Grant Program	40679	NEW	10/11/2016	2016-17/28
R277-923	American Indian and Alaskan Native Education State Plan Pilot Program	40518	NEW	08/11/2016	2016-13/75
R277-924	Partnerships for Student Success Grant Program	40680	NEW	10/11/2016	2016-17/32
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R280-150	Adjudicative Proceedings Under the Vocational Rehabilitation Act	40797	REP	11/07/2016	2016-19/28
R280-200	Rehabilitation	40798	REP	11/07/2016	2016-19/29
R280-202	USOR Procedure for Individuals with the Most Significant Disabilities	40799	REP	11/07/2016	2016-19/30
R280-203	Certification Requirements for Interpreters and Transliterators for the Hearing Impaired	40800	REP	11/07/2016	2016-19/32
R280-204	Utah State Office of Rehabilitation Employee Background Check Requirement	40101	5YR	01/14/2016	2016-3/510
R280-204	Utah State Office of Rehabilitation Employee Background Check Requirement	40102	AMD	03/09/2016	2016-3/11
R280-204	Utah State Office of Rehabilitation Employee Background Check Requirement	40801	REP	11/07/2016	2016-19/34
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R313-22	Specific Licenses	39991	AMD	05/09/2016	2016-1/33
Waste Management and Radiation Control, Waste Management					
R315-310	Permit Requirements for Solid Waste Facilities	40267	AMD	07/15/2016	2016-8/30
Air Quality					
R307-101-2	Definitions	39994	AMD	03/03/2016	2016-1/21
R307-101-3	Version of Code of Federal Regulations Incorporated by Reference	40423	AMD	08/04/2016	2016-11/23
R307-104	Conflict of Interest	39995	NEW	03/03/2016	2016-1/28
R307-110-28	Regional Haze	39849	AMD	02/04/2016	2015-21/45
R307-121	General Requirements: Clean Air and Efficient Vehicle Tax Credit	40746	5YR	09/07/2016	2016-19/105
R307-124	General Requirements: Conversion to Alternative Fuel Grant Program	40471	NEW	09/08/2016	2016-13/76
R307-210	Stationary Sources	40294	EXT	04/04/2016	2016-9/141
R307-210	Stationary Sources	40422	5YR	05/12/2016	2016-11/63
R307-210	Stationary Sources	40424	AMD	08/04/2016	2016-11/24
R307-214	National Emission Standards for Hazardous Air Pollutants	40425	AMD	08/04/2016	2016-11/25
R307-230	NOx Emission Limits for Natural Gas-Fired Water Heaters	40408	LNR	05/10/2016	2016-11/67
R307-312-5	Hot Mix Asphalt Plants	39844	AMD	02/04/2016	2015-21/46

R307-328-4	Loading of Tank Trucks, Trailers, Railroad Tank Cars, and Other Transport Vehicles	39845	AMD	02/04/2016	2015-21/47
R307-351-4	Standards for Rotogravure, Flexographic, and Specialty Printing Operations	40225	NSC	03/11/2016	Not Printed
R307-401-10	Source Category Exemptions	40866	NSC	10/20/2016	Not Printed
R307-403-2	Applicability	40193	NSC	02/25/2016	Not Printed
R307-405-3	Definitions	39846	AMD	02/04/2016	2015-21/48
R307-415-3	Definitions	39847	AMD	02/04/2016	2015-21/50
R307-801	Utah Asbestos Rule	39848	AMD	05/05/2016	2015-21/53
R307-801	Utah Asbestos Rule	39848	CPR	05/05/2016	2016-5/18
R307-841-8	Renovator Certification and Dust Sampling Technician Certification	40207	AMD	05/05/2016	2016-5/7
Drinking Water					
R309-105-4	General	40031	AMD	05/01/2016	2016-2/19
R309-110-4	Definitions	40032	AMD	05/01/2016	2016-2/20
R309-200-5	Primary Drinking Water Standards	40033	AMD	05/01/2016	2016-2/23
R309-210	Monitoring and Water Quality: Distribution System Monitoring Requirements	40034	AMD	05/01/2016	2016-2/26
R309-211	Monitoring and Water Quality: Distribution System – Total Coliform Requirements	40035	NEW	05/01/2016	2016-2/33
R309-215	Monitoring and Water Quality: Treatment Plant Monitoring Requirements	40036	AMD	05/01/2016	2016-2/40
R309-220	Monitoring and Water Quality: Public Notification Requirements	40037	AMD	05/01/2016	2016-2/46
R309-225	Monitoring and Water Quality: Consumer Confidence Reports	40038	AMD	05/01/2016	2016-2/53
Environmental Response and Remediation					
R311-210-1	Administrative Procedures	40686	NSC	09/01/2016	Not Printed
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R313-19-34	Terms and Conditions of Licenses	39990	AMD	03/15/2016	2016-1/32
R313-24	Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements	39992	AMD	03/15/2016	2016-1/38
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R313-12	General Provisions	40572	5YR	07/01/2016	2016-14/172
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R313-15	Standards for Protection Against Radiation	40003	NSC	01/15/2016	Not Printed
R313-16	General Requirements Applicable to the Installation, Registration, Inspection, and Use of Radiation Machines	40574	5YR	07/01/2016	2016-14/173
R313-16-230	Registration of Radiation Machines	40004	NSC	01/15/2016	Not Printed
R313-17	Administrative Procedures	40575	5YR	07/01/2016	2016-14/174
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R313-18-11	Posting of Notices to Workers	40007	NSC	01/15/2016	Not Printed
R313-19	Requirements of General Applicability to Licensing of Radioactive Material	40577	5YR	07/01/2016	2016-14/175
R313-19-13	Exemptions	40322	AMD	06/10/2016	2016-9/59
R313-21	General Licenses	40008	NSC	01/15/2016	Not Printed
R313-22	Specific Licenses	40009	NSC	01/15/2016	Not Printed
R313-22	Specific Licenses	39991	CPR	05/09/2016	2016-7/44
R313-22	Specific Licenses	40323	AMD	06/10/2016	2016-9/63
R313-22	Specific Licenses	40578	5YR	07/01/2016	2016-14/176
R313-25	License Requirements for Land Disposal of Radioactive Waste - General Provisions	40579	5YR	07/01/2016	2016-14/177
R313-25-26	Near Surface Land Disposal Facility Operation and Disposal Site Closure	40451	NSC	06/13/2016	Not Printed
R313-26	Generator Site Access Permit Requirements for Accessing Utah Radioactive Waste Disposal Facilities	40259	5YR	03/10/2016	2016-7/63
R313-27	Medical Use Advisory Committee	40230	NSC	03/08/2016	Not Printed

R313-27	Medical Use Advisory Committee	40666	REP	10/15/2016	2016-17/40
R313-28	Use of X-Rays in the Healing Arts	40580	5YR	07/01/2016	2016-14/177
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R313-32-2	Clarifications or Exceptions	40010	NSC	01/15/2016	Not Printed
R313-36	Special Requirements for Industrial Radiographic Operations	40582	5YR	07/01/2016	2016-14/178
R313-70	Payments, Categories and Types of Fees	40011	NSC	01/15/2016	Not Printed
R313-70	Payments, Categories and Types of Fees	40583	5YR	07/01/2016	2016-14/179
Waste Management and Radiation Control, Waste Management					
R315-1	Utah Hazardous Waste Definitions and References	40117	REP	04/15/2016	2016-3/14
R315-2	General Requirements - Identification and Listing of Hazardous Waste	40118	REP	04/15/2016	2016-3/14
R315-3	Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities	40119	REP	04/15/2016	2016-3/15
R315-4	Procedures for Decisionmaking	40120	REP	04/15/2016	2016-3/16
R315-5	Hazardous Waste Generator Requirements	40121	REP	04/15/2016	2016-3/17
R315-6	Hazardous Waste Transporter Requirements	40122	REP	04/15/2016	2016-3/18
R315-7	Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities	40123	REP	04/15/2016	2016-3/18
R315-8	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	40124	REP	04/15/2016	2016-3/19
R315-9	Emergency Controls	40125	REP	04/15/2016	2016-3/20
R315-12	Administrative Procedures	40126	REP	04/15/2016	2016-3/21
R315-13	Land Disposal Restrictions	40127	REP	04/15/2016	2016-3/21
R315-14	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities	40128	REP	04/15/2016	2016-3/22
R315-15	Standards for the Management of Used Oil	40260	5YR	03/10/2016	2016-7/64
R315-15	Standards for the Management of Used Oil	40446	NSC	06/13/2016	Not Printed
R315-16	Standards for Universal Waste Management	40129	REP	04/15/2016	2016-3/23
R315-17	End of Life Automotive Mercury Switch Removal Standards	40261	5YR	03/10/2016	2016-7/65
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R315-101	Cleanup Action and Risk-Based Closure Standards	40262	5YR	03/10/2016	2016-7/65
R315-101	Cleanup Action and Risk-Based Closure Standards	40921	NSC	11/04/2016	Not Printed
R315-102	Penalty Policy	40263	5YR	03/10/2016	2016-7/66
R315-103	Commercial Hazardous Waste Facility Siting Criteria	40105	NEW	04/15/2016	2016-3/25
R315-124	Procedures for Decisionmaking	40106	NEW	04/15/2016	2016-3/26
R315-124-34	Public Participation	40312	AMD	06/10/2016	2016-9/72
R315-260	Hazardous Waste Management System	40107	NEW	04/15/2016	2016-3/32
R315-260	Hazardous Waste Management System	40277	NSC	04/15/2016	Not Printed
R315-260	Hazardous Waste Management System	40413	NSC	06/06/2016	Not Printed
R315-260	Hazardous Waste Management System	40307	AMD	06/10/2016	2016-9/73
R315-261	General Requirements - Identification and Listing of Hazardous Waste	40108	NEW	04/15/2016	2016-3/49
R315-261	General Requirements - Identification and Listing of Hazardous Waste	40278	NSC	04/15/2016	Not Printed
R315-261	General Requirements - Identification and Listing of Hazardous Waste	40308	AMD	06/10/2016	2016-9/84
R315-261	General Requirements - Identification and Listing of Hazardous Waste	40488	AMD	08/15/2016	2016-13/79
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R315-262	Hazardous Waste Generator Requirements	40109	NEW	04/15/2016	2016-3/170
R315-262	Hazardous Waste Generator Requirements	40279	NSC	04/15/2016	Not Printed
R315-262-10	Purpose, Scope, and Applicability	40309	AMD	06/10/2016	2016-9/95

R315-263	Standards Applicable to Transporters of Hazardous Waste and Standards Applicable to Emergency Control of Spills for All Hazardous Waste Handlers	40110	NEW	04/15/2016	2016-3/196
R315-263	Standards Applicable to Transporters of Hazardous Waste and Standards Applicable to Emergency Control of Spills for All Hazardous Waste Handlers	40280	NSC	04/15/2016	Not Printed
R315-264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	40115	NEW	04/15/2016	2016-3/201
R315-264	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	40281	NSC	04/15/2016	Not Printed
R315-264-1	Purpose, Scope and Applicability	40310	AMD	06/10/2016	2016-9/96
R315-264-56	Emergency Procedures	40475	NSC	06/27/2016	Not Printed
R315-264-73	Operating Record	40665	NSC	08/23/2016	Not Printed
R315-264-151	Wording of the Instruments	40692	NSC	09/01/2016	Not Printed
R315-265	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	40111	NEW	04/15/2016	2016-3/346
R315-266	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities	40112	NEW	04/15/2016	2016-3/347
R315-268	Land Disposal Restrictions	40113	NEW	04/15/2016	2016-3/380
R315-270	Hazardous Waste Permit Program	40114	NEW	04/15/2016	2016-3/418
R315-270	Hazardous Waste Permit Program	40813	NSC	10/07/2016	Not Printed
R315-273	Standards for Universal Waste Management	40116	NEW	04/15/2016	2016-3/468
R315-273	Standards For Universal Waste Management	40311	AMD	06/10/2016	2016-9/99
R315-273	Standards for Universal Waste Management	40541	NSC	08/05/2016	Not Printed
R315-319	Coal Combustion Residuals Requirements	40266	NEW	09/01/2016	2016-8/32
R315-319	Coal Combustion Residuals Requirements	40266	CPR	09/01/2016	2016-15/72
Water Quality					
R317-1-3	Requirements for Waste Discharges	39981	AMD	02/25/2016	2016-1/40
R317-7	Underground Injection Control (UIC) Program	40456	5YR	05/31/2016	2016-12/63
R317-11	Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Soil Evaluations or Percolation Tests for Underground Wastewater Disposal Systems	40489	5YR	06/13/2016	2016-13/164
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R325-4	Interim Patrons Rules (Other Than Utah State Fair)	40223	5YR	02/23/2016	2016-6/31
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R356-101-10	Evaluation Criteria	40497	AMD	08/10/2016	2016-13/104
Economic Development					
R357-1	Rural Fast Track Program	40462	R&R	07/22/2016	2016-12/17
R357-5	Motion Picture Incentive Fund	40483	5YR	06/09/2016	2016-13/165
R357-5	Motion Picture Incentive Fund	40460	R&R	07/22/2016	2016-12/20
R357-6	Technology and Life Science Economic Development and Related Tax Credits	40638	5YR	08/02/2016	2016-17/93
R357-7	Utah Capital Investment Board	40028	R&R	05/16/2016	2016-2/60
R357-7	Utah Capital Investment Board	40028	CPR	05/16/2016	2016-7/49
R357-11	Technology Commercialization Innovation Program (TCIP)	40605	AMD	09/12/2016	2016-15/18
R357-13	Hotel Convention Center Incentive	40027	NEW	03/14/2016	2016-2/76
R357-15	Enterprise Zone Tax Credit	40461	NEW	07/22/2016	2016-12/24
R357-16	Utah Outdoor Recreation Infrastructure Grant	40434	NEW	07/15/2016	2016-11/29
R357-16	Utah Outdoor Recreation Infrastructure Grant	40606	NSC	08/01/2016	Not Printed
R357-17	Air Quality Incentive	40459	NEW	07/22/2016	2016-12/26
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R380-200	Patient Safety Surveillance and Improvement Program	40760	5YR	09/13/2016	2016-19/106
R380-210	Health Care Facilities Patient Safety Program	40761	5YR	09/13/2016	2016-19/107
Center for Health Data, Health Care Statistics					
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R428-1	Health Data Plan and Incorporated Documents	40988	5YR	11/10/2016	Not Printed
R428-2	Health Data Authority Standards for Health Data	40171	AMD	03/25/2016	2016-4/38
R428-2	Health Data Authority Standards for Health Data	40989	5YR	11/10/2016	Not Printed
R428-5	Appeal and Adjudicative Proceedings	40990	5YR	11/10/2016	Not Printed
R428-10	Health Data Authority Hospital Inpatient Reporting Rule	40172	R&R	03/25/2016	2016-4/43
R428-10	Health Data Authority Healthcare Facility Data Reporting Rule	40991	5YR	11/10/2016	Not Printed
R428-11	Health Data Authority Ambulatory Surgical Data Reporting Rule	40173	REP	03/25/2016	2016-4/45
R428-12	Health Data Authority Survey of Enrollees in Health Plans	40992	5YR	11/10/2016	Not Printed
R428-13	Health Data Authority. Audit and Reporting of Health Plan Performance Measures	40174	AMD	03/25/2016	2016-4/47
R428-15	Health Data Authority Health Insurance Claims Reporting	40179	AMD	03/25/2016	2016-4/48
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R436-5	New Birth Certificates After Legitimation, Court Determination of Paternity, or Adoption	40600	5YR	07/13/2016	2016-15/82
R436-13	Disclosure of Records	39817	AMD	02/17/2016	2015-21/88
R436-13-1	Integrity of Vital Records	40439	AMD	07/26/2016	2016-12/38

R426-8	Emergency Medical Services Ambulance Rates and Charges	40324	AMD	07/01/2016	2016-9/114
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Family Health and Preparedness, Licensing					
R432-2	General Licensing Provisions	40453	AMD	08/04/2016	2016-12/34
R432-14	Birthing Center Construction Rule	40550	AMD	08/26/2016	2016-14/54
R432-100	General Hospital Standards	39963	AMD	02/10/2016	2015-24/29
R432-101	Specialty Hospital - Psychiatric	40621	NSC	08/15/2016	Not Printed
R432-104	Specialty Hospital - Long-Term Acute Care	40452	AMD	08/03/2016	2016-12/36
R432-200	Small Health Care Facility (Four to Sixteen Beds)	40776	5YR	09/15/2016	2016-19/107
R432-270	Assisted Living Facilities	39966	AMD	01/28/2016	2015-24/41
R432-300	Small Health Care Facility - Type N	40775	5YR	09/15/2016	2016-19/108
R432-550	Birthing Centers	40243	AMD	05/16/2016	2016-7/9
R432-550	Emergency and Disaster	40551	AMD	08/26/2016	2016-14/56
R432-650	End Stage Renal Disease Facility Rules	40777	5YR	09/15/2016	2016-19/108
R432-700	Home Health Agency Rule	40778	5YR	09/15/2016	2016-19/109
R432-725	Personal Care Agency Rule	40779	5YR	09/15/2016	2016-19/109
R432-750	Hospice Rule	40780	5YR	09/15/2016	2016-19/110
R432-950	Mammography Quality Assurance	40781	5YR	09/15/2016	2016-19/110
Family Health and Preparedness, Primary Care and Rural Health					
R434-40-11	Loan Repayment Grant Eligibility and Selection	40245	AMD	06/01/2016	2016-7/16
R434-50	Assistance for People with Bleeding Disorders	40240	5YR	03/01/2016	2016-6/32
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R414-1-5	Incorporations by Reference	40043	AMD	03/08/2016	2016-2/85
R414-1-5	Incorporations by Reference	40320	AMD	06/27/2016	2016-9/106
R414-1-5	Incorporations by Reference	40599	AMD	09/15/2016	2016-15/21
R414-1A	Medicaid Policy for Experimental, Investigational or Unproven Medical Practices	39985	AMD	03/08/2016	2016-1/56
R414-2B	Inpatient Hospital Intensive Physical Rehabilitation Services	40180	AMD	04/01/2016	2016-4/30
R414-10	Physician Services	40904	5YR	10/24/2016	2016-22/115
R414-19A	Coverage for Dialysis Services by a Free-Standing State-Licensed Dialysis Facility	40491	AMD	08/10/2016	2016-13/122
R414-302-3	Citizenship and Alienage	40375	AMD	07/01/2016	2016-10/29
R414-303	Coverage Groups	40377	AMD	07/01/2016	2016-10/30
R414-303-8	Foster Care, Former Foster Care Youth and Independent Foster Care Adolescents	40040	AMD	03/08/2016	2016-2/89
R414-304	Income and Budgeting	40380	AMD	07/01/2016	2016-10/32
R414-305-3	Aged, Blind and Disabled Non-Institutional and Institutional Medicaid Resource Provisions	40373	AMD	07/01/2016	2016-10/36
R414-307-3	General Requirements for Home and Community-Based Services Waivers	40244	AMD	05/20/2016	2016-7/8
R414-310-6	Creditable Health Coverage	40296	AMD	06/28/2016	2016-9/110
R414-320	Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver	40181	5YR	02/01/2016	2016-4/78
R414-320-6	Creditable Health Coverage	40297	AMD	06/28/2016	2016-9/112
R414-401-3	Assessment	40372	AMD	07/01/2016	2016-10/40
R414-505	Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program	40301	EMR	04/06/2016	2016-9/129
R414-505	Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program	40318	EMR	04/15/2016	2016-9/131
R414-505	Participation in the Nursing Facility Non-State Government-Owned Upper Payment Limit Program	40492	NEW	08/12/2016	2016-13/124
R414-510	Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program	40869	5YR	10/12/2016	2016-21/76
R414-512	Use of Extrapolation in Provider Audits	39914	NEW	01/11/2016	2015-23/20
R414-513	Intergovernmental Transfers	40319	EMR	04/15/2016	2016-9/133

R414-513	Intergovernmental Transfers	40493	NEW	08/12/2016	2016-13/126
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R450-1	Government Records Access and Management Act Rules	40852	EXT	10/04/2016	2016-21/85
R450-3	Arts and Culture Business Alliance General Program Rules	40103	NEW	05/26/2016	2016-3/484
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R455-3	Memberships, Sales, Gifts, Bequests, Endowments	40406	5YR	05/05/2016	2016-11/64
R455-4	Ancient Human Remains	40405	5YR	05/05/2016	2016-11/64
R455-6	State Register for Historic Resources and Archaeological Sites	40187	5YR	02/02/2016	2016-5/26
R455-8	Preservation Easements	40410	5YR	05/10/2016	2016-11/65
R455-9	Board of State History as the Cultural Sites Review Committee Review Board	40186	5YR	02/02/2016	2016-5/27
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R460-1	Authority and Purpose	40013	NSC	01/15/2016	Not Printed
R460-2	Definition of Terms Used Throughout R460	40012	AMD	03/09/2016	2016-2/90
R460-3	Programs of UHC	40018	AMD	03/09/2016	2016-2/92
R460-4	Additional Servicing Rules (Reserved)	40014	NSC	01/15/2016	Not Printed
R460-5	Termination of Eligibility to Participate in Programs	40015	NSC	01/15/2016	Not Printed
R460-6	Adjudicative Proceedings	40016	NSC	01/15/2016	Not Printed
R460-8	Americans with Disabilities Act (ADA) Complaint Procedures	40017	NSC	01/15/2016	Not Printed
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R477-4-5	Transfer and Reassignment	40389	AMD	07/01/2016	2016-10/46
R477-6	Compensation	40390	AMD	07/01/2016	2016-10/47
R477-7	Leave	40399	AMD	07/01/2016	2016-10/50
R477-8	Working Conditions	40391	AMD	07/01/2016	2016-10/55
R477-9	Employee Conduct	40392	AMD	07/01/2016	2016-10/56
R477-10-1	Performance Evaluation	40393	AMD	07/01/2016	2016-10/57
R477-11	Discipline	40394	AMD	07/01/2016	2016-10/58
R477-12	Separations	40395	AMD	07/01/2016	2016-10/60
R477-14	Substance Abuse and Drug-Free Workplace	40925	5YR	10/31/2016	2016-22/115
R477-15-1	Policy	40396	AMD	07/01/2016	2016-10/61
R477-101-18	Training	40774	AMD	11/07/2016	2016-19/75
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R495-862	Communicable Disease Control Act	40050	5YR	01/04/2016	2016-3/512
R495-876	Provider Code of Conduct	40455	5YR	05/31/2016	2016-12/63
R495-880	Adoption Assistance	40454	5YR	05/31/2016	2016-12/64
R495-885	Employee Background Screenings	40264	NEW	05/11/2016	2016-7/18
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R501-14	Background Screening	39913	R&R	01/13/2016	2015-23/24
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R512-1	Description of Division Services, Eligibility, and Service Access	40871	5YR	10/13/2016	2016-21/77

R512-2	Title IV-B Child Welfare/Family Preservation and Support Services and Title IV-E Foster Care, Adoption, and Independent Living	40872	5YR	10/13/2016	2016-21/78
R512-10	Youth and Mentor Program	40305	5YR	04/14/2016	2016-9/136
R512-10	Youth Mentor Program	40587	REP	09/07/2016	2016-15/25
R512-31	Foster Parent Due Process	39938	AMD	01/07/2016	2015-23/33
R512-31	Foster Parent Due Process	40873	5YR	10/13/2016	2016-21/78
R512-32	Children with Reportable Communicable Diseases	40874	5YR	10/13/2016	2016-21/79
R512-40	Adoptive Home Studies, Recruitment, Approval	40255	R&R	05/09/2016	2016-7/21
R512-40	Recruitment, Home Studies, and Approval of Adoptive Families for Children in the Custody of Child and Family Services	40875	5YR	10/13/2016	2016-21/79
R512-41	Qualifying Adoptive Families and Adoption Placement	40256	AMD	05/09/2016	2016-7/24
R512-42	Adoption by Relatives	40195	AMD	04/07/2016	2016-5/13
R512-42	Adoption by Relatives	40876	5YR	10/13/2016	2016-21/80
R512-43	Adoption Assistance	40151	5YR	01/25/2016	2016-4/79
R512-43	Adoption Assistance	40257	AMD	05/09/2016	2016-7/29
R512-44	Choose Life Adoption Support Restricted Account	40306	5YR	04/14/2016	2016-9/136
R512-44	Choose Life Adoption Support Restricted Account	40258	AMD	05/09/2016	2016-7/34
R512-51	Fee Collection for Criminal Background Screening for Prospective Foster and Adoptive Parents and for Employees of Other Department of Human Services Licensed Programs	40877	5YR	10/13/2016	2016-21/80
R512-60	Children's Account	40194	5YR	02/08/2016	2016-5/27
R512-60	Children's Account	40436	AMD	07/22/2016	2016-12/39
R512-80	Definitions of Abuse, Neglect, and Dependency	40878	5YR	10/13/2016	2016-21/81
R512-100	In-Home Services	39905	AMD	01/07/2016	2015-22/65
R512-205	Child Protective Services, Investigation of Domestic Violence Related Child Abuse	40152	5YR	01/25/2016	2016-4/79
R512-301	Out-of-Home Services, Responsibilities Pertaining to a Parent or Guardian	39939	AMD	01/07/2016	2015-23/35
R512-305	Out-of-Home Services, Transition to Adult Living Services	39955	AMD	01/21/2016	2015-24/44
R512-309	Out-of-Home Services, Foster Parent Reimbursement of Motor Vehicle Insurance Coverage for Youth in Foster Care	39956	AMD	01/21/2016	2015-24/46
R512-310	Reasonable and Prudent Parent Standard	39940	AMD	01/07/2016	2015-23/38
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R527-34	Non-IV-A Services	40415	NSC	05/31/2016	Not Printed
R527-35	Non-IV-A Fee Schedule	40435	AMD	07/22/2016	2016-12/41
R527-40	Retained Support	40096	AMD	03/09/2016	2016-3/485
R527-200	Administrative Procedures	40053	5YR	01/05/2016	2016-3/512
R527-201	Medical Support Services	40654	5YR	08/08/2016	2016-17/94
R527-250	Emancipation	40054	5YR	01/05/2016	2016-3/513
R527-800	Acquisition of Real Property, and Medical Support Cooperation Requirements	40416	NSC	05/31/2016	Not Printed
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R539-9	State Supported Employment Pilot Program	40625	5YR	07/26/2016	2016-16/46
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R523-5-7	Requirements to Remain Qualified as an Adult Peer Support Specialist	40653	AMD	10/11/2016	2016-17/52
R523-11	Utah Standards for Approval of Alcohol and Drug Educational Providers and Instructors for Court-Referred DUI Offenders	40768	AMD	11/07/2016	2016-19/76
Substance Abuse and Mental Health, State Hospital					
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R525-8	Forensic Mental Health Facility	40314	AMD	07/07/2016	2016-9/116
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R590-160	Administrative Proceedings	40457	AMD	07/28/2016	2016-12/43
R590-164-6	Electronic Data Interchange Transactions	39998	AMD	02/23/2016	2016-2/97
R590-167-11	Actuarial Certification and Additional Filing Requirements	40182	AMD	03/23/2016	2016-4/57
R590-177	Life Insurance Illustrations Rule	40237	5YR	02/29/2016	2016-6/33
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R590-200	Diabetes Treatment and Management	40238	5YR	02/29/2016	2016-6/34
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R590-210	Privacy of Consumer Information Exemption for Manufacturer Warranties and Service Contracts	40726	5YR	08/31/2016	2016-18/44
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R590-220-16	Classification of Documents	40155	AMD	03/23/2016	2016-4/59
R590-226	Submission of Life Insurance Filings	40156	AMD	03/23/2016	2016-4/60
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R590-266	Utah Essential Health Benefits Package	40275	AMD	05/23/2016	2016-8/82
R590-272	Commission Compensation Reporting	39755	NEW	06/15/2016	2015-19/72
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R592-11	Title Insurance Producer Annual and Controlled Business Reports	40499	5YR	06/15/2016	2016-13/166
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R597-3-5	Public Comments	40192	AMD	04/20/2016	2016-5/14
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R628-10	Rating Requirements to Be a Permitted Depository	40603	NEW	09/07/2016	2016-15/27
R628-12	Certification of Qualified Depositories for Public Funds	40227	5YR	02/26/2016	2016-6/35
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R652-41	Rights of Entry	40136	5YR	01/14/2016	2016-3/530
R652-80	Land Exchanges	40135	5YR	01/14/2016	2016-3/531
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R643-872	Abandoned Mine Reclamation Fund	40695	5YR	08/24/2016	2016-18/49
R643-874	General Reclamation Requirements	40696	5YR	08/24/2016	2016-18/50
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R643-882	Reclamation on Private Land	40700	5YR	08/24/2016	2016-18/52
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R645-100	Administrative: Introduction	40731	5YR	09/06/2016	2016-19/111
R645-103	Areas Unsuitable for Coal Mining and Reclamation Operations	40732	5YR	09/06/2016	2016-19/111
R645-200	Coal Exploration: Introduction	40733	5YR	09/06/2016	2016-19/112
R645-201	Coal Exploration: Requirements for Exploration Approval	40734	5YR	09/06/2016	2016-19/112
R645-202	Coal Exploration: Compliance Duties	40735	5YR	09/06/2016	2016-19/113
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R645-300	Coal Mine Permitting: Administrative Procedures	40737	5YR	09/06/2016	2016-19/114
R645-301	Coal Mine Permitting: Permit Application Requirements	40738	5YR	09/06/2016	2016-19/114
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R649-1-1	Definitions	40302	NSC	04/15/2016	Not Printed
R649-2	General Rules	40711	5YR	08/26/2016	2016-18/54
R649-3	Drilling and Operating Practices	40712	5YR	08/26/2016	2016-18/54
R649-3-23	Well Workover and Recompletion	40444	NSC	06/13/2016	Not Printed
R649-3-32	Reporting of Undesirable Events	40716	AMD	11/01/2016	2016-18/16
R649-5	Underground Injection Control of Recovery Operations and Class II Injection Wells	40713	5YR	08/26/2016	2016-18/55
R649-8	Reporting and Report Forms	40714	5YR	08/26/2016	2016-18/55
R649-9	Waste Management and Disposal	40715	5YR	08/26/2016	2016-18/56
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R651-202	Boating Advisory Council	40060	5YR	01/07/2016	2016-3/514
R651-203	Waterway Marking System	40061	5YR	01/07/2016	2016-3/514
R651-204	Regulating Waterway Markers	40062	5YR	01/07/2016	2016-3/515
R651-204	Regulating Waterway Markers	40090	NSC	02/02/2016	Not Printed
R651-205	Zoned Waters	40063	5YR	01/07/2016	2016-3/515
R651-206	Carrying Passengers for Hire	40064	5YR	01/07/2016	2016-3/516
R651-206	Carrying Passengers for Hire	40091	NSC	02/02/2016	Not Printed
R651-207	Registration Fee	40066	5YR	01/07/2016	2016-3/516
R651-207	Registration Fee	40188	NSC	02/25/2016	Not Printed
R651-208	Backing Plates	40067	5YR	01/07/2016	2016-3/517
R651-208	Backing Plates	40189	NSC	02/25/2016	Not Printed
R651-209	Anchored and Beached Vessels	40084	5YR	01/07/2016	2016-3/517
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R651-210	Change of Address	40190	NSC	02/25/2016	Not Printed
R651-211	Assigned Numbers	40069	5YR	01/07/2016	2016-3/518
R651-211	Assigned Numbers	40191	NSC	02/25/2016	Not Printed
R651-212	Display of Yearly Registration Decals and Month of Expiration Decals	40070	5YR	01/07/2016	2016-3/519
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R651-214	Temporary Registration	40073	5YR	01/07/2016	2016-3/520
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R651-216	Navigation Lights - Note: Figures 1 through 7 mentioned below are on file with the Utah Division of Parks and Recreation	40075	5YR	01/07/2016	2016-3/521
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R651-218	Carburetor Backfire Flame Control	40077	5YR	01/07/2016	2016-3/522
R651-219	Additional Safety Equipment	40078	5YR	01/07/2016	2016-3/523
R651-220	Registration and Numbering Exemptions	40079	5YR	01/07/2016	2016-3/523
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R651-224	Towed Devices	40082	5YR	01/07/2016	2016-3/525
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R651-401	Off-Highway Vehicle and Registration Stickers	40087	5YR	01/07/2016	2016-3/526
R651-405	Off-Highway Implement of Husbandry Sticker Fee	40088	5YR	01/07/2016	2016-3/526
R651-406	Off-Highway Vehicle Registration Fees	40089	5YR	01/07/2016	2016-3/527
R651-412	Curriculum Standards for OHV Education Programs Offered by Non-Division Entities	40213	AMD	04/21/2016	2016-6/22
R651-601	Definitions as Used in These Rules	40447	AMD	07/28/2016	2016-12/44
R651-602	Aircraft and Powerless Flight	40448	AMD	07/28/2016	2016-12/46
R651-611	Fee Schedule	40065	5YR	01/07/2016	2016-3/527
R651-612	Veterans with Disabilities Honor Pass	40445	NEW	07/28/2016	2016-12/48
R651-637	Antelope Island State Park Special Mule Deer and Bighorn Sheep Hunt	40215	AMD	04/21/2016	2016-6/23
R651-801	Swimming Prohibited	40085	5YR	01/07/2016	2016-3/528
R651-802	Scuba Diving	40086	5YR	01/07/2016	2016-3/528
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R655-3	Reports of Water Right Conveyance	40659	R&R	10/12/2016	2016-17/60
R655-10	Dam Safety Classifications, Approval Procedures and Independent Reviews	40166	5YR	01/29/2016	2016-4/80
R655-10-5A	Hazard Classification -- Criteria	40169	AMD	03/24/2016	2016-4/67
R655-11	Requirements for the Design, Construction and Abandonment of Dams	40167	5YR	01/29/2016	2016-4/81
R655-11	Requirements for the Design, Construction and Abandonment of Dams	40175	AMD	03/24/2016	2016-4/68
R655-12	Requirements for Operational Dams	40168	5YR	01/29/2016	2016-4/81
R655-12	Requirements for Operational Dams	40176	AMD	03/24/2016	2016-4/71
R655-17	Water Use Data Reporting and Verification	40660	NEW	10/12/2016	2016-17/66
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R657-3	Collection, Importation, Transportation, and Possession of Animals	40094	AMD	03/09/2016	2016-3/486
R657-5	Taking Big Game	39976	AMD	02/08/2016	2016-1/60
R657-5	Taking Big Game	40403	AMD	07/11/2016	2016-11/42
R657-9	Taking Waterfowl, Wilson's Snipe and Coot	39978	AMD	02/08/2016	2016-1/66
R657-9	Taking Waterfowl, Wilson's Snipe and Coot	40628	5YR	08/01/2016	2016-16/47
R657-10	Taking Cougar	40629	5YR	08/01/2016	2016-16/48
R657-11	Taking Furbearers	40758	AMD	11/07/2016	2016-19/80
R657-23	Utah Hunter Education Program	40404	AMD	07/11/2016	2016-11/43
R657-26	Adjudicative Proceedings for a License, Permit, or Certificate of Registration	40630	5YR	08/01/2016	2016-16/48
R657-33	Taking Bear	40093	AMD	03/09/2016	2016-3/490
R657-37	Cooperative Wildlife Management Units for Big Game or Turkey	39977	AMD	02/08/2016	2016-1/68
R657-48	Wildlife Species of Concern and Habitat Designation Advisory Committee	40370	5YR	05/02/2016	2016-10/86
R657-63	Self Defense Against Wild Animals	40231	5YR	02/29/2016	2016-6/37
NAVAJO TRUST FUND					
Trustees					
R661-1	Utah Navajo Trust Fund Scope	40019	NEW	02/29/2016	2016-2/103
R661-2	Utah Navajo Trust Fund Definitions	40020	NEW	02/29/2016	2016-2/104
R661-3	Utah Navajo Trust Fund Residency Policy	40021	NEW	02/29/2016	2016-2/105
R661-3	Utah Navajo Trust Fund Residency Policy	40829	EMR	09/23/2016	2016-20/83
R661-4	Utah Navajo Trust Fund Chapter Projects	40022	NEW	02/29/2016	2016-2/107

R661-5	Utah Navajo Trust Fund Blue Mountain Dine' Community	40023	NEW	02/29/2016	2016-2/109
R661-6	Utah Navajo Trust Fund Higher Education Financial Assistance and Scholarship Program	40024	NEW	02/29/2016	2016-2/110
R661-6	Utah Navajo Trust Fund Higher Education Financial Assistance and Scholarship Program	40830	EMR	09/23/2016	2016-20/85
R661-7	Utah Navajo Trust Fund Housing Projects Policy	40025	NEW	02/29/2016	2016-2/113
R661-7	Utah Navajo Trust Fund Housing Projects Policy	40607	AMD	10/24/2016	2016-15/28
R661-8	Utah Navajo Trust Fund Power Lines and House Wiring Program	40026	NEW	02/29/2016	2016-2/115
R661-9	Utah Navajo Trust Fund Public Facility Projects	40347	NEW	06/23/2016	2016-10/67
R661-10	Utah Navajo Trust Fund Short-Term Training Program	40348	NEW	06/23/2016	2016-10/68
R661-11	Utah Navajo Trust Fund Water Development Projects Culinary and Septic Systems	40349	NEW	06/23/2016	2016-10/70
R661-12	Utah Navajo Trust Fund Homesite Lease Assistance Program	40350	NEW	06/23/2016	2016-10/71
R661-13	Veterans' Housing Program Policy	40608	NEW	09/21/2016	2016-15/30
R661-14	Heavy Equipment Purchase and Repair Program	40609	NEW	09/21/2016	2016-15/32
R661-15	Indemnification	40610	NEW	09/21/2016	2016-15/33
R661-16	Health Care Systems Improvement Program	40611	NEW	09/21/2016	2016-15/34
R661-17	Office Equipment Purchase Program	40612	NEW	09/21/2016	2016-15/35
R661-18	Outstanding Senior Award Program	40613	NEW	09/21/2016	2016-15/37
R661-19	Student Educational Enrichment Program	40614	NEW	09/21/2016	2016-15/38
R661-20	Photovoltaic (Solar) Systems Program	40615	NEW	09/21/2016	2016-15/39
PARDONS (BOARD OF)					
Administration					
R671-201	Original Hearing Schedule and Notice	40707	EMR	08/25/2016	2016-18/37
R671-201	Original Hearing Schedule and Notice	40708	AMD	10/31/2016	2016-18/18
R671-204	Hearing Continuances	40618	AMD	10/31/2016	2016-16/8
R671-302-1	Open Hearings	40617	AMD	10/31/2016	2016-16/10
R671-308	Offender Hearing Assistance	40619	AMD	10/31/2016	2016-16/10
R671-315-1	Pardons	40316	AMD	07/07/2016	2016-9/118
R671-510	Evidence for Issuance of Warrants	40620	AMD	10/31/2016	2016-16/12
PUBLIC SAFETY					
Administration					
R698-1	Public Petitions for Declaratory Orders	40639	NSC	08/22/2016	Not Printed
R698-8	Local Public Safety and Firefighter Surviving Spouse Trust Fund	40001	NEW	02/24/2016	2016-2/117
Criminal Investigations and Technical Services, Criminal Identification					
R722-360	Certificate of Eligibility for Removal from the Sex Offender and Kidnap Offender Registry	40596	NSC	08/01/2016	Not Printed
R722-390	Certificate of Eligibility for Removal from the Utah White Collar Crime Offender Registry	40597	NSC	08/01/2016	Not Printed
R722-910	Non-Reportable Traffic Offenses	40646	NSC	08/22/2016	Not Printed
Driver License					
R708-16	Pedestrian Vehicle Rule	40095	EXT	01/11/2016	2016-3/533
R708-16	Pedestrian Vehicle Rule	40140	REP	03/24/2016	2016-4/72
R708-18	Regulatory and Administrative Fees	40141	5YR	01/19/2016	2016-4/82
R708-19	Automobile No-Fault Self-Insurance	40142	5YR	01/19/2016	2016-4/82
R708-20	Motor Vehicle Accident Prevention Course Standards	40143	5YR	01/19/2016	2016-4/83
R708-38	Anatomical Gift	40144	5YR	01/19/2016	2016-4/83
R708-41	Requirements for Acceptable Documentation, Storage and Maintenance	40759	AMD	11/08/2016	2016-19/86
R708-42	Driver Address Record	40145	5YR	01/19/2016	2016-4/84
R708-43	Verification of Personal Identifying Information by Depository Institutions	40146	5YR	01/19/2016	2016-4/84

R708-44	Citation Monitoring Service	40147	5YR	01/19/2016	2016-4/85
R708-46	Refugee or Approved Asylee Knowledge Test in Applicant's Native Language	40586	5YR	07/07/2016	2016-15/82
Fire Marshal					
R710-1	Concerns Servicing Portable Fire Extinguishers	40479	AMD	08/15/2016	2016-13/127
R710-2	Rules Pursuant to the Utah Fireworks Act	40601	AMD	09/13/2016	2016-15/41
R710-3	Assisted Living Facilities	40484	AMD	08/15/2016	2016-13/134
R710-4	Buildings Under the Jurisdiction of the State Fire Prevention Board	40485	AMD	08/15/2016	2016-13/137
R710-5	Automatic Fire Sprinkler System Inspecting and Testing	40522	AMD	08/23/2016	2016-14/57
R710-6	Liquefied Petroleum Gas Rules	40602	AMD	09/13/2016	2016-15/46
R710-7	Concerns Servicing Automatic Fire Suppression Systems	40598	AMD	09/13/2016	2016-15/54
R710-8	Day Care Rules	40523	AMD	08/23/2016	2016-14/62
R710-9	Rules Pursuant to the Utah Fire Prevention and Safety Act	40546	AMD	08/23/2016	2016-14/64
R710-10	Rules Pursuant to Fire Service Training, Education, and Certification	40544	AMD	08/23/2016	2016-14/68
R710-11	Fire Alarm System Inspecting and Testing	40521	AMD	08/23/2016	2016-14/72
R710-11	Fire Alarm System Inspecting and Testing	40837	5YR	09/28/2016	2016-20/98
R710-12	Hazardous Materials Training and Certification	40520	AMD	08/23/2016	2016-14/77
R710-13	Reduced Cigarette Ignition Propensity and Firefighter Protection Act	40519	AMD	08/23/2016	2016-14/80
Highway Patrol					
R714-158	Vehicle Safety Inspection Program Requirements	40552	R&R	09/27/2016	2016-14/81
R714-160	Equipment Standards for Passenger Vehicle and Light Truck Safety Inspections	40197	EXT	02/08/2016	2016-5/29
R714-160	Equipment Standards for Passenger Vehicle and Light Truck Safety Inspections	40463	5YR	06/02/2016	2016-13/167
R714-160	Equipment Standards for Passenger Vehicle and Light Truck Safety Inspections	40631	R&R	09/27/2016	2016-16/13
R714-161	Equipment Standards for Motorcycle and ATV Safety Inspections	40198	EXT	02/08/2016	2016-5/29
R714-161	Equipment Standards for Motorcycle and ATV Safety Inspections	40464	5YR	06/02/2016	2016-13/168
R714-161	Equipment Standards for Motorcycle and ATV Safety Inspections	40543	R&R	09/27/2016	2016-14/90
R714-162	Equipment Standards for Heavy Truck, Trailer and Bus Safety Inspections	40199	EXT	02/08/2016	2016-5/29
R714-162	Equipment Standards for Heavy Truck, Trailer and Bus Safety Inspections	40465	5YR	06/02/2016	2016-13/169
R714-163	Street-Legal All-Terrain Vehicles	40542	NEW	09/27/2016	2016-14/102
R714-500	Chemical Analysis Standards and Training	39850	AMD	01/21/2016	2015-22/144
Peace Officer Standards and Training					
R728-101	Public Petitions for Declaratory Rulings	40527	REP	08/23/2016	2016-14/103
R728-401	Requirements For Approval and Certification of Peace Officer Basic Training Programs and Applicants	40534	R&R	08/23/2016	2016-14/104
R728-402	Application Procedures to Attend a Basic Peace Officer Training Program	40528	REP	08/23/2016	2016-14/108
R728-403	Qualifications For Admission To Certified Peace Officer Training Academies	40535	R&R	08/23/2016	2016-14/109
R728-404	Basic Training Basic Academy Rules	40531	REP	08/23/2016	2016-14/115
R728-405	Drug Testing Requirement	40532	REP	08/23/2016	2016-14/119
R728-406	Requirements for Approval and Certification of Basic Correctional, Reserve and Special Function Training Programs and Applicants	40529	REP	08/23/2016	2016-14/120
R728-407	Waiver/Reactivation Process	40533	REP	08/23/2016	2016-14/122
R728-409-14	Suspension, Revocation, or Relinquishment of Certification	40165	NSC	02/17/2016	Not Printed
R728-410	Guidelines Regarding Failure To Obtain Annual Statutory Training	40536	R&R	08/23/2016	2016-14/123

R728-411	Guidelines Regarding Administrative Action Taken Against Individuals Functioning As Peace Officers Without Peace Officer Certification Or Powers	40537	R&R	08/23/2016	2016-14/126
R728-500	Utah Peace Officer Standards and Training In-Service Training Certification Procedures	40530	REP	08/23/2016	2016-14/128
R728-501	Career Development Courses	40539	REP	08/23/2016	2016-14/130
R728-502	Procedure for POST Instructor Certification	40538	R&R	08/23/2016	2016-14/132
R728-505	Service Dog Program Rules	40540	REP	08/23/2016	2016-14/135
PUBLIC SERVICE COMMISSION					
Administration					
R746-200-7	Termination of Service	40472	AMD	08/08/2016	2016-13/141
R746-310	Uniform Rules Governing Electricity Service by Electric Utilities	40704	AMD	10/24/2016	2016-18/20
R746-343-16	New Technology Equipment Distribution Program (NTEDP)	40685	AMD	10/24/2016	2016-18/23
R746-360-4	Application of Fund Surcharges to Customer Billings	40553	AMD	08/22/2016	2016-14/139
R746-360-6	Eligibility for Fund Distributions	40299	AMD	08/08/2016	2016-9/121
R746-360-6	Eligibility for Fund Distributions	40299	CPR	08/08/2016	2016-13/150
R746-360-6	Eligibility for Fund Distributions	40723	AMD	10/24/2016	2016-18/25
R746-409	Pipeline Safety	39934	AMD	03/30/2016	2015-23/42
R746-409	Pipeline Safety	39934	CPR	03/30/2016	2016-3/504
R746-409	Pipeline Safety	40292	5YR	03/31/2016	2016-8/94
REGENTS (BOARD OF)					
Administration					
R765-608	Utah Engineering and Computer Science Scholarship Program	40246	NSC	03/29/2016	Not Printed
R765-608	Utah Engineering and Computer Science Scholarship Program	40343	5YR	04/19/2016	2016-10/87
University of Utah, Administration					
R805-5	Enforcement of No Smoking Areas at University of Utah Hospitals and Clinics	40153	5YR	01/25/2016	2016-4/85
SCHOOL AND INSTITUTIONAL TRUST LANDS					
Administration					
R850-1	Definition of Terms	39962	AMD	01/21/2016	2015-24/48
R850-8	Adjudicative Proceedings	40895	5YR	10/18/2016	2016-22/116
R850-11	Procurement	39961	AMD	01/21/2016	2015-24/50
R850-30-400	Special Use Leases	40185	AMD	03/23/2016	2016-4/73
R850-50	Range Management	39960	AMD	01/21/2016	2015-24/52
R850-50	Range Management	40184	NSC	02/17/2016	Not Printed
R850-90-200	Exchange Criteria	40291	AMD	05/24/2016	2016-8/83
R850-140	Development Property	40767	5YR	09/14/2016	2016-19/117
TAX COMMISSION					
Administration					
R861-1A	Administrative Procedures	40966	5YR	11/10/2016	Not Printed
R861-1A-20	Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-1-1410, 59- 2-1007, 59-7-517, 59-10-535, 59-12-114, 59-13-210, 63G-4-201, 63G-4-401, 68-3-7, and 68-3-8.5	40743	NSC	09/26/2016	Not Printed
Auditing					
R865-3C	Corporation Income Tax	40967	5YR	11/10/2016	Not Printed
R865-4D	Special Fuel Tax	40968	5YR	11/10/2016	Not Printed
R865-6F	Franchise Tax	40969	5YR	11/10/2016	Not Printed

R865-6F-8	Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321	40744	NSC	09/26/2016	Not Printed
R865-6F-28	Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 63N-2-201 through 63N-2-215	40417	AMD	07/14/2016	2016-11/45
R865-7H	Environmental Assurance Fee	40970	5YR	11/10/2016	Not Printed
R865-9I	Income Tax	40971	5YR	11/10/2016	Not Printed
R865-9I-37	Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 63N-2-201 through 63N-2-215	40418	AMD	07/14/2016	2016-11/47
R865-11Q	Self-Insured Employer Assessment	40972	5YR	11/10/2016	Not Printed
R865-12L	Local Sales and Use Tax	40973	5YR	11/10/2016	Not Printed
R865-13G	Motor Fuel Tax	40974	5YR	11/10/2016	Not Printed
R865-14W	Mineral Producers' Withholding Tax	40975	5YR	11/10/2016	Not Printed
R865-15O	Oil and Gas Tax	40976	5YR	11/10/2016	Not Printed
R865-16R	Severance Tax	40978	5YR	11/10/2016	Not Printed
R865-19S	Sales and Use Tax	40979	5YR	11/10/2016	Not Printed
R865-19S-94	Tips, Gratuities, and Cover Charges Pursuant to Utah Code Ann. Section 59-12-103	39987	AMD	04/14/2016	2016-1/76
R865-20T	Tobacco Tax	40980	5YR	11/10/2016	Not Printed
R865-20T-5	Bonding Requirements for Cigarette and Tobacco Products Dealers Pursuant to Utah Code Ann. Sections 59-14-210 and 59-14-301	40745	NSC	09/26/2016	Not Printed
R865-21U	Use Tax	40981	5YR	11/10/2016	Not Printed
Collections					
R867-2B	Delinquent Tax Collection	40982	5YR	11/10/2016	Not Printed
Motor Vehicle					
R873-22M	Motor Vehicle	40983	5YR	11/10/2016	Not Printed
R873-22M-34	Rule for Denial of Personalized Plate Requests Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-411	40419	AMD	07/14/2016	2016-11/49
Motor Vehicle Enforcement					
R877-23V	Motor Vehicle Enforcement	40984	5YR	11/10/2016	Not Printed
R877-23V-20	Reasonable Cause to Deny, Suspend, or Revoke a License Issued Under Title 41, Chapter 3 Pursuant to Utah Code Ann. Section 41-3-209	40420	AMD	07/14/2016	2016-11/50
Property Tax					
R884-24P	Property Tax	40985	5YR	11/10/2016	Not Printed
R884-24P-10	Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210	40421	AMD	07/14/2016	2016-11/51
R884-24P-33	2016 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301	40747	AMD	11/07/2016	2016-19/89
TECHNOLOGY SERVICES					
Administration					
R895-5	Acquisition of Information Technology	40030	AMD	02/23/2016	2016-2/118
TRANSPORTATION					
Administration					
R907-1	Administrative Procedures	40643	5YR	08/03/2016	2016-17/95
R907-3	Administrative Procedure	40860	5YR	10/07/2016	2016-21/81
R907-62	Americans with Disabilities Act	40730	5YR	09/02/2016	2016-19/117
R907-63	Structure Repair and Loss Recovery Procedure	40644	EXT	08/03/2016	2016-17/99
R907-63	Structure Repair and Loss Recovery Procedure	40558	AMD	08/23/2016	2016-14/141
R907-63	Structure Repair and Loss Recovery Procedure	40728	5YR	09/01/2016	2016-18/56

R907-66	Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects	40861	5YR	10/07/2016	2016-21/82
R907-69	Records Access	40590	5YR	07/07/2016	2016-15/83
Motor Carrier					
R909-1	Safety Regulations for Motor Carriers	40721	5YR	08/30/2016	2016-18/57
R909-19	Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification	39953	AMD	01/21/2016	2015-24/58
R909-19	Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification	40468	5YR	06/02/2016	2016-13/170
R909-75	Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes	40722	5YR	08/30/2016	2016-18/57
Operations, Aeronautics					
R914-1	Rules and Regulations	40663	AMD	10/12/2016	2016-17/83
Operations, Construction					
R916-1	Advertising and Awarding Construction Contracts	40627	5YR	07/28/2016	2016-16/49
R916-2	Prequalification of Contractors	40641	5YR	08/03/2016	2016-17/96
R916-3	Design-Build Contracts	40642	5YR	08/03/2016	2016-17/96
R916-5	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	40772	AMD	11/08/2016	2016-19/97
R916-7	Appeals to UDOT Decisions on, and Requesting Compliance with Nighttime Noise Permits	40683	NEW	10/24/2016	2016-18/26
Operations, Maintenance					
R918-5	Construction or Improvement of Highway	40473	EMR	06/08/2016	2016-13/156
R918-5	Construction or Improvement of Highway	40474	EXD	06/08/2016	2016-13/173
R918-5	Construction or Improvement of Highway	40729	NEW	10/24/2016	2016-18/28
Operations, Traffic and Safety					
R920-4	Special Road Use or Event	39941	AMD	01/07/2016	2015-23/46
R920-50	Ropeway Operation Safety	40494	AMD	08/09/2016	2016-13/144
Preconstruction					
R930-2	Public Hearings	40938	5YR	11/02/2016	Not Printed
R930-3	Highway Noise Abatement	40914	5YR	10/25/2016	2016-22/117
R930-5	Establishment and Regulation of At-Grade Railroad Crossings	40939	5YR	11/02/2016	Not Printed
R930-6	Access Management	40940	5YR	11/02/2016	Not Printed
R930-7	Utility Accommodation	39988	AMD	02/23/2016	2016-1/77
R930-7	Utility Accommodation	40724	AMD	10/24/2016	2016-18/29
Preconstruction, Right-of-Way Acquisition					
R933-1	Right of Way Acquisition	40906	5YR	10/25/2016	2016-22/118
R933-2	Control of Outdoor Advertising Signs	40935	5YR	11/02/2016	Not Printed
R933-5	Utah-Federal Agreement for the Control of Outdoor Advertising	40936	5YR	11/02/2016	Not Printed
Program Development					
R926-2	Evaluation of Proposed Additions to or Deletions from the State Highway System	40751	5YR	09/08/2016	2016-19/118
R926-3	Class B and Class C Road Funds	40056	AMD	04/08/2016	2016-3/492
R926-3	Class B and Class C Road Funds	40750	5YR	09/08/2016	2016-19/118
R926-3	Class B and Class C Road Funds	40664	AMD	10/12/2016	2016-17/85
R926-5	State Park Access Highways Improvement Program	40913	5YR	10/25/2016	2016-22/116
R926-9	Establishment, Designation and Operation of Tollways	40204	EXT	02/09/2016	2016-5/30
R926-9	Establishment, Designation and Operation of Tollways	40466	5YR	06/02/2016	2016-13/170

R926-13-4	Highways Within the State That Are Designated as State Scenic Byways	40057	AMD	04/08/2016	2016-3/493
R926-14	Utah Scenic Byway Program Administration; Scenic Byways Designation, De-designation, and Segmentation Processes	40409	EMR	05/10/2016	2016-11/55
R926-14	Utah Scenic Byway Program Administration; Scenic Byways Designation, De-designation, and Segmentation Processes	40525	AMD	08/23/2016	2016-14/142
R926-14	Utah Scenic Byway Program Administration; Scenic Byways Designation, De-designation, and Segmentation Processes	40820	NSC	10/07/2016	Not Printed
R926-15	Designated Scenic Backways	40645	5YR	08/03/2016	2016-17/97
TRANSPORTATION COMMISSION					
Administration					
R940-1	Establishment of Toll Rates	40205	EXT	02/09/2016	2016-5/30
R940-1	Establishment of Toll Rates	40467	5YR	06/02/2016	2016-13/171
R940-5	Approval of Highway Facilities on Sovereign Lands	40647	5YR	08/03/2016	2016-17/97
R940-7	Marda Dillree Corridor Preservation Fund	40910	5YR	10/25/2016	2016-22/118
WORKFORCE SERVICES					
Employment Development					
R986-100	Employment Support Programs	40557	AMD	10/01/2016	2016-14/147
R986-200	Family Employment Program	39944	AMD	02/24/2016	2015-23/52
R986-200-221	Drug Testing Requirements	40556	AMD	09/14/2016	2016-14/148
R986-200-240	Additional Payments Available Under Certain Circumstances	40241	AMD	05/03/2016	2016-6/25
R986-400-402	General Provisions	40315	AMD	07/01/2016	2016-9/122
R986-700	Child Care Assistance	40104	AMD	04/01/2016	2016-3/495
R986-700	Child Care Assistance	40554	AMD	08/25/2016	2016-14/150
R986-700	Child Care Assistance	40555	AMD	10/01/2016	2016-14/151
Rehabilitation					
R993-100	Authority, Purpose and Administrative Review	40591	NEW	10/01/2016	2016-15/62
R993-200	Order of Selection	40592	NEW	10/01/2016	2016-15/66
R993-300	Certification Requirements for Interpreters for the Hearing Impaired	40593	NEW	10/01/2016	2016-15/67
Unemployment Insurance					
R994-205-106	Exempt Real Estate Sales	40045	AMD	02/24/2016	2016-2/120
R994-302	Employer Contribution Payments	40400	5YR	05/03/2016	2016-11/65
R994-308	Bond Requirement	40401	5YR	05/03/2016	2016-11/66
R994-403-117e	Claimant's Responsibility	40449	AMD	08/25/2016	2016-12/49