

UTAH STATE BULLETIN

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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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 Fourteenth Extraordinary Session, Utah Proclamation No. 2016-14E

PROCLAMATION

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

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

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 61st Legislature of the State of Utah into the Fourteen Extraordinary Session at the Utah State Capitol in Salt Lake City, Utah, on the 13th day of December 2016, at 2:00 p.m., for the following purpose:

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 9th day of December 2016.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2016/14/E

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between December 02, 2016, 12:00 a.m., and December 15, 2016, 11:59 p.m. are included in this, the January 01, 2017, 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 31, 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 May 1, 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

**Agriculture and Food, Horse Racing
Commission (Utah)
R52-7
Horse Racing**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41102

FILED: 12/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule establishes the rules and guidelines for horse racing in the state of Utah. The changes to the rule remove the 30-minute waiting period for testing of horses, clarify licensing requirements, and address issues dealing with conflicts of interest by racing officials.

SUMMARY OF THE RULE OR CHANGE: The rule changes allow tests on horse to be conducted at the discretion of the veterinarian. It creates a separate definition of owners to clarify licensing issues. Further, it details how Lasix is to be administered and by whom.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-38-4

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The change does not have an impact on how the state manages horse racing. There will be no cost to the state budget. However, the changes clarify how owners are to be licensed. This change could increase the funds to the Horse Racing Commission. The owner's licensing fee is \$50.

◆ **LOCAL GOVERNMENTS:** Local governments have no role in the enforcement of this rule. As such, there will be no costs or savings to their budgets.

◆ **SMALL BUSINESSES:** This rule change does not change the registration fee required for an owner's license; it only requires that all the people listed as an owner on the horses papers be licensed as an owner. Thus, small business should not be affected by the rule, unless they have a horse registered under multiple individuals at which point each individual would have to pay the \$50 registration fee.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The rule again will have a limited impact on the individuals. If the horse is registered under more than one individual, then each of the individuals will have to pay a \$50 licensing fee to participate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only compliance cost will be if the horse is registered under more than one individual. Then each person listed on the registration will have to pay \$50 for the license.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule changes are a result of a request from those involved in the horse racing industry. The only additional cost will be if the horse is registered under more than one person.

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

AGRICULTURE AND FOOD
HORSE RACING COMMISSION (UTAH)
350 N REDWOOD RD
SALT LAKE CITY, UT 84114

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ 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 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

AUTHORIZED BY: LuAnn Adams, Commissioner

**R52. Agriculture and Food, Horse Racing Commission (Utah).
R52-7. Horse Racing.**

R52-7-1. Authority.

Promulgated under authority of Section 4-38-4.

R52-7-2. Definitions.

The following definitions shall apply in these rules unless otherwise indicated.

1. "Act" means the Utah Horse Regulation Act.
2. "Added money" means all monies added to the fees paid by the horsemen into the purse for a race.
3. "Age" of a horse is reckoned as beginning on the first day of January in the year in which the horse is foaled.
4. "Also Eligible" pertains to (a) a number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to scratch time deadline; (b) the next preferred nonqualifier for the finals or consolation from a set of elimination trials which will become eligible in the event a finalist is scratched by the stewards for a rule violation or is otherwise eligible if written race conditions permit.
5. "Arrears" means money past due for entrance fees, jockey fees, or nomination or supplemental fees in nomination races, and therefore in default incidental to these Rules or the conditions of a race.
6. "Authorized Agent" means a person appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the Agent will act. Said instrument

must be on file with the Commission and its authorized representatives.

7. "Bleeder" means a horse which during or following exercise or the race is observed to be shedding blood from one or both nostrils, or the mouth, or hemorrhaging in the lumen of the respiratory tract.

8. "Breeder" of a horse is the owner or lessee of its dam at the time of breeding.

9. "Closing" means the time published by the organization after which nominations or entries will not be accepted for a race.

10. "Commission" means the Utah Horse Racing Commission.

11. "Commissioner" means a member of the Commission.

12. "Conditions of a race" are the qualifications which determine a horse's eligibility to enter.

13. "Day" is a period of 24 hours beginning at midnight.

14. "Race day" is a day during which horse races are conducted.

15. "Declaration" means the act of withdrawing an entered horse from a race before the closing of overnight entries.

16. "Drug (Medication)" means a substance foreign to the normal physiology of the horse.

17. "Enclosure" means all areas of the property of an organization licensee to which admission can be obtained only by payment of an admission fee or upon presentation of proper credentials and all parking areas designed to serve the facility which are owned or leased by the organization licensee.

18. "Entry" means a horse made eligible to run in a race.

19. "Family" means a husband, wife and any dependent children.

20. "Field" means all horses competing in a race.

21. "Financial Interest" means an interest that could result in directly or indirectly receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a business entity, or as a result of salary, gratuity, or other compensation or remuneration from any person.

22. "Foreign Substances" are all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include but not be limited to all narcotics, stimulants, or depressants.

23. "Foul" means an action by any horse or jockey that hinders or interferes with another horse or jockey during the running of a race.

24. "Horse" means an equine of any breed and includes a stallion, gelding, mare, colt, filly, spayed mare or ridgeling.

25. "Horse Racing" means any type of horse racing, including Arabian, Appaloosa, Paint, Pinto, Quarter Horse, and Thoroughbred horse racing.

26. Horse Racing Types:

A. "Appaloosa Horse Racing" means the form of horse racing in which each participating horse is an Appaloosa horse registered with the Appaloosa Horse Club or any successor organization and mounted by a jockey.

B. "Arabian Horse Racing" means the form of horse racing in which each participating horse is an Arabian horse registered with the Arabian Horse Club Registry of America and approved by the Arabian Horse Racing Association of America or

any successor organization, mounted by a jockey, and engaged in races on the flat over a distance of not less than one-quarter mile or more than four miles.

C. "Paint Horse Racing" means the form of horse racing in which each participating horse is a Paint horse registered with the American Paint Horse Association or any successor organization and mounted by a jockey.

D. "Pinto Horse Racing" means the form of horse racing in which each participating horse is a Pinto horse registered with the Pinto Horse Association of America, Inc., or any successor organization and mounted by a jockey.

E. "Quarter Horse Racing" means the form of horse racing where each participating horse is a Quarter Horse registered with the American Quarter Horse Association or any successor organization, mounted by a jockey, and engaged in a race over a distance of less than one-half mile.

F. "Thoroughbred Horse Racing" means the form of horse racing in which each participating horse is a Thoroughbred horse registered with the Jockey Club or any successor organization, mounted by a Jockey, and engaged in races on the flat.

27. "Inquiry" means the stewards immediate investigation into the running of a race which may result in the disqualification of one or more horses.

28. "Jockey" means the rider licensed to race.

29. "Jockey Agent" means a licensed authorized representative of a jockey.

30. "Lessee" means a licensed owner whose interest in a horse is by virtue of a completed Commission-approved lease form attached to the registration certificate and on file with the Commission.

31. "Lessor" means the owner of the horse that is leased.

32. "Maiden" means a horse that has never won a race recognized by the official race records of the particular horse's breed registry. A maiden which has been disqualified after finishing first is still a maiden.

33. "Minor" means any individual under 18 years of age.

34. "Nominator" means the person who nominated the horse as a possible contender in a race.

35. "Objection" means:

A. A written complaint made to the Stewards concerning a horse entered in a race and filed not later than two hours prior to the scheduled post time for the first race on the day which the questioned horse is entered;

B. A verbal claim of foul in a race lodged by the horse's jockey, trainer, owner, or the owners licensed Authorized Agent before the race is declared official.

36. "Occupation License" means a requirement for any person acting in any capacity within the enclosure during the race meeting.

37. "Occupation Licensee" means a person who has obtained an occupation license.

38. "Utah Bred Horse" means a horse that is sired by a stallion standing in Utah.

39. "Organization License" means a requirement of any person desiring to conduct a race meeting within the state of Utah.

40. "Organization Licensee" means any person receiving an organization license.

41. "Owner" means [is-]any person who holds, in whole or in part, any rights, title, or interest in a horse, or any lessee of a

horse who has been duly issued a currently valid owner's license as a person responsible for such horse.

[41]42. "Person" means any individual, corporation, partnership, syndicate, another association or entity.

[42]43. "Post Position" means the position in the starting gate assigned to the horse for the race.

[43]44. "Post Time" means the advertised time for the arrival of the horses at the start of the race.

[44]45. "Protest" means a written complaint, signed by the protester, against any horse which has started in a race and shall be made to the Stewards within 48 hours after the running of the race, except as noted in Subsection R52-7-10(8).

[45]46. "Race Meeting" means the entire period of time not to exceed 20 calendar days separating any race days for which an organization license has been granted to a person by the Commission to hold horse racing.

[46]47. "Allowance" means a race in which eligibility and/or the weight to be carried are based upon the horse's past performance over a specified time.

[47]48. "Handicap" means a race in which the weights to be carried by the entered horses are assigned according to the Racing Secretary's evaluation of each horse's potential for the purpose of equalizing their respective chances of winning.

[48]49. "Invitational" means a race in which the competing horses are selected by inviting their owners to enter specific horses.

[49]50. "Match" means a race contest between two horses with prior consent by the Commission under conditions agreed to by the owners.

[50]51. "Nomination" means a race in which the subscription to a payment schedule nominates and sustains the eligibility of a particular horse. Nominations must close at least 72 hours before the first post time of the day the race is originally scheduled to be run.

[51]52. "Progeny" means a race restricted to the offspring of a specific stallion or stallions.

[52]53. "Purse Race (Overnight)" means any race in which entries close less than 72 hours prior to its running.

[53]54. "Schooling Race" means a preparatory race for entry qualification in official races which conform to requirements adopted by the Commission.

[54]55. "Stakes" means a race which is eligible for stakes or "black-type" recognition by the particular breed registry.

[55]56. "Trials" means a set of races in which eligible horses compete to determine the finalists for a purse in a nominated race.

[56]57. "Restricted Area" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to, the barn area, paddock, test barn, Stewards Tower, race course, or any other area designated restricted by the organization licensee and/or the Commission. Signs giving notice of restricted access shall be prominently displayed at all entry points.

[57]58. "Rules" means the rules herein prescribed and any amendments or additions.

[58]59. "Scratch" means the act of withdrawing an entered horse from a race after the closing of overnight entries.

[59]60. "Scratch Time" means the deadline set by the organization licensee for the withdrawing of entered horses.

[60]61. "Starter" means the horse whose stall door of the starting gate opens in front of such horse at the time the starter (the Official) dispatches the horses.

[61]62. "Subscription" means the act of nominating a horse to a nomination race.

[62]63. "Week" means a period of seven days beginning at 12:01 a.m., Monday during which races are conducted.

R52-7-6. Racing Officials and Commission Racing Personnel.

1. Racing Officials. The racing officials of a race meeting, unless otherwise ordered by the Commission, are as follows: the stewards, the associate judges, ~~the placing judges,~~ the paddock judge, ~~the patrol judges,~~ the starter, the identifier/tattooer, and the racing secretary. No racing official may serve in that capacity during ~~any~~ a race ~~meeting at~~ in which is entered a horse owned by them or by a member of their family or in which they have any financial interest ~~except for the identifier/tattooer, and the racing secretary.~~ Being the lessee or lessor of a horse shall be construed as having a financial interest.

2. Responsibility To The Commission. The racing officials shall be strictly responsible to the Commission for the performance of their respective duties, and they shall promptly report to the Commission or its stewards any violation of the rules of the Commission coming to their attention or of which they have knowledge. Any racing official who fails to exercise due diligence in the performance of his duties shall be relieved of his duties by the stewards and the matter referred to the Commission.

3. Racing Officials Subject To Approval. Every racing official is subject to prior approval by the Commission before being eligible to act as a racing official at the meeting. At the time of making application for an organization license, the organization shall nominate the racing officials other than the racing officials appointed by the Commission; and after issuance of license to the organization, there shall be no substitution of any racing official except with approval of the stewards or the Commission.

4. Racing Officials Appointed By The Commission. The Commission shall appoint the following racing officials for a race meeting: The board of three stewards and the identifier/tattooer. The Commission may appoint from the approved stewards list one steward to serve as state steward.

5. Racing Personnel Employed By The Commission. The Commission shall employ the services of the licensing person for a race meeting.

6. General Authority Of Stewards. The stewards have general authority and supervision over all licensees and other persons attendant on horses, and also over the enclosures of any recognized meeting. Stewards have the power to interpret the Rules and to decide all questions not specifically covered by them. The stewards shall have the power to determine all questions arising with reference to entries, eligibility and racing; and all entries, declarations and scratches shall be under the supervision of the stewards. The stewards shall be strictly responsible to the Commission for the conduct of the race meeting in every particular.

7. Vacancy Among Racing Officials. Where a vacancy occurs among the racing officials, the stewards shall fill the vacancy immediately. Such appointment is effective until the vacancy is filled in accordance with the rules.

8. **Jurisdiction Of Stewards To Suspend Or Fine.** The stewards' jurisdiction in any matter commences 72 hours before entries are taken for the first day of racing at the meeting and extends until 30 days after the close of such meeting. In the event a dispute or controversy arises during a race meeting which is not settled within the stewards' thirty-day jurisdiction, then the authority of the stewards may be extended by authority of the Commission for the period necessary to resolve the matter, or until the matter is referred or appealed to the Commission. The stewards may suspend for not more than one year per violation the license of anyone whom they have the authority to supervise; or they may impose a fine not to exceed \$2,500 per violation; or they may exclude from all enclosures in this state; or they may suspend and fine and/or exclude. All such suspensions, fines, or exclusions shall be reported immediately to the Commission. The Stewards may suspend a horse from participating in races if the horse has been involved in violation(s) of the rules promulgated by the Commission or the provisions of the Utah Horse Act under the following circumstances:

A. A horse is a confirmed bleeder as determined by the official veterinarian, and the official veterinarian recommends to the stewards that the horse be suspended from participation.

B. A horse is involved with:

i. Any violation of medication laws and rules;

ii. Any suspension or revocation of an occupation license by the stewards or the Commission or any racing jurisdiction recognized by the Commission; or

iii. Any violation of prohibited devices, laws, and rules.

9. **Referral To The Commission.** The stewards may refer with or without recommendation any matter within their jurisdiction to the Commission.

10. **Payment Of Fines.** All fines imposed by the stewards or Commission shall be due and payable to the Commission within 72 hours after imposition, except when the imposition of such fine is ordered stayed by the stewards, the Commission, or a court having jurisdiction. However, when a fine and suspension is imposed by the stewards or Commission, the fine shall be due and payable at the time the suspension expires. Nonpayment of the fine when due and payable may result in immediate suspension pending payment of the fine.

11. **Stewards' Reports And Records.** The stewards shall maintain a record which shall contain a detailed, written account of all questions, disputes, protests, complaints, and objections brought to the attention of the stewards. The stewards shall prepare a daily report concerning their race day activities which shall include fouls and disqualifications, disciplinary hearings, fines and suspensions, conduct of races, interruptions and delays, and condition of racing facility. The stewards shall submit the signed original of their report and record to the Executive Director of the Commission within 72 hours of the race day.

12. **Power To Order Examination Of Horse.** The stewards shall have the power to have tested, or cause to be examined by a qualified person, any horse entered in a race, which has run in a race, or which is stabled within the enclosure; and may order the examination of any ownership papers, certificates, documents of eligibility, contracts or leases pertaining to any horse.

13. **Calling Off Race.** When, in the opinion of the stewards, a race(s) cannot be conducted in accordance with the rules

of the Commission, they shall cancel and call off such race(s). In the event of mechanical failure or interference during the running of a race which affects the horses in such race, the Stewards may declare the race a "no contest." A race shall be declared "no contest" if no horse covers the course.

14. **Substitution Of Jockey Or Trainer.**

A. In the event a jockey who is named to ride a mount in a race is unable to fulfill his engagement and is excused by the stewards, the trainer of the horse may select a substitute jockey; or, if no substitute jockey is available, the stewards may scratch the horse from the race. However, the responsibility to provide a jockey for an entered horse remains with the trainer; and the scratching of said horse by the stewards shall not be grounds for the refund of any nomination, sustaining, penalty payments, or entry fees.

B. In the absence of the trainer of the horse, the stewards may place the horse in the temporary care of another trainer of their selection; however, such horse may not be entered or compete in a race without the approval of the owner and the substitute trainer. The substitute trainer must sign the entry card.

15. **Stewards' List.** The stewards may maintain a stewards' list of those horses which, in their opinion, are ineligible to be entered in any race because of poor or inconsistent performance due to the inability to maintain a straight course, or any other reason considered a hazard to the safety of the participants. Such horse shall be refused entry until it has demonstrated to the stewards or their representatives that it can race safely and can be removed from the stewards' list.

16. **Duties Of The Starter.** The starter shall have complete jurisdiction over the starting gate, the starting of horses, and the authority to give orders not in conflict with the rules as may be required to ensure all participants an equal opportunity to a fair start. The starter shall appoint his assistants; however, he shall not permit his assistants to handle or take charge of any horse in the starting gate without his expressed permission. In the event that organization starter assistants are unavailable to head a horse, the responsibility to provide qualified individuals to head and/or tail a horse in the starting gate shall rest with the trainer. The starter may establish qualification for and maintain a list of such qualified individuals approved by the stewards. No assistant starter or any individual handling a horse at the starting gate shall in any way impede, whether intentionally or otherwise, the start of the race; nor may an assistant starter or other individual, except the jockey handling the horse at the starting gate, apply a whip or other device in an attempt to load any horse in the starting gate. No one other than the jockey shall slap, boot, or otherwise attempt to dispatch a horse from the starting gate.

17. **Starter's List.** The starter may maintain a starter's list of all horses which, in his opinion, are ineligible to be entered in any race because of poor or inconsistent performance in the starting gate. Such horse shall be refused entry until it has demonstrated to the starter or his representatives that it has been satisfactorily schooled in the gates and can be removed from the starter's list. Such schooling shall be under the direct supervision of the starter or his representatives.

18. **Duties Of The Paddock Judge.** The paddock judge shall supervise the assembling of the horses scheduled to race, the saddling of horses in the paddock, the saddling equipment and

changes thereof, the mounting of the jockeys, and their departure for the post. The paddock judge shall provide a report on saddling equipment to the Stewards at their request.

19. Duties Of Patrol Judges. The patrol judges, when utilized, shall be subject to the orders of the stewards and shall report to the stewards all facts occurring under their observation during the running of a race.

20. Duties Of Placing Judges And Timers. The placing judges, timers, and/or stewards shall occupy the judges' stand at the time the horses pass the finish line; and their duties shall be to hand time, place the horses in the correct order of finish, and report the results. In case of a dead heat or a disagreement as to the correct order of finish, the decision of the stewards shall be final. In placing the horses at the finish, the position of the horses' noses only shall be considered the most forward point of progress.

21. Duties Of The Clerk Of Scales. The clerk of scales is responsible for the presence of all jockeys in the jockey's room at the appointed time and to verify that all jockeys have a current Utah jockey's license. The clerk of scales shall verify the correct weight of each jockey at the time of weighing out and when weighing in, and shall report any discrepancies to the stewards immediately. In addition, he or she shall be responsible for the security of the jockey's room and the conduct of the jockeys and their attendants. He or she shall promptly report to the stewards any infraction of the Rules with respect to weight, weighing, riding equipment, or conduct. He or she shall be responsible for accounting of all data required on the scale sheet and submit that data to the horsemen's bookkeeper at the end of each race day.

22. Duties Of The Racing Secretary. The racing secretary shall write and publish conditions of all races and distribute them to horsemen as far in advance of the closing of entries as possible. He or she shall be responsible for the safekeeping of registration certificates and the return of same to the trainers on request or at the conclusion of the race meeting. He or she shall record winning races on the form supplied by the breed registry, which shall remain attached to or part of the registration certificate. The racing secretary shall be responsible for the taking of entries, checking eligibility, closing of entries, selecting the races to be drawn, conducting the draw, posting the overnight sheet, compiling the official program, and discharging such other duties of their office as required by the rules or as directed by the Stewards.

23. Duties Of Associate Judge. An associate judge may perform any of the duties which are performed by any racing official at a meeting, provided such duties are assigned or delegated to them by the Commission or by the stewards presiding at that meeting.

24. Duties Of The Official Veterinarian. The official veterinarian must be a graduate veterinarian and licensed to practice in the State of Utah. He or she shall recommend to the stewards any horse that is deemed unsafe to be raced, or a horse that it would be inhumane to allow to race. He or she shall supervise the taking of all specimens for testing according to procedures approved by the Commission. He or she shall provide proper safeguards in the handling of all laboratory specimens to prevent tampering, confusion, or contamination. All specimens collected shall be sent in locked and sealed cases to the laboratory. He or she shall have the authority and jurisdiction to supervise the practicing licensed veterinarians within the enclosure. The official veterinarian shall report to the Commission the names of all horses humanely

destroyed or which otherwise expire at the meeting, and the reasons therefore. The official veterinarian may place horses on a veterinarian's list, and may remove from the list those horses which, in their opinion, can satisfactorily compete in a race.

25. Veterinarian's List. The official veterinarian may maintain a list of all horses who, in their opinion, are incapable of safely performing in a race and are, therefore, ineligible to be entered or started in a race. Such horse may be removed from the Veterinarian's List when, in the opinion of the official veterinarian, the horse has satisfactorily recovered the capability of performing in a race. The reasons for placing a horse on the veterinarian's list shall include the shedding of blood from one or both nostrils following exercise or the performance in a race and the running of a temperature unnatural to the horse.

26. Duties Of The Identifier. The identifier shall identify all horses starting in a race. The identifier shall inspect documents of ownership, eligibility, registration, or breeding as may be necessary to ensure proper identification of each horse eligible to compete at a race meeting provide assistance to the stewards in that regard. The identifier shall immediately report to the paddock judge and the stewards any horse which is not properly identified or any irregularities reflected in the official identification records. The identifier shall report to the stewards and to the Commission on general racing practices observed, and perform such other duties as the Commission may require. The identifier shall report to the racing secretary before the close of the race day business.

R52-7-8. Veterinarian Practices, Medication and Testing Procedures.

1. Veterinary Practices - Treatment Restricted. Within the time period of 24 hours prior to the post time for the first race of the week until four hours after the last race of the week, no person other than Utah licensed veterinarians or animal technicians under direct supervision of a licensed veterinarian who have obtained a license from the Commission shall administer to any horse within the enclosure any veterinary treatment or any medicine, medication, or other substance recognized as a medication, except for recognized feed supplements or oral tonics or substances approved by the Official Veterinarian.

2. Veterinarians Under Supervision Of Official Veterinarian. Veterinarians licensed by the Commission and practicing at an authorized meeting are under the supervision of the Official Veterinarian and the Stewards. The Official Veterinarian shall recommend to the Stewards or the Commission the discipline to be imposed upon a veterinarian who violates the Rules, and he or she may sit with the Stewards in any hearing before the Stewards concerning such discipline or violation.

3. Veterinarian Report. Every veterinarian who treats any horse within the enclosure for any contagious or communicable disease shall immediately report to the official veterinarian in writing on a form approved by the Commission. The form shall include the name and location of the horse treated, the name of the trainer, the time of treatment, the probable diagnosis, and the medication administered. Each practicing veterinarian shall be responsible for maintaining treatment records on all horses to which they administer treatment during a given race meeting. These records shall be available to the Commission upon subpoena when required. Any such record and any report of treatment as described above is confidential; and its content shall not be disclosed except

in a proceeding before the stewards or the Commission, or in the exercise of the Commission's jurisdiction.

4. **Drugs Or Medication.** Except as authorized by the provisions of this Article, no drug or medication shall be administered to any horse prior to or during any race. Presence of any drug or its metabolites or analogs, or any substance foreign to the natural horse found in the testing sample of a horse participating in a Commission-sanctioned race which are outside of the approved drug threshold levels set forth by California Horse Racing Board (CHRB) Rule No. 1844 (Effective 02/14/12), Authorized Medication, with sections (h)(2),(e)(9) and (f) exempted, hereby incorporated by reference, shall result in disqualification by the Stewards. Accordingly clenbuterol will be treated the same as all other drugs that are not specifically authorized. If the testing laboratory detects clenbuterol or its metabolites or analogs under the laboratory's standard operating procedures, the finding will be reported as a violation. When a horse is disqualified because of an infraction of this Rule, the owner or owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned. (See Drugs and Medications Exceptions, Section R67-7-13.)

5. **Racing Soundness Examination.** Each horse entered to race may be subject to a veterinary examination by the official veterinarian or his authorized representative for racing soundness and health on race day.

6. **Positive Lab Reports.** A finding by a licensed laboratory that a test sample taken from a horse contains a drug or its metabolites or analog, or any substance foreign to the natural horse shall be prima facie evidence that such has been administered to the horse either internally or externally in violation of these rules. It is presumed that the sample of urine, saliva, blood or other acceptable specimen tested by the approved laboratory to which it is sent is taken from the horse in question; its integrity is preserved; that all procedures of same collection and preservation, transfer to the laboratory, and analyses of the sample are correct and accurate; and that the report received from the laboratory pertains to the sample taken from the horse in question and correctly reflects the condition of the horse during the race in which he was entered, with the burden on the trainer, assistant trainer or other responsible party to prove otherwise at any hearing in regard to the matter conducted by the stewards or the Commission.

7. **Intent Of Medication Rules.** It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs, medication, and substances foreign to the natural horse.

8. **Power To Have Tested.** As a safeguard against the use of drugs, medication, and substances foreign to the natural horse, a urine or other acceptable sample shall be taken under the direction of the official veterinarian from the winner of every race and from such other horses as the stewards or the Commission may designate.

9. **Pre-Race Testing.** The stewards may require any horse entered to race to submit to a blood or other pre-race test, and no horse is eligible to start in a race until the owner or trainer complies with the required testing procedure.

10. **Equipment For Official Testing.** Organizations shall provide the equipment, necessary supplies and services prescribed by the Commission and the official veterinarian for the taking of or administration of blood, urine, saliva or other tests.

11. **Taking Of Samples.** Blood, urine, saliva or other samples shall be taken under the direction of the official veterinarian or persons appointed or assigned by the official veterinarian for taking samples. All samples shall be taken in a detention area approved by the Commission, unless the Official Veterinarian approves otherwise. ~~[Each horse shall be cooled out for a minimum of 30 minutes after entry into the test barn before a sample is to be taken.]~~The taking of any test samples shall be witnessed, confirmed or acknowledged by the trainer of the horse being tested or his authorized representative or employee, and may be witnessed by the owner, trainer, or other licensed person designated by them. Samples shall be sent to racing laboratories approved and designated by the Commission, in such manner as the Commission or its designee may direct. All required samples shall be in the custody of the official veterinarian, his/her assistants or other persons approved by the official veterinarian from the time they are taken until they are delivered for shipment to the testing laboratory. No person shall tamper with, adulterate, add to, break the seal of, remove or otherwise attempt to so alter or violate any sample required to be taken by this Article, except for the addition of preservatives or substances necessarily added by the Commission-approved laboratory for preservation of the sample or in the process of analysis.

The Commission has the authority to direct the approved laboratory to retain and preserve samples for future analysis.

The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered in violation of these Rules to the horse earning such purse money.

12. **Laboratories Approved By The Commission.** Only laboratories approved by the Commission may be used in obtaining analysis reports on urine, or other specimens, taken from the winners or other designated horses of each race meeting. The Commission and the Board of Stewards shall receive reports directly from the laboratory.

13. **Split Samples.** As determined by the official veterinarian, when sample quantity permits, each test sample shall be divided into two portions so that one portion shall be used for the initial testing for unknown substances. If the Trainer or owner so requests in writing to the stewards within 48 hours of notice of positive lab report on the test sample of his horse, the second sample shall be sent for further testing to a drug testing laboratory designated and approved by the commission. Nothing in this rule shall prevent the commission or executive director from ordering first use of both sample portions for testing purposes. The results of said split sampling may not prevent the disqualification of the horse as per R52-7-8-4 and R52-7-8-6. All costs for transportation and testing of the second sample portion shall be the responsibility of the requesting person. The official veterinarian shall have overall supervision and responsibility for the freezing, storage and safeguarding of the second sample portion.

14. **Facilitating The Taking Of Urine Samples.** When a horse has been in the test barn more than 1-1/2 hours, a diuretic may be administered by the Official Veterinarian for the purpose of facilitating the collection of a urine sample with permission of the stewards and the trainer or the trainer's authorized test barn representative. The cost of administration of the diuretic is the responsibility of the trainer. Prior to the administration of a diuretic, a blood sample may be taken from the horse.

15. Postmortem Examination. Every horse which dies or suffers a breakdown on the racetrack in training or in competition within any enclosure licensed by the Commission and is destroyed, may undergo, at a time and place acceptable to the official veterinarian, a postmortem examination to the extent reasonably necessary to determine the injury or sickness which resulted in euthanasia or natural death. Any other horse which expires within any enclosure may be required by the official veterinarian to undergo a postmortem examination.

A. The postmortem examination required under this rule will be conducted by a licensed veterinarian employed by the owner or his trainer in consultation with the official veterinarian, who may be present at such postmortem examination.

B. Test samples may be obtained from the carcass upon which the postmortem examination is conducted and shall be sent to a laboratory approved by the Commission for testing for foreign substances or their metabolites and natural substances at abnormal levels. When practical, samples shall be procured prior to euthanasia.

C. The owner of the deceased horse shall make payment of any charges due the veterinarian employed by him to conduct the postmortem examination.

D. A record of such postmortem shall be filed with the official veterinarian by the owner's veterinarian within 72 hours of the death and shall be submitted on a form supplied by the Commission.

E. Each owner and trainer accepts the responsibility for the postmortem examination provided herein as a requisite for maintaining the occupation license issued by the Commission.

R52-7-13. Drugs and Medication Exceptions and Illegal Practices.

1. Horses Tested. The winner of every race and such other horses as the stewards or commission veterinarian may designate shall be escorted by the veterinarian assistant after the race to the testing enclosure for examination by the authorized representative of the Commission and the taking of specimens shall be by the commission veterinarian or his assistant.

2. Trainer Present at Testing. The trainer, or his authorized representative, must be present in the testing enclosure when a urine or other specimen is taken from a horse, the sample tag attached to the specimen shall be signed by the trainer or his representative, as witness of taking of the specimen. Willful failure to be present at or a refusal to allow the taking of the specimen, or any act or threat to impede or prevent or otherwise interfere therewith, shall subject the person or persons doing so to immediate suspension and fine by the stewards and the matter shall be referred to the Commission for such further penalty as may be determined.

3. Specimens Delivered to Laboratory. All specimens taken by or under the direction of the commission veterinarian, or other authorized representative of the Commission, shall be delivered to the laboratory approved by the Commission for official analysis. Each specimen shall be marked by number and date and may also bear such information as may be essential to its proper analysis; but the identity of the horse from the specimen was taken or the identity of its owner, trainer, jockey or stable shall not be revealed to the laboratory. The container of specimen shall be sealed as soon as the specimen is placed therein and shall bear the name of the Commission.

4. Medication. The commission veterinarian, the Commission or any member of the Board of Stewards may take samples of any medicines or other materials suspected of containing improper medication, drugs or chemicals which would affect the racing conditions of a horse in a race and which may be found in stables or elsewhere on race track grounds or in the possession of such tracks or any person connected with racing and the same shall be delivered to the laboratory designated by the Commission.

5. The Only Non-Steroidal Anti-Inflammatory Drug Permitted. Phenylbutazone shall be administered to the horse no later than 24 hours prior to the time the horse is scheduled to race.

6. Phenylbutazone Levels Permitted and Penalty. No urine sample taken from a horse shall exceed 165 micrograms of phenylbutazone or its metabolites per milliliter of urine or shall not exceed 5 micrograms per milliliter of blood plasma. On a first violation period at phenylbutazone concentrations above 5 ug/ml but below 10 ug/ml plasma or serum: a minimum fine of \$250.00; at concentrations above 10 ug/ml plasma: a fine of up to \$500.00.

On a second violation within a 12 month period at phenylbutazone concentrations above 5 ug/ml but below 10 ug/ml plasma or serum: a minimum fine of \$500.00; at concentrations above 10 ug/ml plasma: a fine of up to \$1,000.00.

On a third or subsequent violation within a 12-month period: a fine of \$1,000.00, a suspension of 30 days, and loss of purse.

7. Administered under Direction of Commission Licensed Veterinarian. Phenylbutazone must be administered under the direction of a commission licensed veterinarian.

8. List Provided. Horses which are on phenylbutazone shall not be indicated on the daily racing programs or any other publications except that a list of horses on phenylbutazone will be kept by the stewards.

9. Lasix Treatment. Any horse which exhibits symptoms of Epistaxis and/or respiratory tract hemorrhage is eligible for placement on the bleeder list and for treatment on race days with the approved medication to prevent or limit bleeding during racing.

10. Bleeders Listing. To be placed on the bleeders list, a horse must be found to have, during or immediately following a race or workout, shed free blood from one or both nostrils or bled internally in the respiratory tract. A Commission licensed veterinarian, following his or her personal examination of a horse, or after consulting with the horses' private veterinarian, shall be allowed to certify a horse as a bleeder. A universal bleeders certificate is required.

11. License Required. In any and all cases, private veterinarians must be licensed with the Utah Horse Racing Commission as a veterinarian in order to administer Lasix.

12. Horse Removed From Bleeders List. A Commission licensed veterinarian may remove a horse from the bleeders list, provided a request is made in writing and it is the recommendation of the veterinarian of the horse, or after an examination by the veterinarian, it is determined that the horse is not a bleeder or is no longer eligible for the bleeders list.

13. Treatment Procedure. Horses on the bleeders list must be treated at least four hours prior to post time with the bleeder medication furosemide, (i.e. Lasix). No other treatment is permitted for bleeder treatment. Bleeder medication must be administered ~~by a Commission licensed veterinarian~~ by a licensed veterinarian or trainer in the manner approved by the official

veterinarian, using dosages pursuant to CHRB Rule No. 1845, section (e), (Effective 5/27/05), Authorized Bleeder Medication, which is hereby incorporated by reference. [The bleeder medication is administered by the trainer's veterinarian, and must be witnessed by the trainer or his designee upon their request. Administration of the bleeder medication must be reported in writing on a form designated by the Commission, to the track management no later than two hours prior to the scheduled post time of the last live race of the program] Trainers are required to have Lasix forms completed by the veterinarian, the Lasix form must be returned to the test barn personnel within ten minutes of the time of administration of Lasix. The form shall include the date, time and amount of Lasix administered and the signature of the veterinarian. Upon receipt of the Lasix form, the test barn personnel shall log in the date and time of receipt. If the time of receipt exceeds the ten minute grace period, the test barn personnel shall notify the stewards, and the horse shall be scratched by the stewards for the day's racing.

14. Lasix Levels Permitted and Penalty. Any horse whose post race blood tests contains a level in excess of the levels set forth in CHRB Rule No. 1845, sections (b)-(c), (Effective 5/27/05), Authorized Bleeder Medication, hereby incorporated by reference, will be said to be positive for Lasix overage and in violation of Utah Horse Racing Rules and Regulations.

A. A finding of a chemist of furosemide (Lasix) exceeding the allowable test levels given above shall be considered prima facie evidence that the medication was administered to the horse and carried in the body of the horse while participating in the race.

B. In these cases, a fine and/or suspension will be levied to such horse trainer under the trainer responsibility rule and the horse will be disqualified from the race.

15. Horses Designated. The horses' trainer or designated agent is responsible to enter horses correctly indicating the prescribed medication for the horse. Horses approved for Lasix medication will be designated on the overnight and the daily program with a Lasix or "L". A list of horses approved for and using Lasix medication will be maintained by the stewards.

16. Bleeder Disqualification. Any horse that bleeds a second time in Utah shall not be able to race for a period of 30 days from the date of the second bleeding offense. Any horse that bleeds for a third time shall be suspended from racing for a period of one year from the date of the third offense. Any horse bleeding for the fourth time will be given a lifetime suspension from racing.

17. Disqualification of Owner or Trainer. A horse owner or trainer found to have committed illegal practices under this chapter or found to have administered any non-approved medication substances in violation of the rules in this chapter, shall be deemed disqualified and denied, or shall promptly return, any portion of the purse or sweepstakes or trophy awarded in the affected race, and shall be distributed as in the case of a disqualification. If the affected race is a qualifying race for a subsequent race and if a horse shall be so disqualified, the eligibility of the other horses which ran in the affected race, and which have started in the subsequent race before announcement of such disqualification shall not in any way be affected.

18. Hypodermic Instruments Prohibited. Except by specific written permission of the presiding steward, no person within the grounds of the racing association where the horses are

lodged or kept shall have possession of, upon the premises which he occupies or has the right to occupy or in any of his personal property or effects, any hypodermic instrument, hypodermic syringes or hypodermic needle which may be used for injection into any horse of any medication prohibited by this rule. Every racing association is required to use all reasonable efforts to prevent the violation of this rule.

19. Search Provisions. Every racing association, the Commission or the stewards shall have the right to enter, search and inspect the buildings, stables, rooms and other places where horses which are eligible to race are kept, or where property and effects of the licensee are kept within the grounds of the association. Any licensee accepting a license shall be deemed to have consented to such search and to the seizure of any non-approved or prohibited materials, chemicals, drugs or devices and anything apparently intended to be used in connection therewith.

20. Daily Medication Reports. All practicing veterinarians must submit daily to the commission veterinarian a medication report form furnished by the Commission containing the following:

- A. Name, age, sex and breed of the horse.
- B. The permitted drug used (Bute or Lasix).
- C. The time administered.
- D. The route of the administration.

E. The report must be dated and signed by the veterinarian so administering the medication. Any such report is confidential and its contents shall not be disclosed except in a proceeding before the stewards or the Commission or in the exercise of the Commission's jurisdiction.

21. Prima Facie Evidence. If the stewards find that any non-approved medication, for which the purpose of definition shall include any drug, chemical, narcotic, anesthetic, or analgesic has been administered to a horse in such a manner that it is present in a pre-race or post-race test sample, such presence shall constitute prima facie evidence that the horse has been illegally medicated.

22. Trainer Responsibility. Under all circumstances, the horse of record trainer shall be responsible for the horse he trains.

KEY: horses, horse racing

Date of Enactment or Last Substantive Amendment: ~~June 23, 2016~~ 2017

Notice of Continuation: August 25, 2016

Authorizing, and Implemented or Interpreted Law: 4-38-4

Commerce, Occupational and
Professional Licensing
R156-5a
Podiatric Physician Licensing Act Rule

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 41047

FILED: 12/06/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This filing updates the Podiatric Physician Licensing Act Rule to: 1) comply with statutory changes in postgraduate training residency requirements; 2) implement changes recommended by the Podiatric Physician Board to licensing examination requirements; and 3) implement legislative changes made by H.B. 186, Volunteer Health Care Continuing Education Credit, during the 2016 General Session. This filing also makes minor formatting changes for clarification and correction.

SUMMARY OF THE RULE OR CHANGE: Section R156-5a-302a is amended to conform to Subsection 58-5a-302(5), increasing postgraduate training residency requirements from 12 months to 2 years. Minor formatting changes are also made throughout. Section R156-5a-302b proposes to amend this rule to update the licensing exam requirements as follows: 1) eliminate the Utah Podiatric law exam; and 2) delete the proof of eligibility requirement for the National Board of Podiatric Medical Education (NBPME) and PMLexis exams, as successful completion of these exams is already required for graduation from a podiatric physician school. Section R156-5a-304 is amended to implement H.B. 186 (2016). The amended section allows a podiatric physician to fulfill a portion of the physician's continuing education requirement by providing volunteer health care services in a qualified health care facility. For every four hours of volunteer health care services, the podiatric physician may receive one hour of continuing education credit, up to 15% of the required continuing education. Minor formatting changes are also made throughout. Section R156-5a-305 is amended to correct a statute citation to the radiology courses approved by the Podiatric Physician Board.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-5a-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

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

♦ **LOCAL GOVERNMENTS:** In Section R156-5a-302a, the proposed amendments may apply to a local government if it employs podiatric physicians who now have to complete 2 years of postgraduate training instead of 12 months of postgraduate training. This may decrease the opportunity for licensure progression and make some licensees less serviceable to current and potential local government employers. However, a local government may also benefit from an employee's increased experience and aptitude resulting from the additional postgraduate training. The aggregate impact cannot be estimated as it will vary depending on circumstances. In Section R156-5a-302b, no costs or savings to local government are anticipated from this proposed amendment, because they are not involved in these licensing exam requirements. In Section R156-5a-304, the

proposed changes and amendments apply only to those persons who are required to be licensed as a podiatric physician and choose to earn continuing education credit by providing volunteer services. The volunteer services provided could possibly benefit a local government by increasing the health of any population it serves that would otherwise go without health care for financial reasons. The amount of the savings cannot be estimated as it will vary depending on circumstances. In Section R156-5a-305, no costs or savings to local government are anticipated from this proposed citation correction.

♦ **SMALL BUSINESSES:** In Section R156-5a-302a, the proposed amendments may apply to a small business if it has podiatric physicians who now have to complete 2 years of postgraduate training instead of 12 months of postgraduate training. This may decrease the opportunity for licensure progression, making some physicians less serviceable to current and potential small business employers, and preventing some physicians from having their own small businesses during their second year of residency. However, small business employers and small business owners may benefit from increased physician experience and aptitude resulting from the additional postgraduate training. The aggregate impact cannot be estimated as it will vary depending on circumstances. In Section R156-5a-302b, no costs or savings to small businesses are anticipated from this proposed amendment, because they are not involved in these licensing exam requirements. In Section R156-5a-304, podiatric physicians who own small businesses and provide volunteer services may be impacted by the cost of recordkeeping and lost revenue if they substitute time they could be billing for professional services to provide volunteer health care services. However, these health care professionals will save on the cost of attendance at a continuing education course, and they may also received "goodwill" benefits in their community from their volunteer services. The amount of the cost or savings cannot be estimated as it will vary from business to business depending on the amount of volunteer services provided. In Section R156-5a-305, no costs or savings to small businesses are anticipated from this proposed citation correction.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** In Section R156-5a-302a, applicants for a podiatric physician license will be impacted as they will be required to have completed two years of residency training prior to qualifying for licensure. This may change the activities these physicians can undertake in their second year of residency, and it is likely to lower their earning potential during their second year of residency. However, the Division is not able to determine any exact amount of compliance costs due to varying circumstances. In Section R156-5a-302b, applicants for podiatric physician licenses will experience some savings, as they will no longer be required to take the Utah Podiatric Law Exam and will no longer be required to submit proof to the Division that the applicant is eligible to take the National Board of Podiatric Medical Examiners (NBPME) and Podiatric Medicine Licensing examination (PMLexis) exams. Proof of the exams is included in the information from graduate

programs. However, the Division is not able to determine any exact amount of savings due to varying circumstances. In Section R156-5a-304, licensees will bear the cost of the services provided relative to their time spent providing the service, as well as any costs required for them to document the services provided. The uninsured, underserved, and indigent population will benefit from increased availability of health care services and improved opportunity for these services. In Section R156-5a-305, no costs or savings are anticipated from this statute citation correction.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In Section R156-5a-302a, an applicant for a podiatric physician license will be impacted as the applicant will be required to have completed two years of residency training prior to qualifying for licensure. This may change the activities the physician can undertake in the physician's second year of residency, and it is likely to lower the physician's earning potential during the physician's second year of residency. However, the Division is not able to determine any exact amount of compliance costs due to varying circumstances. In Section R156-5a-302b, no compliance costs are anticipated from this amendment. An applicant for a podiatric physician license will save money, as the applicant will no longer be required to take the Utah Podiatric Law Exam, and will no longer be required to submit proof to the Division that the applicant is eligible to take the National Board of Podiatric Medical Examiners (NBPME) and Podiatric Medicine Licensing examination (PMLexis) exams. In Section R156-5a-304, a licensee will bear the cost of the services provided relative to the licensee's time spent providing the service, as well as any costs required for them to document the services provided. In Section R156-5a-305, no compliance costs are anticipated from this statute citation correction.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment to Section R156-5a-302a provides that the postgraduate training residency requirement is increased from 12 months to 2 years. The aggregate impact of this amendment cannot be estimated as it will vary depending on circumstances. The amendment will decrease the opportunity for licensure progression and will preclude podiatric physicians from having their own small business during their second year of residency. The amendment to Section R156-5a-302b deletes certain licensing exam requirements and will have a negligible impact on businesses. The amendment to Section R156-5a-304 permits a podiatric physician to satisfy up to 15% of the continuing education requirement by providing volunteer health care services and will have a negligible impact on businesses. The amendment to Section R156-5a-305 merely corrects a citation to a provision of the Utah Code and will have no impact on businesses.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-5a. Podiatric Physician Licensing Act Rule.

R156-5a-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the postgraduate training requirement[s] for licensure in Section 58-5a-302 is [~~defined, clarified, or~~] established as [~~requiring each applicant to have successfully completed at least 12 months~~] successful completion of at least two years of postgraduate training in a residency program that, at the time of training, was accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association [~~at the time the applicant received that training~~].

R156-5a-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-1-203(1) and 58-1-301(3), the examinations required to be passed for licensure under [~~requirements for licensure in~~] Section 58-5a-302 are [~~established as follows~~]:

(a) the National Board of Podiatric Medical Examiners examination (NBPME); or

(b) the Podiatric Medicine Licensing examination (PMLexis) [~~and~~

~~(c) the Utah Podiatric law examination.~~

(2) To be eligible to sit for the NBPME or PMLexis, an applicant must submit the following to the Division:

~~(a) an application for licensure as a podiatric physician;~~

~~(b) licensing application fee;~~

~~(c) a transcript indicating completion of an approved podiatric program; and~~

~~(d) a copy of the test application submitted to NBPME or PMLexis].~~

R156-5a-304. Continuing Education.

(1) In accordance with Section 58-5a-304, [~~There is hereby established~~] a continuing professional education requirement is established for all individuals licensed under Title 58, Chapter 5a.

(2) During each two-~~[~~]year period commencing on September 30 of each even-~~[~~]numbered year, a licensee shall be

required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional clinical practice.

(3) The required number of hours of professional education for an individual who first becomes licensed during the two-[-]year period shall be decreased in a pro-rata amount equal to any part of that two year period [year-]preceding the license date[~~on which that individual first became licensed~~].

(4) Qualified professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the [educational-]program directly related to the practice of a podiatric physician;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well-[-]organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience;

(e) have [associated with it-]a competent method of registration of individuals who [actually-]completed the [professional education-]program [and]with records of [that-]registration and completion [are-]available for review; and

(f) be sponsored or approved by a combination of the following:

(i) one of the organizations listed in Subsection 58-5a-304(3);

(ii) the American Podiatric Medical Association; or

(iii) the Division of Occupational and Professional Licensing.

(5) Credit for professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 40 hours per two-[-]year period may be recognized for teaching in a college or university or teaching qualified professional education courses in the field of podiatry;

(c) a maximum of ten hours per two-[-]year period may be recognized for clinical readings directly related to practice as a podiatric physician;[~~and~~]

(d) a maximum of six hours per two-year period [~~of continuing education~~]may come from the Division of Occupational and Professional Licensing; and

(e) per Section 58-13-3 concerning charity health care, a maximum of 15% of the required hours per two-year period may come from providing volunteer services within the scope of license at a qualified location, with one hour of credit earned for every four hours of volunteer service.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after close of the two-[-]year period to which the records pertain. It is the responsibility of the licensee to demonstrate the professional education [~~maintain such information with respect to qualified professional education to demonstrate it-~~] meets the requirements of[~~under~~] this section.

(7) If a licensee properly documents[~~documented~~] that [~~a~~]the licensee is engaged in full-[-]time activities or is subjected to

circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section, the licensee may be excused from the requirement for a period of up to three years[~~;- however, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met~~].

R156-5a-305. Radiology Course for Unlicensed Podiatric Assistants.

In accordance with Subsection 58-54-[4.3(3)]306(3), radiology courses for an unlicensed person performing services under the supervision of a podiatric physician shall include radiology theory consisting of the following:

(1) orientation of radiation technology;

(2) terminology;

(3) radiographic podiatric anatomy and pathology (cursory);

(4) radiation physics (basic);

(5) radiation protection to patient and operator;

(6) radiation biology including interaction of ionizing radiation on cells, tissues and matter;

(7) factors influencing biological response to cells and tissues to ionizing radiation and cumulative effects of x-radiation;

(8) external radiographic techniques;

(9) processing techniques including proper disposal of chemicals; and

(10) infection control in podiatric radiology.

KEY: licensing, podiatrists, podiatric physician

Date of Enactment or Last Substantive Amendment: [December 22, 2015]2017

Notice of Continuation: September 16, 2013

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-5a-101

Education, Administration **R277-106** Utah Professional Practices Advisory Commission Appointment Process

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41086

FILED: 12/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-106 is amended to provide updates that reflect the Board's Utah Professional Practices Advisory Commission (UPPAC) Advisory Committee Taskforce recommendations. The rule is also updated in accordance with the Rulewriting Style Manual.

SUMMARY OF THE RULE OR CHANGE: The changes to Rule R277-106 update procedures to clarify the nominating and application process for UPPAC membership and selection; 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 Subsection 53A-6-303(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The amendments to Rule R277-106 update procedures to clarify the nominating and application process for UPPAC membership and selection, which likely will not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** The amendments to Rule R277-106 update procedures to clarify the nominating and application process for UPPAC membership and selection, which likely will not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** The amendments to Rule R277-106 update procedures to clarify the nominating and application process for UPPAC membership and selection, 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 R277-106 update procedures to clarify the nominating and application process for UPPAC membership and selection, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-404 update procedures to clarify the nominating and application process for UPPAC membership and selection, which likely will not result in any compliance costs for affected persons.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

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

R277. Education, Administration.
R277-106. Utah Professional Practices Advisory Commission Appointment Process.

R277-106-[2]1. Authority and Purpose.

~~[A-](1)~~ This rule is ~~[adopted pursuant to]~~ authorized by:
(a) Utah Constitution Article X, Section 3, which vests general control and supervision ~~[of]~~ over public education in the Board~~[-];~~

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

~~(c) Subsection 53A-6-303(1)(a), which directs the Board to adopt rules establishing procedures for nominating and appointing UPPAC members[-, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities].~~

~~[B-](2)~~ The purpose of this rule is to establish nomination and appointment procedures for UPPAC members.

R277-106-[1]2. Definitions.

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

~~[B-](1)(a)~~ "Nomination application" means~~[-]~~ a form prepared by the Superintendent as described in R277-106-3.

~~[----- (1) written and signed statement by the superintendent of the school district or charter school director in which the educator is currently employed, that the superintendent/director understands the time commitment of UPPAC members and supports the educator in applying for one three-year term as identified in statute. If the applicant is a school district superintendent or charter school director, the chair of the local/charter school board shall provide a statement of support for the educator;~~

~~[----- (2) written and signed statement by the educator's building principal or director that the principal/director understands the time commitment of UPPAC members and supports the educator in applying for one three-year term. If the applicant is a principal, the applicant shall include a statement of understanding of the time commitment in the personal statement provided by the applicant;~~

~~[----- (3) written and signed personal statement by the applicant expressing the applicant's desire to serve as a UPPAC member, a summary of the applicant's professional experience, including associations and professional affiliations; and~~

~~[----- (4) the applicant's vita.~~

~~[----- C. "Superintendent" means the State Superintendent of Public Instruction.]~~

~~[(D)](2)~~ "Utah Professional Practices Advisory Commission" or "[U]PPAC[]" means an advisory commission established under Section 53A-6-301 to assist and advise the Board in matters relating to the professional practices of educators ~~[, under Section 53A-6-301].~~

R277-106-3. UPPAC Notification, Nomination and Application Process.

~~[(A)](1)~~ The UPPAC Executive Secretary shall notify school districts, charter schools, and education organizations in writing of openings on UPPAC for the upcoming term by May 1 ~~[5 of the year in which UPPAC vacancies shall be filled by appointment by the Superintendent].~~

~~(2)~~ The Superintendent shall develop a nomination application through which an applicant expresses interest in serving on UPPAC, which outlines the expectations and time commitment required of a UPPAC member.

~~(3)~~ A nomination application must be signed by:

~~(a)~~ the applicant;

~~(b)~~ in the case of a licensed educator whose primary assignment is teaching or school level, the applicant's principal and superintendent or charter school director;

~~(c)~~ in the case of a licensed educator whose assignment is as a principal or at the district level, the applicant's superintendent;

~~(d)~~ in the case of a licensed educator whose assignment is as a district superintendent or charter school director, the applicant's local board or charter school governing board chair; and

~~(e)~~ in the case of an education organization representative, an officer of the education organization as provided in Subsection 53A-6-302(1).

~~(3)~~ An educator shall submit a statement of interest and resume or vita along with the nomination application.

~~(4)~~ An applicant who is interested in serving on UPPAC shall submit a nomination application to the Superintendent by May 31.

~~[B.]~~ As provided under Section 53A-6-303(1)(b), nomination petitions shall be filed with the Superintendent.]

R277-106-4. UPPAC Selection Process.

~~[(A)](1)~~ The UPPAC Executive Secretary shall review all complete and properly filed applications and may make recommendation ~~[(t)s], per direction from the Superintendent,]~~ to the Superintendent and Board prior to ~~[May 30 of the year in which membership on UPPAC is sought]~~ June 1.

~~[(1)](2)~~ Prior to making the recommendations described in Subsection (1), ~~[(F)]~~ the Executive Secretary may seek additional information to provide to the Superintendent and Board about the experience and qualification of UPPAC applicants.

~~[(2)]~~ Recommendations shall maintain a representative balance of six teachers and three other educators.]

~~(3)~~ Prior to making the ~~[(R)]~~ recommendations described in Subsection (1), the Executive Secretary shall consider demographic diversity, including:

~~(i)~~ rural ~~[(f)]~~ and urban representation ~~[-];~~

~~(ii)~~ geographical balance;

~~(iii)~~ elementary ~~[(f)]~~ and secondary representation ~~[-];~~

~~(iv)~~ gender diversity ~~[-];~~

~~(v)~~ ethnic diversity ~~[-; and geographical balance of UPPAC members.];~~

~~(vi)~~ specialized knowledge of an applicant; and

~~(vii)~~ representation of LEA superintendents, principals, or charter school administrators.

~~(4)~~ In addition to receiving recommendations from the UPPAC Executive Secretary, as described in Subsection (1), the Superintendent shall solicit recommendations from the Board prior to making]

~~[B.]~~ The Superintendent shall make] UPPAC appointments consistent with Section 53A-6-303.

~~[C.]~~ Community members]

~~[(D)](6)~~ If a current UPPAC member[s] desires to serve ~~[(for)]~~ a second term, the member shall indicate the desire to serve an additional term in writing to the Superintendent prior to May 1 ~~[5]~~ of the year in which the member's term expires.

~~[(E)](7)~~ The application ~~[(s)]~~ of ~~[(a)]~~ UPPAC member ~~[(s)]~~ seeking reappointment shall be considered for recommendation at the same time that new appointments are considered.

~~[(F)](8)~~ The Executive Secretary may retain nomination applications for consideration ~~[(for)]~~ in the event of mid-term vacancies or for vacancies in subsequent years.

R277-106-5. Education Organization Member Appointments.

~~(1)~~ ~~[(Community members may be nominated by t)]~~ The state organization or a local chapter of the education organization with the largest membership of parents of students and teachers in the state may nominate community members to serve on UPPAC.

~~(2)~~ Community members ~~[- who are members of a parent/teacher, parent/teacher/student organization]~~ may submit their names to the education organization described in Section 53A-6-302(1) for nomination by the organization.

~~(3)~~ The two ~~[(community)]~~ education organization members ~~[(shall)]~~ may not serve concurrent terms.

R277-106-~~[5]~~6. Filling of Vacancies.

~~[(A)](1)~~ The UPPAC Executive Secretary shall recommend names to the Superintendent and Board to fill UPPAC vacancies that occur midyear.

~~[(B)](2)~~ The UPPAC Executive Secretary may recommend names of previous applicants for UPPAC vacancies or names from school districts or charter schools or other groups or areas of the state that are under represented ~~[- to fill vacancies].~~

KEY: professional competency, professional practices[*]

Date of Enactment or Last Substantive Amendment: [November 7, 2013]2017

Notice of Continuation: September 9, 2013

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-303(1)(a); 53A-1-401[(3)]

Education, Administration
R277-113
LEA Fiscal Policies and Accountability

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41073

FILED: 12/13/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-113 is amended to combine the rule with Rule R277-425, which is being repealed, as well as to incorporate significant, additional changes recommended by the Internal Audit and School Finance Departments. The rule is also updated in accordance with the Rulewriting Style Manual. (Editor's Note: The proposed repeal of Rule R277-425 is under filing No. 41091 in this issue, January 1, 2017, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The changes to Rule R277-113 provide new and amended definitions; provide updated procedures to clarify responsibilities of a local education agency (LEA); provide updated procedures and requirements for required LEA fiscal policies; 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-1-404 and Section 53A-1-405 and Subsection 53A-1-402(1)(e)(iv)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The amendments to Rule R277-113 provide updated procedures for LEA fiscal policies, which likely will not result in a cost or savings to the state budget.
 ♦ **LOCAL GOVERNMENTS:** The amendments to Rule R277-113 provide updated procedures for LEA fiscal policies, which likely will not result in a cost or savings to local government.
 ♦ **SMALL BUSINESSES:** The amendments to Rule R277-113 provide updated procedures for LEA fiscal policies, 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 R277-113 provide updated procedures for LEA fiscal policies, 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 R277-113 provide updated procedures for LEA fiscal policies, which likely will not result in any compliance costs for affected persons.

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

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

EDUCATION
ADMINISTRATION

250 E 500 S

SALT LAKE CITY, UT 84111-3272

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

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

R277. Education, Administration.

R277 113. LEA Fiscal and Auditing Policies~~—and—~~
Accountability].

R277-113-[2]1. Authority and Purpose.

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

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

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

~~(c)~~ Subsection 53A-1-402(1)(e)~~(i)~~, which directs the Board to establish rules and minimum standards for school productivity and cost effectiveness measures~~[-]~~;

~~(d)~~ Subsection 53A-1-402(1)(e)~~(iv)~~, which allows the Board to adopt rules regarding financial, statistical, and student accounting requirements;

~~(e)~~ Section 53A-1-404, which allows the Board to approve auditing standards for school boards; and

~~(f)~~ Section 53A-1-405, which requires the Board to verify accounting procedures of school board for the purpose of determining the allocation of Uniform School Funds.

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

~~(+)(a)~~ require LEAs to formally adopt and implement policies regarding the management and use of public funds;

~~(2)(b)~~ provide minimum standards, procedures and definitions for LEA policies;

~~(3)(c)~~ direct that LEAs make policies, procedures and training materials available to the public and readily accessible on LEA or public school websites, to the extent of resources available;

~~(4)(d)~~ require LEAs to train employees in:

~~(i)~~ appropriate financial practices~~[-]~~;

~~(ii)~~ necessary accounting procedures; and

~~(iii)~~ ethical financial practices; and

~~(5)~~ provide for consistency among LEAs regarding fiscal policies, procedures and accountability practices.]

~~(e)~~ specify uniform budgeting, accounting, and auditing procedures for LEAs consistent with GAAP and GAAS.

R277-113-~~1~~2. Definitions.

~~(1) "Accrual basis of accounting" means a basis of accounting that records:~~

~~(a) revenue when earned and expenses when incurred; and~~

~~(b) transactions irrespective of the dates on which any associated cash flows occur.~~

~~[A-](2) "Arm's length transaction" means a transaction between two unrelated, independent, and unaffiliated parties or a transaction between two parties acting in their own self interest that is conducted as if the parties were strangers so that no conflict of interest exists.~~

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

~~[C-](3) "Exclusive contract or arrangement" means an agreement requiring a buyer to purchase or exchange all needed goods or services from one seller.~~

~~(4) "FASB" means the Financial Accounting Standards Board whose purpose is to establish GAAP for nongovernmental entities within the United States.~~

~~(5) "GAAP" means Generally Accepted Accounting Principles or a common framework of accounting rules and standards for financial reporting promulgated by either FASB or GASB, as applicable to the reporting entity.~~

~~(6) "GAAS" means Generally Accepted Auditing Standards or a set of auditing standards and guidelines promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants.~~

~~(7) "GASB" means the Governmental Accounting Standards Board whose purpose is to establish GAAP for state and local governments within the United States.~~

~~[D-](8) "Internal controls" [are procedures designed to] means a process, implemented by an entity's governing body, management, or other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:~~

~~(a) [safeguard assets,] Effectiveness and efficiency of operations;~~

~~(b) [detect errors and misappropriations,] Reliability of reporting for internal and external use; and~~

~~(c) [produce timely and accurate financial reports, and] Compliance with applicable laws and regulations. [ensure compliance with laws and rules.]~~

~~[E-](9) "LEA" [means a local education agency, including local school boards/public school districts, charter schools, and] includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.~~

~~[F-](10) "Management" means:~~

~~(a) an LEA superintendent or director[;];~~

~~(b) deputy or associate[;];~~

~~(c) business administrator or manager[;]; or~~

~~(d) other educational administrator or designated staff.~~

~~(11) "Modified accrual basis of accounting" means a basis of accounting, commonly used by government agencies, that recognizes revenues when they become available and measurable and recognizes expenditures when liabilities are incurred.~~

~~(12) "Non-operating LEA" means an LEA that has not received minimum school program funds or federal funds and is not providing educational services during a fiscal year, such as an LEA in a start-up period.~~

~~(13) "Operating LEA" means an LEA that has received state minimum school program funds or federal funds and is providing educational services during a fiscal year.~~

~~[G-](14) "Public funds" [(Utah Code Section 51-7-3(25)) means money, funds, and accounts, regardless of the source from which the funds are derived, that are owned, held, or administered by the state or any of its political subdivisions including LEAs or other public bodies.] has the same meaning as that terms is defined in Subsection 51-7-3(26).~~

~~[H-](15) "School sponsored" means an activity, fundraising event, club, camp, clinic, or other event or activity that is authorized by a specific LEA or public school, [which supports the LEA or authorized curricular school club, activity, sport, class or program, that also] according to local board policy, and satisfies at least one of the following conditions:~~

~~[(+)](a) the activity [it-] is managed or supervised by an LEA or public school, or LEA or public school employee;~~

~~[(2)](b) the activity [it-] uses the LEA or public school's facilities, equipment, or other school resources; or~~

~~[(3)](c) the activity [it-] is supported or subsidized, more than [ineffectually] ineffectually, by public funds, including the public school's activity funds or minimum school program dollars.~~

~~(16) "Title IX" refers to that portion of the United States Education Amendments of 1972 codified as 20 U.S.C. 1681 through 20 U.S.C. 1688.~~

~~[I-](17) "Utah Public Officers' and Employees' Ethics Act," [(Utah Code Sections 67-16-1 through 15)] Title 67, Chapter 16, means an [A-] act that provides standards of conduct for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between [their-] public duties and [their-] private interests.~~

R277-113-3. ~~Board~~ Superintendent Responsibilities.

~~[A-](1) The [Board] Superintendent shall provide training, [and] informational materials, and model policies for use by LEAs in developing LEA and public school-specific financial policies [about the use and management of public funds before March 31, 2013].~~

~~[B-](2) The [Board] Superintendent shall provide online training and resources for LEAs regarding the use and management of public funds and ethical practices for licensed Utah educators who manage, control, participate in fundraising, or expend public funds [before March 31, 2013].~~

~~[C-](3) The [Board may] Superintendent shall provide and establish a cycle for state review of LEA fiscal policies and standards.~~

~~[D-](4) The [Board] Superintendent shall work with and provide information upon request to the Utah State Auditor's Office, the Legislative Fiscal Auditors, and other state agencies with the right to information from the [Utah State Office of Education] Board.~~

R277-113-4. LEA Fiscal Responsibilities.

~~[A-](1)(a) An LEA[s] shall develop [have approved by local charter boards] and implement written fiscal policies, subject to approval by the LEA's board, as required by R277-113-5.~~

~~(b) An LEA[s] shall review the LEA's fiscal policies annually.~~

~~[B-]~~(2) An LEA[s] shall ~~[also-]~~develop a plan for annual training of LEA and public school employees, ~~[, at least annually,]~~ on policies enacted by the LEA specific to job function.

(~~[H]~~3) LEA policies~~[These policies]~~ shall be available at each LEA main office, at individual public schools, and on the LEA's website.

(~~[2]~~4) ~~[The-]~~LEA fiscal policies and training may have different components, specificity, and levels of complexity for public elementary and secondary schools.

(~~[3]~~5) An LEA[s] may have one or more policies to satisfy the minimum requirements of this ~~[rule]~~R277-113.

(~~[4]~~6) An LEA policy may reference specific training manuals or other resources that provide detailed descriptions of business practices which are too lengthy or detailed to include in the LEA policy.

(7) An LEA governing board shall have the following responsibilities:

(a) ensure that LEA management properly develops and adheres to a sound system of documented internal controls consistent with R277-113-6.

(b) develop a process to regularly review:

(i) LEA management's budget and financial reporting practices;

(ii) financial statements;

(iii) LEA financial position; and

(iv) LEA and individual school records;

(c) make monthly reports on the fiscal position of the LEA to the LEA board;

(d) monitor LEA contract services by:

(i) determining the appropriate scope of contracts with management companies that provide business services and student services;

(ii) managing the procurement process in compliance with Title 63G, Chapter 6a;

(iii) making recommendations to the LEA board on the results of the procurement process;

(iv) assessing the performance of management companies; and

(v) ensuring management implements sufficient internal controls over the functions of management companies;

(e) monitor procurement and use of systems and software applications for compliance with financial and student privacy laws; and

(f) monitor LEA expenditure of restricted funds to ensure compliance with applicable laws and grant terms and conditions.

(8) A public education foundation established by an LEA shall follow the requirements set forth in Section 53A-4-205.

R277-113-5. LEA Audit Responsibilities.

~~[C-]~~(1) ~~[Each]~~An LEA governing board shall designate board members to serve on an audit ~~[or finance-]~~committee, consistent with Section 53A-30-102(1).

(2) ~~[The]~~An LEA audit~~[or finance]~~ committee ~~[has the following responsibilities]~~shall:

(~~[H]~~a) if required by Section 53A-30-103, establish ~~[and annually review-]~~an internal audit program that provides internal audit services for the programs administered by the LEA~~[, consistent with Section 53A-30-103 (required only if LEAs have 10,000 or more students)]~~;

(~~[2]~~b) receive a report of the risk assessment process undertaken by the LEA management in ~~[conjunction]~~collaboration with the internal audit~~[, if applicable]~~ department;

~~[-----]~~(3) ensure that the LEA management properly develops and adheres to a sound system of documented internal controls consistent with the requirements of R277-113-5;

~~[-----]~~(4) develop a process to review LEA management's financial reporting practices, financial statements, LEA financial position, and LEA and individual school records on a regular basis;

~~[-----]~~(5) report the fiscal position of the LEA to the LEA board monthly;

(~~[6]~~c) monitor the internal and external audit process by:

(i) ~~[determine]~~determining the appropriate scope of the independent external audit[;];

(ii) ~~[determine]~~determining the appropriate scope of non-audit services to be performed by the independent auditor[;];

(iii) ~~[manage]~~managing the audit procurement process in compliance with Title 63G, Chapter 6a, State Procurement Code~~[Section 63G-6a, and];~~

(iv) ~~[make]~~making recommendations to the LEA board on the results of the procurement process;

(~~[7]~~v) ~~[facilitate]~~facilitating regular direct communication with independent external auditors[;];

(vi) ~~[receive]~~receiving independent external audit report and financial statements[;];

(vii) ~~[ensure]~~ensuring management implements corrective actions[;];

(viii) assessing performance of the independent auditors[;];~~[and]~~

(ix) reviewing disagreements between independent auditors and management;

(x) prioritizing the internal audit plan based on risk;

(xi) receiving audit reports from internal auditors, contractors providing internal audit services, and other regulatory bodies; and

(xii) providing an independent forum for internal auditors, internal audit contractors, and other regulatory bodies to report findings of fraud, waste, abuse, non-compliance, or control weaknesses, particularly if management is involved;

~~[-----]~~(8) determine the appropriate scope of contracts with management companies that provide business services and student services, manage the procurement process in compliance with Section 63G-6a, make recommendations to the LEA board on the results of the procurement process, assess the performance of management companies, and ensure management implements sufficient internal controls over the functions of the management company;

~~[-----]~~(9) prioritize internal audit plan, receive audit reports from internal auditors or contractors providing internal audit services and other regulatory bodies, and provide an independent forum for internal auditors or internal audit contractors or other regulatory bodies to report findings of management abuse or control override;

(~~[H]~~d) conduct or advise the LEA board in an annual evaluation of internal audit personnel or contractors providing internal audit services;

(~~[H]~~e) ensure that issues and exceptions reported by ~~[external audits,]~~internal ~~[audits]~~auditors, or other regulatory bodies are resolved in a timely manner;~~[and]~~

~~(12)f~~ present the ~~[annual]~~ audit reports ~~[and findings or other matters communicated by the]~~ of external auditors, internal auditors or other regulatory bodies to the LEA board ~~[in a public meeting];~~

~~(g)~~ receive reports of reviews or audits conducted by the Superintendent and ensure appropriate corrective actions is taken in a timely manner; and

~~(h)~~ advise the local LEA board in the appointment of an audit director or in contracting services for internal audit services in accordance with Subsection 53A-30-103(3).

~~(3)(a)~~ An LEA shall follow the internal auditing requirements of Title 53A, Chapter 30, Internal Audits.

~~(b)~~ An LEA internal audit director may not have responsibilities for management or operations of the LEA.

~~(c)~~ If an LEA internal audit director contracts with a consultant, any contractual agreement with the consultant shall comply with the LEA's procurement policy.

~~(4)~~ An LEA shall obtain all audits and financial reports required by Section 51-2a-201.

R277-113-[5]6. Required LEA Fiscal Policies.

~~[A-](1)(a)~~ ~~[The following fiscal policies shall be required in each LEA.]~~ An LEA[s] shall ensure that the LEA's fiscal policies ~~[each policy]~~ address ~~[es the]~~ all applicable Utah Code references or Board Rules ~~[in each section].~~

~~(b)~~ The requirements set forth in this Section R277-113-~~6~~ ~~[required items]~~ are minimum requirements.

~~(c)~~ An LEA[s] may include other related items, provide LEA specific policy and guidance, and set policies that are more restrictive and inclusive than the minimum provisions established by ~~[the]~~ Board rule.

~~(2)~~ LEA fiscal policies shall include the following:

~~[B.]~~ LEAs shall ensure that policies address applicable elements from the Utah Public Officers' and Employees' Ethics Act, Utah Educator Standards (R277-515), and the definition of public funds.]

~~[C.]~~ LEA fiscal policies shall address the following:]

~~(1)~~ ~~[a]~~ ~~[Cash Handling: The LEA]~~ a cash handling policy, which shall address cash receipts (cash, checks, credit cards, and other items) collected at the LEA and individual public schools ~~[through school sponsored activities]~~ and shall include:

~~(a)~~ ~~i~~ establishment of internal controls and procedures over the collection, deposit, and reconciliation of cash receipts received; and

~~(b)~~ ~~ii~~ compliance with Utah Code 51-4-2(2) regarding deposits.

~~(2)~~ ~~b~~ ~~[Expenditure of Public Funds: The LEA]~~ an expenditure policy, which shall address all expenditures made ~~[by checks, electronic transfers and credit/purchase cards that are made]~~ by the LEA and individual public schools ~~[through school sponsored activities]~~ and shall include:

~~(a)~~ ~~i~~ establishment of internal controls and procedures over the initiation, approval and monitoring of expenditures~~];~~, including:

~~(A)~~ credit, debit, or purchase card transactions~~];~~

~~(B)~~ employee reimbursements~~];~~

~~(C)~~ travel~~];~~ and

~~(D)~~ payroll;

~~(b)~~ ~~ii~~ directives regarding the appropriate use of the LEA's tax exempt status number;

~~(e)~~ ~~iii~~ compliance with Section 63G-6a-1204 regarding length of multi-year contracts;

~~(d)~~ ~~iv~~ compliance with:

~~(A)~~ ~~[Section-]Title 63G[-] Chapter 6a[-et seq., procurement state law];~~ and

~~(B)~~ Board rule regarding construction and improvements~~];~~ and ~~[compliance with]~~

~~(C)~~ Title IX; ~~and~~

~~(v)~~ requirements for LEA contracts, including:

~~(A)~~ inclusion of specific scope of work language;

~~(B)~~ inclusion of federal requirements;

~~(C)~~ inclusion of language regarding data privacy and use, where appropriate; and

~~(D)~~ legal review prior to LEA approval; and

~~(e)~~ ~~vi~~ procedures and documentation maintained by the LEA if the LEA chooses to enter into exclusive contracts or arrangements consistent with state procurement law and the LEA procurement policy.

~~(3)~~ ~~c~~ ~~[Fundraising: The LEA]~~ a fundraising policy ~~[shall] that:~~

~~(i)~~ establishes procedures for LEA and public school fundraising in general~~];~~

~~(ii)~~ establishes an approval process for fundraising activities~~];~~ for school sponsored activities~~];~~

~~(iii)~~ provides for compliance with school fee and fee waiver provisions~~];~~ and

~~(iv)~~ ~~[shall] includes:~~

~~(a)~~ ~~A~~ specific designation of employees by title or job description who are authorized to approve fundraising, school sponsored activities, and grant fee waivers with appropriate attention to student and family confidentiality;

~~(b)~~ ~~B~~ establishment of internal controls and procedures over the approval of fundraising and school sponsored activities and compliance with associated cash handling and expenditure policies;

~~(e)~~ ~~C~~ directives regarding the appropriate use of the LEA's tax exempt status number~~];~~ and issuance of charitable donation receipts;

~~(d)~~ ~~D~~ procedures governing LEA or public school employee interaction with parents, donors, and nonschool sponsored organizations;

~~(e)~~ ~~E~~ disclosure requirements for LEA and public school employees approving, ~~[or otherwise]~~ managing, or overseeing fundraising activities, who also have a financial or controlling interest or access to bank accounts in the fundraising organization or company~~];~~

~~(f)~~ ~~E~~ ~~[This policy shall be in harmony]~~ Provisions establishing compliance with:

~~(I)~~ Utah Constitution, Article X, Section 2, ~~[of the Utah Constitution]~~ establishing a free public education system~~];~~

~~(II)~~ ~~[with]~~ R277-407 ~~[regarding school fees];~~ and

~~(III)~~ ~~[compliance with]~~ Title IX~~];~~

~~(g)~~ ~~v~~ ~~[The]~~ An LEA may include procedures governing:

~~(A)~~ student participation and incentives offered to students~~];~~

~~(B)~~ allowable types of fundraising activities~~];~~ and

~~(C)~~ participation in school sponsored activities by volunteer or outside organizations~~];~~

~~([4]d) [Donations and Gifts: The] an LEA donation and gift policy [shall establish] that includes:~~

- ~~(i) an acceptance and approval process for;~~
- ~~(A) monetary donations[;];~~
- ~~(B) donations and gifts with donor restrictions[;];~~
- ~~(C) donations of gifts, goods, materials, or equipment[;];~~
- and
- ~~(D) donation of funds or items designated for construction or improvements of facilities[; and shall include];~~

~~([a]ii) establishment of internal controls and procedures over the acceptance and approval of donations and gifts and compliance with associated cash handling and expenditure policies;~~

~~([b]iii) directives regarding the appropriate use of the LEA's tax exempt status number, and issuance of charitable donation receipts;~~

~~([e]iv) procedures regarding the objective valuation of donations or gifts if advertising or other services are offered to the donor in exchange for a donation or gift;~~

~~([d]v) procedures governing LEA or public school employee conduct with parents, donors, and nonschool sponsored organizations;~~

~~([e]vi) procedures establishing provisions [to]for direct donations or gifts to the LEA or LEA programs, individual public school or public school programs[; and];~~

~~(vii) provisions restricting donations from being directed at specific LEA employees, individual students, vendors, or brand name goods or services;~~

~~([f]viii) compliance with;~~

~~(A) Title 63G, Chapter 6a[regarding the procurement code];~~

~~(B) state law and Board rule regarding construction and improvements[;];~~

~~(C) IRS regulations and tax deductible directives[;]; and [compliance with]~~

~~(D) Title IX[;];~~

~~([g]ix) [The LEA may include] procedures for;~~

~~(A) accepting donations and gifts through an LEA's legally organized foundation, if applicable[;]; [or]~~

~~(B) [procedures for] recognition of donors[;]; or~~

~~(C) granting naming rights[;]; and~~

~~(e) an LEA Financial Reporting policy, which shall include the following:~~

~~(i) a requirement that the LEA shall ensure financial reporting in accordance with GAAP and audits of LEA financial reporting in accordance with GAAS;~~

~~(ii)(A) a requirement that the LEA shall provide financial reporting in a manner consistent with the basis of accounting as required by GAAP, as applicable to the entity; and~~

~~(B) if an LEA follows FASB standards, a requirement that the LEA shall provide reconciliation between the accrual basis of accounting and modified accrual basis of accounting; and~~

~~(iii) a requirement that the LEA shall provide data and information consistent with budgeting, accounting, including the uniform chart of accounts for LEAs, and auditing standards for Utah LEAs provided online annually by the Superintendent.~~

~~(3) The Superintendent shall maintain a School Finance website with applicable Utah statutes, Board rules, and uniform rules for:~~

~~(a) budgeting;~~

~~(b) financial accounting, including a chart of accounts required for an LEA;~~

~~(c) student membership and attendance accounting;~~

~~(d) indirect costs and proration;~~

~~(e) financial audits;~~

~~(f) statistical audits; and~~

~~(g) compliance and performance audits.~~

R277-113-7. School Sponsored Activities.

~~[D:](1)(a) [The definition of school sponsored and requirements of R277-113-4G do not apply to activities, fundraising events, clinics, clubs, camps, or activities organized by a third party which have not been designated by the LEA as school sponsored.] If an activity, fundraising event, clinic, club, camp, or activity does not meet the definition of school sponsored and is organized by a third party, then the requirements of Subsection R277-113-4(11) do not apply.~~

~~(b) All transactions pertaining to nonschool sponsored events shall be conducted at arm's length[;].~~

~~(c) [F]Revenues and expenditures from nonschool sponsored events shall may not be commingled with public funds.~~

~~[E:](2) An LEA sponsored events, funds may only be managed or held by a public school employee[; only] consistent with R277-107.~~

~~[F:](3) The definition of school sponsored and requirements of R277-113-4[G](11) do not apply to non-curricular clubs specifically authorized and meeting all criteria of Sections 53A-11-1205 through 53A-11-1208.~~

~~[G:](4) An LEA[s] and or individual public school[s] shall comply with the following regarding school and nonschool sponsored activities:~~

~~(a) An LEA may establish LEA specific rules or policies designating categories of school sponsored activities or groups and establishing LEA policy regarding use of facilities or LEA resources.~~

~~([+])b) An LEA may enter into contractual agreements to allow for fundraising and use of LEA facilities.~~

~~(i) An agreement under Subsection (4)(a) shall take into consideration the LEA's fiduciary responsibility for the management and use of public funds.~~

~~(ii) An LEA[s] should consult with the LEA's insurer or legal counsel, or both, to ensure risks are adequately considered and managed;~~

~~([2]c) An LEA shall annually review fundraising activities that support or subsidize LEA or public school-authorized clubs, activities, sports, classes or programs to determine if the activities are school sponsored[; consistent within R277-113-11];~~

~~([3]d) An LEA shall ensure that revenues raised from school sponsored activities and funds expended from the proceeds are [considered]classified and processed as public funds[; consistent with R277-113-1G];~~

~~([4]e) An LEA shall maintain adequate records to [ensure]verify that funds collected from or during school sponsored activities are in compliance with LEA cash handling policies as required by R277-113-5;~~

~~([5]f) An LEA shall maintain adequate records to show that expenditures made to support activities from LEA or public school funds are in compliance with LEA expenditure of funds policies as required by R277-113-5; and~~

~~[(6)g]~~ An LEA shall:

~~(i)~~ make records of activities available to parents, students, and donors;~~and shall~~

~~(ii)~~ maintain [the] records in sufficient detail to track individual contributions and expenditures, as well as overall financial outcome[-];

~~(iii)~~ restrict access to [R] records as required by state or federal law.~~[may be private or protected consistent with Sections 63G-2-302, 303, 305, and the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g.~~

~~H. Public Education Foundations established by LEAs shall follow the requirements provided in Section 53A-4-205.]~~

R277-113-~~[6]8~~. LEA [~~Financial~~]Policies and Compliance with State and Federal Law.

~~[A-](1)~~ An LEA[s-are] is responsible to ensure that its policies comply with the following state laws and Board Rules:

~~[(1)a]~~ Utah Constitution Article X, Section 3;

~~[(2)b]~~ [Utah Code]Title 63G[-], Chapter 6a, Utah Procurement Code;

~~[(3)c]~~ [Utah Code]Title 51[-], Chapter 4, Deposit of Funds Due State;

~~[(4)d]~~ [Utah Code]Title 67[-], Chapter 16, Utah Public Officers' and Employees' Ethics Act;

~~[(5)e]~~ [20 U.S.C. Section 1232g;]Family Educational Rights and Privacy Act, 20 U.S.C. 1232g;

~~[(6)f]~~ [Utah Code]Title 63G[-], Chapter 2, Government Records Access and Management Act;

~~[(7)g]~~ [Utah Code Section]Title 53A[-], Chapter 12, Fees and Textbooks;

~~[(8)h]~~ [Utah Code-]Section 53A-4-205, Public Education Foundations;

~~[(9)i]~~ [Utah Code 53A-11-1205 through 53A-11-1208:]Title 53A, Chapter 11, Part 12, Student Clubs Act;

~~[(a)]~~ 53A-11-1205, Noncurricular clubs -- Annual authorization;

~~[(b)]~~ 53A-11-1206, Clubs -- Limitations and denials;

~~[(c)]~~ 53A-11-1207, Faculty oversight of authorized clubs;

~~[(d)]~~ 53A-11-1208, Use of school facilities by clubs;

~~[(j)]~~ Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;

~~[(k)]~~ Additional state legal compliance guides for operating LEAs and non-operating LEAs as published by the office of the state Auditor;

~~[(l)]~~ Subsection 51-7-3(26), Definition of Public Funds;

~~[(m)]~~ Title 53A, Chapter 30, Internal Audits;

~~[(10)n]~~ R277-407, School Fees;

~~[(11)o]~~ R277-107, Educational Services Outside of Educator's Regular Employment;

~~[(12)p]~~ R277-515, Utah Educator Standards;

~~[(13)q]~~ R277-605, Coaching Standards and Athletic Clinics.

~~[B-](2)~~ An LEA[~~in establishing policies and providing staff training, LEAs~~] shall ~~[consider]include~~ the following requirements of Title IX ~~in LEA policies~~[-, including]:

~~[(1)a]~~ Fundraising shall equitably benefit males and females;

~~[(2)b]~~ Males and females shall have reasonably equal access to facilities, fields, and equipment;

~~[(3)c]~~ School sponsored activities shall be reasonably equal for males and females.

KEY: school sponsored activities, public funds, fiscal policies and procedures, audit committee

Date of Enactment or Last Substantive Amendment: ~~[October 9, 2014]2017~~

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

Education, Administration
R277-114
Corrective Action and Withdrawal or
Reduction of Program Funds

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41074

FILED: 12/13/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Legislature passed S.B. 91, Board of Education Amendments, during the 2016 General Session, which allows the Board to audit a local education agency's (LEA) use of public education funding and take corrective action against an LEA for misuse of funds. Rule R277-114 is amended to provide additional methods of corrective action and provide an LEA an opportunity to appeal or address the Board. The rule is also updated in accordance with the Rulewriting Style Manual.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-114 provide additional methods of corrective action and appeals for an LEA that has been placed on a correction action plan; 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 Subsection 53A-1-401(8)(c)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments provide additional methods of corrective action and appeal opportunity, which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The amendments provide additional methods of corrective action and appeal opportunity, which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The amendments provide additional methods of corrective action and appeal

opportunity, which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments provide additional methods of corrective action and appeal opportunity, which likely will not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments provide additional methods of corrective action and appeal opportunity, which likely will not result in any compliance costs for affected persons.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

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

R277. Education, Administration.

R277-114. Corrective Action and Withdrawal or Reduction of Program Funds.

R277-114-[2]1. Authority and Purpose.

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

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

~~_____](b)~~ 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; and~~

~~_____](c)~~ Subsection 53A-1-401(8)(c), which allows the Board to make rules setting forth the procedures to be followed for enforcing Board rules.

~~_____B-](2)~~ The purpose of the rule is to provide procedures for public education [P]program monitoring and corrective action for noncompliance with identified:

~~_____](a)~~ [P]program requirements[;];

~~_____](b)~~ [P]program accountability standards[;]; and

~~_____](c)~~ financial propriety.

R277-114-[1]2. Definitions.

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

~~_____B-](1)~~ "Program" means a public education project or plan under the direction of the Board.

~~_____C-](2)~~ "Recipient" means an LEA or a school.

~~_____D-~~ "State Superintendent" means the State Superintendent of Public Instruction as defined under Section 53A-1-301, or his or her designee.]

R277-114-3. [State Superintendent Responsibilities.]Program Monitoring.

~~_____A-~~ Program Monitoring]

(1) For each [P]program, the~~[-State]~~ Superintendent shall design and implement a consistent monitoring ~~[program]plan~~ that includes standards for both [P]program outcomes and [P]program financial compliance.

(2) The~~[-State]~~ Superintendent shall notify all [R]recipients of the initiation of or changes to any monitoring ~~[program]plan~~.

(3) The~~[-State]~~ Superintendent shall monitor compliance with:

~~_____](a)~~ [P]program outcomes[;];

~~_____](b)~~ reporting requirements[;]; and

~~_____](c)~~ financial compliance.

R277-114-4. Corrective Action Plans.

~~_____B-~~ Corrective Action Plans]

(1) The~~[-State]~~ Superintendent shall place a [R]recipient on a corrective action plan when a [R]recipient:

~~_____](a)~~ does not demonstrate satisfactory [P]program outcomes[;];

~~_____](b)~~ demonstrates noncompliance with [P]program requirements or allowable [P]program expenditures[;]; or

~~_____](c)~~ does not comply with requests to provide accurate and complete [P]program or financial information.

(2) The~~[-State]~~ Superintendent shall clearly outline in a corrective action plan:

~~_____](a)~~ all areas of noncompliance~~[-and establish];~~

~~_____](b)~~ steps required to satisfy the corrective action plan; and

~~_____](c)~~ a reasonable time frame for the [R]recipient to correct identified issues.

(3) A corrective action plan may also include provision and a timeline for:

~~_____](a)~~ referral for monitoring by a Board section;

~~_____](b)~~ referral for monitoring to the Board's internal audit department, with approval of the Board's Audit Committee;

~~_____](c)~~ periodic meetings between a recipient administrator or governing board member and the Superintendent or a member of the Superintendency;

~~(d) planned appearances before the Board to provide status updates; and~~

~~(e) training for the LEA's staff.~~

~~(4) The Superintendent may employ escalating restrictive conditions in a corrective action plan based on:~~

~~(a) the severity of the violation; or~~

~~(b) repeated violations by an LEA.~~

~~[C-](5) The [State] Superintendent may [withhold, reduce or terminate funding for Recipient noncompliance.]include penalties for non-compliance with a corrective action plan in accordance with Subsection 53A-1-401(8).~~

~~[3](6) The [State] Superintendent shall give notice and a copy of the corrective action plan in writing to:~~

~~(a) the [R]recipient LEA's administrators; [and]~~

~~(b) the respective LEA's governing board; and~~

~~(c) the charter school authorizer, if applicable.~~

~~[D-](7) The [State] Superintendent shall report to the Board monthly about the status of noncompliant [P]program [R]recipients.~~

R277-114-[4]5. Recipient Appeals.

~~(1) A [R]recipient may file an appeal to the Board of any adverse decision of the [State]Superintendent resulting from a corrective action plan [or withholding of funds]or penalty.~~

~~(2) An appeal must be made in writing and within 30 days of the date of the [State] Superintendent's action.~~

~~(3) The Board may:~~

~~(a) review the appeal as a full board; or~~

~~(b) refer the matter to the Board audit committee to make a recommendation to the Board for action.~~

KEY: programs, noncompliance, corrective action

Date of Enactment or Last Substantive Amendment: ~~[June 8, 2015]~~2017

Notice of Continuation: May 1, 2015

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

Education, Administration

R277-210

Utah Professional Practices Advisory Commission (UPPAC), Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41087

FILED: 12/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-210 is amended to update the definition of "National Association of State Directors of Teacher Education and Certification (NASDTEC) Educator

Information Clearinghouse" to include reporting on Board disciplinary action that results in an educator placed on probation and an educator receiving a letter of reprimand.

SUMMARY OF THE RULE OR CHANGE: The changes to Rule R277-210 update the definition of NASDTEC Educator Information Clearinghouse to include those educators being placed on probation or receiving a letter of reprimand.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The changes to Rule R277-210 provide for educators being placed on probation or receiving a letter of reprimand to be reported to the NASDTEC Educator Information Clearinghouse, which likely will not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: The changes to Rule R277-210 provide for educators being placed on probation or receiving a letter of reprimand to be reported to the NASDTEC Educator Information Clearinghouse, which likely will not result in a cost or savings to local government.

◆ SMALL BUSINESSES: The changes to Rule R277-210 provide for educators being placed on probation or receiving a letter of reprimand to be reported to the NASDTEC Educator Information Clearinghouse, which likely will not result in a cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The changes to Rule R277-210 provide for educators being placed on probation or receiving a letter of reprimand to be reported to the NASDTEC Educator Information Clearinghouse, 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 changes to Rule R277-210 provide for educators being placed on probation or receiving a letter of reprimand to be reported to the NASDTEC Educator Information Clearinghouse, which likely will not result in any compliance costs for affected persons.

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

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

EDUCATION

ADMINISTRATION

250 E 500 S

SALT LAKE CITY, UT 84111-3272

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

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

R277. Education, Administration.**R277-210. Utah Professional Practices Advisory Commission (UPPAC), Definitions.****R277-210-1. Authority and Purpose.**

- (1) This rule is authorized by:
 - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
 - (b) Section 53A-6-306, which directs the Board to adopt rules regarding UPPAC duties and procedures; and
 - (c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to establish definitions for terms in UPPAC activities.
- (3) The definitions contained in this rule apply to Rules R277-210 through R277-216.
- (b) Any calculation of time called for by these rules shall be governed by Utah R. Civ. P. 6.

R277-210-2. Definitions.

- (1)(a) "Action" means a disciplinary action taken by the Board adversely affecting an educator's license.
 - (b) "Action" does not include a disciplinary letter.
 - (c) "Action" includes:
 - (i) a letter of reprimand;
 - (ii) probation;
 - (iii) suspension; and
 - (iv) revocation.
 - (2) "Administrative hearing" or "hearing" has the same meaning as that term is defined in Section 53A-6-601.
 - (3) "Alcohol related offense" means:
 - (a) driving under the influence;
 - (b) alcohol-related reckless driving or impaired driving;
 - (c) intoxication;
 - (d) driving with an open container;
 - (e) unlawful sale or supply of alcohol;
 - (f) unlawful permitting of consumption of alcohol by minors;
 - (g) driving in violation of an alcohol or interlock restriction; and
 - (h) any offense under the laws of another state that is substantially equivalent to the offenses described in Subsections(3) (a) through (g).

(4) "Allegation of misconduct" means a written report alleging that an educator:

- (a) has engaged in unprofessional or criminal conduct;
- (b) is unfit for duty;
- (c) has lost the educator's license in another state due to revocation or suspension, or through voluntary surrender or lapse of a license in the face of a claim of misconduct; or
- (d) has committed some other violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.

(5) "Answer" means a written response to a complaint filed by the Executive Secretary alleging educator misconduct.

- (6) "Applicant" means a person seeking:
- (a) a new license;
 - (b) reinstatement of an expired, surrendered, suspended, or revoked license; or
 - (c) clearance of a criminal background review from Executive Secretary at any stage of the licensing process.

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

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

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

(10) "Complainant" means the Executive Secretary.

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

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

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

- (b) "Conviction" includes:
- (i) a finding of guilty by a judge or jury;
 - (ii) a guilty or no contest plea;
 - (iii) a plea in abeyance; and
 - (iv) for purposes of this rule, a conviction that has been expunged.

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

- (a) a charge revealed by a criminal background check;
- (b) a charge revealed by a hit as a result of ongoing monitoring; or
- (c) an educator or applicant's self-disclosure.

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

- (b) "Disciplinary letter" includes:
- (i) a letter of admonishment;
 - (ii) a letter of warning; and
 - (iii) any other action that the Board takes to discipline an educator for educator misconduct that does not rise to the level of an action as defined in this section.

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

(17) "Drug related offense" means any criminal offense under:

- (a) Title 58, Chapter 37;
 - (b) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
 - (c) Title 58, Chapter 37b, Imitation Controlled Substances Act;
 - (d) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;
 - (e) Title 58, Chapter 37d, Clandestine Drug Lab Act; and
 - (f) Title 58, Chapter 37e, Drug Dealer's Liability Act.
- Sections 58-37 through 37e.

(18) "Educator Misconduct" means:

- (a) unprofessional or criminal conduct;
- (b) conduct that renders an educator unfit for duty; or
- (c) conduct that is a violation of standards of ethical conduct, performance, or professional competence as provided in Rule R277-515.

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

- (a) Executive Secretary;
- (b) Chair;
- (c) Vice-Chair; and
- (d) one member of UPPAC at large.

(20) "Executive Secretary" means:

(a) an employee of the Board who:

- (i) is appointed by the Superintendent to serve as the UPPAC Director; and

(ii) serves as a non-voting member of UPPAC, consistent with Section 53A-6-302; or

(b) the Executive Secretary's designee.

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

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

- (a) the Executive Secretary;
- (b) a voting member of UPPAC; and
- (c) a UPPAC attorney.

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

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

(25) "Hearing officer" means a licensed attorney who:

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

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

(c) is not an acting member of UPPAC;

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

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

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

(a) hear evidence presented at a hearing;

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

and

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

(27) "Hearing report" means a report that:

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

(b) includes:

(i) a recommended disposition;

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

(iii) applicable law and rule.

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

(29) "Investigator" means an employee of the Board, or independent investigator selected by the Board, who:

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

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

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

(d) may also be a UPPAC attorney but does not have to be.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(a) had their license suspended or revoked;~~

~~(b) have been placed on probation; or~~

~~(c) have received a letter of reprimand.~~

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

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

(40) "Petitioner" means an individual seeking:

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

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

(41) "Probation" is an action directed by the Board that:

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

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

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

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

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

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

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

(a) a complaint is filed; or

(b) an investigation is undertaken.

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

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

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

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

(46) "Stipulated agreement" means an agreement between a respondent and the Board:

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

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

(i) when approved by the Board; and

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

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

(47)(a) "Suspension" means an invalidation of a Utah educator license.

(b) "Suspension" may:

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

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

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

(49) "UPPAC Attorney File" means a file:

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

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

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

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

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

(a) contains information obtained from:

(i) BCI; and

(ii) letters, police reports, court documents, and other materials as provided by an educator; and

(b) is classified as private under Subsection 63G-2-302(2).

(51) "UPPAC Case File" means a file:

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

(b) opened following UPPAC's direction to investigate alleged misconduct;

(c) that contains the original notification of misconduct with supporting documentation, correspondence with the Executive Secretary, the investigative report, the stipulated agreement, the hearing report, and the final disposition of the case;

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

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

(52) "UPPAC Evidence File" means a file:

(a) maintained by the attorney assigned by UPPAC to investigate a case containing materials, written or otherwise,

obtained by the UPPAC investigator during the course of the attorney's investigation;

(b) that contains correspondence between the Investigator and the educator or the educator's counsel;

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

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

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

KEY: professional practices, definitions, educators

Date of Enactment or Last Substantive Amendment: ~~August 12, 2016~~ **2017**

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

Education, Administration R277-211-6 Proposed Consent to Discipline

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41088

FILED: 12/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-211 is amended to provide Board disciplinary action that results in an educator placed on probation and an educator receiving a letter of reprimand to be included for notification and reporting purposes.

SUMMARY OF THE RULE OR CHANGE: The changes to Rule R277-211 update the rule to include, in the notification and reporting requirements, those educators being placed on probation or receiving a letter of reprimand.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The changes to R277-211 provide for those educators being placed on probation or receiving a letter of reprimand to be included in notification and reporting requirements, which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The changes to Rule R277-211 provide for those educators being placed on probation or receiving a letter of reprimand to be included in notification and reporting requirements, which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The changes to Rule R277-211 provide for those educators being placed on probation or receiving a letter of reprimand to be included in notification and reporting requirements, which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The changes to Rule R277-211 provide for those educators being placed on probation or receiving a letter of reprimand to be included in notification and reporting requirements, 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 changes to Rule R277-211 provide for those educators being placed on probation or receiving a letter of reprimand to be included in notification and reporting requirements, which likely will not result in any compliance costs for affected persons.

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

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

EDUCATION

ADMINISTRATION

250 E 500 S

SALT LAKE CITY, UT 84111-3272

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

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

R277. Education, Administration.

R277-211. Utah Professional Practices Advisory Commission (UPPAC), Rules of Procedure: Notification to Educators, Complaints and Final Disciplinary Actions.

R277-211-6. Proposed Consent to Discipline.

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

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

(3) At a minimum, the Executive Secretary shall include the following in a proposed consent to discipline:

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

(b) a statement that the respondent admits the facts recited in the proposed consent to discipline as true for purposes of the Board administrative action;

(c) a statement that the respondent:

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

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

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

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

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

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

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

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

(B) satisfies other provisions provided in the proposed consent to discipline;

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

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

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

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

(j) a statement that a violation of the terms of an approved consent to discipline may result in additional disciplinary action and may affect the reinstatement process; and

(k) a statement that the educator understands that the Board is not bound by UPPAC's recommendation or the negotiated proposed stipulated agreement unless the Board approves the proposed consent to discipline.

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

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

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

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

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

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

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

(5) If the respondent accepts a consent to discipline with alternative terms and disposition proposed by the Board, the consent to discipline, as modified, is a final Board administrative action without further Board consideration.

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

(7) If the Board remands to UPPAC to provide respondent the opportunity for a hearing under Subsection (4)(b)(i) (B), the Executive Secretary shall:

(a) notify the parties of the decision;

(b) direct a UPPAC attorney to issue a complaint; and

(c) direct the proceedings as if the proposed consent to discipline had not been submitted.

(8) If the Board approves a proposed consent to discipline, the approval is a final Board administrative action and the Executive Secretary shall:

(a) notify the parties of the decision;

(b) update CACTUS to reflect the action;

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

(i) a revocation; ~~or~~

(ii) a suspension;

(iii) probation; or

(iv) a letter of reprimand

(d) direct the appropriate penalties to begin; and

(e) notify the LEAs throughout the state.

KEY: teacher licensing, conduct, hearings

Date of Enactment or Last Substantive Amendment: ~~[August 12, 2016]~~**2017**

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

Education, Administration
R277-212
 UPPAC Hearing Procedures and
 Reports

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41089

FILED: 12/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-212 is amended to provide Board disciplinary action that results in an educator placed on probation and an educator receiving a letter of reprimand to be included for notification and reporting purposes.

SUMMARY OF THE RULE OR CHANGE: The changes to Rule R277-212 update the rule to include, in the notification and reporting requirements, those educators being placed on probation or receiving a letter of reprimand.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The changes to Rule R277-212 provide for those educators being placed on probation or receiving a letter of reprimand to be included in notification and reporting requirements, which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The changes to Rule R277-212 provide for those educators being placed on probation or receiving a letter of reprimand to be included in notification and reporting requirements, which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The changes to R277-212 provide for those educators being placed on probation or receiving a letter of reprimand to be included in notification and reporting requirements, which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The changes to Rule R277-212 provide for those educators being placed on probation or receiving a letter of reprimand to be included in notification and reporting requirements, 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 changes to Rule R277-212 provide for those educators being placed on probation or receiving a letter of reprimand to be included in notification and reporting requirements, which likely will not result in any compliance costs for affected persons.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

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

R277. Education, Administration.

R277-212. UPPAC Hearing Procedures and Reports.

R277-212-2. Scheduling a Hearing.

(1)(a) Following receipt of an answer by respondent requesting a hearing, or at the direction of the Board to give the respondent an opportunity to have a hearing:

(i) UPPAC shall select panel members;

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

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

(b) The Executive Secretary shall schedule a hearing for a date that is not less than 45 days nor more than 180 days from the date the Executive Secretary receives the answer unless otherwise stipulated by the parties.

(c) The required scheduling periods may be waived by mutual written consent of the parties or by the hearing officer for good cause shown.

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

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

(ii) be submitted to the hearing officer at least five days prior to the scheduled date of the hearing.

(b) The hearing officer shall determine whether the reason stated in the request is sufficient to warrant a change.

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

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

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

(3) An educator is entitled to a hearing on any matter in which an action is recommended.

(4) An educator is not entitled to a hearing on a matter in which a disciplinary letter is recommended.

R277-212-3. Appointment and Duties of the Hearing Officer and Hearing Panel.

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

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

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

(d) A hearing officer:

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

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

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

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

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

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

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

(e)[b] The majority of panel members shall be current UPPAC members.

~~(c) As directed by UPPAC, a licensed educator or member of the community may serve as a panel member, if needed.~~

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

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

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

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

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

(4)(a) A UPPAC panel member shall:

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

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

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

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

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

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

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

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

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

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

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

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

(6)(a) The Executive Secretary shall review a request described in Subsection (5) and supporting evidence to determine whether the reasons for the request are substantial and compelling.

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

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

(8)(a) If the Executive Secretary denies a request to disqualify a hearing officer described in Subsection (5), the Executive Secretary shall notify the party within ten days prior to the date of the hearing.

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

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

(d) The decision of the Superintendent described in Subsection (8)(c) is final.

(e) If a party fails to file an appeal within the time requirements of Subsection (8)(b), the appeal shall be deemed denied.

(f) If the Executive Secretary fails to meet the time requirements described in Subsection (6) or (8), the request or appeal is approved.

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

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

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

(c) A party shall submit a request described in Subsection (9)(b) no less than 15 days before a scheduled hearing.

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

(i) review a request described in Subsection (9)(b) and supporting evidence to determine whether the reasons for the request are substantial and compelling enough to disqualify the panel member; and

(ii) if the reasons for the request described in Subsection (9)(b) are substantial and compelling, disqualify the panel member.

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

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

(f) If a request described in Subsection (9)(b) is denied, the hearing officer or the Executive Secretary if there is no hearing officer, shall notify the party requesting the panel member's disqualification no less than ten days prior to the date of the hearing.

(g) The requesting party may file a written appeal of a denial described in Subsection (9)(f) with the Superintendent no later than five days prior to the hearing date.

(h) If the Superintendent finds that an appeal described in Subsection (9)(g) is justified, the Superintendent shall direct the hearing officer or the Executive Secretary if there is no hearing officer, to replace the panel member.

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

(j) The decision of the Superintendent described in Subsection (9)(h) is final.

(k) If a party fails to file an appeal within the time requirements of Subsection (9)(g), the appeal shall be deemed denied.

(l) If the hearing officer, or the Executive Secretary if there is no hearing officer, fails to meet the time requirements described in this Subsection (9), the request or appeal is approved.

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

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

R277-212-13. Hearing Report.

(1) Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials as permitted by the hearing officer, the hearing officer shall sign and issue a hearing report consistent with the recommendations of the panel that includes:

(a) detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted;

- (b) a statement of relevant precedent, if available;
- (c) a statement of applicable law and rule;
- (d) presumptions applied by UPPAC;
- (e) mitigating and aggravating circumstances considered by UPPAC;

(f) a recommended disposition of UPPAC panel members that shall be one or an appropriate combination of the following:

- (i) dismissal of the complaint;
- (ii) letter of admonishment;
- (iii) letter of warning;
- (iv) letter of reprimand;
- (v) probation, to include the following terms and conditions:

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

- (B) a recommended minimum probationary time;
- (C) conditions that can be monitored;
- (D) if recommended by the panel, a person or entity to monitor a respondent's probation;
- (E) a statement providing for costs of probation, if appropriate; and
- (F) whether or not the respondent may work in any capacity in public education during the probationary period;

- (vi) disciplinary action held in abeyance;
- (vii) suspension, to include the following terms and conditions:

(A) a recommended minimum time period consistent with R277-215 after which an educator may request a reinstatement hearing under Rule R277-213; and

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

(viii) revocation; and

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

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

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

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

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

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

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

- (i) as soon as possible after receiving the report; and
- (ii) prior to the 20 day completion deadline of the hearing report.

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

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

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

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

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

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

(i) there are no significant procedural errors;

(ii) the hearing officer's recommendations are based upon a preponderance of the evidence presented at the hearing; and

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

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

(i) the Board for further action;

(ii) the respondent; and

(iii) the UPPAC case file.

(6)(a) If UPPAC adopts a hearing report that recommends an action, as defined in Subsection R277-210-2(1), either party may request review by the Superintendent within 15 days from the date the Executive Secretary sends a copy of the hearing report to the respondent.

(b) The request for review shall consist of:

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

(ii) the issue being appealed; and

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

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

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

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

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

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

(i) notify all parties; and

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

(7) If the Board does not approve a UPPAC hearing report, the Board may:

(a) remand the case to UPPAC with direction to cure due process issues; or

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

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

(i) specifying the reasons, including presumptions and the mitigating and aggravating circumstances the Board considered, why the Board disapproves of the hearing report;

(ii) adopting the Board's decision on the matter; and

(iii) directing the Executive Secretary to include the findings as an addendum to the hearing report, which findings constitute final Board action; or

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

(8) Following Board adoption of a hearing report or the Board's decision under Subsection (7)(b), the Executive Secretary shall:

(a) notify the educator;

(b) notify the educator's employer;

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

(d) report the action to the NASDTEC Educator Information Clearing house if the action results in:

(i) a revocation;~~[-or]~~

(ii) a suspension~~[-];~~

(iii) probation; or

(iv) a letter of reprimand.

(9) The hearing report is a public document under Title 63G, Chapter 2, Government Records Access and Management Act after final action is taken in the case, but may be redacted if it is determined that the hearing report contains particular information, the dissemination of which is otherwise restricted under the law.

(10) A respondent's failure to comply with the terms of a final disposition may result in additional discipline against the educator license.

(11) If a hearing officer fails to satisfy the hearing officer's responsibilities under this rule, the Executive Secretary may:

(a) notify the Utah State Bar of the failure;

(b) reduce the hearing officer's compensation consistent with the failure;

(c) take timely action to avoid disadvantaging either party; or

(d) preclude the hearing officer from further employment by the Board for UPPAC purposes.

(12) The Executive Secretary may waive the deadlines within this section if the Executive Secretary finds good cause.

(13) All criteria of letters of warning and reprimand, probation, suspension, and revocation apply to the comparable sections of the final hearing report.

R277-212-16. Rights of Victims at Hearings.

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

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

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

(c) notify the alleged victim of the right to attend the hearing alone or with a victim advocate present.

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

(3) An alleged victim or witness may have a criminal justice victim advocate or support person attend the hearing with them.

KEY: hearings, reports, educators

Date of Enactment or Last Substantive Amendment: [~~August 12, 2016~~2017]

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

Education, Administration
R277-409
Public School Membership in
Associations

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 41090

FILED: 12/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-409 is amended to provide provisions for student transfers and appeals of association hearing determinations.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-409 provide two new sections. Section R277-409-4 provides procedures for transferring student eligibility to participate in association activities, and Section R277-409-5 provides procedures for appeals of association actions.

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

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The amendments to Rule R277-409 provide provisions for transferring student eligibility and appeals of association actions, which likely will not result in a cost or savings to the state budget.

♦ LOCAL GOVERNMENTS: The amendments to Rule R277-409 provide provisions for transferring student eligibility and appeals of association actions, which may result in a cost to public schools. The cost is speculative.

♦ SMALL BUSINESSES: The amendments to Rule R277-409 provide provisions for transferring student eligibility and appeals of association actions, 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 R277-409 provide provisions for

transferring student eligibility and appeals of association actions, which may result in a cost to an association that governs public education interscholastic activities if a public school is a member of the association. The cost is speculative.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to Rule R277-409 provide provisions for transferring student eligibility and appeals of association actions, which likely will not result in any compliance costs for affected persons.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

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

R277. Education, Administration.

R277-409. Public School Membership in Associations.

R277-409-1. 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 place limitations on public school membership in certain associations with rules or policies that conflict with Board policies.

R277-409-2. Definitions.

(1) "Association" means an organization that governs or regulates a student's participation in an interscholastic activity.

(2) "Eligibility" means eligibility to participate in an association-sponsored interscholastic activity.

([2]3) "Interscholastic activity" means an activity within the state in which the students that participate represent a school in the activity.

([3]4) "Recruiting" means a solicitation or conversation:

(a) initiated by:

(i) an employee of a school or school district;

(ii) a coach or advisor of an interscholastic activity; or

(iii) a member of a booster, alumni, or other organization that performs a substantially similar role as a booster organization, affiliated with a school or school district; and

(b) to influence a student, or the student's relative or legal guardian, to transfer to a school for the purpose of participating in an interscholastic activity at the school.

R277-409-3. Membership Restrictions.

(1) Beginning with the 2017-2018 school year, a public school may not be a member of, or pay dues to an association that adopts rules or policies that are inconsistent with this R277-409[~~3~~].

(2) An association shall permit the Board to audit the association's:

(a) financial statements; and

(b) compliance with Utah Code, Board rule, and the association's bylaws, policies, rules, and best practices.

(3) An association may not treat similarly situated schools differently in the association's designation of division classifications, or in applying other association policies, based solely on the school's status as a charter school or district public school.

(4) An association may sanction a school, coach, or individual who oversees or works with students as part of an interscholastic activity of a public school if the association finds that the coach or individual:

(a) engaged in recruiting activities; or

(b) violated any other rule or policy of the association.

(5) An association shall establish a policy or rule to govern the association's use of student data that complies with the student data privacy requirements of:

(a) FERPA;

(b) Title 53A, Chapter 1, Part 14, Student Data Protection Act;

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

(d) R277-484.

(6) An association shall establish policies or rules that require:

(a) coaches and individuals who oversee interscholastic activities or work with students as part of an interscholastic activity to meet a set of professional standards that are consistent with the Utah Educator Professional Standards described in Rule R277-515; and

(b) the association or public school to annually train each coach or other individual who oversees or works with students as part of an interscholastic activity of a public school on the following:

(i) child sexual abuse prevention as described in Section 53A-13-112;

(ii) the prevention of bullying, cyber-bullying, hazing, harassment, and retaliation as described in:

(A) Title 53A, Chapter 11a, Bullying and Hazing; and

(B) R277-613; and

(iii) the professional standards described in Subsection

(6)(a).

(7) An association shall establish procedures and mechanisms to:

(a) monitor LEA compliance with the association's training requirements described in Subsection (6);

(b) sanction individuals who violate the association's professional standards described in Subsection (6)(a);

(c) track individuals who violate the association's standards described in Subsection (6)(a); and

(d) prohibit individuals who have violated the association's standards described in Subsection (6)(a) from coaching, overseeing, or working with students as part of an interscholastic activity.

(8) An association shall establish a policy or rule that requires the association to follow requirements similar to the requirements of:

(a) Title 52, Chapter 4, Open and Public Meetings Act; and

(b) Title 63G, Chapter 2, Government Records Access and Management Act.

R277-409-4. Transferring Student Eligibility to Participate in Association Activities.

(1) An association may not deny a student eligibility to participate in an interscholastic activity except as provided in Subsection (2).

(2)(a) After a student has established eligibility to participate in an interscholastic activity at a school at the varsity level, an association shall deny the student's eligibility to participate in that interscholastic activity at the varsity level for up to twelve months at a new school.

(b) In the case of a subsequent transfer by the student after a transfer described in Subsection (2)(a), an association shall deny the student's eligibility to participate at the varsity level in any interscholastic activity for twelve months from the date of the student's first attendance at a new school.

(3) Notwithstanding Subsection (2), an association may not deny a student eligibility to participate in an interscholastic activity at the varsity level if:

(a) the student's full family moves outside of the boundaries of the originating school;

(b) the student's transfer to the new school is a result of a death in the family, which requires the student to move from the student's original residence;

(c) the student's transfer to the new school is a result of a divorce, which requires the student to move from the student's original residence;

(d) the student moves to live with an individual who has legal or physical custody of the student; or

(e)(i) the student has been a victim of bullying; and

(ii) the bullying was reported, documented, and investigated by the school or law enforcement.

(4) If an association denies a student's eligibility to participate in an interscholastic activity at the varsity level as

described in Subsection (3), the association shall issue a written decision, with supported findings, explaining the reasons why the student's eligibility to participate at the varsity level at the new school was denied.

R277-409-5. Appeals of Association Actions.

- (1) An association shall establish:
- (a) a uniform procedure for hearing and deciding:
 - (i) disputes;
 - (ii) questions;
 - (iii) allegations of violations of the association's rules;
 - and
 - (iv) other issues related to interscholastic activities governed by the association;
- (b) an appeals process to review association decisions on issues described in Subsections (1)(a)(i) through (iv) to determine whether the association properly followed the association's rules and procedures; and
- (c) an appeal panel, with members as described in Subsection (2), to conduct the appeals process.
- (2) The appeal panel shall consist of the following three members, appointed by the Board, who will serve a one year term:
- (a) a judge or attorney who is not employed by, or contracts with a school;
 - (b) a retired educator, principal, or superintendent; and
 - (c) a retired athletic director or coach.
- (3) The Board shall appoint the members of the appeal panel described in Subsection (2):
- (a) from the association's nominations described in Subsection (4); and
 - (b) in accordance with the Board's appointment process.
- (4)(a) The association shall nominate up to 3 individuals for each position described in Subsection (2) for the Board's consideration.
- (b) If the Board refuses to appoint members to the panel who were nominated by the association as described in Subsection (4)(a), the Board will request additional nominations from the association.

KEY: schools, memberships, associations

Date of Enactment of Last Substantive Amendment:
[2016]2017

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

Education, Administration

R277-425

Budgeting, Accounting, and Auditing for Utah Local Education Agencies (LEAs)

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 41091

FILED: 12/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-425 is repealed and the provisions of Rule R277-425 are incorporated into amended Rule R277-113. (Editor's Note: The proposed amendment of Rule R277-113 is under filing No. 41073 in this issue, January 1, 2017, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-425 specifies uniform budgeting, accounting, and auditing procedures for LEAs consistent with Generally Accepted Accounting Principles (GAAP) and Generally Accepted Auditing Standards (GAAS). These provisions are moved to Rule R277-113; therefore, the rule is being repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-1-404 and Section 53A-1-405 and Subsection 53A-1-402(1)(e)(iv)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The provisions from this repealed rule are moved to Rule R277-113, which likely will not result in a cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** The provisions from this repealed rule are moved to Rule R277-113, which likely will not result in a cost or savings to local government.

♦ **SMALL BUSINESSES:** The provisions from this repealed rule are moved to Rule R277-113, which likely will not result in a cost or savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The provisions from this repealed rule are moved to Rule R277-113, 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 provisions from this repealed rule are moved to Rule R277-113, which likely will not result in any compliance costs for affected persons.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

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

R277. Education, Administration.**~~[R277-425. Budgeting, Accounting, and Auditing for Utah Local Education Agencies (LEAs).~~****~~R277-425-1. Definitions.~~**

~~_____ A. "Accrual accounting" means a basis of accounting that measures the performance of an entity by recognizing economic events regardless of when cash transactions occur. Economic events are recognized by matching revenues to expenses at the time in which the transaction occurs rather than when payment is made.~~

~~_____ B. "Board" means the Utah State Board of Education.~~

~~_____ C. "FASB" means the Financial Accounting Standards Board that has legal authority to establish financial accounting and reporting standards (GAAP) for publicly held companies and nonprofit organizations.~~

~~_____ D. "GAAP" means Generally Accepted Accounting Principles, as defined in the Codification of Governmental Accounting and Financial Reporting Standards, as published by the Governmental Accounting Standards Board.~~

~~_____ E. "GAAS" means auditing standards established by the American Institute of Certified Public Accountants, generally referred to as Generally Accepted Auditing Standards.~~

~~_____ F. "GASB" means the Governmental Accounting Standards Board that is the source of generally accepted accounting principles (GAAP) used by state and local governments in the United States.~~

~~_____ G. "LEA" means local education agency which includes school districts and charter schools.~~

~~_____ H. "Modified accrual accounting" means a basis of accounting, commonly used by government agencies, that recognizes revenues when they become available and measurable and, recognizes expenditures when liabilities are incurred.~~

~~_____ I. "Non-operating LEA" means an LEA that has not received minimum school program funds or federal funds and is not providing educational services during a fiscal year, such as an LEA in a start-up year(s).~~

~~_____ J. "Operating LEA" means an LEA that has received state minimum school program funds or federal funds and is providing educational services during a fiscal year.~~

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

R277-425-2. Authority and Purpose.

~~_____ A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision over public~~

~~education in the Board, Section 53A-1-402(1)(c)(iv) which allows the Board to adopt rules regarding financial, statistical, and student accounting requirements, Section 53A-1-404 which allows the Board to approve auditing standards for school boards, Section 53A-1-405 which requires the Board to verify accounting procedures of school boards for the purpose of determining the allocation of Uniform School Funds, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.~~

~~_____ B. The purpose of this rule is to specify uniform budgeting, accounting, and auditing procedures for LEAs consistent with Generally Accepted Accounting Principles (GAAP) and Generally Accepted Auditing Standards (GAAS).~~

R277-425-3. LEA Audit Requirements.

~~_____ A. An operating LEA shall cause an audit to be made of its accounts by a competent, independent certified public accountant. Utah Code Section 51-2a-201-1 requires audits for an entity whose revenues or expenditures of all funds is \$500,000 or more. Section 51-2a-201-2 require an entity whose revenues or expenditures of all funds less than \$500,000 cause a financial report to be made in a manner prescribed by the state auditor. The state auditor provides for external parties to require audits of their entities.~~

~~_____ B. A non-operating LEA shall cause a financial report to be made consistent with Utah Code section 51-2a-201.~~

R277-425-4. Reporting Standards.

~~_____ A. Each LEA's financial reporting shall be in accordance with GAAP which include GAAS.~~

~~_____ B. LEA's financial reporting shall be provided in a manner consistent with the basis of accounting as determined by the entity's GAAP, consistent with either GASB or FASB. If FASB standards are followed, the LEA shall provide reconciliation between the accrual basis of accounting and modified accrual basis of accounting.~~

~~_____ C. LEAs shall provide data and information consistent with School Finance budgeting, accounting and auditing standards for Utah LEAs provided online by the Utah State Office of Education, October, 2013 and reviewed annually. The USOE School Finance website contains applicable Utah statutes, applicable Board rules, and uniform rules for:~~

- ~~_____ (1) budgeting;~~
- ~~_____ (2) financial accounting which includes a chart of accounts for LEAs required under Section 53A-1-301(3)(d)(v);~~
- ~~_____ (3) student membership and attendance accounting;~~
- ~~_____ (4) indirect costs and proration;~~
- ~~_____ (5) financial audits;~~
- ~~_____ (6) statistical audits; and~~
- ~~_____ (7) compliance and performance audits.~~

~~_____ D. Section 53A-19-103 allows LEAs to have an undistributed reserve not to exceed five percent of the LEA general fund budgeted expenditures. The purpose of the reserve is to meet unexpected and unspecified contingencies.~~

KEY: education finance

Date of Enactment or Last Substantive Amendment: October 8, 2013

~~Notice of Continuation: August 2, 2013
Authorizing, and Implemented or Interpreted Law: 53A-1-402(1)(c); 53A-1-404; 53A-1-405; 53A-1-401(3); Art X Sec 3]~~

Education, Administration
R277-521
National Board Certification
Reimbursement

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41075

FILED: 12/13/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule is in response to H.B. 331, Education Provisions, passed during the 2016 General Session. The new rule provides procedures and timelines for reimbursing eligible educators for the cost to attain or renew a National Board certification.

SUMMARY OF THE RULE OR CHANGE: This new Rule R277-521 provides definitions and application procedures for an eligible educator to be reimbursed costs paid to attain or renew a National Board certification.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-6-114

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This new Rule R277-521 provides procedures for an educator to be reimbursed for costs to attain or renew a National Board certification, which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** This new Rule R277-521 provides procedures for an educator to be reimbursed for costs to attain or renew a National Board certification, which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** This new Rule R277-521 provides procedures for an educator to be reimbursed for costs to attain or renew a National Board certification, which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Educators who attain or renew a National Board certification will be reimbursed the cost, subject to legislative appropriation and on a first-come, first-served basis.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This new Rule R277-521 provides procedures for an educator to be reimbursed for costs to attain or renew a National Board

certification, which likely will not result in any compliance costs for affected persons.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

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

R277. Education, Administration.

R277-521. National Board Certification Reimbursement.

R277-521-1. 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-6-114, which requires the Board to make rules to specify procedures and timelines for reimbursing educators for the cost to attain or renew a National Board certification.

(2) The purpose of this rule is to specify procedures and timelines for reimbursing educators for the cost to attain or renew a National Board certification.

R277-521-2. Definitions.

(1) "Eligible educator" means an educator who holds a current National Board certification attained or renewed:

(a) after July 1, 2016; and

(b) while employed as an educator by an LEA in Utah.

(2) "Local education agency" or "LEA" means:

(a) a school district;

(b) a charter school; or

(c) the Utah Schools for the Deaf and the Blind.

(3) "National Board certification" means the same as that term is defined in Section 53A-6-103.

R277-521-3. Application Procedures.

- (1) The Superintendent shall establish and maintain an online application system for National Board certification reimbursements.
- (2) To receive reimbursement for the costs an eligible educator paid to attain or renew a National Board certification, an eligible educator shall submit an application through the application system established under Subsection (1).
- (3)(a) For fiscal year 2017, the Superintendent shall publicize the date on which applications may be submitted.
- (b) For fiscal year 2018 and each succeeding fiscal year, the application window is July 1 to June 30.
- (4)(a) Subject to legislative appropriations, the Superintendent shall reimburse eligible educators on a first come, first served basis until funds appropriated for National Board certification reimbursements are exhausted for that fiscal year.
- (b) The amount appropriated for National Board certification reimbursements is \$88,300.
- (c) If funds are insufficient to reimburse all eligible educators who apply in any given fiscal year, subject to legislative appropriations, the Superintendent shall reimburse eligible educators who did not receive reimbursement the previous fiscal year on a first come, first served basis.
- (d) The Superintendent may only reimburse an eligible educator for costs the eligible educator paid to attain or renew a National Board certification.

KEY: eligible educator, National Board certification
Date of Enactment of Last Substantive Amendment: 2017
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53A-6-114

Education, Administration
R277-526
 Paraeducator to Teacher Scholarship
 Program

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 41092
 FILED: 12/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-526 is amended to provide changes that clarify Utah State Board of Education (Board) involvement in the scholarship committee and provide additional criteria to determine funding for applicants. Changes have also been made in accordance with the Rulewriting Style Manual.

SUMMARY OF THE RULE OR CHANGE: The changes to Rule R277-526 provide revised definitions, clarification of

Board involvement in the scholarship committee, and add additional criteria for determining funding for applicants. Technical and conforming changes are also provided throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Subsection 53A-6-802(8)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The amendments to Rule R277-526 are procedural and for clarification purposes, which likely will not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: The amendments to Rule R277-526 are procedural and for clarification purposes, which likely will not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: The amendments to Rule R277-526 are procedural and for clarification purposes, 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 R277-526 are procedural and for clarification purposes, 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 R277-526 are procedural and for clarification purposes, which likely will not result in any compliance costs for affected persons.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

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

R277. Education, Administration.**R277-526. Paraeducator to Teacher Scholarship Program.****R277-526-[2]1. Authority and Purpose.**

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

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

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

~~(c)~~ Subsection 53A-6-802(8), which requires the Board to make rules to administer the Paraeducator to Teacher Scholarship Program.

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

~~(a)~~ distribute funds to paraeducators seeking to become licensed educators; and

~~(b)~~ ~~[to—]~~establish application and accountability procedures to provide funding to prospective educators directly and fairly.

R277-526-[4]2. Definitions.

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

~~[B-](1)~~ "LEA" ~~[means a local education agency, including local school boards/public school districts, charter schools, and]~~includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

~~[C-](2)~~ "Paraeducator" ~~[for purposes of this rule means a school employee who:~~

~~(1)~~ delivers instruction under the direct supervision of a teacher; and

~~(2)~~ works in an area where there is a shortage of qualified teachers, such as special education, Title I, English as a Second Language, reading remediation, math, or science.] means the same as that term is defined in Section 53A-6-801.

~~[D-](3)~~ "Paraeducator Scholarship Selection Committee" or ~~[(C-)"committee"]~~ means the committee established by the Board to select scholarship recipients as required by Subsection 53A-6-802(4).

~~[E-](4)~~ "Scholarship" ~~[for purposes of this rule—]means funds provided by the Board—paid directly to a Utah institution of higher education on behalf of [the]a paraeducator [to pay only for the actual and documented costs for tuition toward an associate's or a bachelor's degree program to become a licensed teacher.]in accordance with Section 53A-6-802.~~

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

R277-526-3. Scholarship Amounts and Requirements.

~~[A-](1)~~ A paraeducator shall use a stipend awarded under this rule ~~[shall be used—]solely [and completely—]for expenses approved by Section 53A-6-802 and this rule annually between July 1 and the following June 30.~~

~~[B-](2)~~ A scholarship recipient shall remain continuously employed~~[, consistent with the employment agreement and]by an LEA in accordance with Subsection 53A-6-802(7).~~

~~[C-](3)~~ A scholarship recipient shall provide documentation of progress toward graduation, as requested by the scholarship recipient's employer or the Board.

~~[D-](4)~~ A scholarship recipient who does not remain employed for the duration of the scholarship period or who does not

satisfactorily complete funded courses ~~[may]shall~~ be responsible to reimburse the Board for the amount of scholarship funding.

~~[E-]~~ The Committee shall determine funding for applicants from applications received from LEAs after considering the number of applications received and the amount of funding available.

~~[F-]~~ The Committee may develop and consider selection criteria including:

~~(1)~~ support from the recommending LEA; and

~~(2)~~ geographical distribution of recipients.]

R277-526-4. Applicant Scholarships Recipient and LEA Responsibilities.

~~[A-](1)~~ An LEA shall employ a ~~[S]~~Sscholarship recipient[s] shall be employed] for a minimum of 10 hours per week ~~[by a public LEA—]at the time of application for the [Paraeducator-S]scholarship and during any year in which the paraeducator receives the scholarship.~~

~~[B-](2)~~ A ~~[S]~~Sscholarship applicant[s] shall submit a completed application[s] found on the ~~[USOE—]Board~~ website to the~~[ir employers']~~ applicant's LEA.

~~[C-](3)~~ An ~~[A-]~~Aapplicant[s] shall provide university transcripts and information about tuition expenses ~~[only—]on the [completed—]application based on the most recent information available from the Utah institution of higher education to which the applicant has either been admitted or made application.~~

~~[D-](4)~~ An LEA[s] shall submit all applications to the ~~[USOE]Superintendent~~ on or before May 15 annually.

~~[E-](5)~~ A ~~[S]~~Sscholarship recipient[s] and the LEA[s] whose employee[s] receives funding under this program shall cooperate on any assessment required by the Board.

R277-526-5. State Board of Education Staff/Committee Responsibilities.

~~[A-]~~ The Board shall establish a Paraeducator Scholarship Selection Committee and working procedures for the Committee consistent with 53A-6-802(4) by May 15, 2008.]

~~[B-](1)~~ The ~~[C-]~~committee shall consist of:

~~(1)a)~~ one representative of the Board ~~[member—]~~designated by the Board;

~~(2)b)~~ one representative of the Board of Regents designated by the Board of Regents;

~~(3)c)~~ one representative of the largest parent/teacher association in the state;

~~(4)d)~~ no more than two additional representatives of the general public designated by the Board~~[—consistent with Section 53A-6-802(4)].~~

~~[C-](2)~~ The ~~[C-]~~committee shall receive completed applications from LEAs consistent with R277-526-4.

~~(3)~~ The committee shall determine funding for applicants from applications received from LEAs after considering the number of applications received and the amount of funding available.

~~(4)~~ The committee may develop and consider additional selection criteria including:

~~(a)~~ support from the recommending LEA; and

~~(b)~~ geographical distribution of recipients.

~~[D-](5)~~ The ~~[C-]~~committee shall provide names of scholarship recipients to the Board for review and comment by August 1, annually.

[E-](6) The [€]committee or the Board may require a summary assessment of the increased number of paraeducators who become educators and other program results from participating scholarship recipients and LEAs.

KEY: paraeducators, scholarships

Date of Enactment or Last Substantive Amendment: [April 7, 2014]2017

Notice of Continuation: August 2, 2013

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-6-802(8)

Education, Administration

R277-602

Special Needs Scholarships - Funding and Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41093

FILED: 12/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-602 is amended to clarify provisions for student and private school eligibility for participation in the Special Needs Scholarship Program.

SUMMARY OF THE RULE OR CHANGE: The responsibilities of parents, local education agencies, the Utah State Board of Education, and private schools that receive special needs scholarship funding are amended to clarify program requirements. Technical and conforming changes are also made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-1a-707

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The changes to Rule R277-602 are for clarification purposes, which likely will not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** The changes to Rule R277-602 are for clarification purposes, which likely will not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** The changes to Rule R277-602 are for clarification purposes, which likely will not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The changes to Rule R277-602 are for clarification purposes, 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 changes to Rule R277-602 are for clarification purposes, which likely will not result in any compliance costs for affected persons.

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

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

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

R277. Education, Administration.

R277- 602. Special Needs Scholarships - Funding and Procedures.

R277-602-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of the public school system under 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

~~[(b) Subsection 53A-1a-706(5)(b), which provides for Board rules to establish timelines for payments to private schools;~~

~~(c) Title 53A, Chapter 15, Part 15, Background Checks, which provides for criminal background checks and ongoing monitoring for employees and volunteers;~~

~~[(d)c] Section 53A-1a-707, which [provides for Board rules about]authorizes the Board to make rules establishing:~~

~~(i) the eligibility of students[for scholarships and the application process for students] to participate in the scholarship program; and~~

~~(ii) the application process for the scholarship program.~~

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

(2) The purpose of this rule is to:

(a) outline responsibilities of a parent, an LEA, ~~and~~ an eligible private school, ~~[that accepts a scholarship from a special needs student]~~ and the Board in providing choice for a parent of a special needs student who chooses to have a student served in a private school; and

(b) provide accountability for the citizenry in the administration and distribution of the scholarship funds.

R277-602-2. Definitions.

(1) "Appeal" means an opportunity to discuss or contest a final administrative decision consistent with and expressly limited to the procedures of this rule.

(2) "Appeals Committee" means a committee comprised of:

- (a) the special needs scholarship coordinator;
- (b) the ~~[USOE]~~ Board's Special Education Director;
- (c) one individual appointed by the Superintendent ~~[or designee]~~; and
- (d) two Board-designated special education advocates.

(3) "Assessment" means a formal testing procedure carried out under prescribed and uniform conditions that measures a student's academic progress, consistent with Subsection 53A-1a-705(1)(f).

(4) "Assessment team" means the individuals designated under Subsection 53A-1a-703(1).

(5) "Days" means school days unless specifically designated otherwise in this rule.

(6) "Eligible student" means a student who meets the qualifications described in Section 53A-1a-704.

(7) "Enrollment" means that:

- (a) the student has completed the school enrollment process;
- (b) the school maintains required student enrollment information and documentation of age eligibility;
- (c) the student is scheduled to receive services at the school;
- (d) the student attends regularly; and
- (e) the school has accepted the student consistent with Rule R277-419 and the student's IEP.

~~[(8) "Final administrative action" means the concluding action under Title 53A, Chapter 1a, Part 7, Carson Smith Scholarships for Students with Special Needs Act and this rule.]~~

~~[(9) "Private school that has previously served a student with a disability" means a school that:~~

- ~~(a) has enrolled a student within the last three years under the special needs scholarship program;~~
- ~~(b) has enrolled a student within the last three years who has received special education services under an Individual Services Plan (ISP) from an LEA where the school is geographically located; or~~

~~(c) can provide other evidence to the Board that is determinative of having enrolled a student with a disability within the last three years.~~

~~[(10) "Warrant" means payment by check to a private school.~~

R277-602-3. Parent Responsibilities and Payment Provisions.

(1) ~~[If the student is enrolled in a public school or was enrolled in a public school in the year previous to the year in which~~

~~the scholarship is sought, the parent shall submit an application, available from the Superintendent or online, to the LEA within which the parent resides.] To receive a scholarship, a parent of a student shall submit an application by the deadline described in Subsection 53A-1a-704(4), on a form specified by the Superintendent to:~~

~~(a) the LEA that the student is or was enrolled in; or~~

~~(b) if the student was not enrolled in an LEA in the school year prior to the school year in which the scholarship is sought, the school district that is responsible for the education of the student under the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1414.~~

~~[(a)2] [Consistent with the timeline provided in Subsection 53A-1a-704(4), the parent shall complete all required information on the application and submit.] Along with the application described in Subsection (1), a parent shall submit documentation that:~~

~~[(i)a] the parent is a resident of the state;~~

~~[(i)b] the student is at least three years of age before September 2 of the year of enrollment;~~

~~[(i)c] the student is not more than 21 years of age and has not graduated from high school; and~~

~~[(iv) the student has satisfied Subsection (1) or (2); and]~~

~~[(v)d] the student has official acceptance at an eligible private school, as [established by] described in Section 53A-1a-705.~~

~~[(b) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.]~~

~~[(e)3] Any intentional falsification, misinformation, or incomplete information provided on the application may result in the cancellation of the scholarship to the student and non-payment to the private school.~~

~~[(2) If the student was not enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent shall submit an application to the school district responsible for child find under the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1414.~~

~~[(a) The parent shall complete all required information on the application and submit, with the application, documentation that:~~

~~(i) the parent is a resident of the state;~~

~~(ii) the student is at least three years of age before September 2 of the year of enrollment;~~

~~(iii) the student is not more than 21 years of age and has not graduated from high school;~~

~~(iv) the student has satisfied Subsection (1) or (2); and~~

~~(v) the student has official acceptance at an eligible private school, as established by Section 53A-1a-705.~~

~~[(b) The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.]~~

~~[(e)4] The parent shall participate in an assessment team meeting to make the determin[e]ations described in Section 53A-1a-704[.]~~

~~(i) if a student would qualify for special education services; and~~

~~(ii) the level of services for which the student would be eligible if enrolled in a public school].~~

(3)5(a) The [Board]Superintendent shall make a scholarship payment in accordance with Section 53A-1a-706.

(b) [The]A parent shall, consistent with Subsection 53A-1a-706(8), endorse the warrant received by the private school from the Superintendent no more than 15 calendar days after the private school's receipt of the warrant.

(4)6(a) [The]A parent shall notify the Board in writing within five days if the student does not continue in enrollment in an eligible private school for any reason, including:

- (i) parent or student choice;
- (ii) suspension or expulsion of the student; or
- (iii) the student [misses more than]has unexcused absences during all of the prior 10 consecutive school days.

(b) If [the]a student does not continue in enrollment, the [Board]Superintendent may:

- (i) modify the payment to the private school[-]; or
- (ii) request reimbursement from the private school if payment has already been made.

(5)2 [The]A parent shall cooperate and respond within 10 days to an enrollment cross-checking request from the [Board]Superintendent.

(6)8 The parent shall notify the [Board]Superintendent in writing by ~~March~~May 1 annually to indicate the student's continued enrollment.

R277-602-4. LEA Responsibilities.

(1) An LEA that receives a student's scholarship application consistent with Subsection 53A-1a-704(4) shall:

(a) forward [an]the application to the [Board]Superintendent no more than 10 days following receipt of the application[-];

~~(2) The LEA that receives a student's scholarship application shall:~~

(a)b verify enrollment of the student seeking a scholarship in a previous school year within a reasonable time following contact by the [Board]Superintendent;

(b)c verify the existence of the student's IEP and level of service to the Superintendent within a reasonable time;

(e)d provide personnel to participate on an assessment team to[-determine:

~~(i)(A) if a student who was previously enrolled in a private school that has previously served a student with a disability would qualify for special education services if enrolled in a public school; and~~

~~(B) the appropriate level of special education services that would be provided were the child enrolled in a public school for purposes of determining the scholarship amount consistent with Subsection 53A-1a-706(2); or];~~

(i) make the determination described in Section 53A-1a-704; or

(ii) [if]determine whether a student who previously received a special needs scholarship is entitled to receive the scholarship during the subsequent eligibility period.

(3) A special needs scholarship student may not [enroll in an LEA for dual enrollment or]participate in an extracurricular or co-curricular activity at an LEA, consistent with the parent's assumption of full responsibility for a student's services under Subsection 53A-1a-704(5).

(4) An LEA shall cooperate with the [Board]Superintendent in cross-checking special needs scholarship student enrollment information~~[- as requested by the Board] to ensure scholarship payments are not erroneously made.~~

(5)(a) An LEA shall provide written notice to a parent of a student who has an IEP of the availability of a scholarship to attend a private school in accordance with Subsection 53A-1a-704(10).

(b) The written notice shall consist of the following statement: A local education agency is required by Utah law, Subsection 53A-1a-704(10), to inform parents of students with IEPs enrolled in public schools, of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program.

R277-602-5. State Board of Education Responsibilities.

(1) No later than April 1, the [Board]Superintendent shall provide an application containing acknowledgments required under Subsection 53A-1a-704(5), for a parent seeking a special needs scholarship:

- (a) online;
- (b) at the Board office; and
- (c) at LEA offices.

(2) The [Board]Superintendent shall provide a determination that a private school meets the eligibility requirements of Section 53A-1a-705 as soon as possible but no more than 30 calendar days after the private school submits an application and completes documentation of eligibility.

(3) The [Board]Superintendent may:

(a) provide reasonable timelines within the application for satisfaction of private school requirements;

(b) issue letters of warning;

(c) require the school to take corrective action within a time frame set by the [Board]Superintendent;

(d) suspend the school from the program consistent with Section 53A-1a-708;[

~~(e) impose a penalty as the Board determines appropriate under the circumstances;]~~

(f)e establish an appropriate penalty for a private school that fails to comply with requirements described in Title 53A, Chapter 1a, Part 7, Carson Smith Scholarships for Students with Special Needs, including:

(i) provid[e]ing an affidavit under Section 53A-1a-708;

(ii) administering [an]-assessments or reporting an assessment to a parent or assessment team under Subsection 53a-1a-705(1)(f);

(iii) employing teachers with credentials required under Subsection 53A-1a-705(g);

(iv) provid[e]ing to a parent relevant credentials of teachers under Subsection 53A-1a-705(i); or

(v) requir[e]ing a completed criminal background and ongoing monitoring under Title 53A, Chapter 15, Part 15, Background Checks and take appropriate action consistent with information received; [and]or

(g)f initiate a complaint and hold an administrative hearing, as appropriate, and consistent with this rule.

(4) The [Board]Superintendent shall make a list of eligible private schools updated annually and available no later than June 1 of each year.

(5) ~~The Board shall provide information about an approved scholarship and availability and level of funding to a scholarship applicant parent no later than March 1 of each year.]~~ On or before July 1, the Superintendent shall annually publish information regarding the level of funding available for scholarships for the fiscal year.

(6) ~~The [Board]Superintendent shall mail a scholarship payment directly to a private school [as soon as reasonably possible consistent]in accordance with Subsection 53A-1a-706(8) as soon as reasonably possible.~~

~~———— (7) If an annual legislative appropriation is inadequate to cover all scholarship applicants and documented levels of service, the Board shall establish by rule a lottery system for determining the scholarship recipients, with preference provided for under Subsection 53A-1a-706(1)(e).~~

~~———— (8) The Board shall verify and cross-check, using USOE technology services, special needs scholarship student enrollment information consistent with Subsection 53A-1a-706(7).]~~

R277-602-6. Responsibilities of Private Schools that Receive Special Needs Scholarships.

(1) ~~[A private school that intends to enroll a scholarship student]~~ To be eligible to enroll a scholarship student, a private school shall:

(a) meet the criteria described in Section 53A-1a-705; and

(b) submit an application and appropriate documentation by the deadline established in Section 53A-1a-705 to the Superintendent on a form designated by the Superintendent.

~~———— (2) A private school shall submit an application and appropriate documentation for eligibility to receive a special needs scholarship student to the Superintendent on forms designated by the Superintendent.]~~

(2) A licensed independent certified public accountant that a private school contracts with to determine whether the private school has adequate working capital in accordance with Section 53A-1a-705 shall define adequate working capital as a working capital ratio of greater than one calculated by dividing current assets by current liabilities.

~~———— (3) A private school shall satisfy criminal background check and ongoing monitoring requirements for an employee and a volunteer consistent with Title 53A, Chapter 15, Part 15, Background Checks.]~~

([4]3)(a) A private school that seeks to enroll a special needs scholarship student shall, in concert with the parent seeking a special needs scholarship for a student, initiate the assessment team meetings required under Section 53A-1a-704.

([a]b) A private school shall schedule a meeting at a time and location mutually acceptable to the private school, the applicant parent, and participating public school personnel.

~~———— (b) Designated private school and public school personnel shall maintain documentation of the meeting and the decision made for a student.]~~

(c)(i) [Except as provided by Subsection (4)(c)(ii), a]A private school and public school shall confidentially maintain documentation regarding an [required]assessment team meeting, including documentation of:

(A) a meeting for a student denied a scholarship or service; and

(B) a student admitted into a private school and the student's level of service.

(ii) Upon request by the Superintendent, a private school and public school shall provide the documentation described in Subsection ([4]3)(c)(i) to the Superintendent for purposes of determining student scholarship eligibility or for verification of compliance.

~~———— ([5]4) A private school that receives a scholarship payment[under this rule] shall provide complete student records in a timely manner to another private school or a public school that requests student records if a parent transfers a student under Subsection 53A-1a-704(7).~~

~~———— ([6]5) A private school shall notify the Board within five days if the student does not continue in enrollment in an eligible private school for any reason, including:~~

~~(a) parent or student choice;~~

~~(b) suspension or expulsion of the student; or~~

~~(c) the student [misses more than]has unexcused absences during all of the prior ten consecutive school days[of school].~~

~~———— ([7]6) A private school shall satisfy health and safety laws and codes required by Subsection 53A-1a-705(1)(d), including:~~

~~(a) the adoption of emergency preparedness response plans that include training for school personnel and parent notification for fire drills, natural disasters, and school safety emergencies; and~~

~~(b) compliance with Rule R392-200, Design, Construction, Operation, Sanitation, and Safety of Schools.~~

~~———— ([8]7)(a) An approved eligible private school that changes ownership shall submit a new application for eligibility to receive [a Carson Smith]a special needs scholarship payment from the [Board]Superintendent:~~

~~(i) that demonstrates that the school continues to meet the eligibility requirements of Section 53A-1a-705 and this rule; and~~

~~(ii) within 60 calendar days of the date that an agreement is signed between previous owner and new owner.~~

~~(b) If the Superintendent does not receive the application within the time described in Subsection ([8]7)(a)(ii):~~

~~(i) the new owner of the school is presumed ineligible to receive continued [Carson Smith]special needs scholarship payments from the Superintendent;~~

~~(ii) at the discretion of the Board, the Superintendent may reclaim any payments made to a school within the previous 60 calendar days; and~~

~~———— (iii) the private school is not an eligible school; and]~~

~~———— ([iv]iii) the private school shall submit a new application for[Carson Smith] eligibility to enroll special needs scholarship students consistent with the requirements and timelines of this rule.~~

R277-602-7. Special Needs Scholarship Appeals.

(1)(a) A parent of an eligible student or a parent of a prospective eligible student may appeal only the following actions under this rule:

(i) an alleged violation by the Superintendent of Sections 53A-1a-701 through 710 or this rule; or

(ii) an alleged violation by the Superintendent of a required timeline.

(b) An appellant has no right to additional elements of due process beyond the specific provisions of this rule.

- (2) The Appeals Committee may not grant an appeal contrary to Sections 53A-1a-701 through 53A-1a-710.
- (3) A parent shall submit an appeal:
 - (a) in writing to the ~~[USOE]~~Board's Special Needs Scholarship Coordinator at: Utah State ~~[Office]~~Board of Education, 250 East 500 South, P.O. Box 144200, Salt Lake City, UT 84114-4200; and
 - (b) within 15 calendar days of written notification of the final administrative ~~[decision]~~action described in Subsection (1)(a).
- (4)(a) The appeal opportunity does not include an investigation required under or similar to an IDEA state complaint investigation.
 - (b) Nothing in the appeals process established under this rule shall be construed to limit, replace, or adversely affect parental appeal rights available under IDEA.
- (5) The Appeals Committee shall:
 - (a) consider an appeal within 15 calendar days of receipt of the written appeal;
 - (b) transmit the decision to a parent no more than ten calendar days following consideration by the Appeals Committee; and
 - (c) finalize an appeal as expeditiously as possible in the joint interest of schools and students involved.
- (6) The Appeals Committee's decision is ~~[the]~~a final administrative action.

KEY: special needs students, scholarships
Date of Enactment or Last Substantive Amendment: [~~October 8, 2015~~2017
Notice of Continuation: August 13, 2015
Authorizing, and Implemented or Interpreted Law: Art X Sec 3; [~~53A-1a-706(5)(b); Title 53A, Chapter 15, Part 15;~~ 53A-1a-707; 53A-1-401(3)]

Education, Administration
R277-752
Special Education Intensive Services
Fund

NOTICE OF PROPOSED RULE
 (New Rule)
 DAR FILE NO.: 41076
 FILED: 12/13/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new Rule R277-752 is in response to S.B. 242, The Special Education Intensive Needs Fund Amendments, passed during the 2016 General Session.

SUMMARY OF THE RULE OR CHANGE: This new Rule R277-752 provides definitions and an application and distribution formula process for a local education agency (LEA) to receive an annual allocation from the special education intensive services fund.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-17a-112.1

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This new Rule R277-752 provides for an LEA to receive an annual allocation from the special education intensive services fund, which likely will not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** Some LEAs will receive funding to offset the costs of serving students whose educational program exceeds three times the state average per pupil expenditures. Savings to LEAs are speculative at this time.
- ◆ **SMALL BUSINESSES:** This new Rule R277-752 provides for an LEA to receive an annual allocation from the special education intensive services fund, 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 R277-752 provides for an LEA to receive an annual allocation from the special education intensive services fund, 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 R277-752 provides for an LEA to receive an annual allocation from the special education intensive services fund, which likely will not result in any compliance costs for affected persons.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

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

R277. Education, Administration.**R277-752. Special Education Intensive Services Fund.****R277-752-1. 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-17a-112.1, which requires the Board to make rules establishing a distribution formula to allocate money appropriated to the board for the special education intensive services fund.

(2) The purpose of this rule is to establish:

(a) an application process for the special education intensive services fund; and

(b) a formula to distribute the funds.

R277-752-2. Definitions.

(1) "Highest impacted LEA cost ratio" means the quotient of, for a fiscal year:

(a) an LEA's unreimbursed expenses remaining after allocations are made from the high cost student fund described in R277-752-3; and

(b) an LEA's total state special education revenues from the prior fiscal year.

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

(3) "Special education intensive services fund" means funding available to offset the costs of students whose educational program exceeds three times the state average per pupil expenditures.

R277-752-3. Application Process - Distribution Formula.

(1) To receive an annual allocation from the special education intensive services fund, an LEA shall annually submit to the Superintendent an application claiming:

(a) expenses that:

(i) are associated with providing direct special education and related services identified in a student's IEP; and

(ii) exceed three times the state average per pupil expenditures using data from the most recently published State Superintendent's Annual Report; and

(b) any reimbursements received for the expenses described in Subsection (1)(a)(i) from private insurance or Medicaid.

(2) From the special education intensive services fund, the Superintendent shall allocate:

(a) 50% of the appropriation to the high cost student fund to be distributed to LEAs based on the highest cost students with disabilities:

(i) as described in Section 53A-17a-112.1; and

(ii) in accordance with Subsection (3); and

(b) 50% of the appropriation to the highly impacted LEA fund to be distributed to LEAs based on the highest impact to an LEA due to high cost students with disabilities:

(i) as described in Section 53A-17a-112.1; and

(ii) in accordance with Subsection (4).

(3)(a) The Superintendent shall distribute funds to LEAs from the high cost student fund using a step down reimbursement process as described in this Subsection (3).

(b) The first step is to reimburse for the highest cost student equal to the difference between the highest cost student and the second highest cost student.

(c) The second step is to reimburse for the highest cost student and second highest cost student equal to the difference between the second highest cost student and the third highest cost student.

(d) Except as provided in Subsection (3)(e), the Superintendent shall continue the step down reimbursement process described in this subsection until funds are exhausted.

(e) If funding is insufficient to fully reimburse the cost for all students in a step, the Superintendent shall reallocate the remaining funds to the highly impacted LEA fund.

(f) In determining student cost under this Subsection (3), the Superintendent shall sum expenses described in Subsection (1)(a)(i) less:

(i) the state average per pupil expenditures using data from the most recently published State Superintendent's Annual Report; and

(ii) reimbursements from private insurance or Medicaid.

(4)(a) The Superintendent shall distribute funds to LEAs from the highly impacted LEA fund by providing a reimbursement equal to the difference between:

(i) an LEA's unreimbursed expenses remaining after allocations are made from the high cost student fund; and

(ii) the product of:

(A) an LEA's total state special education funding from the prior fiscal year; and

(B) the median of the highest impacted LEA cost ratios.

(b) The Superintendent shall provide a reimbursement described in Subsection (4)(a) starting with the LEA with the highest impacted LEA cost ratio until funds are exhausted.

KEY: special education, intensive services fund

Date of Enactment of Last Substantive Amendment: 2017

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53A-17a-112.1

Education, Administration
R277-915
 Work-Based Learning Programs for
 Interns

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41094

FILED: 12/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-915 is amended to provide updates to

terminology, move provisions regarding work-based learning from Rule R277-916 to this rule, and provide technical and conforming changes consistent with the Rulewriting Style Manual.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-915 provide changes to definitions and move provisions from Rule R277-916 to this rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-29-102

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The amendments to Rule R277-915 provide updates to terminology and move provisions, which likely will not result in a cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** The amendments to Rule R277-915 provide updates to terminology and move provisions, which likely will not result in a cost or savings to local government.

♦ **SMALL BUSINESSES:** The amendments to Rule R277-915 provide updates to terminology and move provisions, 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 R277-915 provide updates to terminology and move provisions, 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 R277-915 provide updates to terminology and move provisions, which likely will not result in any compliance costs for affected persons.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

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

R277. Education, Administration.

R277-915. Work-based Learning Programs ~~for Interns.~~

R277-915-~~2~~1. Authority and Purpose.

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

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

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

~~(c)~~ ~~by~~ Section 53A-29-102, which ~~provides that the Board shall provide rules to schools wishing to offer and operate internships in connection with work experience and career exploration programs; and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.~~ allows schools to offer WBL programs in accordance with Board rules.

~~B.~~(2) The purpose of this rule is to provide ~~direction to LEAs as they provide work-based learning programs and to establish criteria to be included in those policies.~~ standards for WBL programs.

R277-915-~~1~~2. Definitions.

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

~~C.~~(1) "LEA" ~~means a local education agency, including local school boards/public school districts, charter schools, and~~ includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

~~B.~~(2)(a) "~~Intern~~Participant" means a student enrolled in a school-sponsored work experience and career exploration program under Section 53A-29-102 involving both classroom instruction and work experience with a cooperating employer, for which the student may or may not receive~~s no~~ compensation.

~~(b)~~ Participant may include a student completing an apprenticeship.

~~(c)~~ Participant does not include a student on work release.

~~D.~~(3) "School-based enterprise" means a business~~es~~ set up and run by supervised students learning to apply ~~practical~~ practical skills in the production of goods or services for sale or use by others.

~~E.~~(4) "Work site" or "workplace" means the actual location where employment occurs for a particular occupation~~s~~, or an environment that simulates all aspects~~f~~ or elements of that employment, ~~for instance~~ including school-based enterprises.

~~F.~~(5) "Work-based learning" or "WBL" means ~~activities that involve actual work experience or connect classroom learning to work.~~ a continuum of awareness, exploration, preparation, and training activities that combine structured learning and authentic work experiences implemented through industry and education partnerships.

R277-915-3. Mandatory LEA Policy.

~~A.~~ Each An LEA that has ~~work-based learning~~ WBL programs that include assigning students to act as

~~[interns]participants~~ at off-campus sites or in on-campus simulations shall establish a policy which ~~[provides procedures and criteria for at least]~~includes the following~~[-issues]:~~

- (1) training for student ~~[interns]participants~~, student ~~[intern]participant~~ supervisors, and cooperating employers regarding health hazards and safety procedures in the workplace;
- (2) standards and procedures for approval of off-campus work sites;
- (3) transportation options for students to and from the work site;
- (4) appropriate supervision by employers at the work site;
- (5) adequate insurance coverage provided and identified either by the student, the program, or the LEA;
- (6) appropriate supervision and ~~[evaluation]~~assessment of the student by the LEA;~~[-and]~~
- (7) appropriate involvement and approval by the student's parents in the ~~[work-based intern]~~WBL program~~[-];~~
- (8) provision for risk or liability inherent in the WBL program developed in consultation with State Risk Management or the LEA's insurance provider; and
- (9) a requirement that any WBL credit awarded maintains the integrity and rigor expected for high school graduation, as determined by the Board.

R277-915-4. Disbursement of Funds.

- (1) The Superintendent shall align public elementary, secondary, and postsecondary or adult schools by LEA.
- (2) The proportion of total WBL funding allocated for a participating LEA shall remain the same as the previous year unless:
 - (a) the LEA discontinues the program;
 - (b) the LEA does not meet program standards; or
 - (c) LEA proportions are adjusted by the Board.
- (3) A participating LEA shall provide an equal match in funds to state appropriated WBL funds.

R277-915-5. Standards.

- (1) WBL shall be integrated into all levels of the educational delivery system and shall be coordinated within the LEA and among regions.
- (2) To be eligible for WBL funds, an LEA shall:
 - (a) have the program approved by the LEA board;
 - (b) employ licensed WBL coordination personnel with salaries and benefits matched by the local recipient of funds;
 - (c) document that a WBL committee representing all schools within the LEA:
 - (i) has been created;
 - (ii) is functioning effectively; and
 - (iii) regularly addresses WBL issues;
 - (d) conduct WBL activities utilizing information from:
 - (i) business and industry;
 - (ii) administrators;
 - (iii) teachers;
 - (iv) counselors;
 - (v) parents; and
 - (vi) students;
 - (e) develop work-based preparation, participation, and assessment activities for students and teachers involved in all WBL LEA activities;

(f) maintain evidence that WBL components have been integrated and coordinated with:

- (i) elementary career awareness;
- (ii) secondary career exploration;
- (iii) integrated core activities;
- (iv) College and Career Awareness; and
- (v) comprehensive guidance and counseling;
- (g) maintain evidence of WBL activities and assurances in each LEA developed in coordination with a student's:
 - (i) IEP;
 - (ii) Plan for College and Career Readiness; and
 - (iii) 504 requirements;
 - (h) require the inclusion of all student groups within the LEA in career development and preparation;
 - (i) demonstrate WBL coordination with employers and with other school and community development activities.
 - (j) verify that sufficient budget for a WBL coordinator, facilities, materials, equipment, and support staff is available;
 - (k) participate in initial state-sponsored WBL coordinated professional development and in periodic ongoing coordination and professional development activities;
 - (l) require that the WBL team utilize a database system developed by the LEA for the LEA's specific needs; and
 - (m) participate in the CTE Program Approval evaluation every three years.

R277-915-[4]6. Consistency with Law and State and LEA Board Rules and Policies.

- [A-](1) ~~[The work-based intern]~~A WBL experience shall be consistent with the provisions of the Fair Labor Standards Act, ~~[Part 570, Subpart E, 29 C.F.R.]~~29 U.S.C. Sec. 201, et seq.
- [B-](2) ~~[Work-based intern]~~WBL programs shall operate consistently with Board rules and LEA policies, including:
 - (a) student transportation[-];
 - (b) credit toward graduation[-];
 - (c) attendance[-]; and
 - (d) fee waivers.

KEY: public schools, ~~[intern program*]~~work-based learning

Date of Enactment or Last Substantive Amendment: ~~[March 12, 2012]~~2017

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-29-102; 53A-1-401(3)

Environmental Quality, Air Quality **R307-125** Clean Air Retrofit, Replacement, and Off-Road Technology Program

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 41099
FILED: 12/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose for this amendment is to get rid of the provision that limits the percentage of funding the Division of Air Quality can use from funds allocated for the Clean Air Retrofit, Replacement, and Off-Road Technology (CARROT) Program on the Lawn Mower Exchange Program. The statute authorizing funding of the Lawn Mower Exchange Program does not require a limit on the percent of the CARROT funds that may be used for the Lawn Mower Exchange Program. There is no reason to cap the funding at 50%, and the rule is being amended to reflect that.

SUMMARY OF THE RULE OR CHANGE: The 50% limit on the percentage of CARROT funds that may be used toward a program like the Lawn Mower Exchange has been eliminated. If this rule is adopted, any percentage of the CARROT funds may be used for the Lawn Mower Exchange Program.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104 and Section 19-2-203

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no cost or savings to the state budget, because the rule amendment does not change the amount of money in the CARROT fund; it only affects where the money can go.

◆ **LOCAL GOVERNMENTS:** There is no cost or savings to the local governments, because the rule amendment does not change the amount of money in the CARROT fund; it only affects where the money can go.

◆ **SMALL BUSINESSES:** There is likely no cost or savings to small businesses, because the rule amendment does not change the amount of money in the CARROT fund; it only affects where the money can go. The only business that may notice a difference is the business that partners with the state to do a lawn mower exchange. If the Division allocates more of the funds toward a lawn mower exchange, then it is likely that the business would be able to make more money selling a greater number of lawn mowers for the exchange.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no cost or savings to "other persons", because the rule amendment does not change the amount of money in the CARROT fund; it only affects where the money can go.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons, because the rule does not change the total amount of money in the program; it only gives the Division more flexibility in deciding how the money is spent.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment will have little to no fiscal impact on businesses. The only business that may notice a difference is the business that partners with the state to do a lawn mower exchange. If the Division allocates more of the funds toward a lawn mower exchange, then it is likely that the

business would be able to make more money selling a greater number of lawn mowers for the exchange.

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

ENVIRONMENTAL QUALITY
AIR QUALITY
FOURTH FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/08/2017

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.**R307-125. Clean Air Retrofit, Replacement, and Off-Road Technology Program.****R307-125-1. Authority and Purpose.**

(1) This rule specifies the requirements and procedures of the Clean Air Retrofit, Replacement and Off-Road Technology Program that is authorized in 19-2-203.

(2) The procedures of this rule constitute the minimum requirements for the application for and the awarding of funds that are designated for the Clean Air Retrofit, Replacement, and Off-Road Technology Program.

R307-125-2. Definitions.

The terms "certified," "cost," "director," "division," "eligible equipment," "eligible vehicle," and "verified" are defined in 19-2-202.

[R307-125-3. Allocation of Funds.

~~The director may apportion up to 50% of the funds allocated for this program for an exchange, rebate, or low-cost purchase program under 19-2-203(2). The remainder may be allocated to a grant program under 19-2-203(1).~~

[R307-125-[4]3. Grants Under 19-2-203(1).

- (1) A grant under 19-2-203(1) may only be used for:
- verified technologies for eligible vehicles or equipment; and
 - certified vehicles, engines, or equipment.
- (2) In prioritizing grant awards, the director shall consider:
- whether and to what extent the applicant has already secured some other source of funding;
 - the air quality benefits to the state and local community attributable to the project;

- (c) the cost-effectiveness of the proposed project;
- (d) the feasibility and practicality of the project; and
- (e) other factors that the director determines should apply

based on the nature of the application.

(3) In prioritizing grant awards, the director may also, at the request of an applicant, consider the financial need of the applicant.

(4) A successful grant applicant will be required to agree:

(a) to provide information to the division about the vehicles, equipment, or technology acquired with the grant proceeds;

(b) to allow inspections by the division to ensure compliance with the terms of the grant;

(c) to permanently disable replaced vehicles, engines, and equipment from use; and

(d) for any grant that is not given on a reimbursement basis, to commit to complete the project as proposed;

(e) not to change the location or use of the vehicle, engine or equipment from the location or use proposed in their application without approval of the director; and

(f) to any additional terms as determined by the director.

(5) Eligible vehicles are defined in 19-2-202(7). No additional vehicles under 19-2-202(7)(e) are eligible at this time.

(6) The division shall use the following procedures to implement the grant program:

(a) The division shall provide notice on the division's website of the availability of grants and of cut-off dates for applications.

(b) An application for a grant shall be on a form provided by the division.

(c) The director may provide grants on a reimbursement basis or as an advance award.

(d) Successful grant applicants will be required to sign a grant agreement that contains the terms described in R307-125-4]3(4).

(e) State agencies and employees are eligible to participate in the program and are subject to program requirements.

R307-125-[5]4. Exchange, Rebate, or Low-Cost Purchase Programs Under 19-2-203(2).

(1) The director has discretion to choose whether to use an exchange, rebate or low-cost purchase program.

(2) The division shall use the following procedures to implement an exchange, rebate or low-cost purchase program:

(a) The division shall provide notice on the division's website of any exchange, rebate or low-cost purchase program.

(b) An application for an exchange, rebate, or low-cost purchase shall be on a form provided by the division.

(c) State agencies and employees are eligible to participate in any program and are subject to program requirements.

(d) The director may establish additional procedures appropriate to the specific program.

(3) A participant in an exchange, rebate, or low-cost purchase program will be required to agree to the terms outlined in the application as determined by the director.

KEY: air quality, grants, rebates, purchase program

Date of Enactment or Last Substantive Amendment: [December 4, 2014]2017

Authorizing, and Implemented or Interpreted Law: 19-1-203; 19-2-203

**Environmental Quality, Air Quality
R307-841
Residential Property and Child-
Occupied Facility Renovation**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41100

FILED: 12/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to implement amendments that EPA made to its regulations regarding lead-based paint renovator certification courses into the Utah State Air Quality rules.

SUMMARY OF THE RULE OR CHANGE: These amendments reduce the training burden and costs to the regulated community by allowing electronic training as an option for the LBP renovator refresher course.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(i)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There will be no cost or savings to the state budget because the rule amendment only impacts how the regulated community is able to take "renovator refresher courses." The state does not have any new financial obligations regarding the new online course.

♦ **LOCAL GOVERNMENTS:** There will be no cost or savings to the local government because the rule amendment only impacts how the regulated community is able to take "renovator refresher courses." Local governments do not have any new financial obligations regarding the new online course.

♦ **SMALL BUSINESSES:** There may be a savings to small businesses that participate in "renovator refresher courses." The ability to take the course online could save some companies money because hosting or attending an in-person course can cost people money commuting. Any savings gained from taking an online class cannot be estimated as the avoided commute will vary from person to person.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Other persons will see a small savings because the rule enables people to take the course online. This could save people gas money and other small costs associated with commuting. Any savings gained from taking an online class cannot be estimated as the avoided commute will vary from person to person.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule amendments add no new compliance costs for the regulated community because the rule is allowing people to take the course online so that people can save money and time on commuting.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There may be a savings to businesses that participate in "renovator refresher courses." The ability to take the course online could save some companies money.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 AIR QUALITY
 FOURTH FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.

R307-841. Residential Property and Child-Occupied Facility Renovation.

R307-841-1. Purpose.

This rule ~~contains~~ implements 40 CFR 745, regulations developed under Sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this rule is to ensure the following:

- (1) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and
- (2) Individuals performing renovations regulated in accordance with R307-841-3 are properly trained; renovators and firms performing these renovations are certified; and the work practices in R307-841-5 are followed during these renovations.

R307-841-7. Firm Certification.

- (1) Initial certification.
 - (a) Firms that perform renovations for compensation must apply to the director for certification to perform renovations or dust sampling. To apply, a firm must submit to the director a completed "Lead-Based Paint Certification Application for Firms,"

signed by an authorized agent of the firm, and pay the correct amount of fees.

(b) After the director receives a firm's application, the director will take one of the following actions within 90 days of the date the application is received:

(i) The director will approve a firm's application if the director determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When the director approves a firm's application, the director will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved;

(ii) The director will request a firm to supplement its application if the director determines that the application is incomplete. If the director requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request; and

(iii) The director will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (1)(b)(ii) of this section or if the director determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. The director will send the firm a letter giving the reason for not approving the application. The director will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(2) Re-certification. To maintain its certification, a firm must be re-certified by the director.

(a) Timely and complete application. To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Lead-Based Paint Certification Application for Firms" which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include the correct amount of fees.

(i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until the director has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and the director does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until the director approves its re-certification application.

(iii) If the firm fails to obtain re-certification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (1), of this section.

(b) Director's action on an application. After the director receives a firm's application for re-certification, the director will review the application and take one of the following actions within 90 days of receipt:

(i) The director will approve a firm's application if the director determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When the director approves a firm's application for re-certification, the director will issue the firm a new certificate with an expiration date not more than 5 years from the date that the firm's current certification expires.

(ii) The director will request a firm to supplement its application if the director determines that the application is incomplete.

(iii) The director will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if the director determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. The director will send the firm a letter giving the reason for not approving the application. The director will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(3) Amendment of certification. A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(a) To amend a certification, a firm must submit a completed "Lead-Based Paint Certification Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(b) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, the director will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(c) Amending a certification does not affect the certification expiration date.

(4) Firm responsibilities. Firms performing renovations must ensure that:

(a) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with R307-841-8;

(b) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in R307-841-8;

(c) All renovations performed by the firm are performed in accordance with the work practice standards in R307-841-5;

(d) The pre-renovation education requirements of R307-841-4 have been performed; and

(e) The recordkeeping requirements of R307-841-6 are met.

R307-841-8. Renovator Certification and Dust Sampling Technician Certification.

(1) Renovator certification and dust sampling technician certification.

(a) To become a certified renovator or certified dust sampling technician, an individual must successfully complete an initial lead-based paint renovator or dust-sampling technician course accredited by the director under R307-842-1, the EPA under 40 CFR 745.225, or a state or tribal program that has been authorized by EPA pursuant to subpart Q of 40 CFR 745.

(b) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who ~~have~~ successfully completed a director, EPA, HUD, or EPA/HUD model renovation training course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher renovator training course that includes hands-on training in lieu of the initial renovator training course to become a certified renovator.

(c) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead-based paint inspectors or risk assessors may act as certified dust sampling technicians without further training.

(d) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by the director under R307-842-1, the EPA under 40 CFR 745.225, or by a state or tribal program that is authorized under subpart Q of 40 CFR 745 within 5 years of the date the individual completed the initial course described in paragraph (1)(a) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again. Individuals who complete a renovator course accredited by the director under R307-842-1, the EPA or an EPA authorized program on or before March 31, 2010, must complete a renovator refresher course accredited by the director under R307-842-1, the EPA or an EPA authorized program on or before March 31, 2016, to maintain renovator certification. Individuals who completed a renovator course accredited by the director under R307-842-1, the EPA or an EPA authorized program between April 1, 2010 and March 31, 2011, will have one year added to their original 5-year ~~certification~~ training certificate expiration date. Individuals who take a renovator refresher course that does not include hands-on training will have a training course certificate expiration date 3 years from the date they complete the training. Individuals who take a refresher training course that includes hands-on training will have a training course certificate expiration date 5 years from the date they complete the training. Individuals who take the renovator refresher course without hands-on training must, for their next renovator refresher course, take a course that includes hands-on training.

(e) An individual shall be re-certified as a renovator or a dust sampling technician if the individual successfully completes the appropriate lead-based paint accredited refresher training course and submits a valid copy of the appropriate refresher course completion certificate. If more than 5 years but less than 6 years

have passed since certification or re-certification for an individual that completed an initial or a refresher training course with a course test and hands-on assessment, or if more than 3 years but less than 4 years have passed since a renovator re-certification course is completed through an e-learning refresher course, then the individual may apply for re-certification. Lead-based paint renovators and dust sampling technicians are not required to take a director exam to become re-certified. During the time period when the individual is not certified by the director, that individual cannot perform any regulated work activities that requires individual certification.

(2) Renovator responsibilities. Certified renovators are responsible for ensuring compliance with R307-841-5 at all renovations to which they are assigned. A certified renovator:

(a) Must perform all of the tasks described in R307-841-5(2) and must either perform or direct workers who perform all of the tasks described in R307-841-5(1);

(b) Must provide training to workers on the work practices required by R307-841-5(1) that they will be using in performing their assigned tasks;

(c) Must be physically present at the work site when the signs required by R307-841-5(1)(a) are posted, while the work area containment required by R307-841-5(1)(b) is being established, and while the work area cleaning required by R307-841-5(1)(e) is performed;

(d) Must regularly direct work being performed by other individuals to ensure that the work practices required by R307-841-5(1) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area;

(e) Must be available, either on-site or by telephone, at all times that renovations are being conducted;

(f) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint;

(g) Must have with them at the work site their current Utah Lead-Based Paint Renovator certification card; and

(h) Must prepare the records required by R307-841-6(2)(a)(ii), (iii), and (f).

(3) Dust sampling technician responsibilities. When performing optional dust clearance sampling under R307-841-5(3), a certified dust sampling technician:

(a) Must collect dust samples in accordance with R307-842-3(5)(h), must send the collected samples to a laboratory recognized by EPA under TSCA Section 405(b), and must compare the results to the clearance levels in accordance with R307-842-3(5)(h); and

(b) Must have with them at the work site their current Utah Lead-Based Paint Dust Sampling Technician certification card.

KEY: paint, lead-based paint, lead-based paint renovation

Date of Enactment or Last Substantive Amendment: ~~May 5, 2016~~ 2017

Notice of Continuation: February 5, 2015

Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(i)

Environmental Quality, Air Quality R307-842 Lead-Based Paint Activities

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41101

FILED: 12/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to implement amendments that EPA made to its regulations regarding lead-based paint (LBP) renovator certification courses into the Utah State Air Quality rules.

SUMMARY OF THE RULE OR CHANGE: These amendments reduce the training burden and costs to the regulated community by allowing electronic training as an option for the LBP renovator refresher course.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(i)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will be no cost or savings to the state budget, because the rule amendment only impacts how the regulated community is able to take "renovator refresher courses." The state does not have any new financial obligations regarding the new online course.

◆ **LOCAL GOVERNMENTS:** There will be no cost or savings to the local government because the rule amendment only impacts how the regulated community is able to take "renovator refresher courses." Local governments do not have any new financial obligations regarding the new online course.

◆ **SMALL BUSINESSES:** There may be a savings to small businesses that participate in "renovator refresher courses." The ability to take the course online could save some companies money because hosting or attending an in-person course can cost people money commuting. Any savings gained from taking an online class cannot be estimated as the avoided commute will vary from person to person.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Other persons will see a small savings because the rule enables people to take the course online. This could save people gas money and other small costs associated with commuting. Any savings gained from taking an online class cannot be estimated as the avoided commute will vary from person to person.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule amendments add no new compliance costs for the regulated community because the rule is allowing people to take the course online so that people can save money and time on commuting.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There may be a savings to businesses that participate in "renovator refresher courses." The ability to take the course online could save some companies money.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 AIR QUALITY
 FOURTH FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.

R307-842. Lead-Based Paint Activities.

R307-842-1. Accreditation of Training Programs: Target Housing and Child-Occupied Facilities.

(1) Scope.

(a) A training program may seek accreditation to offer courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines. Training courses taught in Utah must be accredited by the director. All e-learning renovator refresher courses accredited by the director or are originating from companies based in Utah must also be accredited by the director.

(b) Training programs may apply to the director for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section. Training programs may apply to the director for accreditation of their renovator or dust sampling technician courses or refresher courses pursuant to this section.

(c) A training program must not provide, offer, or claim to provide director-accredited lead-based paint activities courses without applying for and receiving accreditation from the director as required under paragraph (2) of this section. A training program must not provide, offer, or claim to provide director-accredited renovator or dust sampling technician courses without applying for and receiving accreditation from the director as required under paragraph (2) of this section.

(d) Accredited training programs, training program managers, and principal instructors must comply with all of the requirements of this section including approved terms of the

application and all the requirements and limitations specified in any accreditation documents issued to training programs.

(2) Application process. The following are procedures a training program must follow to receive director accreditation to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses:

(a) A training program seeking accreditation shall submit a written application to the director containing the following information:

(i) The training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages and electronic learning courses are considered different courses, and each must independently meet the accreditation requirements;

(iii) The name and documentation of the qualifications of the training program manager;

(iv) The name(s) and documentation of qualifications of any principal instructor(s); and

(v) A statement signed by the training program manager certifying that the training program meets the requirements established in paragraph (3) of this section. If a training program uses EPA-recommended model training materials, the training program manager shall include a statement certifying that, as well; or

(vi) If a training program does not use EPA-recommended model training materials, its application for accreditation shall also include:

(A) A copy of the student and instructor manuals, or other materials to be used for each course;

(B) A copy of the course agenda for each course; and

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate;

(vii) All training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training;

(B) A copy of the course test blueprint for each course;

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course; and

(D) A copy of the quality control plan as described in paragraph (3)(i) of this section.

(b) If a training program meets the requirements in paragraph (3) of this section, then the director shall approve the application for accreditation no more than 180 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the director may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The director may also request additional materials retained by the training program under paragraph (8) of this section. If a training program's application is disapproved, the program may reapply for accreditation at any time.

(c) A training program may apply for accreditation to offer initial courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section.

(d) A training program applying for accreditation must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(3) Requirements for the accreditation of training programs. ~~[For a training program to obtain accreditation from the director to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses, the program]~~ A training program accredited by the director to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses must meet the following requirements:

(a) The training program shall employ a training manager who has:

(i) At least 2 years of experience, education, or training in teaching workers or adults; or

(ii) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(iii) Two years of experience in managing a training program specializing in environmental hazards; and

(iv) Demonstrated experience, education, or training in the construction industry including: lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(b) The training manager shall designate a qualified principal instructor for each course who has:

(i) Demonstrated experience, education, or training in teaching workers or adults; and

(ii) Successfully completed at least 16 hours of any director-accredited, EPA-accredited, or EPA-authorized state or tribal-accredited lead-specific training for instructors of lead-based paint activities courses or 8 hours of any director-accredited, EPA-accredited or EPA-authorized state or tribal-accredited lead-specific training for instructors of renovator or dust sampling technician courses; and

(iii) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(c) The principal instructor shall be responsible for the organization of the course, course delivery, and oversight of the teaching of all course material. The training manager may designate guest instructors as needed for a portion of the course to provide instruction specific to the lecture, hands-on activities, or work practice components of a course. However, the principal instructor is primarily responsible for teaching the course materials and must be present to provide instruction (or oversight of portions of the course taught by guest instructors) for the course for which he or she has been designated the principal instructor.

(d) The following documents shall be recognized by the director as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in paragraphs (3)(a) and (3)(b) of this section. This documentation must be submitted with the accreditation application and retained by the training program as

required by the recordkeeping requirements contained in paragraph (8) of this section. Those documents include the following:

(i) Official academic transcripts or diploma as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

(e) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(f) To become accredited in the following disciplines, the training program shall provide initial training courses that meet the following training requirements:

(i) The initial inspector course shall last a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial inspector course are contained in paragraph (4)(a) of this section;

(ii) The initial risk assessor course shall last a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial risk assessor course are contained in paragraph (4)(b) of this section;

(iii) The initial supervisor course shall last a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial supervisor course are contained in paragraph (4)(c) of this section;

(iv) The initial project designer course shall last a minimum of 8 training hours. The minimum curriculum requirements for the initial project designer course are contained in paragraph (4)(d) of this section;

(v) The initial abatement worker course shall last a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial abatement worker course are contained in paragraph (4)(e) of this section;

(vi) The initial renovator course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial renovator course are contained in paragraph (4)(f) of this section; and

(vii) The initial dust sampling technician course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial dust sampling technician course are contained in paragraph (4)(g) of this section.

(viii) Electronic learning and other alternative course delivery methods are permitted for the classroom portion of renovator, dust sampling technician, or lead-based paint activities courses but not the hands-on portion of these courses, or for final course tests or proficiency tests described in paragraph (3)(g) of this

section. Electronic learning courses must comply with the following requirements:

(A) A unique identifier must be assigned to each student for them to use to launch and re-launch the course;

(B) The training provider must track each student's course log-ins, launches, progress, and completion, and maintain these records in accordance with paragraph (8) of this section;

(C) The course must include periodic knowledge checks equivalent to the number and content of the knowledge checks contained in EPA's model course, but at least 16 over the entire course. The knowledge checks must be successfully completed before the student can go on to the next module;

(D) There must be a test of at least 20 questions at the end of the electronic learning portion of the course, of which 80% must be answered correctly by the student for successful completion of the electronic learning portion of the course. The test must be designed so that students do not receive feedback on their test answers until after they have completed and submitted the test; and

(E) Each student must be able to save or print a copy of an electronic learning course completion certificate. The electronic certificate must not be susceptible to easy editing.

(g) For each course offered, the training program shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each student must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

(i) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in paragraph (4) of this section;

(ii) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics; and

(iii) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

(h) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(i) The name, a unique identification number, and address of the individual;

(ii) The name of the particular course that the individual completed;

(iii) Dates of course completion/test passage;

(iv) For initial inspector, risk assessor, project designer, supervisor, or abatement worker course completion certificates, the expiration date of interim certification, which is 6 months from the date of course completion;

(v) The name, address, and telephone number of the training program;

(vi) The language in which the course was taught; ~~and~~

(vii) For renovator and dust sampling technician course completion certificates, a photograph of the individual. The photograph must be an accurate and recognizable image of the

individual. As reproduced on the certificate, the photograph must not be smaller than 1 square inch; and

(viii) For renovator, dust sampling technician, or lead-based paint activities course completion certificates, the expiration date of the training certificate.

(i) The training manager shall develop and implement a quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(i) Procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

(ii) Procedures for the training manager's annual review of principal instructor competency.

(j) Courses offered by the training program must teach the work practice standards contained in R307-841-5 or R307-842-3, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting.

(k) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.

(l) The training manager shall allow the director or the director's authorized representative to audit the training program to verify the contents of the application for accreditation as described in paragraph (2) of this section.

(m) The training manager must provide notification of renovator, dust sampling technician, or lead-based paint activities courses offered.

(i) The training manager must provide the director with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered except for any renovator course without hands-on training delivered via electronic learning. The original notification must be received by the director at least 7 business days prior to the start date of any renovator, dust sampling technician, or lead-based paint activities course;

(ii) The training manager must provide the director updated notification when renovator, dust sampling technician, or lead-based paint activities courses will begin on a date other than the start date specified in the original notification, as follows:

(A) For renovator, dust sampling technician, or lead-based paint activities courses beginning prior to the start date provided to the director, an updated notification must be received by the director at least 7 business days before the new start date; and

(B) For renovator, dust sampling technician, or lead-based paint activities courses beginning after the start date provided to the director, an updated notification must be received by the director at least 2 business days before the start date provided to the director;

(iii) The training manager must update the director of any change in location of renovator, dust sampling technician, or lead-based paint activities courses at least 7 business days prior to the start date provided to the director;

(iv) The training manager must update the director regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by the director at least 2 business days prior to the start date provided to the director;

(v) Each notification, including updates, must include the following:

(A) Notification type (original, update, or cancellation);
 (B) Training program name, address, and telephone number;
 (C) Course discipline, type (initial/refresher), and the language in which instruction will be given;
 (D) Date(s) and time(s) of training;
 (E) Training location(s) telephone number, and address;
 (F) Principal instructor's name; and
 (G) Training manager's name and signature;
 (vi) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification of renovator, dust sampling technician, or lead-based paint activities course schedules can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(m)(v) of this section. All written notifications must be delivered to the director by United States Postal Service, fax, commercial delivery service, ~~or~~ hand delivery, or by email. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(vii) Renovator, dust sampling technician, or lead-based paint activities courses must not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification; and

(viii) No training program shall provide renovator, dust sampling technician, or lead-based paint activities courses without first notifying the director of such activities in accordance with the requirements of this paragraph.

(n) The training manager must provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses.

(i) The training manager must provide the director notification after the completion of any renovator, dust sampling technician, or lead-based paint activities course. This ~~notice~~ notification must be received by the director no later than 10 business days following ~~the~~ course completion. Notifications for any e-learning renovator refresher course that does not include hands-on training must be submitted via written notification or electronically using the Utah Division of Air Quality electronic notification system no later than the 10th day of the month and include all students trained in the previous month. Written notification for any e-learning renovator refresher course, can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(n)(ii) of this section. All written notifications must be delivered to the director by United States Postal Service, fax, commercial delivery service, hand delivery, or by email. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(ii) The notification must include the following:

(A) Training program name, address, and telephone number;

(B) Course discipline and type (initial/refresher);
 (C) Date(s) of training;
 (D) The following information for each student who took the course:

- (I) Name,
- (II) Address,
- (III) Date of birth,
- (IV) Course completion certificate number,
- (V) Course test score, ~~and~~
- (VI) For renovator or dust sampling technician courses, a digital photograph of the student ~~;~~ and

(VII) For renovator refresher courses, the expiration date of the training certificate;

- (E) Training manager's name and signature; and
- (F) Utah Division of Air Quality Lead-Based Paint Program training verification statement ~~;~~ and.

(iii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification following renovator, dust sampling technician, or lead-based paint activities training courses can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(n)(ii) of this section. All written notifications must be delivered to the director by United States Postal Service, fax, commercial delivery service, ~~or~~ hand delivery, or by email. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site.

(4) Minimum training curriculum requirements. ~~[To become accredited to offer lead-based paint courses in the specific disciplines listed in this paragraph, training programs must ensure that their courses of study include, at a minimum, the following course topics.]~~ A training program accredited by the director to offer lead-based paint courses in the specific disciplines listed in paragraph (4) must ensure that its courses of study include, at a minimum, the following course topics.

(a) Inspector. Instruction in the topics described in paragraphs (4)(a)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an inspector ~~;~~ ;

(ii) Background information on lead and its adverse health effects ~~;~~ ;

(iii) Background information on federal, state, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities ~~;~~ ;

(iv) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing ~~;~~ ;

(v) Paint, dust, and soil sampling methodologies ~~;~~ ;

(vi) Clearance standards and testing, including random sampling ~~;~~ ;

(vii) Preparation of the final inspection report ~~;~~ and

(viii) Recordkeeping.

(b) Risk assessor. Instruction in the topics described in paragraphs (4)(b)(iv), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a risk assessor ~~;~~ ;

(ii) Collection of background information to perform a risk assessment[-];

(iii) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food[-];

(iv) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards[-];

(v) Lead hazard screen protocol[-];

(vi) Sampling for other sources of lead exposure[-];

(vii) Interpretation of lead-based paint and other lead sampling results, including all applicable federal or state guidance or regulations pertaining to lead-based paint hazards[-];

(viii) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards[-]; and

(ix) Preparation of a final risk assessment report.

(c) Supervisor. Instruction in the topics described in paragraphs (4)(c)(v), (vii), (viii), (ix), and (x) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a supervisor[-];

(ii) Background information on lead and its adverse health effects[-];

(iii) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint abatement[-];

(iv) Liability and insurance issues relating to lead-based paint abatement[-];

(v) Risk assessment and inspection report interpretation[-];

(vi) Development and implementation of an occupant protection plan and abatement report[-];

(vii) Lead-based paint hazard recognition and control[-];

(viii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices[-];

(ix) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods[-];

(x) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods[-];

(xi) Clearance standards and testing[-];

(xii) Cleanup and waste disposal[-]; and

(xiii) Recordkeeping.

(d) Project designer.

(i) Role and responsibilities of a project designer[-];

(ii) Development and implementation of an occupant protection plan for large-scale abatement projects[-];

(iii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects[-];

(iv) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects[-];

(v) Clearance standards and testing for large scale abatement projects[-]; and

(vi) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(e) Abatement worker. Instruction in the topics described in paragraphs (4)(e)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an abatement worker[-];

(ii) Background information on lead and its adverse health effects[-];

(iii) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint abatement[-];

(iv) Lead-based paint hazard recognition and control[-];

(v) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices[-];

(vi) Interior dust abatement methods/cleanup or lead-based paint hazard reduction[-]; and

(vii) Soil and exterior dust abatement methods or lead-based paint hazard reduction.

(f) Renovator. Instruction in the topics described in paragraphs (4)(f)(iv), (vi), (vii), and (viii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibility of a renovator[-];

(ii) Background information on lead and its adverse health effects[-];

(iii) Background information on EPA, HUD, OSHA, and other federal, state, and local regulations and guidance that pertain to lead-based paint and renovation activities[-];

(iv) Procedures for using acceptable test kits to determine whether paint is lead-based paint[-];

(v) Procedures for collecting a paint chip sample and sending it to a laboratory recognized by EPA under section 405(b) of TSCA[-];

(vi) Renovation methods to minimize the creation of dust and lead-based paint hazards[-];

(vii) Interior and exterior containment and cleanup methods[-];

(viii) Methods to ensure that the renovation has been properly completed, including cleaning verification, and clearance testing[-];

(ix) Waste handling and disposal[-];

(x) Providing on-the-job training to other workers[-]; and

(xi) Record preparation.

(g) Dust sampling technician. Instruction in the topics described in paragraphs (4)(g)(iv) and (vi) of this section must be included in the hands-on portion of the course.

(i) Role and responsibility of a dust sampling technician[-];

(ii) Background information on lead and its adverse health effects[-];

(iii) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint and renovation activities[-];

(iv) Dust sampling methodologies[-];

(v) Clearance standards and testing[-]; and

(vi) Report preparation.

(5) Requirements for the accreditation of refresher training programs. A training program may seek accreditation to offer refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. ~~[To obtain director accreditation]~~ A training program accredited by the director to offer refresher training[-; a training program] must meet the following minimum requirements:

(a) Each refresher course shall review the curriculum topics of the full-length courses listed under paragraph (4) of this

section, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(i) An overview of current safety practices relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline;

(ii) Current laws and regulations relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline; and

(iii) Current technologies relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline;

(b) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours. Refresher courses for all disciplines except renovator and project designer must include a hands-on component. Renovators must take a refresher course that includes hands-on training at least every other re-certification;

(c) Except for e-learning renovator refresher courses and project designer courses, for all other courses offered, the training program shall conduct a hands-on assessment[, ~~and at the completion of the course, a course test~~]. With the exception of project designer courses, the training program shall conduct a course test at the completion of the course. Renovators must take a refresher course that includes hands-on training at least every other re-certification;

(d) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding initial training course as described in paragraph (2) of this section. If so, the director shall use the approval procedure described in paragraph (2) of this section. In addition, the minimum requirements contained in paragraphs (3)(a) through (3)(e), ~~(3)(f)(viii)~~, and (3)(g) through (3)(n), and (5)(a) through (5)(c) of this section shall also apply; and

(e) A training program seeking accreditation to offer refresher training courses only shall submit a written application to the director containing the following information:

(i) The refresher training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for accreditation;

(iii) The name and documentation of the qualifications of the training program manager;

(iv) The name(s) and documentation of the qualifications of the principal instructor(s);

(v) A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in paragraph (3) of this section, except for the requirements in paragraph (3)(f) of this section. If a training program uses EPA-developed model training materials, the training manager shall include a statement certifying that, as well;

(vi) If the refresher training course materials are not based on EPA-developed model training materials, the training program's application for accreditation shall include:

(A) A copy of the student and instructor manuals to be used for each course; and

(B) A copy of the course agenda for each course;

(vii) All refresher training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training;

(B) A copy of the course test blueprint for each course;

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable); and

(D) A copy of the quality control plan as described in paragraph (3)(i) of this section;

(viii) The requirements in paragraphs (3)(a) through (3)(e), ~~(3)(f)(viii)~~ and (3)(g) through (3)(n) of this section apply to refresher training providers; and

(ix) If a refresher training program meets the requirements listed in this paragraph, then the director shall approve the application for accreditation no more than 180 days after receiving a complete application from the refresher training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the director may, at the director's discretion, work with the applicant to address inadequacies in the application for accreditation. The director may also request additional materials retained by the refresher training program under paragraph (8) of this section. If a refresher training program's application is disapproved, the program may reapply for accreditation at any time.

(6) Re-accreditation of training programs.

(a) Unless re-accredited, a training program's accreditation, including refresher training accreditation, shall expire 4 years after the date of issuance. If a training program meets the requirements of this section, the training program shall be re-accredited.

(b) A training program seeking re-accreditation shall submit an application to the director no later than 180 days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, the director cannot guarantee that the program will be re-accredited before the end of the accreditation period.

(c) The training program's application for re-accreditation shall contain:

(i) The training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for re-accreditation;

(iii) The name and qualifications of the training program manager;

(iv) The name(s) and qualifications of the principal instructor(s);

(v) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the students' ability to learn;

(vi) A statement signed by the program manager stating:

(A) That the training program complies at all times with all requirements in paragraphs (3) and (5) of this section, as applicable; and

(B) The recordkeeping and reporting requirements of paragraph (8) of this section shall be followed; and

(vii) A payment of appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(d) Upon request, the training program shall allow the director or the director's authorized representative to audit the training program to verify the contents of the application for re-accreditation as described in paragraph (6)(c) of this section.

(7) Suspension, revocation, and modification of accredited training programs.

(a) The director may, after notice and an opportunity, for hearing, suspend, revoke, or modify training program accreditation, including refresher training accreditation, if a training program, training manager, or other person with supervisory authority over the training program has:

(i) Misrepresented the contents of a training course to the director and/or the student population;

(ii) Failed to submit required information or notifications in a timely manner;

(iii) Failed to maintain required records;

(iv) Falsified accreditation records, instructor qualifications, or other accreditation-related information or documentation;

(v) Failed to comply with the training standards and requirements in this section;

(vi) Failed to comply with federal, state, or local lead-based paint statutes or regulations; or

(vii) Made false or misleading statements to the director in its application for accreditation or re-accreditation which the director relied upon in approving the application.

(b) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(8) Training program recordkeeping requirements.

(a) Accredited training programs shall maintain, and make available to the director or the director's authorized representative, upon request, the following records:

(i) All documents specified in paragraph (3)(d) of this section that demonstrate the qualifications listed in paragraphs (3)(a) and (3)(b) of this section of the training manager and principal instructors;

(ii) Current curriculum/course materials and documents reflecting any changes made to these materials;

(iii) The course test blueprint;

(iv) Information regarding how the hands-on assessment is conducted including, but not limited to:

(A) Who conducts the assessment;

(B) How the skills are graded;

(C) What facilities are used; and

(D) The pass/fail rate;

(v) The quality control plan as described in paragraph (3) of this section;

(vi) Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate;

(vii) Any other material not listed in paragraphs (8)(a)(i) through (8)(a)(vi) of this section that was submitted to the director as part of the program's application for accreditation.

(viii) For renovator refresher and dust sampling technician refresher courses, a copy of each trainee's prior course

completion certificate showing that each trainee was eligible to take the refresher course; and

(ix) For course modules delivered in an electronic format, a record of each student's log-ins, launches, progress, and completion, and a copy of the electronic learning completion certificate for each student.

(b) The training program must retain records pertaining to renovator, dust sampling technician and lead-based paint activities courses at the address specified on the training program accreditation application (or as modified in accordance with paragraph (8)(c) of this section) for the following minimum periods:

(i) Records pertaining to lead-based paint activities courses must be retained for a minimum of 3 years and 6 months;

(ii) Records pertaining to renovator or dust sampling technician courses offered must be retained for a minimum of 5 years and 6 months.

(c) The training program shall notify the director in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.

(9) Amendment of accreditation.

(a) A training program must amend its accreditation within 90 days of the date a change occurs to information included in the program's most recent application. If the training program fails to amend its accreditation within 90 days of the date the change occurs, the program may not provide renovator, dust sampling technician, or lead-based paint activities training until its accreditation is amended.

(b) To amend an accreditation, a training program must submit a completed Division of Air Quality Lead-Based Paint Application for Course Accreditation, signed by an authorized agent of the training provider, noting on the form that it is submitted as an amendment and indicating the information that has changed.

(c) Training managers, principal instructors, permanent training locations. If the amendment includes a new training program manager, any new or additional principal instructor(s), or any new permanent training location(s), the training provider is not permitted to provide training under the new training manager or offer courses taught by any new principal instructor(s) or at the new training location(s) until the director either approves the amendment or 30 days have elapsed, whichever occurs earlier. Except:

(i) If the amendment includes a new training program manager or new or additional principal instructor that was identified in a training provider accreditation application that the director has already approved under this section, the training provider may begin to provide training under the new training manager or offer courses taught by the new principal instructor on an interim basis as soon as the provider submits the amendment to the director. The training provider may continue to provide training under the new training manager or offer courses taught by the new principal instructor if the director approves the amendment or if the director does not disapprove the amendment within 30 days.

(ii) If the amendment includes a new permanent training location, the training provider may begin to provide training at the new permanent training location on an interim basis as soon as the provider submits the amendment to the director. The training provider may continue to provide training at the new permanent training location if the director approves the amendment or if the director does not disapprove the amendment within 30 days.

R307-842-2. Certification of Individuals and Firms Engaged in Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities.

(1) Certification of individuals.

(a) Individuals seeking certification by the director to engage in lead-based paint activities must either:

(i) Submit to the director an application demonstrating that they meet the requirements established in paragraphs (2) or (3) of this section for the particular discipline for which certification is sought; or

(ii) Submit to the director an application with a copy of a valid lead-based paint activities certification (or equivalent) from the EPA or a state or tribal program that has been authorized by EPA pursuant to subpart Q of 40 CFR 745; or

(iii) For supervisor, inspector, and/or risk assessor certification, submit to the director an application with a copy of a valid lead-based paint training certificate from an EPA-accredited, or EPA-authorized state or tribal-accredited lead-specific training in the appropriate discipline and pass the certification exam in the appropriate discipline offered by the director.

(b) Following the submission of an application demonstrating that all the requirements of this section have been met, the director shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

(c) Upon receiving director certification, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in R307-842-3.

(d) It shall be a violation of state administrative rules for an individual to conduct any of the lead-based paint activities described in R307-842-3 if that individual has not been certified by the director pursuant to this section to do so.

(e) Individuals applying for certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(2) Inspector, risk assessor or supervisor.

(a) To become certified by the director as an inspector, risk assessor, or supervisor, pursuant to paragraph (1)(a)(i) of this section, an individual must:

(i) Successfully complete an accredited initial training course in the appropriate discipline and receive a course completion certificate from an accredited training program;

(ii) Pass the certification exam in the appropriate discipline offered by the director; and

(iii) Meet or exceed the following experience and/or education requirements:

(A) Inspectors. No additional experience and/or education requirements;

(B) Risk assessors.

(I) Successful completion of an accredited initial training course for inspectors; and

(II) Bachelor's degree and 1 year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an Associates degree and 2 years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(III) Certification as an industrial hygienist, professional engineer, registered architect and/or certification in a related

engineering/health/environmental field (e.g., safety professional, environmental scientist); or

(IV) A high school diploma (or equivalent), and at least 3 years of experience in a related field (e.g., lead, asbestos, environmental remediation work or construction);

(C) Supervisor.

(I) One year of experience as a certified lead-based paint abatement worker; or

(II) At least 2 years of experience in a related field (e.g., lead, asbestos, or environmental remediation work) or in the building trades.

(b) The following documents shall be recognized by the director as evidence of meeting the requirements listed in (2)(b)(iii) of this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(c) In order to take the certification examination for a particular discipline an individual must:

(i) Successfully complete an accredited initial training course in the appropriate discipline and receive a course completion certificate from an accredited training program; and

(ii) Meet or exceed the education and/or experience requirements in paragraph (2)(a)(iii) of this section.

(d) The initial training course completion certificate shall serve as interim certification for an individual until the next available opportunity to take the certification exam. Such interim certification shall expire 6 months after issuance.

(e) After passing the appropriate certification exam and submitting an application demonstrating that he/she meets the appropriate training, education, and/or experience prerequisites described in paragraph (2)(a) of this section, an individual shall be issued a certificate by the director. To maintain certification, an individual must be re-certified as described in paragraph (4) of this section.

(f) An individual may take the certification exam no more than three times within 6 months of receiving an initial training course completion certificate.

(g) If an individual does not pass the certification exam and receive a certificate within 6 months of receiving his/her initial training course completion certificate, the individual must retake the appropriate initial training course from an accredited training program before reapplying for certification from the director.

(3) Abatement worker and project designer.

(a) To become certified by the director as an abatement worker or project designer, pursuant to paragraph (1)(a)(i) of this section, an individual must:

(i) Successfully complete an accredited initial training course in the appropriate discipline and receive a course completion certificate from an accredited training program; and

(ii) Meet or exceed the following additional experience and/or education requirements:

(A) Abatement workers. No additional experience and/or education requirements; and

(B) Project designers.

(I) Successful completion of an accredited initial training course for supervisors;

(II) Bachelor's degree in engineering, architecture, or a related profession, and 1 year of experience in building construction and design or a related field; or

(III) Four years of experience in building construction and design or a related field.

(b) The following documents shall be recognized by the director as evidence of meeting the requirements listed in this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(c) The initial training course completion certificate shall serve as an interim certification until certification from the director is received, but shall be valid for no more than 6 months from the date of completion.

(d) After successfully completing the appropriate initial training courses and meeting any other qualifications described in paragraph (3)(a) of this section, an individual shall be issued a certificate from the director. To maintain certification, an individual must be re-certified as described in paragraph (4) of this section.

(4) Re-certification.

(a) To maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by the director in that discipline by the director either:

(i) Every 3 years if the individual completed a training course with a course test and hands-on assessment; or

(ii) Every 5 years if the individual completed a training course with a proficiency test.

(b) An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training course and submits a valid copy of the appropriate refresher training course completion certificate. If more than 3 years but less than 4 years have passed since certification or re-certification for an individual that completed an initial or a refresher training course with a course test and hands-on assessment, or if more than 5 years but less than 6 years have passed since certification or re-certification for an individual that completed an initial or a refresher training course with a proficiency test for the supervisor, inspector, and/or risk assessor disciplines, then the individual must also pass the certification exam in the appropriate discipline offered by the director. Lead-based paint workers and project designers are not required to take a director exam to become re-certified. During the time period when the individual is not certified by the director, that individual cannot perform any regulated work activities that requires individual certification.

(c) Individuals applying for re-certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(5) Certification of firms.

(a) All firms which perform or offer to perform any of the lead-based paint activities or renovations described in R307-842-3 shall be certified by the director.

(b) A firm seeking certification shall submit to the director a letter attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards in R307-842-3 for conducting lead-based paint activities.

(c) From the date of receiving the firm's letter requesting certification, the director shall have 90 days to approve or disapprove the firm's request for certification. Within that time, the director shall respond with either a certificate of approval or a letter describing the reasons for disapproval.

(d) The firm shall maintain all records pursuant to the requirements in R307-842-3.

(e) Firms may apply to the director for certification to engage in lead-based paint activities pursuant to this section.

(f) Firms applying for certification or re-certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

~~[(g) To maintain certification a firm shall submit appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.]~~

(6) Suspension, revocation, and modification of certifications of individuals engaged in lead-based paint activities.

(a) The director may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:

(i) Obtained training documentation through fraudulent means;

(ii) Gained admission to and completed an accredited training program through misrepresentation of admission requirements;

(iii) Obtained certification through misrepresentation of certification requirements or related documents dealing with education, training, professional registration, or experience;

(iv) Performed work requiring certification at a job site without having proof of certification;

(v) Permitted the duplication or use of the individual's own certificate by another;

(vi) Performed work for which certification is required, but for which appropriate certification has not been received;

(vii) Failed to comply with the appropriate work practice standards for lead-based paint activities at R307-842-3; or

(viii) Failed to comply with federal, state, or local lead-based paint statutes or regulations.

(b) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(7) Suspension, revocation, and modification of certifications of firms engaged in lead-based paint activities.

(a) The director may, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certification if a firm has:

(i) Performed work requiring certification at a job site with individuals who are not certified;

- (ii) Failed to comply with the work practice standards established in R307-842-3;
 - (iii) Misrepresented facts in its letter of application for certification to the director;
 - (iv) Failed to maintain required records; or
 - (v) Failed to comply with federal, state, or local lead-based paint statutes or regulations.
- (b) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

R307-842-3. Work Practice Standards for Conducting Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities.

- (1) Effective date, applicability, and terms.
- (a) All lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.
- (b) When performing any lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment, or abatement, a certified individual must perform that activity in compliance with the appropriate requirements below.
- (c) Documented methodologies that are appropriate for this section are found in the following: the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil, the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001), and other equivalent methods and guidelines.
- (d) Clearance levels are appropriate for the purposes of this section may be found in the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil or other equivalent guidelines.
- (2) Inspection.
- (a) An inspection shall be conducted only by a person certified by the director as an inspector or risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.
- (b) When conducting an inspection, the following locations shall be selected according to documented methodologies and tested for the presence of lead-based paint:
- (i) In a residential dwelling and child-occupied facility, each component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint; and
- (ii) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history in every common area, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.
- (c) Paint shall be sampled in the following manner:
- (i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

- (ii) All collected paint chip samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.
- (d) The certified inspector or risk assessor shall prepare an inspection report which shall include the following information:
- (i) Date of each inspection;
 - (ii) Address of building;
 - (iii) Date of construction;
 - (iv) Apartment numbers (if applicable);
 - (v) Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;
 - (vi) Name, signature, and certification number of each certified inspector and/or risk assessor conducting testing;
 - (vii) Name, address, and telephone number of the certified firm employing each inspector and/or risk assessor, if applicable;
 - (viii) Each testing method and device and/or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device;
 - (ix) Specific locations of each painted component tested for the presence of lead-based paint; and
 - (x) The results of the inspection expressed in terms appropriate to the sampling method used.
- (3) Lead hazard screen.
- (a) A lead hazard screen shall be conducted only by a person certified by the director as a risk assessor.
- (b) If conducted, a lead hazard screen shall be conducted as follows:
- (i) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected;
 - (ii) A visual inspection of the residential dwelling or child-occupied facility shall be conducted to:
 - (A) Determine if any deteriorated paint is present; and
 - (B) Locate at least two dust sampling locations;
 - (iii) If deteriorated paint is present, each surface with deteriorated paint, which is determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead;
 - (iv) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways, or stairwells where one or more children, age 6 and under, are most likely to come in contact with dust; and
 - (v) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in paragraph (3)(b)(iv) of this section, the risk assessor shall also collect composite dust samples from common areas where one or more children, age 6 and under, are most likely to come into contact with dust.
- (c) Dust samples shall be collected and analyzed in the following manner:
- (i) All dust samples shall be taken using documented methodologies that incorporate adequate quality control procedures; and

(ii) All collected dust samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(d) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(e) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:

(i) The information required in a risk assessment report as specified in paragraph (4) of this section, including paragraphs (4)(k)(i) through (4)(k)(xiv), and excluding paragraphs (4)(k)(xv) through (4)(k)(xviii) of this section. Additionally, any background information collected pursuant to paragraph (3)(b)(i) of this section shall be included in the lead hazard screen report; and

(ii) Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.

(4) Risk assessment.

(a) A risk assessment shall be conducted only by a person certified by the director as a risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(b) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.

(c) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.

(d) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(i) Each friction surface or impact surface with visibly deteriorated paint; and

(ii) All other surfaces with visibly deteriorated paint.

(e) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust.

(f) For multi-family dwellings and child-occupied facilities, the samples required in paragraph (4)(d) of this section shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(i) Common areas adjacent to the sampled residential dwelling or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, age 6 and under, are likely to come into contact with dust.

(g) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in each room,

hallway, or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility where one or more children, age 6 and under, are likely to come into contact with dust.

(h) Soil samples shall be collected and analyzed for lead concentrations in the following locations:

(i) Exterior play areas where bare soil is present;

(ii) The rest of the yard (i.e., non-play areas) where bare soil is present; and

(iii) Dripline/foundation areas where bare soil is present.

(i) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate adequate quality control procedures.

(j) Any collected paint chip, dust, or soil samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(k) The certified risk assessor shall prepare a risk assessment report which shall include the following information:

(i) Date of assessment;

(ii) Address of each building;

(iii) Date of construction of buildings;

(iv) Apartment number (if applicable);

(v) Name, address, and telephone number of each owner of each building;

(vi) Name, signature, and certification number of the certified risk assessor conducting the assessment;

(vii) Name, address, and telephone number of the certified firm employing each certified risk assessor if applicable;

(viii) Name, address, and telephone number of each recognized laboratory conducting analysis of collected samples;

(ix) Results of the visual inspection;

(x) Testing method and sampling procedure for paint analysis employed;

(xi) Specific locations of each painted component tested for the presence of lead;

(xii) All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples;

(xiv) Any other sampling results;

(xv) Any background information collected pursuant to paragraph (4)(c) of this section;

(xvi) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards;

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards; and

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(5) Abatement.

(a) An abatement shall be conducted only by an individual certified by the director, and if conducted, shall be conducted according to the procedures in this paragraph.

(b) A certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available by telephone, pager or answering service, and able to be present at the work site in no more than 2 hours.

(c) The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this section and all other federal, state, and local requirements.

(d) A certified firm must notify the director of lead-based paint abatement activities as follows:

(i) Except as provided in paragraph (5)(d)(ii) of this section, the director must be notified prior to conducting lead-based paint abatement activities. The original notification must be received by the director at least 5 business days before the start date of any lead-based paint abatement activities;

(ii) Notification for lead-based paint abatement activities required in response to an elevated blood lead level (EBL) determination, or federal, state, tribal, or local emergency abatement order should be received by the director as early as possible before, but must be received no later than the start date of the lead-based paint abatement activities. Should the start date and/or location provided to the director change, an updated notification must be received by the director on or before the start date provided to the director. Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency abatement order must be included in the written notification to take advantage of this abbreviated notification period;

(iii) Except as provided in paragraph (5)(d)(ii) of this section, updated notification must be provided to the director for lead-based paint abatement activities that will begin on a date other than the start date specified in the original notification, as follows:

(A) For lead-based paint abatement activities beginning prior to the start date provided to the director an updated notification must be received by the director at least 5 business days before the new start date included in the notification; and

(B) For lead-based paint abatement activities beginning after the start date provided to the director an updated notification must be received by the director on or before the start date provided to the director;

(iv) Except as provided in paragraph (5)(d)(ii) of this section, updated notification must be provided to the director for any change in location of lead-based paint abatement activities at least 5 business days prior to the start date provided to the director;

(v) Updated notification must be provided to the director when lead-based paint abatement activities are canceled, or when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by the director on or before the start date provided to the director, or if work has already begun, within 24 hours of the change;

(vi) The following must be included in each notification:

(A) Notification type (original, updated, or cancellation);

(B) Date when lead-based paint abatement activities will start;

(C) Date when lead-based paint abatement activities will end (approximation using best professional judgment);

(D) Firm's name, Utah lead-based paint firm certification number, address, and telephone number;

(E) Type of building (e.g., single family dwelling, multi-family dwelling, and/or child-occupied facilities) on/in which abatement work will be performed;

(F) Property name (if applicable);

(G) Property address including apartment or unit number(s) (if applicable) for abatement work;

(H) Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency abatement order, if using the abbreviated time period as described in paragraph (5)(d)(ii) of this section;

(I) Name and Utah lead-based paint individual certification number of the project supervisor;

(J) Approximate square footage/acreage to be abated;

(K) Brief description of abatement activities to be performed; and

(L) Name, title, and signature of the representative of the certified firm who prepared the notification;

(vii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification can be accomplished using either the sample form titled "Lead-Based Paint Abatement Project Notification" or similar form containing the information required in paragraph (5)(d)(vi) of this section. All written notifications must be delivered by United States Postal Service, fax, commercial delivery service, ~~or~~ hand delivery, or by email on or before the applicable date. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(viii) Lead-based paint abatement activities shall not begin on a date, or at a location other than that specified in either an original or updated notification, in the event of changes to the original notification; and

(ix) No firm or individual shall engage in lead-based paint abatement activities, as defined in R307-840-2, prior to notifying the director of such activities according to the requirements of this paragraph.

(e) A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:

(i) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards; and

(ii) A certified supervisor or project designer shall prepare the occupant protection plan.

(f) The work practices listed below shall be restricted during an abatement as follows:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High

Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97% or greater efficiency;

(iii) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 2 square feet in any one room, hallway, or stairwell or totaling no more than 20 square feet on exterior surfaces; and

(iv) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

(g) If conducted, soil abatement shall be conducted in one of the following ways:

(i) If the soil is removed:

(A) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but no greater than 400 ppm; and

(B) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility; or

(ii) If soil is not removed, the soil shall be permanently covered, as defined in R307-840-2.

(h) The following post-abatement clearance procedures shall be performed only by a certified inspector or risk assessor:

(i) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris, or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris, or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures;

(ii) Following the visual inspection and any post-abatement cleanup required by paragraph (5)(h)(i) of this section, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques;

(iii) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate adequate quality control procedures;

(iv) Dust samples for clearance purposes shall be taken a minimum of 1 hour after completion of final post-abatement cleanup activities;

(v) The following post-abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the residential dwelling or child-occupied facility:

(A) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of each of no less than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, or stairwells shall be sampled;

(B) After conducting an abatement with no containment, two dust samples shall be taken from each of no less than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and window trough (if present) and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are less than four rooms, hallways, or stairwells

within the residential dwelling or child-occupied facility, then all rooms, hallways, or stairwells shall be sampled; and

(C) Following an exterior paint abatement, a visible inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they must be removed from the site and properly disposed of, according to all applicable federal, state, and local requirements;

(vi) The rooms, hallways, or stairwells selected for sampling shall be selected according to documented methodologies;

(vii) The certified inspector or risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each single surface dust sample with clearance levels in paragraph (5)(h)(viii) of this section for lead in dust on floors, interior window sills, and window troughs or from each composite dust sample with the applicable clearance levels for lead in dust on floors, interior window sills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance level or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance level divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested; and

(viii) The clearance levels for lead in dust are 40 ug/ft² for floors, 250 ug/ft² for interior window sills, and 400 ug/ft² for window troughs.

(i) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample;

(ii) A sufficient number of residential dwellings are selected for dust sampling to provide a 95% level of confidence that no more than 5% or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels; and

(iii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in paragraph (5)(h) of this section.

(j) An abatement report shall be prepared by a certified supervisor or project designer no later than 30 business days after receiving the results of final clearance testing and all soil analyses (if applicable). The abatement report shall include the following information:

(i) Start and completion dates of abatement;

(ii) The name and address of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project;

(iii) The occupant protection plan prepared pursuant to paragraph (5)(e) of this section;

(iv) The name, address, and signature of each certified risk assessor or inspector conducting clearance sampling and the date of clearance testing;

(v) The results of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses; and

(vi) A detailed written description of the abatement, including abatement methods used, locations of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(6) Collection and laboratory analysis of samples. Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this section shall be:

(a) Collected by persons certified by the director as an inspector or risk assessor; and

(b) Analyzed by a laboratory recognized by EPA pursuant to Section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip, dust, and soil samples.

(7) Composite dust sampling. Composite dust sampling may only be conducted in the situations specified in paragraphs (3) through (5) of this section. If such sampling is conducted, the following conditions shall apply:

(a) Composite dust samples shall consist of at least two subsamples;

(b) Every component that is being tested shall be included in the sampling; and

(c) Composite dust samples shall not consist of subsamples from more than one type of component.

(8) Determinations.

(a) Lead-based paint is present:

(i) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5% by weight; and

(ii) On any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.

(b) A paint-lead hazard is present:

(i) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in the definition of "Dust-lead hazard" in R307-840-2;

(ii) On any chewable lead-based paint surface on which there is evidence of teeth marks;

(iii) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame); and

(iv) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(c) A dust-lead hazard is present in a residential dwelling or child-occupied facility:

(i) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than 40 ug/ft² for floors and 250 ug/ft² for interior window sills, respectively;

(ii) On floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

(iii) On floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property.

(d) A soil-lead hazard is present:

(i) In a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million; or

(ii) In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.

(9) Recordkeeping. All reports or plans required in this section shall be maintained by the certified firm or individual who prepared the report for no fewer than 3 years. The certified firm or individual also shall provide copies of these reports to the building owner who contracted for its services.

R307-842-4. Lead-Based Paint Activities Requirements.

Lead-based paint activities, as defined in R307-840-2, shall only be conducted according to the procedures and work practice standards contained in R307-842-3 of this rule. No individual or firm may offer to perform or perform any lead-based paint activity as defined in R307-840-2, unless certified to perform that activity according to the procedures in R307-842-2.

R307-842-5. Work Practice Requirements for Lead-Based Paint Hazards.

Applicable certification, occupant protection, and clearance requirements and work practice standards are found in R307-842 and in regulations issued by HUD at 24 CFR Part 35, Subpart R. The work practice standards in those regulations do not apply when treating paint-lead hazards of less than:

(a) Two square feet of deteriorated lead-based paint per room or equivalent,

(b) Twenty square feet of deteriorated paint on the exterior building, or

(c) Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

KEY: paint, lead-based paint, lead-based paint abatement

Date of Enactment or Last Substantive Amendment: ~~May 3, 2012~~ **2017**

Notice of Continuation: February 5, 2015

Authorizing, and Implemented or Interpreted Law: 19-2-104(1)

(i)

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-1-5
Incorporations by Reference**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41104

FILED: 12/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement by rule Medicaid policy through incorporating by reference the Medicaid State Plan and all Medicaid provider manuals to 01/01/2017.

SUMMARY OF THE RULE OR CHANGE: The Department incorporates by reference the Utah Medicaid State Plan and approved State Plan Amendments (SPAs) to 01/01/2017. Specifically, the Department incorporates by reference the following SPAs: SPA 16-0003-UT Mandatory Coverage for Pregnant Women, which updates mandatory coverage for pregnant women with accompanying applications for food stamps, financial assistance, child care, and medical assistance; SPA 16-0004-UT General Eligibility Requirements, which updates general eligibility requirements with accompanying applications for food stamps, financial assistance, child care, medical assistance, and combined medical assistance programs; SPA 16-0005-UT Presumptive Eligibility by Hospitals, which updates presumptive eligibility by hospitals with accompanying applications for both combined medical assistance programs and hospital presumptive eligibility; and SPA 16-0027-UT Medicaid Recovery Audit Contractors, which reimburses recovery audit contractors on a flat-fee basis rather than a contingency basis for the work of identifying overpayments and underpayments in the Medicaid program. This proposed rule also incorporates by reference the following Medicaid provider manuals: Medical Supplies and Durable Medical Equipment Utah Medicaid Provider Manual, and the manual's attachment for Donor Human Milk Request Form, effective 01/01/2017; Hospital Services Utah Medicaid Provider Manual with its attachments, effective 01/01/2017; the Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid, effective 01/01/2017; the Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual, effective 01/01/2017; the Hospice Care Utah Medicaid Provider Manual, and the manual's attachment for the Utah Medicaid Prior Authorization Request for Hospice Services, effective 01/01/2017; the Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual, with its attachments, effective 01/01/2017; the Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual, effective 01/01/2017;

the Personal Care Utah Medicaid Provider Manual, and the manual's attachment for the Request for Prior Authorization: Personal Care and Capitated Programs effective 01/01/2017; the Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual, effective 01/01/2017; Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual, effective 01/01/2017; the Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities Utah Medicaid Provider Manual, effective 01/01/2017; the Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual, effective 01/01/2017; the Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual, effective 01/01/2017; the Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual, effective 01/01/2017; the Office of Inspector General (OIG) Administrative Hearings Procedures Manual, effective 01/01/2017; the Pharmacy Services Utah Medicaid Provider Manual with its attachments, effective 01/01/2017; the Coverage and Reimbursement Code Look-up Tool, effective 01/01/2017; the CHEC Services Utah Medicaid Provider Manual with its attachments, effective 01/01/2017; the Chiropractic Medicine Utah Medicaid Provider Manual, effective 01/01/2017; the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual, effective 01/01/2017; the General Attachments (All Providers) for the Utah Medicaid Provider Manual, effective 01/01/2017; the Indian Health Utah Medicaid Provider Manual, effective 01/01/2017; the Laboratory Services Utah Medicaid Provider Manual with its attachments, effective 01/01/2017; the Medical Transportation Utah Medicaid Provider Manual, effective 01/01/2017; the Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with attachment, effective 01/01/2017; the Licensed Nurse Practitioner Utah Medicaid Provider Manual, effective 01/01/2017; the Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables, effective 01/01/2017; the Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual with its attachments, effective 01/01/2017; the Podiatric Services Utah Medicaid Provider Manual, effective 01/01/2017; the Primary Care Network Utah Medicaid Provider Manual with its attachments, effective 01/01/2017; the Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual, effective 01/01/2017; the Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual, effective 01/01/2017; the School-Based Skills Development Services Utah Medicaid Provider Manual, effective 01/01/2017; Section I: General Information Utah Medicaid Provider Manual, effective 01/01/2017; the Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual, effective 01/01/2017; Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual, effective 01/01/2017; Vision Care Services

Utah Medicaid Provider Manual, effective 01/01/2017; Women's Services Utah Medicaid Provider Manual, effective 01/01/2017; Medically Complex Children's Waiver Utah Medicaid Provider Manual, effective 01/01/2017; and Autism Spectrum Disorder Related Services for EPSDT Eligible Individuals Utah Medicaid Provider Manual, effective 01/01/2017.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Updates Medically Complex Children's Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Podiatric Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Laboratory Services Utah Medicaid Provider Manual with attachments, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Hospital Services Utah Medicaid Provider Manual with attachments, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates General Attachments (All Providers) for the Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Licensed Nurse Practitioner Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Coverage and Reimbursement Code Look-up Tool, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Vision Care Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Utah Medicaid State Plan, published by Centers for Medicare and Medicaid Services, 01/01/2017
- ◆ Updates Primary Care Network Utah Medicaid Provider Manual with attachments, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Indian Health Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Medical Transportation Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Chiropractic Medicine Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Hospice Care Utah Medicaid Provider Manual, and Utah Medicaid Prior Authorization Request for Hospice Services, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Home Health Agencies Utah Medicaid Provider Manual, and Private Duty Nursing Acuity Grid, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual, with attachments, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with attachment, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Pharmacy Services Utah Medicaid Provider Manual with attachments, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates CHEC Services Utah Medicaid Provider Manual with attachments, published by Division of Medicaid and Health Financing, 01/01/2017

- ◆ Updates Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Medical Supplies and Durable Medical Equipment Utah Medicaid Provider Manual, and Donor Human Milk Request Form, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Section I: General Information Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Office of Inspector General Administrative Hearings Procedures Manual, published by Office of Inspector General and Medicaid Services, 01/01/2017
- ◆ Updates Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Autism Spectrum Disorder Related Services for EPSDT Eligible Individuals Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates School-Based Skills Development Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Personal Care Utah Medicaid Provider Manual, and Request for Prior Authorization: Personal Care and Capitated Programs, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Women's Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual with attachments, published by Division of Medicaid and Health Financing, 01/01/2017
- ◆ Updates Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2017

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no budget impact because this change only fulfills the requirement to incorporate the

State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to the Department or other state agencies.

- ◆ **LOCAL GOVERNMENTS:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to local governments.

- ◆ **SMALL BUSINESSES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to small businesses.

- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to Medicaid recipients and to Medicaid providers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to a single Medicaid recipient or to a Medicaid provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because all changes are already in the State Plan.

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the 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 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-1. Utah Medicaid Program.

R414-1-5. Incorporations by Reference.

The Department incorporates the [~~October~~January 1, 2016], versions of the following by reference:

(1) Utah Medicaid State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;

(2) Medical Supplies and Durable Medical Equipment Utah Medicaid Provider Manual, as applied in Rule R414-70, and the manual's attachment for Donor Human Milk Request Form;

(3) Hospital Services Utah Medicaid Provider Manual with its attachments;

(4) Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;

(5) Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual;

(6) Hospice Care Utah Medicaid Provider Manual, and the manual's attachment for the Utah Medicaid Prior Authorization Request for Hospice Services;

(7) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;

(8) Personal Care Utah Medicaid Provider Manual and the manual's attachment for the Request for Prior Authorization: Personal Care and Capitated Programs;

(9) Utah Home and Community-Based Waiver Services for Individuals Age 65 or Older Utah Medicaid Provider Manual;

(10) Utah Home and Community-Based Waiver Services for Individuals with an Acquired Brain Injury Utah Medicaid Provider Manual;

(11) Utah Community Supports Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;

(12) Utah Home and Community-Based Services Waiver for Individuals with Physical Disabilities Utah Medicaid Provider Manual;

(13) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;

(14) Utah Home and Community-Based Services Waiver for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;

(15) Utah Home and Community-Based Waiver Services Medicaid Autism Waiver Utah Medicaid Provider Manual;

(16) Office of Inspector General Administrative Hearings Procedures Manual;

(17) Pharmacy Services Utah Medicaid Provider Manual with its attachments;

(18) Coverage and Reimbursement Code Look-up Tool found at <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php> ;

(19) CHEC Services Utah Medicaid Provider Manual with its attachments;

(20) Chiropractic Medicine Utah Medicaid Provider Manual;

(21) Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual;

(22) General Attachments (All Providers) for the Utah Medicaid Provider Manual;

(23) Indian Health Utah Medicaid Provider Manual;

(24) Laboratory Services Utah Medicaid Provider Manual with its attachments;

(25) Medical Transportation Utah Medicaid Provider Manual;

(26) Non-Traditional Medicaid Plan Utah Medicaid Provider Manual with attachment;

(27) Licensed Nurse Practitioner Utah Medicaid Provider Manual;

(28) Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, and the manual's attachment for Physical Therapy and Occupational Therapy Decision Tables;

(29) Physician Services, Anesthesiology and Laboratory Services Utah Medicaid Provider Manual with its attachments;

(30) Podiatric Services Utah Medicaid Provider Manual;

(31) Primary Care Network Utah Medicaid Provider Manual with its attachments;

(32) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;

(33) Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual;

(34) School-Based Skills Development Services Utah Medicaid Provider Manual;

(35) Section I: General Information Utah Medicaid Provider Manual;

(36) Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual;

(37) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual;

(38) Vision Care Services Utah Medicaid Provider Manual;

(39) Women's Services Utah Medicaid Provider Manual;

(40) Medically Complex Children's Waiver Utah Medicaid Provider Manual; and

(41) Autism Spectrum Disorder Related Services for EPSDT Eligible Individuals Utah Medicaid Provider Manual.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [2016]2017

Notice of Continuation: March 2, 2012
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-34-2

**Health, Health Care Financing,
 Coverage and Reimbursement Policy
 R414-302-6
 Residents of Institutions**

**NOTICE OF PROPOSED RULE
 (Amendment)**

DAR FILE NO.: 41070
 FILED: 12/13/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change to provide Medicaid coverage for individuals who reside in certain halfway houses.

SUMMARY OF THE RULE OR CHANGE: The Centers for Medicaid and Medicare Services has clarified that individuals who reside in certain halfway houses are eligible for Federal Financial Participation (FFP). This amendment, therefore, allows an individual who resides in a qualified halfway house to receive Medicaid coverage. Based upon the "quick enrollment" pilot project with state prisons, the Department anticipates that less than 15 individuals will qualify for Medicaid. This amendment also updates incorporations by reference, removes language associated with the incorporations, and 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:

- ◆ Adds 42 CFR 435.1009, published by Government Printing Office, 10/01/2015
- ◆ Adds 42 CFR 435.1010, published by Government Printing Office, 10/01/2015
- ◆ Removes 42 CFR 435.1009, published by Government Printing Office, 10/01/2012
- ◆ Removes 42 CFR 435.1010, published by Government Printing Office, 10/01/2012

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is a total annual cost of about \$45,400 to the state budget as a result of this amendment.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not make eligibility determinations for the Medicaid program.
- ◆ **SMALL BUSINESSES:** This amendment does not impose any new costs or requirements on small businesses because

they do not make eligibility determinations for the Medicaid program.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment does not impose any new costs or requirements on Medicaid providers and recipients because it does not affect Medicaid services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment does not impose any new costs or requirements on a single Medicaid provider or recipient because it does not affect Medicaid services.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because the proposed rule does not affect Medicaid services and increase in eligibility is slight.

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 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-302. Eligibility Requirements.

R414-302-6. Residents of Institutions.

(1) The Department provides Medicaid coverage to individuals who are residents of institutions subject to the limitations in 42 CFR 435.1009 and 435.1010 (October 1, 2015), which the Department adopts and incorporates by reference. ~~[related to residents of public institutions, patients in an institution for mental diseases who do not meet the age criteria, and patients in an institution for tuberculosis as defined in 42 CFR 435.1009, October 1, 2012 ed., which is incorporated by reference. The Department also adopts and incorporates by reference the definitions in 42 CFR 435.1010, 2012 ed.]~~

~~(2) The Department does not consider persons under the age of 18 to be residents of an institution if they are living temporarily in the institution while arrangements are being made for other placement.]~~

(2) An individual who resides in a halfway house may receive Medicaid coverage if the halfway house meets the following criteria:

(a) The halfway house allows the individual to work outside the facility;

(b) The halfway house allows the individual to use community facilities at will, such as libraries, grocery stores, recreation areas, or schools; and

(c) The halfway house allows the individual to seek health care treatment in the community to the same extent as other Medicaid enrollees.

(3) The Department does not consider an individual who resides in a temporary shelter for a limited period of time as a resident of an institution.

~~[(4) The Department considers ineligible residents of institutions for mental disease (IMD) who are ages 21 through 64 as non-residents while on conditional or convalescent leave from the institution. A resident of an IMD who is under 21 years of age, or is under 22 years of age and enters an IMD before reaching 21 years of age, is considered to be a resident while on conditional or convalescent leave from the institution.]~~

(4[5]) For individuals under 22 years of age who become residents of an IMD before reaching 21 years of age, the Department limits Medicaid eligibility to individuals residing in the Utah State Hospital.

KEY: state residency, citizenship, third party liability, Medicaid

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, Health Care Financing, Coverage and Reimbursement Policy

R414-504

Nursing Facility Payments

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41054

FILED: 12/07/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to remove ambiguity and to clarify requirements for the Quality Improvement (QI) Incentive applications.

SUMMARY OF THE RULE OR CHANGE: This amendment includes language that removes ambiguity and clarifies requirements for the QI Incentive applications.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Title 26, Chapter 35a

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no budget impact because the changes to this rule do not alter the overall amount of state and federal funds that regulated health care facilities may receive.

◆ **LOCAL GOVERNMENTS:** There is no budget impact because the changes to this rule do not alter the overall amount of state and federal funds that local government-operated health care facilities may receive.

◆ **SMALL BUSINESSES:** The aggregate amount that the Department pays to Medicaid-certified nursing homes does not change. This amendment impacts small and large businesses equally. Nursing homes that take advantage of the incentives will receive more than nursing homes that do not. The total incentive amount available to nursing homes is \$5,475,900, which is reserved from the base rate budget for nursing homes. The incentives positively impact the treatment that nursing home residents receive.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The aggregate amount that the Department pays to Medicaid-certified nursing homes does not change. Nursing homes that take advantage of the incentives will receive more than nursing homes that do not. The total incentive amount available to nursing homes is \$5,475,900, which is reserved from the base rate budget for nursing homes. The incentives positively impact the treatment that nursing home residents receive.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because there are only increases in funds for a nursing facility that takes advantage of the quality improvement incentives that are available, and the references to the Utah Medicaid State Plan do not alter the operation of the program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule amendment would have a positive fiscal impact for any business who voluntarily submits an application for quality improvement incentives in that it clarifies the application process to qualify for the incentives.

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 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-504. Nursing Facility Payments.

R414-504-4. Quality Improvement Incentive.

(1) Reimbursement for Nursing Home Quality Improvement Incentives is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

(2) Division staff are not required to request additional information relating to any application submission.

(3) Providers shall ensure all necessary information is included in the application in order to qualify.

(4) For applications received and reviewed by division staff prior to the annual submission deadline, if the application is incorrect or lacks sufficient supporting documentation, then the application shall be denied. If it is received prior to the annual submission deadline, the provider may submit a subsequent application that includes all needed supporting documentation for consideration.

(5) For applications received prior to the annual submission deadline and reviewed by division staff after the annual submission deadline, then the provider's application may be considered for qualification of a reduced amount, where possible, based on the submitted documentation.

(6) In all cases, no additional applications, documentation or explanation will be accepted if submitted after the annual submission deadline.

R414-504-5. Reimbursement for Intermediate Care Facilities for the Mentally Retarded.

The following principles apply to the payment of community-based intermediate care facilities for the mentally retarded (ICF/MRs) that are licensed under [Utah Code]Section 26-21-13.5:

(1) The Department pays approximately 93% of the aggregate payments to ICF/MRs based on a prospective flat rate established in Utah State Plan Attachment 4.19-D. The Department pays the balance as a property cost component calculated by the Fair Rental Value system pursuant to Section R414-504-3.

(2)(a) Reimbursement for the ICF/MR Quality Improvement Incentive is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

(b) Division staff are not required to request additional information relating to any application submission.

(c) Providers shall ensure all necessary information is included in the application in order to qualify.

(d) For applications received and reviewed by division staff prior to the annual submission deadline, if the application is incorrect or lacks sufficient supporting documentation, then the application shall be denied. If it is received prior to the annual submission deadline, the provider may submit a subsequent application that includes all needed supporting documentation for consideration.

(e) For applications received prior to the annual submission deadline and reviewed by division staff after the annual submission deadline, then the provider's application may be considered for qualification of a reduced amount, where possible, based on the submitted documentation.

(f) In all cases, no additional applications, documentation or explanation will be accepted if submitted after the annual submission deadline.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~July 1, 2011~~ 2017

Notice of Continuation: November 14, 2012

Authorizing, and Implemented or Interpreted Law: 26-1-5; ~~26-18-3~~; 26-35a

Health, Family Health and
Preparedness, Licensing
R432-270
Assisted Living Facilities

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 41056

FILED: 12/07/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule amendment is to add requirements for staff to receive dementia-specific training during orientation and yearly, as well as to amend and delete unnecessary requirements. The Health Facility Committee reviewed and approved these rule amendments on 11/09/2016.

SUMMARY OF THE RULE OR CHANGE: The rule amendment is to add requirements for all staff to receive dementia-specific training during orientation and yearly, as well as to require the facility administrator to obtain four hours

of dementia/Alzheimer's-specific training per year. This amendment also amends and deletes unnecessary requirements.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no impact to the state budget because this amendment simply requires assisted living staff to receive dementia-specific training and deletes unnecessary requirements.
- ◆ LOCAL GOVERNMENTS: There is no impact to the local government budget because this amendment simply requires assisted living staff to receive dementia-specific training and deletes unnecessary requirements.
- ◆ SMALL BUSINESSES: There is no impact to the small business budgets because this amendment simply requires assisted living staff to receive dementia-specific training and deletes unnecessary requirements.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to businesses, individuals, local governments, and persons that are not small businesses because this amendment simply requires assisted living staff to receive dementia-specific training and deletes unnecessary requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to affected persons because this amendment simply requires assisted living staff to receive dementia-specific training and deletes unnecessary requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business because the amendment clarifies the specific type of training already required by the rule.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carmen Richins by phone at 801-273-2802, by FAX at 801-274-0658, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-273-2804, by FAX at 801-274-0658, or by Internet E-mail at jhoffman@utah.gov or mail at PO BOX 142003, Salt Lake City, UT 84114-2003

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

**R432. Health, Family Health and Preparedness, Licensing.
R432-270. Assisted Living Facilities.**

R432-270-3. Definitions.

- (1) The terms used in these rules are defined in R432-1-3.
- (2) In addition:
 - (a) "Assessment" means documentation of each resident's ability or current condition in the following areas:
 - (i) memory and daily decision making ability;
 - (ii) ability to communicate effectively with others;
 - (iii) physical functioning and ability to perform activities of daily living;
 - (iv) continence;
 - (v) mood and behavior patterns;
 - (vi) weight loss;
 - (vii) medication use and the ability to self-medicate;
 - (viii) special treatments and procedures;
 - (ix) disease diagnoses that have a relationship to current activities of daily living status, behavior status, medical treatments, or risk of death;
 - (x) leisure patterns and interests;
 - (xi) assistive devices; and
 - (xii) prosthetics.
 - (b) "Activities of daily living (ADL)":
 - (i) means those personal functional activities required for an individual for continued well-being, including:
 - (A) personal grooming, including oral hygiene and denture care;
 - (B) dressing;
 - (C) bathing;
 - (D) toileting and toilet hygiene;
 - (E) eating/nutrition;
 - (F) administration of medication; and
 - (G) transferring, ambulation and mobility.
 - (ii) are divided into the following levels:
 - (A) "Independent" means the resident can perform the ADL without help.
 - (B) "Assistance" means the resident can perform some part of an ADL, but cannot do it entirely alone.
 - (C) "Dependent" means the resident cannot perform any part of an ADL; it must be done entirely by someone else.
 - (c) "Home-like" as used in statute and this rule means a place of residence which creates an atmosphere supportive of the resident's preferred lifestyle. Home-like is also supported by the use of residential building materials and furnishings.
 - (d) "Hospice patient" means an individual who is admitted to a hospice program or agency.
 - (e) "Legal representative" means an individual who is legally authorized to make health care decisions on behalf of another individual.
 - (f) "Monitoring device":
 - (i) means a video surveillance camera or a microphone or other device that captures audio; and
 - (ii) does not include:

(A) a device that is specifically intended to intercept wire, electronic, or oral communication without notice to or the consent of a party to the communication; or

(B) a device that is connected to the Internet or that is set up to transmit data via an electronic communication.

(g) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice registered nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.

(h) "Self-direct medication administration" means the resident can:

(i) recognize medications offered by color or shape; and

(ii) question differences in the usual routine of medications.

(i) "Service Plan" means a written plan of care for services which meets the requirements of R432-270-13.

(j) "Services" means activities which help the residents develop skills to increase or maintain their level of psycho-social and physical functioning, or which assist them in activities of daily living.

(k) "Significant change" means a major change in a resident's status that is self-limiting or impacts on more than one area of the resident's health status.

(l) "Significant assistance" means the resident is unable to perform any part of an ADL and is dependent upon staff or others to accomplish the ADL as defined in R432-270-3(2)(b).

(m) "Social care" means:

(~~n~~)ⁱ providing opportunities for social interaction in the facility or in the community; or

(ii) providing services to promote independence or a sense of self-direction.

(~~e~~)ⁿ "Unit" means an individual living space, including living and sleeping space, bathroom, and optional kitchen area.

R432-270-8. Personnel.

(1) Qualified competent direct-care personnel shall be on the premises 24 hours a day to meet residents needs as determined by the residents' assessment and service plans. Additional staff shall be employed as necessary to perform office work, cooking, housekeeping, laundering and general maintenance.

(2) The services provided or arranged by the facility shall be provided by qualified persons in accordance with the resident's written service plan.

(3) All personnel who provide personal care to residents in a Type I facility shall be at least 18 years of age or be a certified nurse aide and shall have related experience in the job assigned or receive on the job training.

(4) Personnel who provide personal care to residents in a Type II facility must be certified nurse aides or complete a state certified nurse aide program within four months of the date of hire.

(5) Personnel shall be licensed, certified, or registered in accordance with applicable state laws.

(6) The administrator shall maintain written job descriptions for each position, including job title, job responsibilities, qualifications or required skills.

(7) Facility policies and procedures must be available to personnel at all times.

(8) ~~[All personnel]~~ Each employee must receive documented orientation to the facility and the job for which they are hired. Orientation shall include the following:

(a) job description;

(b) ethics, confidentiality, and residents' rights;

(c) fire and disaster plan;

(d) policy and procedures; ~~and~~

(e) reporting responsibility for abuse, neglect and exploitation ~~[-]; and~~

(f) dementia specific training including:

(i) communicating with dementia patients and their caregivers;

(ii) communication methods and when they are appropriate;

(iii) types and stages of dementia including information on the physical and cognitive declines as the disease progresses;

(iv) person centered care principles; and

(v) how to maintain safety in the dementia patient environment.

(9) Each employee shall receive documented in-service training. The training shall be tailored to annually include all of the following subjects that are relevant to the employee's job responsibilities:

(a) principles of good nutrition, menu planning, food preparation, and storage;

(b) principles of good housekeeping and sanitation;

(c) principles of providing personal and social care;

(d) proper procedures in assisting residents with medications;

(e) recognizing early signs of illness and determining when there is a need for professional help;

(f) accident prevention, including safe bath and shower water temperatures;

(g) communication skills which enhance resident dignity;

(h) first aid;

(i) resident's rights and reporting requirements of Section 62A-3-201 to 312; and

(j) ~~[special needs of the]~~ [resident] specific training.

(10) The facility administrator shall annually receive a total of 4 hours of Dementia/Alzheimer's specific training.

(11) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for that reason alone.

(1~~+~~)² The facility shall establish a personnel health program through written personnel health policies and procedures which protect the health and safety of personnel, residents and the public.

(1~~2~~)³ The facility must complete an employee placement health evaluation to include at least a health inventory when an employee is hired. Facilities may use their own evaluation or a Department approved form.

(a) A health inventory shall obtain at least the employee's history of the following:

(i) conditions that may predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions that may prevent the employee from performing certain assigned duties satisfactorily.

(b) The facility shall develop employee health screening and immunization components of the personnel health program.

(c) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(d) All infections and communicable diseases reportable by law shall be reported to the local health department in accordance with the Communicable Disease Rule, R386-702-3.

(1[3]4) The facility shall develop and implement policies and procedures governing an infection control program to protect residents, family and personnel; which includes appropriate task related employee infection control procedures and practices.

(1[4]5) The facility shall comply with the Occupational Safety and Health Administration's Blood-borne Pathogen Standard.

R432-270-13. Service Plan.

(1) Each resident must have an individualized service plan that is consistent with the resident's unique cognitive, medical, physical, and social needs, and is developed within seven calendar days of the day the facility admits the resident. The facility shall periodically revise the service plan as needed.

(2) The facility shall use the resident assessment to develop, review, and revise the service plan for each resident.

(3) ~~[The service plan must be prepared by the administrator or a designated facility service coordinator.~~

~~_____ (4)]~~The service plan shall include a written description of the following:

(a) what services are provided;

(b) who will provide the services, including the resident's significant others who may participate in the delivery of services;

(c) how the services are provided;

(d) the frequency of services; and

(e) changes in services and reasons for those changes.

R432-270-19. Medication Administration.

(1) A licensed health care professional must assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided shall be documented on each resident's assessment.

(2) Each resident's medication program must be administered by means of one of the methods described in (a) through (f) in this section:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the facility must assess each person's ability to safely have medications in the unit. If safety is a factor, a resident shall keep his medication in a locked container in the unit.

(b) The resident is able to self-direct medication administration. Facility staff may assist residents who self-direct medication administration by:

(i) reminding the resident to take the medication;

(ii) opening medication containers; and

(iii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(c) Family members or a designated responsible person may administer medications. If a family member or designated responsible person assists with medication administration, they shall sign a waiver indicating that they agree to assume the responsibility to fill prescriptions, administer medication, and document that the medication has been administered. Facility staff may not serve as the designated responsible person.

(d) For residents who are unable to self-administer or self-direct medications, facility staff may administer medications only after delegation by a licensed health care professional under the scope of their practice.

(i) If a licensed health care professional delegates the task of medication administration to unlicensed assistive personnel, the delegation shall be in accordance with the Nurse Practice Act and R156-31B-701.

(ii) The medications must be administered according to the prescribing order.

(iii) The delegating authority must provide and document supervision, evaluation, and training of unlicensed assistive personnel assisting with medication administration.

(iv) The delegating authority or another registered nurse shall be readily available either in person or by telecommunication.

(e) Residents may independently administer their own personal insulin injections if they have been assessed to be independent in that process. This may be done in conjunction with the administration of medication in methods (a) through (d) of this section.

(f) home health or hospice agency staff may provide medication administration to facility residents exclusively, or in conjunction with (a) through (e) of this section.

(3) The facility must have a licensed health care professional or licensed pharmacist review all resident medications at least every six months.

(4) Medication records shall include the following:

(a) the resident's name;

(b) the name of the prescribing practitioner;

(c) medication name including prescribed dosage;

(d) the time, dose and dates administered;

(e) the method of administration;

(f) signatures of personnel administering the medication;

and

(g) the review date.

(5) The licensed health care professional or licensed pharmacist should document any change in the dosage or schedule of medication in the medication record. When changes in the medication are documented by the facility staff the licensed health care professional must co-sign within 72 hours. The licensed health care professional must notify all unlicensed assistive personnel who administer medications of the medication change.

(6) ~~The facility [Each resident's medication record] must have access to [contain] a [list of] reference for possible reactions and precautions for all prescribed medications in the facility.~~

(7) The facility must notify the licensed health care professional when medication errors occur.

(8) Medication error incident reports shall be completed when a medication error occurs or is identified.

(9) Medication errors must be incorporated into the facility quality improvement process.

(10) Medications stored in a central storage area shall be:

(a) locked to prevent unauthorized access; and

(b) available for the resident ~~shall~~ to have timely access to the medication.

(11) Medications that require refrigeration shall be stored separately from food items and at temperatures between 36 - 46 degrees Fahrenheit.

(12) The facility must develop and implement policies governing the;

(a) security and disposal of controlled substances by the licensee or facility staff which shall be consistent with the provisions of 21 CFR 1307.21[-]; and

(b) destruction and disposal of unused, outdated, or recalled medications.

(13) The facility shall document the return of resident's medication to the resident or to the resident's responsible person upon discharge.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: ~~2016~~2017

Notice of Continuation: April 10, 2014

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-1

Human Services, Administration,
Administrative Hearings
R497-100
Adjudicative Proceedings

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 41057
FILED: 12/12/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment will clarify the Department of Human Services (DHS) procedures for informal adjudicative proceedings. Citations are also updated.

SUMMARY OF THE RULE OR CHANGE: This amendment establishes a default burden of proof for DHS where none is otherwise stated. It establishes the result of failing to request a hearing in a timely manner in certain cases, and it clarifies the public's right to be represented by an attorney or non-attorney in informal adjudicative proceedings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-4-202 and Section 63G-4-203

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no anticipated cost or savings. DHS has sufficient staffing and resources to absorb any work that may be required due to amended changes. All changes reflect current practices, clarify the public's rights, and update citations.

◆ **LOCAL GOVERNMENTS:** Local government is not affected by this rule; therefore, there is no cost. The amendment does not change current practice.

◆ **SMALL BUSINESSES:** There is no impact to small businesses, because the amendment does not change current practice. The rule clarifies the public's rights and updates citations.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The rule reflects current practice and will have no impact on persons other than small businesses, businesses, or local government entities. The rule clarifies the public's rights and updates citations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule reflects current practice and will have no financial impact on affected persons. The rule clarifies the public's rights and updates citations.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is not anticipated that this rule change will have a fiscal impact on business.

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

HUMAN SERVICES
ADMINISTRATION, ADMINISTRATIVE HEARINGS
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
◆ Sonia Sweeney by phone at 801-538-8241, by FAX at 801-538-4604, or by Internet E-mail at ssweeney@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

AUTHORIZED BY: Ann Williamson, Executive Director

R497. Human Services, Administration, Administrative Hearings.

R497-100. Adjudicative Proceedings.

R497-100-1. Authority.

The Department of Human Services, Office of Administrative Hearings is given rulemaking authority pursuant to Utah Code Ann. Section 62A-1-111.

R497-100-2. Definitions.

The terms used in this rule are defined in Section 63G-4-103. In addition,

(1) For the purpose of this ~~Rule[section]~~, "agency" means the Department of Human Services or a division or office of the Department of Human Services including the Division of Child and Family Services (DCFS), the Division of Services to People with Disabilities (DSPD), the Division of Juvenile Justice Services (DJJS), the Division of Aging and Adult Services (DAAS), ~~[the Division of Mental Health (DMH), the Division of Substance Abuse (SA)]~~ Substance Abuse and Mental Health (DSAMH), the Office of Licensing (OL), the Utah State Developmental Center (USDC), the Utah State Hospital (USH), and any boards, commissions, officers, councils, committees, bureaus, or other administrative units, including the Executive Director and Director of each Division, Office or Institution~~[the Department or other persons acting on behalf of or under the authority of the Executive Director or Director]~~. For purposes of this ~~Rule[section]~~, the term "agency~~[Department of Human Services]~~" does not include the Office of Recovery Services (ORS).~~[The rules regarding ORS are stated in R527-200.]~~

(2) "Agency actions or proceedings" of the Department of Human Services include, but are not limited to the following:

(a) challenges to findings of child abuse, neglect and dependency pursuant to Section 62A-4a-1009;

(b) due process hearings afforded to foster parents prior to removal of a foster child from their home pursuant to Section 62A-4a-206;

~~[(e) the denial, revocation, modification, or suspension of any Department foster home license, or group care license;]~~

~~[(d)c] the denial, revocation, modification or suspension of a license issued by the Office of Licensing pursuant to Section 62A-2-101, et seq.;~~

~~[(e)d] challenges to findings of abuse, neglect or exploitation of a vulnerable~~[disabled or elder]~~ adult pursuant to Section 62A-3-301, et seq.;~~

~~[(f) the licensure of community alternative programs by the Office of Licensing;]~~

~~[(g)e] actions by the Division of Juvenile Justice Services and the Youth Parole Authority relating to granting or revocation of parole, discipline or, resolution of grievances of, supervision of, confinement of or treatment of residents of any Juvenile Justice Services facility or institution;~~

~~[(h)f] resolution of client grievances with respect to delivery of services by private, nongovernmental, providers within the ~~[Department]agency's~~ service delivery system;~~

~~[(i)g] actions by ~~[Department]Agency~~ owned and operated institutions and facilities relating to discipline or treatment of residents confined to those facilities;~~

~~[(j)h] placement and transfer decisions affecting involuntarily committed residents of the Utah State Developmental Center pursuant to Sections 62A-5-313;~~

~~[(k)l] protective payee hearings;~~

~~[(H)j] ~~Agency[Department]~~ records amendment hearings held pursuant to Section 63G-~~[3]2~~-603.~~

(3) "Aggrieved person" includes any applicant, recipient or person aggrieved by an agency action.

(4) "Declaratory Order" is an administrative interpretation or explanation of the applicability of a statute, rule, or order within the primary jurisdiction of the agency to specified circumstances.

(5) "Office" means the Office of Administrative Hearings in the Department of Human Services.

(6) "Presiding officer" means an agency head, or individual designated by the agency head, by these rules, by agency rule, or by statute to conduct an adjudicative proceeding and may include the following:

(a) hearing officers;

(b) administrative law judges;

(c) division and office directors;

(d) the superintendent of agency institutions;

(e) statutorily created boards or committees.

R497-100-3. Exceptions.

The provisions of this ~~[section]rule~~ do not govern the following:

(1) The procedures for promulgation of agency rules, or the judicial review of those procedures. See Section 63G-4-102(2) (a).

(2) Department actions relating to contracts for the purchase or sale of goods or services by and for the state or by and for the ~~[Department]agency~~, including terminations of contracts by the Department.

(3) Initial applications for and initial determinations of eligibility for state-funded programs.

(4) Adjudicative proceedings brought by or against ORS. The rules regarding ORS are stated in R527-200.

R497-100-4. Form of Proceeding.

(1) All adjudicative proceedings commenced by the Department of Human Services or commenced by other persons affected by the Department of Human Services' actions shall be informal adjudicative proceedings.

(2) However, any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(3) If a proceeding is converted from informal to formal, the Procedure for Formal Adjudicative Proceedings in Section 63G-4-204~~[102]~~through 208~~[, et seq.]~~ shall apply. In all other cases, the Procedures for Informal Proceedings in Section 63G-4-203 and R497-100-6 shall apply.

R497-100-5. Commencement of Proceedings.

(1) All adjudicative proceedings shall be commenced by either:

(a) a notice of agency action, if proceedings are commenced by the agency; or

(b) a request for agency action, if proceedings are commenced by persons other than the agency.

(2) ~~[(a)]~~ When adjudicative proceedings are commenced by the agency, the notice of agency action shall conform to Section 63G-4-201(2) ~~[(a)]~~ and shall also include a statement that:

~~[(i)]~~ a ~~[a statement that]~~ the adjudicative proceeding is to be conducted informally; and

~~[(b)]~~ describes the aggrieved person's right to request a hearing and the applicable time limits within which a hearing must be requested.

~~[(ii)]~~ if a hearing is to be held in an informal adjudicative proceeding, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default; and

~~[(iii)]~~ if the agency's rules do not provide for a hearing, a statement that the parties may request a hearing within ten working days of the notice of agency action.

~~[(b)]~~ The notice of agency action shall be mailed or published in conformance with Section 63G-4-201(2)(b).]

~~[(e)]~~ When adjudicative proceedings are commenced by a person other than the agency, the request for agency action shall conform to Section 63G-4-201(3)(a) and (b) and include the name of the adjudicative proceeding, if known.

~~[(d)]~~ In the case of adjudicative proceedings commenced under Subsection ~~[(2)]~~ ~~[(e)]~~ by a person other than the agency, the presiding officer shall within ten ~~working~~ business days give notice by mail to all parties. The written notice shall:

~~[(i)]~~ a) give the agency's file number or other reference number;

~~[(ii)]~~ b) give the name of the proceeding;

~~[(iii)]~~ c) designate that the proceeding is to be conducted informally;

~~[(iv)]~~ d) if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default;

~~[(v)]~~ e) if the agency's rules do not provide for a hearing, state the parties' right to request a hearing within ten working days of the agency's response; and

~~[(vi)]~~ f) give the name, title, mailing address, and telephone number of the presiding officer.

R497-100-6. Availability of Hearing.

(1) When an informal adjudicative proceeding is commenced by the agency, if the agency's rules do not provide otherwise, a party may request a hearing within ten business days of receipt of the notice of agency action.

(2) All hearing requests received by the agency shall be forwarded to the office, unless another presiding officer is designated by statute or rule.

(3) In the case of a hearing commenced under Subsection (1), a party who fails to request a hearing within ten business days

of receipt of the notice of agency action shall have no right to an adjudicative hearing or judicial review of the agency action, unless the party can demonstrate, by a preponderance of the evidence, that it was virtually impossible or unreasonably burdensome to file the request within ten business days.

~~[(1)]~~ Hearings may be held in any informal adjudicative proceedings conducted in connection with an agency action if the aggrieved party requests a hearing and if there is a disputed issue of fact. If there is no disputed issue of fact, the presiding officer may deny a request for a hearing and determine all issues in the adjudicative proceeding, if such a determination complies ~~done in compliance]~~ with the policies and standards of the applicable agency. If the aggrieved person objects to the denial of a hearing, that person may raise that objection as grounds for relief in a request for reconsideration.

~~[(2)]~~ There is no issue of fact if:

(a) the aggrieved person tenders facts which on their face establish the right of the agency to take the action or obtain the relief sought in the proceeding; or

(b) the aggrieved person tenders facts upon the request of the presiding officer and the fact does not conflict with the facts relied upon by the agency in taking its action or seeking its relief.

R497-100-7. Procedures for Informal Proceedings.

In compliance with Section 63G-4-203, the procedure for the informal adjudicative proceedings is as follows:

(1) (a) The respondent to a notice of agency action or request for agency action may, but is not required to, file an answer or responsive pleading to the allegations contained in the notice of agency action or the request for agency action within 10 ~~working~~ business days following receipt of the notice of agency action or request for agency action ~~adverse party's pleading~~.

(b) A party may be represented by an attorney or a non-attorney. Attorneys will not be appointed by the office or the agency.

~~[(c)]~~ A hearing shall be provided to any party entitled to request a hearing in accordance with Section 63G-4-203.

~~[(e)]~~ d) In the hearing, the party named in the notice of agency action or in the request for agency action ~~may be represented by counsel and]~~ shall be permitted to testify, present evidence and comment on the issues.

~~[(d)]~~ e) Hearings will be held only after a timely notice has been mailed to all parties.

~~[(e)]~~ f) Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence. The office may require that parties exchange documents prior to the hearing in order to expedite the process. All parties to the proceedings will be responsible for the appearance of witnesses.

~~[(f)]~~ g) All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.

~~[(g)]~~ h) Intervention is prohibited, except that intervention is allowed where a federal statute or rule requires that a state permit intervention.

~~[(h)]~~ i) Within a reasonable time after the close of the hearing, or after the party's failure to request a hearing within the time prescribed by the agency's rules, the presiding officer shall issue a signed order in writing that conforms to Section 63G-4-203(1)(i).

(~~i~~) All hearings shall be open to all parties.

(~~j~~) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at the hearings.

(~~k~~) A copy of the presiding officer's order shall be promptly mailed to each of the parties.

(2) All hearings shall be recorded at the office's expense. A transcript of the record may be prepared pursuant to Section 63G-4-203(2)(b). [~~The recording will be maintained for one year after the order has been issued.~~]

(3) Unless the agency's statute or rules specify otherwise, when an informal adjudicative proceeding is commenced by the agency and is to be heard by the office, the agency shall have the burden of proving, by a preponderance of the evidence, that it did not abuse its discretion. This can be demonstrated by showing that the agency's decision was not arbitrary and capricious.

R497-100-8. Venue.

(1) Venue for in-person hearings conducted by the office shall be in an agency office located in the county closest to where the aggrieved person resides or maintains their principle place of business, unless the office finds good cause to hold the hearing elsewhere.

R497-100-[8]9. Declaratory Orders.

(1) Who May File. Any person or governmental entity directly affected by a statute, rule or order administered, promulgated or issued by an agency, may file a petition for a declaratory order by addressing and delivering the written petition to the presiding officer of the appropriate agency.

(2) Content of Petition.

(a) The petition shall be clearly designated as a request for an agency declaratory order and shall include the following information;

(i) the statute, rule or order to be reviewed;

(ii) a detailed description of the situation or circumstances at issue;

(iii) a description of the reason or need for a declaratory order, including a statement as to why the petition should not be considered frivolous;

(iv) an address and telephone where the petitioner can be contacted during regular work days;

(v) a statement about whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

(vi) the signature of the petitioner or an authorized representative.

(3) Exemptions from Declaratory Order Procedure. A declaratory order shall not be issued by the agency [~~any agency of the Department~~] under the following circumstances:

(a) the subject matter of the petition is not within the jurisdiction and competency of the agency;

(b) the person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the declaratory order request;

(c) the declaratory order procedure is likely to substantially prejudice the rights of a person who would be a necessary party, unless that person consents in writing to a determination of the matter by a declaratory proceeding;

(d) the declaratory order is trivial, irrelevant, or immaterial;

(e) a declaratory order proceeding is otherwise prohibited by state or federal law;

(f) a declaratory order is not in the best interest of the agency or the public;

(g) the subject matter is not ripe for consideration; or

(h) the issue is currently pending in a judicial proceeding.

(4) Intervention in Accordance with Sections 63G-4-203(1)(g) and 63G-4-503.

(a) Intervention is prohibited in informal adjudicative proceedings, except where a federal statute or rule requires that intervention be permitted.

(b) In the case of an adjudicative proceeding that has been converted to a formal adjudicative proceeding, a person may intervene in a declaratory order proceeding by filing a petition to intervene with the presiding officer of the agency within 30 days after the conversion of the proceeding.

(c) The agency presiding officer may grant a petition to intervene if the petition meets the following requirements:

(i) the intervenor's legal interests may be substantially affected by the declaratory order proceedings; and

(ii) the interests of justice and the orderly and prompt conduct of the declaratory order proceeding will not be materially impaired by allowing intervention.

(5) Review of Petition for Declaratory Order.

(a) After review and consideration of a petition for a declaratory order, the presiding officer of the agency may issue a written order that conforms to Section 63G-4-503(6)(a);

(b) If the matter is set for an adjudicative proceeding, written notice shall be mailed to all parties that shall:

(i) give the name, title, mailing address, and telephone number of the presiding officer;

(ii) give the agency's file number or other reference number;

(iii) give the name of the proceeding;

(iv) state whether the proceeding shall be conducted informally or formally;

(v) state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default; and

(vi) if the agency's rules do not provide for a hearing, state the parties' right to request a hearing within 10 working days of the agency's response.

(c) If the agency's presiding officer issues a declaratory order, it shall conform to Section 63G-4-503(6)(b) and shall also contain:

(i) a notice of any right of administrative or judicial review available to the parties; and

(ii) the time limits for filing an appeal or requesting review.

(d) A copy of all declaratory orders shall be mailed in accordance with Section 63G-4-503(6)(c).

(e) If the agency's presiding officer has not issued a declaratory order within 60 days after receipt of the petition, the petition is deemed denied.

R497-100-[9]10. Agency Review.

Agency review shall not be allowed.~~[Nothing contained in this rule prohibits a party from filing a petition for reconsideration pursuant to Section 63G-4-302. If the 20th day for filing a request for reconsideration falls on a weekend or holiday the deadline will be extended until the next working day.]~~

R497-100-11. Reconsideration.

Nothing contained in this Rule prohibits a party from filing a petition for reconsideration pursuant to Section 63G-4-302. If the 20th day for filing a request for reconsideration falls on a weekend or holiday, the deadline will be extended until the next working day.

R497-100-[10]12. Scope and Applicability.

The provisions of this section supersede the provisions of any other Department rules which may conflict with the foregoing rules.

KEY: administrative procedures, social services

Date of Enactment or Last Substantive Amendment: ~~[January 21, 2009]~~2017

Notice of Continuation: July 20, 2015

Authorizing, and Implemented or Interpreted Law: 62A-1-110; 62A-1-111

Natural Resources, Wildlife Resources R657-62 Drawing Application Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41098

FILED: 12/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the division's drawing application process.

SUMMARY OF THE RULE OR CHANGE: This rule is being amended to change the process in the drawings when preference points are used. The new process would evaluate applicants' first hunt choice first, beginning with the applications with the greatest number of preference points, then applicants second hunt choice, and so forth. In addition, a person would lose the preference points if that person draws out for a general season buck deer permit, regardless of the hunt choice drawn out on (1st to 5th).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This rule amendment alters a process already in place and does not create a cost or savings to the division. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

♦ **LOCAL GOVERNMENTS:** Since this amendment alters an existing process, 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:** This amended rule will alter the structure for using preference points in a division drawing. The Division has determined that it would not generate a cost or saving impact to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amended rule will alter the structure for using preference points in a division drawing. The Division has determined that it would not generate a cost or saving impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amended rule will alter the structure for using preference points in a division drawing. DWR determines that this amendment will not create a cost or savings impact to individuals who participate in hunting in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

AUTHORIZED BY: Gregory Sheehan, Director

R657. Natural Resources, Wildlife Resources.**R657-62. Drawing Application Procedures.****R657-62-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for drawing applications and procedures.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the respective guidebooks of the Wildlife Board.

R657-62-9. Preference Points.

(1) Preference points are used in the applicable drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2)(a) A preference point is awarded for:

(i) each valid, unsuccessful application ~~of the first-choice hunt when~~ applying for a general buck deer ~~permit, or~~

~~each valid unsuccessful application when applying for an~~, antlerless deer, antlerless elk, doe pronghorn, Sandhill Crane, Sharp-tailed grouse, Greater sage grouse or Swan permit; or

~~(iii)~~ (ii) each valid application when applying only for a preference point in the applicable drawings.

(b) Preference points are awarded by species for:

(i) general buck deer;

(ii) antlerless deer;

(iii) antlerless elk;

(iv) doe pronghorn;

(v) Sandhill Crane;

(vi) Sharp-tailed Grouse;

(vii) Greater sage grouse; and

(viii) Swan.

(3)(a) A person may not apply in the drawing for both a preference point and a permit for the species listed in (2)(b).

(b) A person may not apply for a preference point if that person is ineligible to apply for a permit.

(c) Preference points shall not be used when obtaining remaining permits.

(4) Preference points ~~for the applicable species are~~ forfeited if:

~~(a)~~ a person obtains a ~~first-choice hunt~~ general buck deer ~~permit through the drawing;~~

~~(b)~~ a person obtains an, antlerless deer, antlerless elk, doe pronghorn, Sandhill Crane, Sharp-tailed grouse, Greater sage grouse or Swan permit through the drawing~~;~~.

(5) Preference points are not transferable.

(6) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain copies of electronic applications from 2000 to the current applicable drawings for the purpose of researching preference point records.

(c) Any requests for researching an applicant's preference point records must be submitted within the time frames provided in Subsection (b).

(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any preference point obtained by fraud, deceit, misrepresentation, or in violation of law.

KEY: wildlife, permits

Date of Enactment or Last Substantive Amendment: ~~March 16, 2015~~ 2017

Notice of Continuation: April 14, 2014

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

Pardons (Board of), Administration**R671-311-3****Earned Time Adjustments****NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41081

FILED: 12/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Legislature made changes to Section 77-27-5.4. The Board is updating Section R671-311-3 to conform to the statutory changes.

SUMMARY OF THE RULE OR CHANGE: Programs that qualify for the Earned Time adjustment are approved by the Board in collaboration with the Department of Corrections, as required by Subsection 77-27-5.4(2)(a)(ii). Earned time credits may be forfeit if the Board determines a rescission hearing is necessary in accordance with Subsection 77-27-5.4(4). Individuals without a release date or who have not met a contingency are not eligible for the Earned Time Program, see Subsection 77-27-5.4(3).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art VII, Sec 12 and Section 64-13-1 and Section 64-13-25 and Section 64-13-7.5 and Section 77-27-1 et seq. and Section 77-27-11 and Section 77-27-5 and Section 77-27-5.4 and Section 77-27-6 and Section 77-27-7 and Subsection 63G-3-201(3) and Subsection 77-27-10(2)(b) and Subsection 77-27-9(4)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The proposed changes clarify how decisions are made about which programs qualify and who is eligible for earned time adjustments but do not create a cost or savings. The changes do not create new processes that would incur new costs. The changes are unlikely to make a substantial change in the number of earned time adjustments granted.

◆ **LOCAL GOVERNMENTS:** The Department of Corrections contracts with county jails to house state inmates and to provide programming. These programs must meet standards set by the Department of Corrections. Completing these

programs qualifies inmates for an earned time adjustment. These programs are already approved for the earned time adjustment, so the rule change will not have an impact. However, new programs in the jail or prison must also meet performance standards and be approved by the Board in collaboration with the Department of Corrections before the program is eligible for earned time adjustments.

♦ **SMALL BUSINESSES:** Small business does not participate in the parole process or the Earned Time Program. There is no fiscal impact for small business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Earned Time Program provides time cuts to inmates who complete programming. Other than successfully completing the intervention program, the inmate is not required to submit any form or application.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost to the inmate when the Board grants a time cut due to successful completion of an intervention program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Private business does not participate in the parole process. The interventions programs are provided by the Department of Corrections either directly or through county jails. The proposed rule change does not affect businesses.

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

PARDONS (BOARD OF)
ADMINISTRATION
ROOM 300
448 E 6400 S
SALT LAKE CITY, UT 84107-8530
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Greg Johnson by phone at 801-261-6454, by FAX at 801-261-6481, or by Internet E-mail at gregjohnson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

AUTHORIZED BY: Angela Micklos, Chair

R671. Pardons (Board of), Administration.

R671-311. Special Attention Reviews, Hearings and Decisions.

R671-311-3. Earned Time Adjustments.

(1) Earned Time adjustments shall reduce the period of incarceration for offenders who have been granted a release from prison and who successfully complete [recidivism]risk reduction programming or objectives, as defined and specified herein.

(2) Definitions.

(a) "Adjustment" means:

(i) a reduction of an offender's period of incarceration when a release date has been ordered by the Board; and

(ii) has the same meaning as "credit" as used in Utah Code Ann. Section 77-27-5.4.

(b) "Case Action Plan" means the plan, developed by the Department pursuant to Utah Code Ann. Subsection 64-13-1(1), that identifies the program priorities that will reduce the offender's criminal risk factors as determined by a risk and needs assessment.

(c) "Department" refers to the Utah Department of Corrections and any of its divisions, bureaus, or departments.

(d) "Earned time adjustment" has the same meaning as, and comprises the program mandated in, Utah Code Ann. Section 77-27-5.4 and as defined in this Rule.

(e) "Forfeiture" and "Forfeiture of Earned Time Credits" as used in Utah Code Ann. Subsection 77-27-5.4(4) means that a release date granted by the Board following an earned time adjustment is rescinded due to a major disciplinary violation, new criminal conviction, new criminal activity, or other similar action committed by the offender.

(f) "Programming" means a component, objective, requirement, or program identified in an offender's case action plan that:

(i) meets the minimum standards and qualifications for programs established by the Department pursuant to Utah Code Ann. Section 64-13-7.5 or 64-13-25; and

(ii) has been shown by scientific research to reduce recidivism by addressing an offender's criminal risk factors.

(iii) has been approved by the Board in collaboration with the Department as required by Utah Code Ann. Section 77-27-5.4 (2)(a)(ii).

(g) "Successful completion" means that an offender has completed [a]case action plan [component, objective, requirement or]programming and has earned a completion rating of "successful" as determined by standards set by the Department.

(3) Earned Time Adjustments.

(a) An offender shall earn an adjustment of four months for the successful completion of a program identified by the Department as pertaining to, satisfying, or applying within [~~the highest ranked priority in the~~]an offender's case action plan.

(b) An offender shall earn an adjustment of four months for successful completion of one additional program as identified by the Department in the offender's case action plan.

(c) The earned time adjustment shall change the previously ordered release date, resulting in a reduction in the length of incarceration.

~~[(d) If an offender earns a time adjustment prior to a Board decision setting release, the earned time and programming completion shall be considered by the Board when making subsequent release decisions.~~

~~(e)(d)~~ The Board, in its discretion, may grant earned time adjustments in excess of four months to recognize additional or extraordinary programming performance or achievement.

(e) The board may order the forfeiture of earned time credits under this section if it determines a rescission hearing is necessary in accordance with Section 77-27-5.4(4).

(4) Exclusions:

(a) Offenders whose previously ordered release date does not provide enough time, including time for transition services, for

the adjustment may not be granted a full earned time adjustment, but shall receive a partial adjustment if the previously ordered release date allows for the same.

(b) Earned time adjustments may not be used to change an offender's original hearing as scheduled by the Board.

(c) Offenders who have been sentenced to life without parole are ineligible for earned time adjustments.

(d) Offenders who have been ordered by the Board to serve a life sentence to expiration are ineligible for earned time adjustments.

(e) Earned time adjustments may not be granted for a second or subsequent completion of the same classes, programs, or case action plan priorities during the same term of incarceration without an intervening release.

(f) Offenders who do not have a current release date are not eligible for the Earned Time adjustment according to Utah Code Ann. Section 77-27-5.4(3)(d); however, the Board shall consider the program completion when making subsequent release decisions.

(g) Offenders who have not met a contingency requirement for release ordered by the Board are ineligible for an earned time adjustment.

(5) The Department shall notify the Board, within 30 days, of an offender's successful completion of a case action plan program that is eligible for an earned time adjustment.

KEY: parole, inmates, sentences, time cut
Date of Enactment or Last Substantive Amendment: [~~October 15, 2015~~2017]

Notice of Continuation: January 31, 2012

Authorizing, and Implemented or Interpreted Law: Art. VII, Sec. 12; 63G-3-201(3); 64-13-1; 64-13-7.5; 64-13-25; 77-27-1 et seq.; 77-27-5.4; 77-27-7; 77-27-5; 77-27-6; 77-27-9(4)(a); 77-27-10(2)(b); 77-27-11

**Science Technology and Research
 Governing Authority, Administration
 R856-4**

**USTAR Science Technology Initiation
 Grant**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41095

FILED: 12/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2), which requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for one of USTAR's new grant programs, the USTAR Science Technology Initiation Grants. This new rule facilitates the grant under Section 63M-2-503 by establishing the

eligibility and reporting criteria for an entity to receive a grant including: 1) the form and process of submitting a grant application; 2) a description of entities eligible to apply for a grant; 3) a description of specific categories of projects that are eligible for a grant; and 4) the criteria that will be considered in evaluating and awarding grants.

SUMMARY OF THE RULE OR CHANGE: The Science Technology Initiation Grant (STIG) provides grants to support university-affiliated researchers to develop preliminary data and to conduct proof of concept experiments or other precursor research activities required to pursue larger, commercially-oriented grants from a federal agency, grant making foundation, industry or related entity. The goal of STIG is to increase the amount of external research funding received by Utah's universities, promote interdisciplinary and cross-university collaboration and strengthen the research and development capacity at state universities in commercially-oriented areas aligned to existing state industry sectors. STIGs are to be administered to the university that employs the applicant.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-302(h)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** None--Although this is a new program, it is funded with the same appropriations that have already been allocated to USTAR for these purposes.

♦ **LOCAL GOVERNMENTS:** None--Only universities can apply for these grants. Therefore, local government entities are not affected by this rule.

♦ **SMALL BUSINESSES:** None--Only universities can apply for these grants. It is anticipated that small businesses will benefit from the research of universities that receive this grant, since the grant is established to create economic growth in Utah. However, USTAR is unable to estimate any fiscal benefit for small businesses as a result of this rule, because the impact is indirect and will vary depending on circumstance.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Only universities can apply for these grants. Therefore, other persons other than small business are not affected by this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If successful in winning a grant, awardees will be required to report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Only universities can apply for these grants. Therefore, businesses are not affected by this rule. It is anticipated that businesses will likely benefit from the research of universities that receive this grant, since the grant

is established to create economic growth in Utah. However, USTAR is unable to estimate any fiscal benefit for small businesses as a result of this rule, because the impact is indirect and will vary depending on circumstance.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
SCIENCE TECHNOLOGY AND RESEARCH GOVERNING AUTHORITY ADMINISTRATION
60 E NORTH TEMPLE
THIRD FLOOR
SALT LAKE CITY, UT 84111
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Thom Williams by phone at 801-538-8633, or by Internet E-mail at thomwilliams@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

AUTHORIZED BY: Ivy Estabrooke, Executive Director

R856. Science Technology and Research Governing Authority (Utah), Administration.

R856-4. USTAR Science Technology Initiation Grant.

R856-4-1. Authority.

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

R856-4-2. Purpose and Goals.

(1) The Science and Technology Initiation Grant (STIG) provides grants to support university affiliated researchers to the development of preliminary data, conduct proof of concept experiments or other precursor research activities required to pursue larger, commercially-oriented grants from a federal agency, grant making foundation, industry or related entity.

(2) The goal of STIG is to increase the amount of external research funding received by Utah's universities, promote interdisciplinary and cross-university collaboration and strengthen the research and development capacity at state Universities in commercially-oriented areas aligned to existing state industry sectors.

(3) STIG grants are to be administered to the university that employs the applicant.

R856-4-3. Definitions.

(1) "Applicant" means the university affiliated researcher or research team for a particular project.

(2) "Awardee(s)" means a project that has been awarded a Science and Technology Initiation Grant (STIG).

(3) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(4) "Commercialization plan" means the strategy or process by which a company will introduce a technology into the market.

(5) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(6) "Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).

(7) "Targeted funding" means the larger commercially-oriented grant or other external funding offered by a federal agency, grant making foundation, or related entity for which the researcher will apply after using the STIG grant to develop required data.

(8) "Grant making foundation" means any not for profit organization that awards research grants (e.g. The Bill and Melinda Gates Foundation, The Lemelson Foundation, etc).

(9) "Targeted Industry Sector" means the Utah industry or industries designated by USTAR for purposes of eligibility for STIG grants using the selection criteria described in these rules.

(10) "University" means any college, university, or other public or not-for-profit higher education institution with its primary location in Utah.

(11) "USTAR" means the Utah Science, Technology and Research Initiative.

(12) "STIG" and "STIG grant" mean the Science and Technology Initiation Grant, a competitive grant program administered by USTAR.

R856-4-4. Eligibility Criteria.

(1) Individual researchers or research teams employed by a University are eligible to apply for a STIG grant.

(2) Applicants must identify the specific targeted funding source and the award type or solicitation.

(3) Applicants must propose using grant funds to support specific research and development activities, such as developing proofs of concept or performing initial data generation, necessary to develop requisite data for applicant's technology to be eligible for the targeted funding.

(4) Applicant's existing technology must be assessed to be between TRL 0-3.

(5) Collaborations among researchers at different universities and/or among researchers in different disciplines, while not required, will be given priority in the evaluation process described in Rule 7.

(6) USTAR funding cannot be used as a material benefit to another state. Funding from a STIG grant must be used within the State of Utah.

(7) Applicants must be developing a technology in an eligible industry sector.

(a) USTAR will identify the "Industry Sector(s)" eligible to receive a STIG in the STIG application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the eligible technology sectors to ensure they are strategically selected to maximize the potential benefit to the state and align with USTAR's economic development objectives.

(c) In selecting industry sectors eligible to receive support from STIG, the Governing Authority may consider the following factors:

(i) statewide or regional importance of the industry to Utah's economy;

(ii) relative size of the sector, its stability, and growth potential;

(iii) characteristics of the state's workforce including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(v) the potential for the industry sector to develop new jobs and business opportunities in the state;

(vi) likelihood that research in this sector will result in creation of a company in Utah or IP transfer to an existing Utah company; and

(vii) any other factor the governing authority deems relevant.

(6) Applicants must obtain a cost-sharing commitment from each university that will receive funding from a STIG grant;

(a) matching funds may be provided via:

(i) Direct payment to university for the research project; and/or

(ii) "In-kind" contribution, which may include:

(A) Salary of university affiliated researcher or personnel;

(B) Cost of Subject Matter Expert(s) (SME);

(C) Materials and equipment;

(D) Work/research space;

(E) Travel and other expenses budgeted for the project;

or,

(F) Other contributions, as approved by USTAR

R856-4-5. Application Form and Submission Guidelines.

(1) USTAR will accept applications for STIG grants on an ongoing basis.

(2) USTAR will make applications and instructions available on USTAR's website and also in paper form upon request.

(3) The instructions will include the following:

(a) The procedure for submitting an application.

(b) Specific instructions for application content which will include:

(i) The procedure for submitting an application.

(ii) Specific instructions for application content, including:

(A) description of the target grant;

(B) list of technical milestones; and,

(C) timeline for completion of research.

(iii) Specific instructions for the required budget outline, including:

(1) total project cost;

(2) a description of any funds already secured for activities related to this project;

(3) an itemized budget detailing planned use of grant funds; and,

(4) breakdown of costs to complete each milestone.

(iv) Description of the application evaluation process and scoring system.

(v) Instructions for reporting project results and completing annual follow-up surveys.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Rules 6-7 herein.

R856-4-6. Application Review Procedure.

(1) University Pre-screening.

(a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

(2) Initial eligibility screening.

(a) USTAR will conduct an initial eligibility screening for each application to ensure:

(i) Completeness;

(ii) Verification of minimum eligibility requirements; and

(iii) Appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.

(b) Any application that fails to meet the criteria in Rule 6 Section (2) will be rejected.

(3) Panel Review.

(a) Accepted applications will be reviewed by independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Rule 7.

(i) Each expert panel will consist of at least two technical subject-matter experts who will assess the scientific and technical merits of the proposal and the alignment to the funding source.

(ii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications including whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the target industry sector in Utah;

(D) experience evaluating grant proposals; and,

(E) any other factors USTAR deems important.

(iii) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website.

(4) Governing Authority review.

(i) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(ii) The subcommittee will recommend projects for award and award amounts of grant funding to the full governing authority for final approval.

R856-4-7. Evaluation and Award Criteria.

(1) The panel of subject matter experts will use a scoring system to evaluate and rank grant applications and determine grant amounts.

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) technical merit of proposal;

(ii) appropriate technology readiness level (TRL 0-3);

(iii) whether proposal involves a collaboration between researchers at more than one university;

(iv) whether the proposal involves a collaboration between researchers in more than one discipline;

(v) competitiveness of the proposed project and team for the target grant;

(vi) potential future economic benefit to the state;

(vii) reasonableness of the proposed budget, including whether the amounts are appropriate for the work proposed;

(viii) reasonableness of proposed milestones and timelines; and

(ix) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance.

R856-4-8. Grant Amount, Award, and Required Contract.

(1) USTAR will have the discretion to limit the amount of funding that may be awarded for each STIG based on available funds, scope of project, and quality of proposal.

(2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the sole judgment and discretion of USTAR and the governing authority.

(3) Upon award of a STIG, and prior to any disbursement of funds, university(ies) must enter into a contract with USTAR governing the use of STIG grant funding.

(4) Unless addressed in the terms and conditions of the contract between university(ies) and USTAR, the following provisions shall apply:

(a) grant funding may not be used to provide a primary benefit to any state or nation-state other than Utah; and,

(b) for all other eligibility requirements, awardees must maintain eligibility status for the STIG program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year of reporting has been completed.

(5) Violations of Rule 8, Section 4 may result in forfeiture of grant funding and require repayment of all or a portion of the funding received as part of the program.

R856-4-9. Contract Modifications.

(1) University may request a modification to the terms of an STIG contract.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to timelines of less than one month if it is the first such modification;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes that do not alter the budget, company's eligibility status, or violate any state or federal law;

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

R856-4-10. Milestones.

(1) STIG funding must be used by individual researchers or research teams to develop proof of concept and/or initial data generation projects needed to apply for the targeted funding.

(2) Acceptable milestones must be specific to the project and designed to result in achieving the targeted funding.

(3) Specific funding details will be provided in the program announcement and in each STIG contract.

R856-4-11. Funding Distribution.

(1) Initial funding of no more than 50% of the total grant award will be provided within 30 days of a signed contract to allow the recipient to meet initial milestones.

(2) Remaining grant funds will be disbursed upon successful completion of designated milestones as set forth in the contract.

(3) Specific funding details will be provided in the program announcement and in each STIG grant contract.

(4) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract.

R856-4-12. Milestones and Reporting.

(1) All universities receiving STIG funding are required to provide the reporting for researchers or research teams as specified in Section 63M-2-702 and 704, as applicable.

KEY: USTAR, TRL, STIG

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, Implemented, or Interpreted Law: 63M-2-302(h)

Science Technology and Research
Governing Authority, Administration

R856-5

USTAR Energy Research Triangle
Professors Grant

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41096

FILED: 12/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2), which requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for one of USTAR's new grant programs, the USTAR Energy Research Triangle Professors Grant. This rule establishes the eligibility and reporting criteria for an entity to receive a grant under Section 63M-2-503 including: 1) the form and process of submitting a grant application; 2) which entities are eligible to apply for a USTAR Energy Research

Triangle Professors Grant; 3) specific categories of projects that are eligible; 4) the criteria for awarding grants and determining grant amounts; and 5) the reporting requirements of grant recipients.

SUMMARY OF THE RULE OR CHANGE: This rule establishes the USTAR Energy Research Triangle Professors grant program is a collaborative effort between USTAR and the Utah Governor's Office of Energy Development (GOED) and will be administered according to this rule. Grants provide funding for projects in which research teams from at least three Utah non-profit higher education institutions collaborate to address energy related technical challenges important to economic growth in the state of Utah. Anticipated duration of projects will be 12 to 18 months. Funding must be budgeted by state fiscal year (July 1 through June 30) and funding will be dependent on meeting milestones and continued USTAR/GOED appropriation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-302(h)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--Although this is a new program, it's funded by appropriations that have already been allocated to USTAR for these purposes.
- ◆ **LOCAL GOVERNMENTS:** None--Only universities can apply for these grants. Therefore, local government entities are not affected by this rule.
- ◆ **SMALL BUSINESSES:** None--Only universities can apply for these grants. It is anticipated that small businesses will benefit from the research of universities that receive this grant, since the grant is established to create economic growth in Utah. However, USTAR is unable to estimate any fiscal benefit for small businesses as a result of this rule, because the impact is indirect and will vary depending on circumstance.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Only universities can apply for these grants. Therefore, persons other than small business are not affected by this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If successful in winning a grant, awardees will be required to report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Only universities can apply for these grants. Therefore, businesses are not affected by this rule. It is anticipated that businesses will likely benefit from the research of universities that receive this grant since the grant is established to create economic growth in Utah. However, USTAR is unable to estimate any fiscal benefit for small

businesses as a result of this rule, because the impact is indirect and will vary depending on circumstance.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 SCIENCE TECHNOLOGY AND RESEARCH GOVERNING AUTHORITY ADMINISTRATION
 60 E NORTH TEMPLE
 THIRD FLOOR
 SALT LAKE CITY, UT 84111
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Thom Williams by phone at 801-538-8633, or by Internet E-mail at thomwilliams@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

AUTHORIZED BY: Ivy Estabrooke, Executive Director

R856. Science Technology and Research Governing Authority (Utah), Administration.
R856-5. USTAR Energy Research Triangle Professors Grant.
R856-5-1. Authority.

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

R856-5-2. Purpose and Goals.

(1) The USTAR Energy Research Triangle Professors grant program is a collaborative effort between USTAR and The Utah Governor's Office of Energy Development and will be administered according to these rules.

(2) Grants provide funding for projects in which research teams from at least 3 Utah non-profit higher education institutions collaborate to address energy related technical challenges important to economic growth in the state of Utah.

(3) Anticipated duration of projects will be 12-18 months. Funding must be budgeted by State fiscal year (1JUL-30JUN) and funding will be dependent on meeting milestones and continued USTAR/OED appropriation.

R856-5-3. Definitions.

(1) "Applicant" means the research team for a particular project.

(2) "Awardee(s)" means a project that has been awarded an Energy Research Triangle - Professor grant.

(3) "Commercialization plan" means the strategy or process by which a researcher or research team will introduce a technology into the market.

(4) "ERT-P" and "ERT-P grant" mean the Energy Research Triangle - Professor grant program, a competitive grant program administered by USTAR.

(5) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(6) "Lead university" is defined as the university which applies for ERT-P funding and is the principal contact between USTAR and the research team.

(7) "OED" means the Utah Governor's Office of Energy Development.

(8) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(9) Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).

(10) "University" means any college, university, or other public or not-for-profit higher education institution with it's primary location in Utah.

(11) "USTAR" means the Utah Science, Technology and Research Initiative.

(12) "UTAG" means the University Technology Acceleration Grants administered by the Utah Science, Technology and Research Initiative.

R856-5-4. Eligibility Criteria.

(1) ERT-P grant is available to university research teams that meet the following guidelines:

(a) Research team must include at least three researchers.

(b) Research team must include at least three Utah universities or colleges.

(c) Research team must include at least two Utah research universities under the Carnegie Classification of Institutions of Higher Education (http://carnegieclassifications.iu.edu/classification_descriptions/basic.php). The following three Utah universities are currently classified as research universities:

(i) University of Utah;

(ii) Utah State University;

(iii) Brigham Young University;

(d) Research team may include at least one researcher from universities in the state of Utah other than those listed in (1) (c).

(2) Research team must be developing a technology with applications that can address Utah-specific energy and natural resource issues.

(a) USTAR/OED may specify a specific subsector of Utah's energy and natural resource industry as a priority for grant funding in the ERT-P application materials.

(b) ERT-P grants are targeted at energy and natural resource innovation and development.

(c) In selecting targeted energy and natural resource subsectors eligible to receive support from ERT-P, the governing authority may consider the following factors:

(A) statewide or regional importance of the subsector to Utah's economy;

(B) relative size of the subsector, its stability, and growth potential;

(C) characteristics of the state's existing workforce, including education and training;

(D) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(E) the potential for the subsector to develop new jobs and business opportunities in the state; and,

(F) the likelihood that research in this subsector will result in the creation of a company in Utah or IP transfer to an existing Utah company.

(3) Eligible technologies will be between a TRL 2-5 at the time of the anticipated grant award;

(4) Applicants may not receive ERT-P funding and UTAG funding for the same technology in the same Utah fiscal year.

R856-5-5. Application Form and Submission Guidelines.

(1) For each round of grants, USTAR/OED will provide a program announcement and make applications and instructions available on USTAR and/or OED's website, and in paper form upon request.

(2) Completed applications must be received on or before the specified deadline in the application instructions.

(3) The instructions will include the following:

(a) The procedure for submitting an application.

(b) Specific instructions for application content which will include:

(i) The procedure for submitting an application:

(A) description of the target grant;

(B) list of technical milestones; and,

(C) timeline for completion of research.

(ii) Specific instructions for the required budget outline, including:

(A) total project cost;

(B) a description of any funds already secured for activities related to this project;

(C) an itemized budget detailing planned use of grant funds; and,

(D) breakdown of costs to complete each milestone.

(iii) Description of the application evaluation process and scoring system.

(iv) Instructions for reporting project results and completing annual follow-up surveys.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Rules 6-7 herein.

R856-5-6. Application Review Procedure.

(1) Initial eligibility screening.

(a) USTAR/OED will conduct an initial eligibility screening for each application to ensure:

(i) Completeness;

(ii) Verification of minimum eligibility requirements; and

(iii) Appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.

(b) Any application that fails to meet the criteria in Rule 6 Section (1) will be rejected.

(2) Panel Review.

(a) Accepted applications will be reviewed by subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Rule 7.

(i) USTAR/OED will have discretion to select the experts for the review panels and shall consider, as applicable:

(A) academic qualifications including whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the the commercial/industrial energy sector or sub-sector in Utah;

(D) experience evaluating grant proposals; and

(E) any other factors USTAR/OED deems important.

(ii) USTAR/OED will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website. The experts will also be required to sign an NDA.

(iii) Governing authority review. A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(iv) Recommendations from the subcommittee concerning which projects should be awarded a grant and the proposed budget will be presented to the full governing authority for approval.

R856-5-7. Evaluation and Award Criteria.

(1) The expert panel will use a scoring system to evaluate and rank grant applications and determine grant amounts.

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) Technical merit;

(ii) Strength and maturity of research and management team, as applicable;

(iii) Appropriate technology readiness level (TRL 2- 5);

(iv) Potential economic impact, as measured by:

(A) Job creation;

(B) Potential revenue due to expansion of current business or development of a new business; and/or

(C) Projected time to revenue or job creation;

(v) Market need, technical and management experience and qualifications;

(vi) Reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed);

(vii) Reasonableness of proposed milestones;

(viii) Proposed timeline is achievable and will not exceed 18 months; and,

(ix) Any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

R856-5-8. Grant Amount, Award, and Required Contract.

(1) USTAR/OED will have the discretion to limit the amount of funding that may be awarded for each ERT-P based on available funds, scope of project, and quality of proposal.

(2) USTAR/OED reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.

(3) Upon award of an ERT-P, and prior to any disbursement of funds, each lead university must enter into a contract with USTAR governing the use of grant funding.

(a) The "lead university" is defined as the principal investigator's university

(b) Subcontracts to the remaining universities will be administered by the lead university.

(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

(a) grant funding may not be used to provide a primary benefit to any state other than Utah; and,

(b) for all other eligibility requirements, awardee must maintain eligibility status for the ERT-P program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.

(5) Violations of Rule 8, Section 4 may result in forfeiture of grant funding and require repayment of all or a portion of the funding received as part of the program.

R856-5-9. Contract Modifications.

University may request a modification to the terms of an ERT-P contract.

(1) USTAR may deny a modification request for any reason.

(2) USTAR shall have discretion to agree to reasonable, non-substantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to timelines of less than one month if it is the first such modification;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes that do not alter the budget, company's eligibility status, or violate any state or federal law;

(3) Substantive changes must be approved by the USTAR governing authority.

(4) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

R856-5-10. Funding Distribution.

(1) Funding will be provided to the lead university and will be distributed per the subcontracts to each of the supporting universities.

(2) Initial funding of no more than 50% of the total grant award will be provided within a reasonable time after the ERT-P grant is approved to allow the university team to meet initial milestones.

(3) Remaining grant funds for individual milestones will be disbursed upon successful completion of those milestones.

(4) A portion of the final milestone funding will be withheld until final reporting is received.

(5) Specific funding details will be provided in the program announcement and in each ERT-P grant contract.

(6) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

R856-5-11. Milestones and Reporting.

(1) Research team is required to provide reporting, as applicable, specified in Sections 63M-2-702 and 704.

KEY: ERT Professors Grant, TRL, USTAR

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, Implemented, or Interpreted Law: 63M-2-302(h)

**Science Technology and Research
Governing Authority, Administration
R856-6
USTAR Energy Research Triangle
Scholars Grant**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41097

FILED: 12/14/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2), which requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for one of USTAR's new grant programs, the USTAR Energy Research Triangle Scholars Grant. This rule establishes the eligibility and reporting criteria for an entity to receive a grant under Section 63M-2-503 including: 1) the form and process of submitting a grant application; 2) which entities are eligible to apply for a USTAR Energy Research Triangle Scholars Grant; 3) specific categories of projects that are eligible; 4) the criteria for awarding grants and determining grant amounts; and 5) the reporting requirements of grant recipients.

SUMMARY OF THE RULE OR CHANGE: This rule establishes the USTAR Energy Research Triangle Scholars grant program is a collaborative effort between USTAR and the Utah Governor's Office of Energy Development and will be administered according to these rules. Grants provide funding to university faculty research professors for student-led projects that seek to address technical challenges related to energy issues important to economic growth in the state of Utah. Anticipated duration of projects will be 12-18 months. Funding must be budgeted by state fiscal year (July 1 through June 30) and funding will be dependent on meeting milestones and continued USTAR appropriation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-302(h)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: None--Although this is a new program, it's funded by appropriations that have already been allocated to USTAR for these purposes.

♦ LOCAL GOVERNMENTS: None--Only universities can apply for these grants. Therefore, local government entities are not affected by this rule.

♦ SMALL BUSINESSES: None--Only universities can apply for these grants. It is anticipated that small businesses will benefit from the research of universities that receive this grant, since the grant is established to create economic growth in Utah. However, USTAR is unable to estimate any fiscal benefit for small businesses as a result of this rule, because the impact is indirect and will vary depending on circumstance.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Only universities can apply for these grants. Therefore, persons other than small business are not affected by this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If successful in winning a grant, awardees will be required to report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Only universities can apply for these grants. Therefore, businesses are not affected by this rule. It is anticipated that businesses will likely benefit from the research of universities that receive this grant, since the grant is established to create economic growth in Utah. However, USTAR is unable to estimate any fiscal benefit for small businesses as a result of this rule, because the impact is indirect and will vary depending on circumstance.

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

SCIENCE TECHNOLOGY AND RESEARCH
GOVERNING AUTHORITY

ADMINISTRATION

60 E NORTH TEMPLE

THIRD FLOOR

SALT LAKE CITY, UT 84111

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Thom Williams by phone at 801-538-8633, or by Internet E-mail at thomwilliams@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

AUTHORIZED BY: Ivy Estabrooke, Executive Director

R856. Science Technology and Research Governing Authority (Utah), Administration.

R856-6. USTAR Energy Research Triangle Scholars Grant.

R856-6-1. Authority.

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

R856-6-2. Purpose and Goals.

(1) The USTAR Energy Research Triangle Scholars grant program is a collaborative effort between USTAR and The Utah Governor's Office of Energy Development and will be administered according to these rules.

(2) Grants provide funding to university faculty research professors for student-led projects that seek to address technical challenges related to energy issues important to economic growth in the state of Utah.

(3) Anticipated duration of projects will be 12-18 months. Funding must be budgeted by State fiscal year (1JUL-30JUN) and funding will be dependent on meeting milestones and continued USTAR appropriation.

R856-6-3. Definitions.

(1) "Applicant" means the researcher for a particular project.

(2) "Awardee" means a project that has been awarded an Energy Research Triangle Scholars grant.

(3) "Commercialization plan" means the strategy or process by which a researcher will introduce a technology into the market.

(4) "ERT-S" and "ERT-S grant" mean the Energy Research Triangle Scholar grant program, a competitive grant program administered by USTAR.

(5) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(6) "OED" means the Utah Governor's Office of Energy Development.

(7) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(8) "Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).

(9) "University" means any college, university, or other public or not-for-profit higher education institution with its primary location in Utah.

(10) "USTAR" means the Utah Science, Technology and Research Initiative.

(11) "ERT-P" and "ERT-P grant" mean the Energy Research Triangle - Professor grant program, a competitive grant program administered by USTAR.

(12) "UTAG" means the University Technology Acceleration Grants administered by the Utah Science, Technology and Research Initiative.

R856-6-4. Eligibility Criteria.

(1) The ERT-S grant is restricted to university affiliated researchers for student-lead projects meeting the following guidelines:

(a) Project must be led by currently matriculated students in good standing.

(b) Project must be led by student enrolled in a nonprofit Utah university.

(c) Student project must be overseen by a research professor at a nonprofit Utah university.

(2) Student researcher must be developing a technology with applications that can address Utah-specific energy and natural resource issues.

(a) USTAR/OED may specify a specific subsector of Utah's energy and natural resource industry as a priority for grant funding in the ERT-S application materials.

(b) ERT-S grants are targeted at energy and natural resource innovation and development.

(c) In selecting targeted energy and natural resource subsectors eligible to receive support from ERT-S, the governing authority may consider any or all of the following factors:

(A) statewide or regional importance of the subsector to Utah's economy;

(B) relative size of the subsector, its stability, and growth potential;

(C) characteristics of the state's existing workforce, including education and training;

(D) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(E) the potential for the subsector to develop new jobs and business opportunities in the state; and,

(F) the likelihood that research in this subsector will result in the creation of a company in Utah or IP transfer to an existing Utah company.

(3) Student researcher must be developing a technology assessed at the start of the project to be between a TRL of 2 and 5.

(4) ERT-S, ERT-P funding and UTAG funding cannot be requested for the same technology in the same fiscal year.

R856-6-5. Application Form and Submission Guidelines.

(1) For each round of grants, USTAR/OED will provide a program announcement and make applications and instructions available on USTAR and/or OED's website and in paper form upon request.

(2) Completed applications must be received on or before the specified deadline in the application instructions.

(3) The instructions will include the following:

(a) The procedure for submitting an application.

(b) Specific instructions for application content which will include:

(i) The procedure for submitting an application.

(A) description of the technology;

(B) list of technical milestones; and,

(C) timeline for completion of research.
(ii) Specific instructions for the required budget outline, including:
(A) total project cost;
(B) a description of any funds already secured for activities related to this project;
(C) an itemized budget detailing planned use of grant funds; and,
(D) breakdown of costs to complete each milestone.
(iii) Description of the application evaluation process and scoring system.
(iv) Instructions for reporting project results and completing annual follow-up surveys.
(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Rules 6-7 herein.

R856-6-6. Application Review Procedure.

(1) Initial eligibility screening.
(a) USTAR/OED will conduct an initial eligibility screening for each application to ensure:
(i) Completeness;
(ii) Verification of minimum eligibility requirements; and
(iii) Appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.
(b) Any application that fails to meet the criteria in Rule 6 Section (1) will be rejected.
(2) Panel Review.
(a) Accepted applications will be reviewed by subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Rule 7.
(i) USTAR/OED will have discretion to select the experts for the review panels and shall consider, as applicable:
(A) academic qualifications including whether the expert has a terminal degree in a relevant field;
(B) relevant work experience and practical training in the field;
(C) knowledge of the the commercial/industrial energy sector or sub-sector in Utah;
(D) experience evaluating grant proposals; and,
(E) any other factors USTAR/OED deems important.
(ii) USTAR/OED will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website.
(3) Governing authority review.
(i) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.
(ii) Recommendations from the subcommittee concerning which projects should be awarded a grant and the budget for the grant will be presented to the full governing authority for approval.

R856-6-7. Evaluation and Award Criteria.

(1) The expert panel will use a scoring system to evaluate and rank grant applications and determine grant amounts.
(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:
(i) Technical merit;
(ii) Strength and maturity of research or management team, as applicable;
(iii) Appropriate technology readiness level (TRL 2- 5);
(iv) Potential economic impact, as measured by:
(A) Job creation;
(B) Potential revenue due to expansion of current business or development of a new business; and/or,
(C) Projected time to revenue or job creation;
(D) Other measures of economic impact such as natural resource impacts.
(v) Market need, technical and management experience and qualifications;
(vi) Reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed);
(vii) Reasonableness of proposed milestones;
(viii) Proposed timeline is achievable and will not exceed 18 months;
(ix) Potential for positive impact on student's professional development goals and,
(x) Any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

R856-6-8. Grant Amount, Award, and Required Contract.

(1) USTAR/OED will have the discretion to limit the amount of funding that may be awarded for each ERT-S based on available funds, scope of project, and quality of proposal.
(2) USTAR/OED reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.
(3) Upon award of a ERT-S, and prior to any disbursement of funds, each university must enter into a contract with USTAR governing the use of grant funding.
(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:
(a) grant funding may not be used to provide a primary benefit to any state other than Utah; and,
(b) for all other eligibility requirements, awardee must maintain eligibility status for the ERT-S program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.
(5) Violations of Rule 8, Section 4 may result in forfeiture of ERT-S grant funding and require repayment of all or a portion of the funding received as part of the program.

R856-6-9. Contract Modifications.

University may request a modification to the terms of an ERT-S contract.
(1) USTAR may deny a modification request for any reason.

(2) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to timelines of less than one month if it is the first such modification;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes that do not alter the budget, company's eligibility status, or violate any state or federal law;

(3) Substantive changes must be approved by the USTAR governing authority.

(4) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

R856-6-10. Funding Distribution.

(1) Award funding shall be made to the university faculty research professor mentoring the student. The professor will then distribute funds to the student researcher to engage in research under the professor's direction.

(2) Initial funding of no more than 50% of the total grant award will be provided within a reasonable time after an ERT-S grant is approved to allow the student researcher to meet initial milestones.

(3) Remaining grant funds for individual milestones will be disbursed upon successful completion of those milestones.

(4) A portion of the grant may be retained until final reporting is received.

(5) Specific funding details will be provided in the program announcement and in each ERT-S grant contract.

(6) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

R856-6-11. Milestones and Reporting.

(1) Student researcher is required to provide reporting, as applicable, specified in Section 63M-2-702 and 704.

KEY: ERT Scholars Grant, USTAR

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, Implemented, or Interpreted Law: 63M-2-302(h)

**Transportation, Program Development
R926-13-4
Highways Within the State That Are
Designated as State Scenic Byways**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41053

FILED: 12/06/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The State Scenic Byway Committee voted on and

approved a motion to extend the Energy Loop Scenic Byway on 02/02/2011. This approved extension was never amended into the rule. This proposed amendment to Rule R926-14 remedies that deficiency.

SUMMARY OF THE RULE OR CHANGE: This filing extends the Energy Loop Scenic Byway to include US-6 from SR-96 at Colton (MP 216.17) to the southern boundary of Helper (MP 233.72), and SR-10 from SR-31 (MP 47.58) to the Huntington State Park (MP 49.38).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 72-4-303(4)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The Department does not anticipate that this amendment will result in any aggregate cost or saving to the state budget. It does not implicate fiscal matters of any kind.

♦ LOCAL GOVERNMENTS: The Department does not anticipate that this amendment will result in any aggregate cost or saving to the budgets of any local government. It does not implicate fiscal matters of any kind.

♦ SMALL BUSINESSES: The Department does not anticipate that this amendment will result in any aggregate cost or saving to the budgets of any small business. It does not implicate fiscal matters of any kind.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not anticipate that this amendment will result in any aggregate cost or saving to the budgets of persons other than small businesses, businesses, or local government entities. It does not implicate fiscal matters of any kind.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate that this amendment will result in any compliance cost for affected persons. It does not implicate fiscal matters of any kind.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I do not believe this amendment will not have any fiscal impact on business.

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

TRANSPORTATION
PROGRAM DEVELOPMENT
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at cwnewman@utah.gov
♦ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at jimpalmer@utah.gov

- ◆ Linda Hull by phone at 801-965-4253, or by Internet E-mail at lhull@utah.gov
- ◆ Michelle Jeronimo by phone at 801-965-3883, or by Internet E-mail at mjeronimo@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

AUTHORIZED BY: Carlos Braceras, Executive Director

R926. Transportation, Program Development.

R926-13. Designated Scenic Byways.

R926-13-4. Highways Within the State That Are Designated as State Scenic Byways.

The following roads are designated as state scenic byways (date of designation is April 9, 1990 unless otherwise specified):

(1) Logan Canyon Scenic Byway. US Route 89, beginning at 1500 East in Logan and running to the intersection of SR-30 in Garden City, excluding a 20-foot segment within Garden City at a location centered at approximately mile point 497.73.

(a) Designated April 9, 1990.

(b) Shortened June 13, 2002 when designated a National Scenic Byway and the portion of US-89 from Garden City to the Utah/Idaho State Line was transferred to the Bear Lake Scenic Byway.

(c) Segment excluded May 13, 2010 by action of the Garden City town council which determined the segment at approximately mile point 497.73 lay adjacent to a non-scenic area.

(2) Bear Lake Scenic Byway. US Route 89, beginning at the Utah/Idaho state line and running to SR-30; and State Route 30, beginning at US-89, and running to East Shore Road in Laketown.

(a) Designated April 9, 1990 as Laketown Scenic Byway.

(b) Extended and renamed June 13, 2002 to include the portion of US-89 originally included in the state designation of the Logan Canyon Scenic Byway that was excluded when that byway was designated a National Scenic Byway.

(3) Ogden River Scenic Byway. State Route 39, beginning at Valley Drive, near the mouth of Ogden Canyon, and running to the eastern Wasatch-Cache Forest boundary near highway milepost 48; and State Route 158 from SR-39, and running to County Road FAS-3468; and the County Road FAS-3468, from SR-158, running to SR-39.

(4) Big Cottonwood Canyon Scenic Byway. State Route 190, beginning at SR-210, and running to the end of the Brighton Loop.

(5) Little Cottonwood Canyon Scenic Byway. State Route 210, beginning at SR-209, and running to the end of state maintenance, near Alta.

(6) Provo Canyon Scenic Byway. US Route 189, beginning at SR-52, and running to SR-113, near Charleston; and State Route 113, from US-189 running to US-40 in Heber City.

(a) Designated April 9, 1990.

(b) Realigned onto SR-113 from the eastern portion of US-189 February 25, 2003.

(7) Mirror Lake Scenic Byway. State Route 150, beginning at SR-32 in Kamas, and running to the Utah/Wyoming State Line.

(8) Flaming Gorge-Uintas Scenic Byway. US Route 191, beginning at US-40 in Vernal, and running to the Utah/Wyoming State Line; State Route 44, from US-191, running to SR-43 in Manila; and State Route 43, from SR-44, running to the Utah/Wyoming state line.

(a) Designated April 9, 1990 on SR-44 and US-191 between SR-44 and Vernal.

(b) Added November 18, 1992 the portion of US-191 between SR-44 and the state line.

(9) Indian Canyon Scenic Byway. US Route 191, beginning at US-6 near Helper, and running to US-40 in Duchesne.

(10) The Energy Loop: Huntington and Eccles Canyons Scenic Byway. State Route 31, beginning at US-89 in Fairview, and running to SR-10 in Huntington; State Route 264, from SR-31, running to SR-96; and State Route 96, from Clear Creek, and running to US-6 near Colton.

(a) Designated April 9, 1990 on SR-31 and SR-264.

(b) Extended circa 1992 to add SR-96 between Clear Creek and Colton.

(c) Extended on February 2, 2011 to include US-6 from SR-96 at Colton (MP 216.17) to the southern boundary of Helper (MP 233.72) and SR-10 from SR-31 (MP 47.58) to the Huntington State Park (MP 49.38).

(11) Nebo Loop Scenic Byway. State Route 115, beginning at I-15 and running to SR-198; State Route 198, from SR-115 running to 600 East in Payson; and along County Road FAS-2822 (600 East) and National Forest Road 015 (FAS-1822 and the portion of FAS-1820 south of FAS-1822) running to SR-132 in Juab County.

(12) Upper Colorado River Scenic Byway. State Route 128, beginning at US-191 near Moab, and running to I-70 West Cisco interchange.

(13) Potash-Lower Colorado River Scenic Byway. State Route 279, beginning at the southwest end of SR-279 near the Potash Plant and running to US-191.

(14) Indian Creek Corridor Scenic Byway. State Route 211, beginning at US-191 and running to County Road FAS-2432; and County Road FAS-2432 from SR-211 running to the Canyonlands National Park Visitor Center.

(15) Bicentennial Highway Scenic Byway. State Route 95, beginning at SR-24, and running to US-191.

(16) Trail of The Ancients Scenic Byway. State Route 95, beginning at SR-275, and running to US-191; State Route 275, from SR-95 and running to Natural Bridges National Monument; US Route 191 from Center Street in Blanding running to SR-162 in Bluff; and State Route 162 from US-191 running to the Utah/Colorado state line.

(a) Designated February 7, 1994 on SR-275, over the eastern portion of the Bicentennial Highway Scenic Byway between SR-275 and US-191, and on US-191 between Blanding and SR-262.

(b) Extended June 6, 2001 to include US-191 between SR-262 and Bluff, and to include SR-162.

(17) Monument Valley to Bluff Scenic Byway. US Route 163, beginning at the Utah/Arizona State Line running to US-191;

and US Route 191 from US-163 running to the Cottonwood Wash Bridge in Bluff.

(18) Capitol Reef Country Scenic Byway. State Route 24, beginning at SR-72 in Loa, and running to SR-95 in Hanksville.

(19) Highway 12, A Journey Through Time Scenic Byway. State Route 12, beginning at US-89 near Panguitch, and running to SR-24 near Torrey.

(20) Markagunt High Plateau Scenic Byway. State Route 14, beginning at SR-130 and running to US-89.

(21) Cedar Breaks Scenic Byway. State Route 148, beginning at SR-14, through Cedar Breaks National Monument, running to SR-143.

(22) Brian Head-Panguitch Lake Scenic Byway. State Route 143, beginning at I-15 South Parowan Interchange, and running to US-89 in Panguitch.

(23) Beaver Canyon Scenic Byway. State Route 153, beginning at SR-160 in Beaver, and running to the end of pavement near Elk Meadows.

(24) Mt. Carmel Scenic Byway. US Route 89, beginning at the Kanab north city limit (approximately highway milepost 65), and running to SR-12.

(25) Zion Park Scenic Byway. State Route 9, beginning at I-15 and running to US-89.

(26) Kolob Fingers Road Scenic Byway. The National Park Service Road, beginning at I-15, and running to the Kolob Canyon Overlook.

(27) Dead Horse Mesa Scenic Byway. State Route 313, from US-191 running to Dead Horse Point State Park; and the Island in the Sky Road FAS-1708, from SR-313 running to Grandview Point.

(a) Designated May 16, 2002.

(28) Fishlake Scenic Byway. State Route 25 and County Roads FAS-2554 (comprising Fish Lake Road/Forest Highway 31) and FAS-3268 (Freemont River Road/Forest Highway 42), beginning at SR-24, and running to SR-72.

(a) Designated April 9, 1990, on SR-25 between SR-24 and Johnson Valley Reservoir.

(b) Extended November 18, 1992, along the Fremont River Road between Johnson Valley Reservoir and SR-72 to comprise the southern portion of the Gooseberry/Fremont Road Scenic Backway.

(29) Dinosaur Diamond Prehistoric Highway Scenic Byway. Interstate 70, from the Utah/Colorado state line running to Cisco Exit 214; the County Road FAS-1714 through Cisco, from I-70 running to SR-128; State Route 128, from the Cisco Road running to US-191 near Moab; US Route 191, from SR-128 running to I-70 at Crescent Junction; Interstate 70, from US-191 at Crescent Junction running to US-6 near Green River; US Route 6, from I-70 running to US-191 near Helper; US Route 191, from US-6 near Helper running to US-40 in Duchesne; US Route 40, from US-191 in Duchesne to the Utah/Colorado state line.

(a) Dinosaur Diamond Prehistoric Highway designated in Title 72, Chapter 4, Section 204 in 1998.

(b) Scenic byway route established with National Scenic Byway designation differs from special highway designation in that it includes County Road FAS-1714 and I-70 east of Cisco and does not at this time include those portions located on SR-10, on SR-155, or on US-191 south of SR-128.

(c) Segment excluded June 27, 2013 by action of the Naples City Council which determined the segment on US-40 at approximately mile point 145.87 (300 South) to mile point 148.53 (3000 South) become a non-scenic byway.

(d) Segment excluded July 20, 2015 by action of the Uintah County Commission which determined the segment on US-40 from mile point 153 to 154 become a non-scenic byway.

(e) Segment excluded August 31, 2015 by action of the Uintah County Commission which determined the segment on US-40 from mile point 154 to 156 become a non-scenic byway.

(30) Great Salt Lake Legacy Parkway Scenic Byway. State Route 67, beginning at I-215 and running to I-15.

(a) Designated May 16, 2002.

KEY: transportation, scenic byways, highways

Date of Enactment or Last Substantive Amendment: ~~April 8, 2016~~ 2017

Notice of Continuation: June 16, 2015

Authorizing, and Implemented or Interpreted Law: 72-4-303; 63G-3-201

Workforce Services, Unemployment Insurance **R994-405-2** Separations from a Temporary Help Company (THC)

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 41103
FILED: 12/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify when benefits will be allowed in Temporary Help Company (THC) cases.

SUMMARY OF THE RULE OR CHANGE: These changes are to reflect current Department practice and provide guidance for claimants and THC on how job separations are adjudicated.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to local government.

♦ **SMALL BUSINESSES:** There are no costs or savings to any small businesses as there are no fees associated with this program and it is federally funded.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to any persons other than small businesses, businesses, or local government entities as there are no fees associated with this program and it is federally funded.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons, as there are no fees associated with this program and it is federally funded. These changes will not impact the contribution rate of any employer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employers contribution tax rate.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY, UT 84111-2333
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

AUTHORIZED BY: Jon Pierpont, Executive Director

R994. Workforce Services, Unemployment Insurance.

R994-405. Ineligibility for Benefits.

R994-405-2. Separations From a Temporary Help Company (THC).

~~[THC is defined in R994-202-102. Because the THC is the employer, eligibility for benefits of employees of a THC and the THC's liability for claims will be based on the reason for separation from the THC and not the reason for the separation from the client company.~~

~~(1) If the claimant reports back to the THC within a reasonable period of time after the claimant's last assignment ends and no work is offered because no work is available, the separation is a reduction of force, regardless of the reason the claimant left the last assignment except as provided in paragraph (2) of this section.~~

~~A reasonable period of time is generally considered to be whatever is stipulated in the employment contract between the claimant and the THC but must be at least two business days. The claimant must contact the THC prior to filing a claim for benefits with the Department for the separation to be considered a reduction of force.~~

~~(2) If a claimant is no longer able to perform the type of work previously performed for the THC and the THC agrees to send the claimant out on work he or she is able to do, it is considered a quit and the THC may be eligible for relief of charges.~~

~~(3) If the claimant fails to contact the THC for a new assignment within a reasonable period of time after the claimant's last assignment ends, the separation is a quit and not a reduction of force.~~

~~(4) If the claimant files a new claim or reopens an existing claim prior to contacting the THC for another assignment, the job separation is a quit, even if the claimant subsequently contacts the THC within a reasonable period of time.~~

~~(5) If the claimant contacts the THC for a new assignment within a reasonable period of time after the claimant's last assignment ends and the claimant refuses a new assignment, the job separation is a quit if the new assignment is similar to the previous assignments. The separation is a reduction of force and an offer of new work if the new assignment is substantially different from the previous assignments. The job duties, wages, hours, and conditions of the new assignment should be considered in determining the similarity of the new assignment.~~

~~(6) If the THC refuses to send the claimant out on any new assignments it is a discharge. This includes instances where the claimant previously left an ongoing assignment or the client company prevented the claimant from completing an ongoing assignment.~~ (1) THC is defined in R994-202-102. Because the THC is the employer, eligibility for benefits of employees of a THC and the THC's liability for claims is based on the reason for the separation from the THC and not the reason for the separation from the client company. Once the Department determines the type of separation, it will then use the following rules to determine eligibility:

(a) R994-405-101 et seq. for a voluntary quit;

(b) R994-405-201 et seq. for a discharge or reduction of force;

(c) R994-405-210 et seq. for a discharge for a crime.

(2) If there is no contact between the claimant and the THC within a reasonable period of time after the assignment ends, the separation is considered a voluntary quit. A reasonable period of time is generally considered to be whatever is stipulated in the employment contract between the claimant and the THC but must be at least two business days.

(a) If it is an initial or reopened claim, the contact must be before the claim is filed or it is considered a voluntary quit.

(b) If the THC informs the claimant about the end of an assignment, the requirement for contact is considered to have been satisfied.

(3) If the claimant and the THC have the required contact and:

(a) the THC is willing to send the claimant out on future assignments, but no new work is offered, the separation is considered a reduction of force;

(b) the THC refuses to send the claimant out on any future assignments, the separation is considered a discharge;

(c) the THC suspends the claimant from future assignments for a specific period of time, the separation will be adjudicated as a discharge if the claimant files a claim during the suspension period. If the claim is filed after the suspension period is over, and no new work has been offered, the separation is considered a reduction of force; or

(d) the claimant refuses an offer for a new assignment, the job separation is a quit if the new assignment is similar to his or her previous assignments. The separation is a reduction of force and an offer of new work if the new assignment is substantially different from the previous assignments. The elements listed in R994-405-306 should be considered in determining if the new assignment is similar to past assignments.

(i) If the only work available is the assignment the claimant just left and the claimant refuses to return to that assignment, the separation is considered a voluntary quit.

(ii) If the claimant is no longer able to perform the type of work previously performed for the THC and the THC agrees to send the claimant out on work he or she is able to do when it is available, the separation is considered a quit and the THC may be eligible for relief of charges.

KEY: unemployment compensation, employment, employee's rights, employee termination

Date of Enactment or Last Substantive Amendment: ~~July 9, 2012~~2017

Notice of Continuation: May 16, 2013

Authorizing, and Implemented or Interpreted Law: 35A-4-502(1)(b); 35A-1-104(4); 35A-4-405

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 31, 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 May 1, 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, Air Quality
R307-302
Solid Fuel Burning Devices

NOTICE OF CHANGE IN PROPOSED RULE
 DAR FILE NO.: 40773
 FILED: 12/15/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change in proposed rule (CPR) is to more clearly describe what the rule does in the "Purpose and Definitions" section found at Section R307-302-1.

SUMMARY OF THE RULE OR CHANGE: The CPR adds the word "visible" before emissions and adds the phrase "and specifies when it is permissible to burn in...." These additions help explain that the rule is establishing visible emission standards and regulating when people may burn in solid-fuel burning devices for comfort heating. The previous version of the rule only said that the rule was setting emission standards. There was no mention of what kind of emissions or the fact that the rule is regulating when someone can burn. (EDITOR'S 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 38. 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 19-2-104

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--There is no cost or savings to the state budget as a result of this change because the change is only clarifying the purpose of the rule. It is not changing the way the rule impacts the state.
- ◆ **LOCAL GOVERNMENTS:** None--There is no cost or savings to any local government as a result of this change because the change is only clarifying the purpose of the rule. It is not changing the way the rule impacts the local government.
- ◆ **SMALL BUSINESSES:** None--There is no cost or savings to small businesses as a result of this change because the change is only clarifying the purpose of the rule. It is not changing the way the rule impacts any business.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--There is no cost or savings to "other" persons as a result of this change because the change is only clarifying the

purpose of the rule. It is not changing the way the rule impacts the public.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no added compliance costs because of this change. The change is only clarifying the purpose of the rule; it is not changing any requirements for those that the rule regulates.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes will have no fiscal impact on any businesses because the change is only clarifying the purpose of the rule. The change is not modifying any of the existing requirements within in the rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 AIR QUALITY
 FOURTH FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

THIS RULE MAY BECOME EFFECTIVE ON: 01/31/2017

AUTHORIZED BY: Bryce Bird, Director

R307. Environmental Quality, Air Quality.

R307-302. Solid Fuel Burning Devices.

R307-302-1. Purpose and Definitions.

(1) R307-302 establishes visible emission standards [for all] and specifies when it is permissible to burn in solid fuel burning devices used to provide comfort heating.

(2) The following additional definitions apply to R307-302:

"Seasoned wood" means wood that has a moisture content of less than or equal to 25%.

"Sole source of heat" means the solid fuel burning device is the only available source of heat for the entire residence, except for small portable heaters.

"Solid fuel burning device" means fireplaces, wood stoves and boilers used for burning wood, coal, or any other nongaseous and non-liquid fuel, both indoors and outdoors, but excluding outdoor wood boilers, which are regulated under R307-208.

R307-302-2. Applicability.

(1) R307-302-3 and R307-302-6 shall apply to any solid fuel burning device used to provide comfort heating in PM10 or PM2.5 nonattainment or maintenance areas as defined in 40 CFR 81.345 (July 1, 2011). Collectively, The PM10 and PM2.5 nonattainment and maintenance plan areas are geographically

defined as all regions of Salt Lake and Davis counties; all portions of the Cache Valley; all regions in Weber County west of the Wasatch mountain range; all regions of Utah County; in Box Elder County, from the Wasatch mountain range west to the Promontory mountain range and south of Portage; and in Tooele County, from the northernmost part of the Oquirrh mountain range to the northern most part of the Stansbury mountain range and north of Route 199.

(2) R307-302-4 shall apply only within the city limits of Provo in Utah County.

(3) R307-302-5 shall apply in all portions of Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(4) The following exemptions apply to R307-302:

(a) R307-302 does not apply to restaurant and institutional food preparation.

(b) R307-302 does not apply to commercial and industrial boilers subject to an approval order issued under R307-401.

(c) R307-302-3 does not apply to sources located above 7,000 feet in elevation within Box Elder, Davis, Salt Lake, Tooele, Utah and Weber counties.

(d) R307-302 does not apply to firefighting training devices that meet the definition of a solid fuel burning device.

R307-302-3. No-Burn Periods for Particulates.

(1) A person using a solid fuel burning device as a sole source of heat must register with the director in order to be exempt during mandatory no-burn periods.

(2) When the ambient concentration of PM10 measured by the monitors in Salt Lake, Davis, Weber, or Utah counties reaches the level of 120 micrograms per cubic meter and the forecasted weather for the specific area includes a temperature inversion which is predicted to continue for at least 24 hours, the director will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for solid fuel burning devices is in effect. The mandatory no-burn periods will only apply to those areas or counties impacting the real-time monitoring site registering the 120 micrograms per cubic meter concentration. A person in the affected areas shall not use a solid fuel burning device unless it is the sole source of heat for an entire residence and registered with the director.

(3) PM10 Contingency Plan. If the PM10 Contingency Plan described in Section IX, Part A, of the State Implementation Plan has been implemented, the trigger level for no-burn periods as specified in R307-302-3(2) will be 110 micrograms per cubic meter for that area where the PM10 Contingency Plan has been implemented.

(4) When the ambient concentration of PM2.5 measured by monitors in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah or Weber counties are forecasted to reach or exceed 25 micrograms per cubic meter, the director will issue a public announcement to provide broad notification that a mandatory no-burn period for solid fuel burning devices is in effect. The mandatory no-burn periods will only apply to those counties identified by the director. A person within the geographical boundaries described in R307-302-2(1) shall not use a solid fuel burning device unless it is the sole source of heat for an entire residence and registered with the director.

(5) PM2.5 Contingency Plan. If the PM2.5 contingency plan of the State Implementation Plan has been implemented, the

trigger level for no-burn periods as specified in R307-302-3(4) shall be 15 micrograms per cubic meter for the area where the PM2.5 contingency plan has been implemented.

R307-302-4. No-Burn Periods for Carbon Monoxide.

(1) Beginning on November 1 and through March 1, the director will issue a public announcement and will distribute such announcement to the local media notifying the public that a mandatory no-burn period for solid fuel burning devices is in effect when the running eight-hour average carbon monoxide concentration as monitored by the state at 4:00 PM reaches a value of 6.0 ppm or more.

(2) In addition to the conditions contained in R307-302-4(1), the director may use meteorological conditions to initiate a no-burn period. These conditions are:

(a) A national weather service forecasted clearing index value of 250 or less;

(b) Forecasted wind speeds of three miles per hour or less;

(c) Passage of a vigorous cold front through the Wasatch Front; or

(d) Arrival of a strong high pressure system into the area.

(3) During the no-burn periods specified in R307-302-4(1) and (2), a person in Provo City shall not use a solid fuel burning device unless it is the sole source of heat for an entire residence and is registered with the director.

R307-302-5. Opacity and Prohibited Fuels for Heating Appliances.

(1) Except during no-burn periods as required by R307-302-3 and 4, visible emissions from solid fuel burning devices shall be limited to a shade or density no darker than 20% opacity as measured by EPA Method 9, except for the following:

(a) An initial fifteen minute start-up period, and

(b) A period of fifteen minutes in any three-hour period in which emissions may exceed the 20% opacity limitation for refueling.

(2) Prohibited Fuels: A person shall not cause or allow any of the following materials to be burned in a solid fuel burning device at any time:

(a) asphaltic products;

(b) books and magazines;

(c) garbage;

(d) paints;

(e) colored/wrapping paper;

(f) plastic;

(g) rubber products;

(h) treated wood;

(i) waste petroleum products; or

(j) any other material not intended by a manufacturer for use as a fuel in a solid fuel burning device.

(3) A person burning wood in a solid fuel burning device shall only burn seasoned wood.

R307-302-6. Prohibition.

(1) No person shall sell, offer for sale, supply, install, or transfer a wood burning stove that is not EPA certified or a fireplace that is not EPA qualified.

(2) Ownership of a non EPA certified stove within a residential dwelling installed prior to March 6, 2014 may be transferred as part of a real estate transaction, so long as the unit remains intact within the real property of sale.

KEY: air pollution, fireplaces, stoves, solid fuel burning

Date of Enactment or Last Substantive Amendment: 2017

Notice of Continuation: May 6, 2015

Authorizing, and Implemented or Interpreted Law: 19-2-101; 19-2-104

**Transportation, Operations,
Aeronautics
R914-3
Aircraft Registration Enforcement**

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 40937

FILED: 12/13/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change in proposed rule (CPR) deletes Subsection R914-3-4(3) because the Tax Commission does not have authority to levy the penalties recognized in Subsection R914-3-4(3). Authority to penalize for aircraft registration violations resides with the Department of Transportation alone.

SUMMARY OF THE RULE OR CHANGE: This change deletes Subsection R914-3-4(3) from the new rule. (EDITOR'S NOTE: The original proposed new rule upon which this change in proposed rule (CPR) was based was published in the December 1, 2016, issue of the Utah State Bulletin, on page 114. Underlining in the rule below indicates text that has been added since the publication of the proposed new rule mentioned above; strike-out indicates text that has been deleted. You must view the CPR and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 72-10-112(3)(b)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Department does not anticipate this change will cause any additional costs or savings to the state budget. The authority to levy penalties the new rule grants to the Tax Commission that this change eliminates remains with the Department of Transportation pursuant to Utah Code Section 72-10-112. The fiscal impact of the new rule will not change.

♦ **LOCAL GOVERNMENTS:** The Department does not anticipate this change will cause any additional costs or

savings to the budgets of local governments. The new rule does not implicate local governments in any way, fiscal or otherwise.

♦ **SMALL BUSINESSES:** The Department does not anticipate this change will cause any additional costs or savings to the budgets of small business. Only small businesses that own aircraft that violate the Department's registration requirements will be affected by the new rule. Small businesses that violate the Department's registration requirements will be penalized by the Department alone rather than being subject to penalties by the Department and the Tax Commission. The change does not change the amount or nature of the penalties the Department may levy for registration violations.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate this change will cause any additional costs or savings to the budgets of persons other than small businesses, businesses, or local government entities. Only persons other than small businesses, businesses, or local government entities that own aircraft that violate the Department's registration requirements will be affected by the new rule. Those persons other than small businesses, businesses, or local government entities that violate the Department's registration requirements will be penalized by the Department alone rather than being subject to penalties by the Department and the Tax Commission. The change does not change the amount or nature of the penalties the Department may levy for registration violations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This change will not increase or decrease compliance costs for affected persons. This change eliminates the Tax Commission authority to levy penalties for violating aircraft registration requirements as such authority remains with the Department of Transportation. The amount and nature of available penalties do not change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I do not believe this change in the proposed new rule will have any fiscal impact on business.

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 cnewman@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
♦ Jason Davis by phone at 801-965-4895, or by Internet E-mail at jasondavis@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 01/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/07/2017

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 Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Commerce, Occupational and Professional Licensing

R156-1

General Rule of the Division of Occupational and Professional Licensing

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41052

FILED: 12/06/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 58-1-106(1)(a) provides the Division may adopt and enforce rules to administer Title 58. Subsection 58-1-308(1)(a) provides that the Division will establish a rule with respect to the renewal cycle of occupations and professions regulated by the Division. This rule was enacted to clarify the provisions of Title 58, Chapter 1, with respect to all occupations and professions regulated by the Division.

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 January 2012, it has been amended several times. The only written comment the Division received with respect to this rule was a February 2013 email from Hunter Finch from the

Governor's Office of Management and Budget in which he notified the Division of an incorrect statutory citation. The citation was corrected through a nonsubstantive rule filing under Filing No. 37395.

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 general rules of the Division, as allowed under statutory authority provided in Title 58, Chapter 1, applicable to all occupations and professions regulated by the Division. This rule should be also be continued as it provides information to ensure applicants for licensure are knowledgeable about general rules of the Division with respect to items that are not covered separately in each occupational/professional rule.

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:
♦ W. Ray Walker by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 12/06/2016

Education, Administration

R277-106

Utah Professional Practices Advisory
Commission Appointment Process

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41083
FILED: 12/14/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-1-401 allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Subsection 53A-6-303(1)(a) directs the Board to adopt rules establishing procedures for nominating and appointing Utah Professional Practices Advisory Commission (UPPAC) members.

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 R277-106 continues to be necessary because it establishes nomination and appointment procedures for UPPAC members as provided by state law. 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: 12/14/2016

Education, Administration

R277-526

Paraeducator to Teacher Scholarship
Program

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41084
FILED: 12/14/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-1-401 allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Subsection 53A-6-802(8) requires the Board to make rules to administer the Paraeducator to Teacher Scholarship Program.

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 R277-526 continues to be necessary because it establishes application and accountability procedures to provide funding to prospective educators as provided by state law. 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: 12/14/2016

Education, Administration

R277-915

Work-Based Learning Programs for Interns

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41085
FILED: 12/14/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53A-1-401 allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Section 53A-29-102 allows schools to offer work-based learning programs in accordance with Board rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written 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 R277-915 continues to be necessary because it establishes standards and procedures for work-based learning programs.

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: 12/14/2016

Financial Institutions, Banks

R333-13

Rule Designating Applicable Federal Law for Banks Subject to the Jurisdiction of the Department of Financial Institutions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41049
FILED: 12/06/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule designates which one or more federal laws are applicable to a bank subject to the jurisdiction of the department. The rule establishes that designated federal law may only be enforced by the department by taking action permitted under Title 7 and the applicable chapters set forth in Section 7-1-325. The statutory provision states that the ". . . department shall by rule . . . designate which one or more federal laws are applicable to an institution subject to the jurisdiction of the department."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 7-1-325 requires that the department designate, by rule, which one or more federal laws are applicable to an institution subject to the jurisdiction of the department. Therefore, this rule should be continued.

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

FINANCIAL INSTITUTIONS
BANKS
ROOM 201
324 S STATE ST
SALT LAKE CITY, UT 84111-2393
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 12/06/2016

**Financial Institutions, Industrial Loan Corporations
 R339-12**

Rule Designating Applicable Federal Law for Industrial Loan Corporations Subject to the Jurisdiction of the Department of Financial Institutions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 41050
 FILED: 12/06/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The rule designates which one or more federal laws are applicable to an industrial loan corporation subject to the jurisdiction of the department. The rule establishes that designated federal law may only be enforced by the department by taking action permitted under Title 7 and the applicable chapters set forth in Section 7-1-325. The statutory provision states that the ". . . department shall by rule . . . designate which one or more federal laws are applicable to an institution subject to the jurisdiction of the department."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No supporting or opposing written comments have been received since the last notice of continuation.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 7-1-325 requires that the department designate, by rule, which one or more federal laws are applicable to an institution subject to the jurisdiction of the department. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 FINANCIAL INSTITUTIONS
 INDUSTRIAL LOAN CORPORATIONS
 ROOM 201
 324 S STATE ST
 SALT LAKE CITY, UT 84111-2393
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 12/06/2016

**Health, Family Health and Preparedness, Emergency Medical Services
 R426-5**

Emergency Medical Services Training and Certification Standards

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 41048
 FILED: 12/06/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: In Title 26, Chapter 8a, it is required to train and certify emergency medical service personnel.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comments were only received as part of the rule amendment process when adding information pertaining to Peer Review Board and BCI background check criteria. Public comments for those amendments were considered in the rule amendment process. The balance of the rule has not received public comment.

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 provides key standards and

instruction for ensuring qualified and trained EMS personnel. Therefore, this rule should be continued. Recent amendments provide a new process for discipline of EMS-certified individuals for misconduct as required in Title 26, Chapter 8a.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 12/06/2016

Human Services, Administration **R495-810**

Government Records Access and Management Act

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41072
FILED: 12/13/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: As required by Section 63-2-204, this rule specifies where and to whom a request for access of Department of Human Services (DHS) records shall be directed.

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: This rule gives clarity to the state law and

helps the public understand department policies and procedures, and what the public needs to do in order to comply with the Government Records and Access Act. Without this rule, the public would not know how to file a GRAMA request, what costs are involved, or how to appeal a denial of their request. Therefore, this rule should be continued.

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

HUMAN SERVICES
ADMINISTRATION
DHS ADMINISTRATIVE OFFICE
MULTI STATE OFFICE BUILDING
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Janell Hall by phone at 801-538-4143, by FAX at 801-538-4317, or by Internet E-mail at janellhall@utah.gov
◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

AUTHORIZED BY: Ann Williamson, Executive Director

EFFECTIVE: 12/13/2016

Human Services, Administration **R495-878**

Americans with Disabilities Act and Civil Rights Grievance Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41071
FILED: 12/13/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The purpose of this rule is to implement the provisions of 28 CFR 35 which in turn implements Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the department because of a disability.

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: As required by 28 CFR 35.107, the Utah Department of Human Services, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended. Therefore, this rule should be continued.

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

HUMAN SERVICES
ADMINISTRATION
DHS ADMINISTRATIVE OFFICE
MULTI STATE OFFICE BUILDING
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Janell Hall by phone at 801-538-4143, by FAX at 801-538-4317, or by Internet E-mail at janellhall@utah.gov
♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonessrobbins@utah.gov

AUTHORIZED BY: Ann Williamson, Executive Director

EFFECTIVE: 12/13/2016

**Human Services, Recovery Services
R527-3
Definitions**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41067

FILED: 12/13/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-1-111 gives the Department of Human Services (DHS) the authority to create rules necessary to carry out its responsibilities. Section 62A-11-107 gives the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law. Sections 62A-11-103, 62A-11-303, 62A-11-401, and 78B-14-102 provide definitions of terms and acronyms used by the ORS.

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 during or since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule to provide the public with knowledge of commonly used acronyms and terms associated with ORS or its programs that are not available in statute. Therefore, this rule should be continued.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Casey Cole by phone at 801-741-7523, by FAX at 801-536-8509, or by Internet E-mail at cacole@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 12/13/2016

**Human Services, Recovery Services
R527-253
Collection of Child Support Judgments**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41082

FILED: 12/14/2016

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: Pursuant to Section 62A-11-107, the Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules as necessary to provide services. Under Section 62A-11-320, ORS is given the authority to demand payment in full or to set or reset payment schedules to collect past-due support. This rule makes it clear that the interests of the state determine whether immediate payment in full should be required or if it is in the best interest of the state to set or reset payment schedules to collect the past-due support. It also provides a listing of some of the legal remedies available to collect a judgment.

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 during or since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The state laws and federal regulations cited in this rule are still in effect. This rule also clarifies that the office is not limited to taking only one legal remedy at a time. Therefore, the rule should be continued.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
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
- ◆ LeAnn Wilber by phone at 801-741-7516, by FAX at 801-536-8509, or by Internet E-mail at lwilber@utah.gov
- ◆ Scott Weight by phone at 801-741-7435, by FAX at 801-536-8509, or by Internet E-mail at sweigh2@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 12/14/2016

Human Services, Recovery Services **R527-258** Enforcing Child Support When the Obligor is an Ex-Prisoner or in a Treatment Program

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41068
FILED: 12/13/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-11-107 gives the Office of Recovery Services (ORS) the authority to adopt, amend, and enforce rules necessary to carry out its responsibilities under state law. The office is able to address

establishment of support payment schedules in accordance with Section 62A-11-329, as well as provide the conditions under which an obligor may contest a payment schedule. This statute also governs the amount of a non-custodial parent's (NCP) current obligation and the payment amount that may be required on past-due support. This is also the basis for this rule in working with IV-A child support debts that may accrue during a period of incarceration and the nature of the payment that requires twelve months of payments following the NCP's incarceration. Section 62A-11-326.1 provides the requirements for ORS to issue a notice to a parent's or legal guardian's employer to enroll a dependent child in the insurance plan available, which is available through the parent's or legal guardian's employer, and that ORS will also provide notice to the parent or legal guardian that the notice was sent to the employer. 45 CFR 303.31 and 45 CFR 303.32 respectively provide the requirements for ORS to include private health insurance in new or modified orders for support and to establish written criteria to identify orders that do not address health care needs of children and enforce the provision of health care coverage for the children using the federally mandated information about the National Medical Support Notice (NMSN).

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 during or since the last five-year review of 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: It is necessary to continue this rule as the federal regulations and state statutes are still in effect and the program providing for the discharge of the IV-A debt when support payments are made as required for the year following the NCP's incarceration is still beneficial from a child support perspective, as well as a corrections perspective. The rule also provides the procedures for the office in setting up payment schedules and clarifies that the federal National Medical Support Notices will be used to enroll a dependent child in the parent's or legal guardian's health insurance plan through the parent's or legal guardian's employer, even when the responsible parent has recently been incarcerated or in a treatment program.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Casey Cole by phone at 801-741-7523, by FAX at 801-536-8509, or by Internet E-mail at cacole@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 12/13/2016

EFFECTIVE: 12/12/2016

Insurance, Administration
R590-102
 Insurance Department Fee Payment
 Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 41058
 FILED: 12/12/2016

**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-3-103 requires the department to set regulatory fees and publish them as a list.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: One comment was received in 2013 during the open comment period on amendments made to the rule (Filing No. 37018). The comment merely pointed out an error that occurred as a result of renumbering sections in the rule; a nonsubstantive change was filed to fix the error (Filing No. 37220). The department received no substantive comments during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it is specifically required by law and because it makes it easy for the public to see all of the fees charged by the department. It also provides regular opportunities for the public to make comment regarding changes to the fee schedule. Therefore, this rule should be continued.

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

INSURANCE
 ADMINISTRATION
 STATE OFFICE BLDG
 450 N MAIN ST, ROOM 3110
 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

Insurance, Administration
R590-103
 Security Deposits

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 41059
 FILED: 12/12/2016

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the commissioner to write rules to implement Title 31A of the Utah Code. Subsection 31A-2-206(17) authorizes the commissioner to write rules to implement the provisions of this section dealing with the receipt and handling of deposits and type of securities that may be qualified in the deposits.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule requires insurance companies to deposit a certain amount of money into an account to take care of claims in case they go out of business. The deposits help pay for claims, which are also covered, in part, by a guaranty association, which most companies are associated with. However, the most important use of these deposits is to help cover the administrative costs of a liquidation. The rule provides guidelines that help ensure that the deposits are federally secured and the financial institution is holding the required amount. Without these safeguards, it would be very difficult to be sure that the funds are actually deposited, as required by the law. Therefore, this rule should be continued.

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

INSURANCE
 ADMINISTRATION
 STATE OFFICE BLDG
 450 N MAIN ST, ROOM 3110
 SALT LAKE CITY, UT 84114-1201

OR AT THE OFFICE OF ADMINISTRATIVE RULES.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 12/12/2016

Insurance, Administration
R590-121
Rate Modification Plan Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41060

FILED: 12/12/2016

**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 31A-2-201(3) and (4) authorize the commissioner to write rule to implement the provisions of Title 31A of the Utah Code. Section 31A-2-203 authorizes the commissioner to make rules pertaining to the financial condition and market regulation surveillance systems. Section 31A-2-204 deals with the conduct of an examination of an insurer by the department, including what is contained in the order; accessing licensees' records; compliance to the examiner's requests; resolving the issue of inadequate reports; and the preparation, issuance, and distribution of the report. Section 31A-2-205 sets standards for setting the cost of the examination of the insurer and how and when it is to be paid. Sections 31A-19a-201, 31A-19a-202, and 31A-19a-203 require a rule to set procedures for submitting rate filings electronically. Section 31A-23a-402 allows the commissioner to define by rule insurance practices that are an unfair method of competition or deceptive act or practice as determined after a finding of fact. The rule establishes criteria for the modification of manual rates through the application of insurer rate modification plans and for the reporting of pertinent information concerning utilization of such plans, in order to determine whether the rates developed meet the standards of the rating 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: The department has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule give guidance to licensees about how they can develop alternative rating plans. The rule establishes criteria that must be applied to all policies written outside of a standard rating structure. This rule establishes guidelines that reduce the possibility of unfair rating by property and casualty insurance companies and rate service organizations. Therefore, this rule should be continued.

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

INSURANCE
ADMINISTRATION
STATE OFFICE BLDG
450 N MAIN ST, ROOM 3110
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 12/12/2016

Insurance, Administration
R590-126
**Accident and Health Insurance
Standards**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41061

FILED: 12/12/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3)(a) authorizes rules to implement the Insurance Code. Sections 31A-2-202 and 31A-23a-412 authorize the commissioner to request reports, conduct examinations, and inspect records of any licensee. Subsection 31A-22-605(4) requires the commissioner to adopt rules to establish standards for disclosure in the sale of and benefits provided by the individual and franchise accident and health policies. Section 31A-22-623 authorizes the commissioner to establish by rule minimum standards of coverage for dietary products for

inborn metabolic errors. Section 31A-22-626 authorizes the commissioner to establish by rule minimum standards of coverage for diabetes for accident and health insurance. Subsection 31A-23a-402(8) authorizes the commissioner to define by rule acts and practices that are unfair and unreasonable. Subsection 31A-26-301(1) authorizes the commissioner to set standards for timely payment of claims. The rule provides reasonable standardization and simplification of terms and coverages of insurance policies in order to facilitate public understanding and comparison, to prohibit provisions that may be misleading or confusing in connection with the purchase of accident and health insurance or with the settlement of claims, and to provide full disclosure in the sale of such insurance.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule during the past 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: Products in the individual market require closer regulation since there is not an employer entity who can bargain for an equitable contract on behalf of the individual. The rule sets forth benefits to be offered for certain products, yet still allows products with lesser benefits to be offered if marketed as "limited benefits." This helps individuals assess what type of product is being offered. Therefore, this rule should be continued.

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

INSURANCE
ADMINISTRATION
STATE OFFICE BLDG
450 N MAIN ST, ROOM 3110
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 12/12/2016

Insurance, Administration
R590-133
Variable Contracts

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41062
FILED: 12/12/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the commissioner to implement the provisions of Title 31A and Subsection 31A-20-106(1)(b)(ii), which gives the commissioner authority to regulate the issuance and sale of variable contracts.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comments were received during the comment period for a proposed amendment to the rule (Filing No. 36633). These comments requested the removal of the words "or terminate" from the rule. The department disagreed with these comments because the words "or terminate" serve as a consumer protection by requiring that a producer be knowledgeable and licensed in variable contracts before recommending that it is no longer beneficial for the consumer and should be terminated and did not include the changes 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: The rule provides guidance to both insurers and producers selling variable life insurance products so that compliance with the insurance code can be maintained. The rule provides consumer protection by requiring disclosure and annual reports for the product purchased. Therefore, this rule should be continued.

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

INSURANCE
ADMINISTRATION
STATE OFFICE BLDG
450 N MAIN ST, ROOM 3110
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 12/12/2016

Insurance, Administration
R590-176
Health Benefit Plan Enrollment

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41063
FILED: 12/12/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the commissioner to write rules to implement the Insurance Code, Title 31A. The rule provides enrollment standards, as required by Section 31A-30-108, for carriers who provide health benefit plan coverage to individuals and small employers, as stated in Section 31A-30-104. Subsection 31A-2-202(2) allows the commissioner to prescribe forms for the collection of information by the department. The rule requires the insurer to file a certificate with the department that includes information about the individuals covered, the qualifying conditions, and uninsurable count at the end of an enrollment.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides clarification for Title 31A, Chapter 30, with regard to the federal Health Insurance Portability and Accountability Act (HIPAA). The rule provides standards that must be met for an insurer to be waived from the requirements of Chapter 30 and defines what constitutes meeting the enrollment cap. It also addresses general requirements to make sure insurers treat health benefit plan applicants fairly. Therefore, this rule should be continued.

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

INSURANCE
ADMINISTRATION
STATE OFFICE BLDG
450 N MAIN ST, ROOM 3110
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 12/12/2016

Insurance, Administration
R590-181
Yankee Bond Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41064
FILED: 12/12/2016

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-18-105(13) permits the commissioner to specify an investment besides those listed in this section that insurers can invest in. The rule allows them to invest in Yankee Bonds.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments regarding this rule in the past 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: Due to the fact that some insurers are investing in Yankee Bonds, this rule is necessary to provide guidelines that make sure the quality of the bond is high and does not take up a major share of the portfolio. Without the rule, insurers would not be able to invest in Yankee Bonds at all. Therefore, this rule should be continued.

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

INSURANCE
ADMINISTRATION
STATE OFFICE BLDG
450 N MAIN ST, ROOM 3110
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 12/12/2016

Insurance, Administration
R590-182
Risk Based Capital Instructions

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 41065
 FILED: 12/12/2016

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 authorizes the commissioner to write rules to implement Title 31A of the Utah Code. Subsection 31A-17-601(7) authorizes the commissioner to adopt risk based capital instructions to be used by licensed insurers and filed annually with the department.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides reference to the Risk Based Capital (RBC) instructions and establishes their authority under Utah law. The RBC reports and instructions are important to ensure that Utah insurance companies report on the same basis as companies from other states. Without this uniformity, cost to companies and to the state would increase significantly, which would also increase costs to Utah policyholders. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 INSURANCE
 ADMINISTRATION
 STATE OFFICE BLDG
 450 N MAIN ST, ROOM 3110
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 12/12/2016

Natural Resources, Wildlife Resources
R657-20
Falconry

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 41051
 FILED: 12/06/2016

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Section 23-17-7 and in accordance with 50 CFR 21, 2000 ed., which is incorporated by reference into Rule R657-20, the Wildlife Board is authorized and required to provide rules to regulate the possession and use of raptors for falconry.

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 during or since the last five-year review of Rule R657-20.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-20 provides the requirements, procedures, and standards for possessing and using raptors for falconry. The provisions adopted in this rule are effective in providing the requirements, procedures, and standards for managing the falconry program. Continuation of this rule is necessary for continued success of this program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: Gregory Sheehan, Director

EFFECTIVE: 12/06/2016

Public Safety, Administration
R698-1

Public Petitions for Declaratory Orders

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41045
FILED: 12/05/2016

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 63G-4-503 requires that an agency shall issue rules that provide for the form, contents, and filing of petitions for declaratory orders; and clarifies requirements for rule content.

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 not been any written comments received regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it is required under Section 63G-4-503.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 1ST FLOOR
SALT LAKE CITY, UT 84119-5994
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

AUTHORIZED BY: Keith Squires, Commissioner

EFFECTIVE: 12/05/2016

Public Safety, Administration
R698-2

Government Records Access and Management Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41046
FILED: 12/05/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 63G-2-204, which allows agencies to make rules specifying where and to whom requests for access to agency records shall be directed.

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 not been any written comments received regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as Section 63G-2-204 grants authority for the rule, and the rule clarifies the process by which an individual may seek access to records maintained by DPS.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 1ST FLOOR
SALT LAKE CITY, UT 84119-5994
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

AUTHORIZED BY: Keith Squires, Commissioner

EFFECTIVE: 12/05/2016

Public Safety, Administration
R698-3

Americans with Disabilities Act (ADA)
Complaint Procedure

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41069
FILED: 12/13/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under Subsection 63G-3-201(3), which requires rulemaking when an agency issues a written interpretation of a state or federal legal mandate. The federal mandate that is interpreted in this rule is 28 CFR 35.107, Designation of responsible employee and adoption of grievance procedures.

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 not been any written comments received regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it is required under 28 CFR 35.107.

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

PUBLIC SAFETY
ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 1ST FLOOR
SALT LAKE CITY, UT 84119-5994
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

AUTHORIZED BY: Keith Squires, Commissioner

EFFECTIVE: 12/13/2016

**Public Safety, Peace Officer Standards and Training
R728-401**

Training Academy Requirements

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41078
FILED: 12/13/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53, Chapter 6.

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 supporting or opposing this rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary to continue guidance through the process of creating and maintaining a training academy. Therefore, this rule should be continued.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
♦ Wade Breur by phone at 801-256-2329, or by Internet E-mail at wbreur@utah.gov

AUTHORIZED BY: Scott Stephenson, Director

EFFECTIVE: 12/13/2016

**Public Safety, Peace Officer Standards and Training
R728-403
Procedures for Certification**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41079
FILED: 12/13/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director

shall, with the advice of the council, make rules necessary to administer Title 53, Chapter 6.

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 supporting or opposing this rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued to provide procedures for a dispatcher or peace officer to become certified or reactivate certification.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
- ◆ Wade Breur by phone at 801-256-2329, or by Internet E-mail at wbreur@utah.gov

AUTHORIZED BY: Scott Stephenson, Director

EFFECTIVE: 12/13/2016

Public Safety, Peace Officer Standards and Training

R728-411

Guidelines for Administrative Action Against Individuals Functioning as Peace Officers Without Valid Peace Officer Certification

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41080
FILED: 12/13/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE

OR REQUIRE THE RULE: This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53, Chapter 6.

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 supporting or opposing this rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides the framework for the division to address an individual who is exercising peace officer authority without proper peace officer certification.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
- ◆ Wade Breur by phone at 801-256-2329, or by Internet E-mail at wbreur@utah.gov

AUTHORIZED BY: Scott Stephenson, Director

EFFECTIVE: 12/13/2016

Public Service Commission, Administration

R746-348

Interconnection

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 41077
FILED: 12/13/2016

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Commission may require any telecommunications corporation to interconnect its essential

facilities with another telecommunications corporation that provides public telecommunications services in the same, adjacent, or overlapping services territory. These statutes (Sections 54-8b-2, 54-8b-2.2, and 54-4-12) require a commission rule for interconnection and that the commission set rules governing interconnection standards between companies.

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 submitted 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: Statutes requiring this rule and the need to regulate still remain in effect. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Melanie Reif by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at mreif@utah.gov
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: Melanie Reif, Legal Counsel

EFFECTIVE: 12/13/2016

End of the Five-Year Notices of Review and Statements of Continuation Section

**NOTICES OF
FIVE-YEAR REVIEW EXTENSIONS**

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

EXTENSIONS are governed by Subsection 63G-3-305(6).

Veterans' And Military Affairs,
Administration
R978-1
Rule Governing Veterans' Affairs

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 41066

FILED: 12/12/2016

EXTENSION REASON AND NEW DEADLINE: A request for extension is asked for because there has not been enough time to bring the required parties together to finalize the language of the rule. The rule review is essentially done but needs to have a final review/edit from key people. The new deadline is 04/09/2017.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ W. Todd Hansen by phone at 801-584-1914, by FAX at 801-584-1916, or by Internet E-mail at wthansen@utah.gov

AUTHORIZED BY: Dennis McFall, Deputy Director

EFFECTIVE: 12/12/2016

End of the Notices of Five-Year Review Extensions 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

No. 40887 (AMD): R277-604. Private School, Home School, Electronic High School (EHS), and Bureau of Indian Affairs (BIA) Student Participation in Public School Achievement Tests

Published: 11/01/2016

Effective: 12/08/2016

Commerce

Occupational and Professional Licensing

No. 40863 (AMD): R156-17b. Pharmacy Practice Act Rule

Published: 11/01/2016

Effective: 12/08/2016

No. 40888 (AMD): R277-605. Coaching Standards and Athletic Clinics

Published: 11/01/2016

Effective: 12/08/2016

No. 40864 (AMD): R156-67. Utah Medical Practice Act Rule

Published: 11/01/2016

Effective: 12/08/2016

No. 40889 (AMD): R277-609. Standards for LEA Discipline Plans and Emergency Safety Interventions

Published: 11/01/2016

Effective: 12/08/2016

No. 40865 (AMD): R156-68. Utah Osteopathic Medical Practice Act Rule

Published: 11/01/2016

Effective: 12/08/2016

No. 40890 (AMD): R277-726. Statewide Online Education Program

Published: 11/01/2016

Effective: 12/08/2016

Education

Administration

No. 40884 (NEW): R277-409. Public School Membership in Associations

Published: 11/01/2016

Effective: 12/08/2016

Environmental Quality

Air Quality

No. 40766 (AMD): R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits

Published: 10/01/2016

Effective: 12/08/2016

No. 40885 (AMD): R277-438. Dual Enrollment

Published: 11/01/2016

Effective: 12/08/2016

Health

Health Care Financing, Coverage and Reimbursement Policy
No. 40490 (R&R): R414-10A. Transplant Services Standards

Published: 07/01/2016

Effective: 12/15/2016

No. 40886 (AMD): R277-511. Academic Pathway to Teaching (APT) Level 1 License

Published: 11/01/2016

Effective: 12/08/2016

NOTICES OF RULE EFFECTIVE DATES

No. 40490 (CPR): R414-10A. Transplant Services Standards
Published: 11/01/2016
Effective: 12/15/2016

No. 40809 (AMD): R414-508. Requirements for Transfer of Bed Licenses
Published: 10/15/2016
Effective: 12/07/2016

Center for Health Data, Health Care Statistics
No. 40851 (AMD): R428-2. Health Data Authority Standards for Health Data
Published: 11/01/2016
Effective: 12/08/2016

Family Health and Preparedness, Licensing
No. 40822 (AMD): R432-3-11. Annual Reporting Requirements
Published: 10/15/2016
Effective: 12/06/2016

No. 40821 (AMD): R432-270. Assisted Living Facilities
Published: 10/15/2016
Effective: 12/06/2016

Insurance

Administration
No. 40891 (AMD): R590-262. Health Data Authority Health Insurance Claims Reporting
Published: 11/01/2016
Effective: 12/12/2016

Natural Resources

Wildlife Resources
No. 40867 (AMD): R657-13. Taking Fish and Crayfish
Published: 11/01/2016
Effective: 12/08/2016

Public Safety

Administration
No. 40834 (AMD): R698-5. Hazardous Chemical Emergency Response Commission
Published: 10/15/2016
Effective: 12/06/2016

Regents (Board Of)

Administration
No. 40658 (NEW): R765-431. State Authorization Reciprocity Agreement Rule
Published: 09/01/2016
Effective: 12/12/2016

No. 40862 (AMD): R765-609. Regents' Scholarship
Published: 11/01/2016
Effective: 12/12/2016

Tax Commission

Administration
No. 40853 (AMD): R861-1A-2. Rulemaking Power Pursuant to Utah Code Ann. Section 59-1-210 and 63-46a-4
Published: 11/01/2016
Effective: 12/08/2016

Auditing

No. 40854 (AMD): R865-19S-41. Sales to The United States Government and Its Instrumentalities Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-106
Published: 11/01/2016
Effective: 12/08/2016

Property Tax

No. 40855 (AMD): R884-24P-53. 2016 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515
Published: 11/01/2016
Effective: 12/08/2016

Transportation

Administration
No. 40812 (AMD): R907-62. Americans with Disabilities Act
Published: 10/15/2016
Effective: 12/06/2016

Motor Carrier

No. 40811 (AMD): R909-1. Safety Regulations for Motor Carriers
Published: 10/15/2016
Effective: 12/06/2016

No. 40810 (NEW): R909-4. Motor Carrier, Enforcement, Penalties
Published: 10/15/2016
Effective: 12/06/2016

End of the Notices of Rule Effective Dates Section

**2016 RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2016 through December 15, 2016. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Office of Administrative Rules (801-538-3003).

A copy of the **RULES INDEX** is available for public inspection at the Office of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Office's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Administrative Rules</u>					
R15-1	Administrative Rule Hearings	40907	NSC	11/04/2016	Not Printed
R15-2	Public Petitioning for Rulemaking	40908	NSC	11/04/2016	Not Printed
R15-3	Definitional Clarification of Administrative Rule	40909	NSC	11/04/2016	Not Printed
R15-4	Administrative Rulemaking Procedures	40911	NSC	11/04/2016	Not Printed
R15-5	Administrative Rules Adjudicative Proceedings	40912	NSC	11/04/2016	Not Printed
<u>Archives</u>					
R17-9	Electronic Participation at Meetings	41034	5YR	11/30/2016	2016-24/47
<u>Facilities Construction and Management</u>					
R23-19	Facility Use Rules	40226	NSC	03/11/2016	Not Printed
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	40044	NSC	01/15/2016	Not Printed
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	40440	EMR	05/23/2016	2016-12/51
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	40441	AMD	07/22/2016	2016-12/6
R23-25	Administrative Rules Adjudicative Proceedings	40480	5YR	06/09/2016	2016-13/159
R23-31	Executive Residence Commission	40481	5YR	06/09/2016	2016-13/159
R23-32	Rules of Procedure for Conduct of Utah State Building Board Meetings	40945	5YR	11/03/2016	2016-23/123
<u>Finance</u>					
R25-2	Finance Adjudicative Proceedings	40805	5YR	09/20/2016	2016-20/91
R25-7	Travel-Related Reimbursements for State Employees	40548	EMR	07/01/2016	2016-14/161
R25-7	Travel-Related Reimbursements for State Employees	40547	AMD	08/22/2016	2016-14/6
R25-7-8	Reimbursement for Lodging	40986	NSC	12/01/2016	Not Printed
R25-7-10	Reimbursement for Transportation	40042	AMD	02/23/2016	2016-2/4
R25-15	Change Date and Set Aside Provisions for Annual Leave II	39943	NEW	01/13/2016	2015-23/6
<u>Fleet Operations</u>					
R27-4	Vehicle Replacement and Expansion of State Fleet	40824	5YR	09/23/2016	2016-20/91
R27-5	Fleet Tracking	40823	5YR	09/23/2016	2016-20/92
R27-6	Fuel Dispensing Program	40825	5YR	09/23/2016	2016-20/92
R27-8	State Vehicle Maintenance Program	40826	5YR	09/23/2016	2016-20/93
R27-9	Dispensing Compressed Natural Gas to the Public	40827	5YR	09/23/2016	2016-20/93
R27-10	Identification Mark for State Motor Vehicles	40828	5YR	09/23/2016	2016-20/94

Purchasing and General Services

R33-1	Utah Procurement Rules, "General Procurement Provisions," Definitions	40559	AMD	08/22/2016	2016-14/11
R33-4	General Procurement Provisions, Prequalifications, Specifications, and Small Purchases	40560	AMD	08/22/2016	2016-14/15
R33-5	Request for Information	40571	AMD	08/22/2016	2016-14/19
R33-5-104	Small Purchases	41021	NSC	12/07/2016	Not Printed
R33-6	Bidding	40561	AMD	08/22/2016	2016-14/24
R33-6-114	Technology Acquisitions for Executive Branch Procurement Units	40048	AMD	02/23/2016	2016-2/6
R33-7	Request for Proposals	40438	NSC	06/13/2016	Not Printed
R33-7	Request for Proposals	40567	AMD	08/22/2016	2016-14/27
R33-7-301	Addenda to Request for Proposals	41022	NSC	12/07/2016	Not Printed
R33-8	Exceptions to Procurement Requirements	40570	AMD	08/22/2016	2016-14/34
R33-9	Cancellations, Rejections, and Debarment	40565	AMD	08/22/2016	2016-14/39
R33-12	Terms and Conditions, Contracts, Change Orders and Costs	40562	NSC	07/15/2016	Not Printed
R33-12-502	Technology Modifications	40047	AMD	02/23/2016	2016-2/7
R33-15	Architect-Engineer Services	40563	NSC	07/15/2016	Not Printed
R33-16	Controversies and Protests	40564	NSC	07/15/2016	Not Printed
R33-18	Appeal to the Utah Court of Appeals	40566	NSC	07/15/2016	Not Printed
R33-21	Interaction Between Procurement Units	40568	AMD	08/22/2016	2016-14/42
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Risk Management

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ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

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Navajo Trust Fund, Trustees	40019	R661-1	NEW	02/29/2016	2016-2/103
	40020	R661-2	NEW	02/29/2016	2016-2/104
<u>direct-entry midwife</u>					
Commerce, Occupational and Professional Licensing	40353	R156-77	5YR	04/26/2016	2016-10/83
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Commerce, Administration	40948	R151-3	5YR	11/03/2016	2016-23/123
Human Services, Services for People with Disabilities	40648	R539-1	AMD	10/25/2016	2016-17/53
	40625	R539-9	5YR	07/26/2016	2016-16/46
<u>disabilities act</u>					
Public Safety, Administration	41069	R698-3	5YR	12/13/2016	Not Printed
<u>disabled persons</u>					
Education, Rehabilitation	40799	R280-202	REP	11/07/2016	2016-19/30
Human Services, Administration	41071	R495-878	5YR	12/13/2016	Not Printed
Workforce Services, Rehabilitation	40592	R993-200	NEW	10/01/2016	2016-15/66
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Education, Administration	40330	R277-205	REP	08/12/2016	2016-9/28
	40331	R277-206	REP	08/12/2016	2016-9/29
	40883	R277-609	5YR	10/14/2016	2016-21/76
	40889	R277-609	AMD	12/08/2016	2016-21/22
<u>disciplinary presumptions</u>					
Education, Administration	39837	R277-207	NEW	01/11/2016	2015-21/17
	40333	R277-207	REP	08/12/2016	2016-9/31
	40506	R277-215	NEW	08/12/2016	2016-13/29
	40831	R277-215-2	NSC	10/07/2016	Not Printed
<u>discipline of employees</u>					
Human Resource Management, Administration	40394	R477-11	AMD	07/01/2016	2016-10/58
	40925	R477-14	5YR	10/31/2016	2016-22/115
<u>disclosure requirements</u>					
Natural Resources, Geological Survey	40214	R638-1	5YR	02/17/2016	2016-6/36
Tax Commission, Administration	40966	R861-1A	5YR	11/10/2016	2016-23/137
	40853	R861-1A-2	AMD	12/08/2016	2016-21/58
	40743	R861-1A-20	NSC	09/26/2016	Not Printed
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Agriculture and Food, Administration	40235	R51-4	5YR	02/29/2016	2016-6/27
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	40626	R606-1	5YR	07/28/2016	2016-16/47
Labor Commission, Antidiscrimination and Labor, Fair Housing	40717	R608-1	5YR	08/29/2016	2016-18/45
Transportation, Administration	40730	R907-62	5YR	09/02/2016	2016-19/117
	40812	R907-62	AMD	12/06/2016	2016-20/74
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Agriculture and Food, Animal Industry	40478	R58-4	5YR	06/09/2016	2016-13/160
<u>disinfection monitoring</u>					
Environmental Quality, Drinking Water	40036	R309-215	AMD	05/01/2016	2016-2/40

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Human Resource Management, Administration	40394	R477-11	AMD	07/01/2016	2016-10/58	
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	41078	R728-401	5YR	12/13/2016	Not Printed	
	40535	R728-403	R&R	08/23/2016	2016-14/109	
	41079	R728-403	5YR	12/13/2016	Not Printed	
	40536	R728-410	R&R	08/23/2016	2016-14/123	
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Education, Administration	40883	R277-609	5YR	10/14/2016	2016-21/76	
	40889	R277-609	AMD	12/08/2016	2016-21/22	
<u>distribution of revenues</u>						
Science Technology and Research Governing Authority, Administration	40656	R856-2	REP	11/16/2016	2016-17/75	
<u>distribution system monitoring</u>						
Environmental Quality, Drinking Water	40034	R309-210	AMD	05/01/2016	2016-2/26	
	40035	R309-211	NEW	05/01/2016	2016-2/33	
<u>diversion programs</u>						
Commerce, Occupational and Professional Licensing	40412	R156-1	AMD	07/11/2016	2016-11/3	
	41052	R156-1	5YR	12/06/2016	Not Printed	
<u>domestic violence</u>						
Human Services, Child and Family Services	40871	R512-1	5YR	10/13/2016	2016-21/77	
	40152	R512-205	5YR	01/25/2016	2016-4/79	
	39939	R512-301	AMD	01/07/2016	2015-23/35	
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Environmental Quality, Drinking Water	40031	R309-105-4	AMD	05/01/2016	2016-2/19	
	40770	R309-105-15	AMD	11/22/2016	2016-19/40	
	40032	R309-110-4	AMD	05/01/2016	2016-2/20	
	40033	R309-200-5	AMD	05/01/2016	2016-2/23	
	40034	R309-210	AMD	05/01/2016	2016-2/26	
	40035	R309-211	NEW	05/01/2016	2016-2/33	
	40036	R309-215	AMD	05/01/2016	2016-2/40	
	40037	R309-220	AMD	05/01/2016	2016-2/46	
	40038	R309-225	AMD	05/01/2016	2016-2/53	
	40771	R309-400-12	AMD	11/22/2016	2016-19/41	
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Public Safety, Driver License	40145	R708-42	5YR	01/19/2016	2016-4/84	
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Education, Administration	41002	R277-507	5YR	11/15/2016	2016-23/128	
	40250	R277-507-1	NSC	03/29/2016	Not Printed	
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Public Safety, Driver License	40147	R708-44	5YR	01/19/2016	2016-4/85	
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Public Safety, Driver License	40146	R708-43	5YR	01/19/2016	2016-4/84	
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Education, Administration	40675	R277-606	AMD	10/11/2016	2016-17/21	
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Human Resource Management, Administration	40925	R477-14	5YR	10/31/2016	2016-22/115	
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	40885	R277-438	AMD	12/08/2016	2016-21/13	
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	40638	R357-6	5YR	08/02/2016	2016-17/93	
	40028	R357-7	R&R	05/16/2016	2016-2/60	
	40028	R357-7	CPR	05/16/2016	2016-7/49	
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	40671	R277-419	AMD	10/11/2016	2016-17/6	
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Human Resource Management, Administration	40393	R477-10-1	AMD	07/01/2016	2016-10/57	
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	40338	R277-214	NEW	08/12/2016	2016-9/51	
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Education, Administration	41002	R277-507	5YR	11/15/2016	2016-23/128	
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	40509	R277-511	NEW	08/12/2016	2016-13/39	
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	40330	R277-205	REP	08/12/2016	2016-9/28
	40331	R277-206	REP	08/12/2016	2016-9/29
	39837	R277-207	NEW	01/11/2016	2015-21/17
	40333	R277-207	REP	08/12/2016	2016-9/31
	40502	R277-210	NEW	08/12/2016	2016-13/10
	40504	R277-212	NEW	08/12/2016	2016-13/18
	40506	R277-215	NEW	08/12/2016	2016-13/29
	40831	R277-215-2	NSC	10/07/2016	Not Printed
	40430	R277-216	NEW	08/12/2016	2016-11/12
	40099	R277-510	5YR	01/14/2016	2016-3/510
	40100	R277-510	AMD	03/09/2016	2016-3/8
	40362	R277-510-5	NSC	05/11/2016	Not Printed
	40510	R277-515	AMD	08/12/2016	2016-13/41
	40667	R277-530	5YR	08/15/2016	2016-17/91
	40673	R277-530	AMD	10/11/2016	2016-17/15
	40668	R277-531	5YR	08/15/2016	2016-17/92
	40674	R277-531	AMD	10/11/2016	2016-17/18
	40512	R277-533	AMD	08/11/2016	2016-13/49

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	40632	R384-415	AMD	12/29/2016	2016-17/41

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Crime Victim Reparations, Administration	40148	R270-5	NEW	04/06/2016	2016-4/14
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Commerce, Occupational and Professional Licensing	39980	R156-82-201	AMD	02/08/2016	2016-1/12
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Health, Disease Control and Prevention, Health Promotion	40210	R384-415	AMD	04/15/2016	2016-5/8	
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	40358	R616-3-3	AMD	07/01/2016	2016-10/66	
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	40872	R512-2	5YR	10/13/2016	2016-21/78	
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Navajo Trust Fund, Trustees	40025	R661-7	NEW	02/29/2016	2016-2/113	
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	40585	R58-20	AMD	09/19/2016	2016-15/6	
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	40283	R426-5	AMD	05/31/2016	2016-8/70	
	41048	R426-5	5YR	12/06/2016	Not Printed	
	40178	R426-7	AMD	03/25/2016	2016-4/33	
	40324	R426-8	AMD	07/01/2016	2016-9/114	
	40426	R426-9	AMD	07/15/2016	2016-11/39	
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	40017	R460-8	NSC	01/15/2016	Not Printed	
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	40551	R432-550	AMD	08/26/2016	2016-14/56
	40777	R432-650	5YR	09/15/2016	2016-19/108
	40778	R432-700	5YR	09/15/2016	2016-19/109
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	40851	R428-2	AMD	12/08/2016	2016-21/42	
	40990	R428-5	5YR	11/10/2016	2016-23/135	
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Environmental Quality, Air Quality	40408	R307-230	LNR	05/10/2016	2016-11/67	
<u>natural gas pipeline safety</u>						
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	39934	R746-409	CPR	03/30/2016	2016-3/504	
<u>natural resources</u>						
Natural Resources, Forestry, Fire and State Lands	40136	R652-41	5YR	01/14/2016	2016-3/530	
<u>naturopathic physician</u>						
Commerce, Occupational and Professional Licensing	40706	R156-71	5YR	08/25/2016	2016-18/42	
<u>naturopaths</u>						
Commerce, Occupational and Professional Licensing	40706	R156-71	5YR	08/25/2016	2016-18/42	
<u>Navajo health systems</u>						
Navajo Trust Fund, Trustees	40611	R661-16	NEW	09/21/2016	2016-15/34	
<u>NC-SARA</u>						
Regents (Board Of), Administration	40658	R765-431	NEW	12/12/2016	2016-17/67	
<u>needles</u>						
Health, Disease Control and Prevention, Epidemiology	40765	R386-900	NEW	11/07/2016	2016-19/74	
<u>negative options</u>						
Commerce, Consumer Protection	40342	R152-11	5YR	04/19/2016	2016-10/80	
<u>NESHAP</u>						
Environmental Quality, Air Quality	40425	R307-214	AMD	08/04/2016	2016-11/25	
<u>network interconnection</u>						
Public Service Commission, Administration	41077	R746-348	5YR	12/13/2016	Not Printed	
<u>neuter</u>						
Agriculture and Food, Animal Industry	40637	R58-24	5YR	08/02/2016	2016-17/87	
<u>new source review</u>						
Environmental Quality, Air Quality	40294	R307-210	EXT	04/04/2016	2016-9/141	
	40422	R307-210	5YR	05/12/2016	2016-11/63	
	40424	R307-210	AMD	08/04/2016	2016-11/24	
<u>new state revenue</u>						
Governor, Economic Development	40483	R357-5	5YR	06/09/2016	2016-13/165	
	40460	R357-5	R&R	07/22/2016	2016-12/20	
	40638	R357-6	5YR	08/02/2016	2016-17/93	

<u>news agencies</u>						
Pardons (Board Of), Administration	40617	R671-302-1	AMD	10/31/2016	2016-16/10	
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Health, Disease Control and Prevention, Health Promotion	40210	R384-415	AMD	04/15/2016	2016-5/8	
	40632	R384-415	AMD	12/29/2016	2016-17/41	
<u>noise permits</u>						
Transportation, Operations, Construction	40683	R916-7	NEW	10/24/2016	2016-18/26	
<u>non-profits</u>						
Education, Administration	40680	R277-924	NEW	10/11/2016	2016-17/32	
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Public Safety, Criminal Investigations and Technical Services, Criminal Identification	40646	R722-910	NSC	08/22/2016	Not Printed	
<u>nonattainment</u>						
Environmental Quality, Air Quality	40193	R307-403-2	NSC	02/25/2016	Not Printed	
<u>notice of agency action</u>						
Transportation, Motor Carrier	40810	R909-4	NEW	12/06/2016	2016-20/80	
<u>notification</u>						
Natural Resources, Forestry, Fire and State Lands	40482	R652-150	5YR	06/09/2016	2016-13/166	
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Commerce, Real Estate	40276	R162-2f	AMD	05/31/2016	2016-8/7	
	40856	R162-2f	AMD	12/22/2016	2016-21/8	
	40364	R162-2f-202b	NSC	05/11/2016	Not Printed	
<u>NOx</u>						
Environmental Quality, Air Quality	40408	R307-230	LNR	05/10/2016	2016-11/67	
<u>noxious weeds</u>						
Agriculture and Food, Plant Industry	39965	R68-9	AMD	02/02/2016	2015-24/8	
<u>nuclear medicine</u>						
Environmental Quality, Waste Management and Radiation Control, Radiation	40581	R313-32	5YR	07/01/2016	2016-14/178	
	40010	R313-32-2	NSC	01/15/2016	Not Printed	
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Labor Commission, Industrial Accidents	40919	R612-300-14	AMD	12/22/2016	2016-22/89	
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Commerce, Occupational and Professional Licensing	40897	R156-31b	AMD	12/22/2016	2016-22/35	
<u>nursing facility</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	40372	R414-401-3	AMD	07/01/2016	2016-10/40	
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Commerce, Occupational and Professional Licensing	40941	R156-40a	5YR	11/03/2016	2016-23/125	
	40052	R156-46b	5YR	01/05/2016	2016-3/509	
	40219	R156-55a	AMD	04/21/2016	2016-6/16	
	40649	R156-55a	5YR	08/04/2016	2016-17/89	
	40351	R156-55a-301	AMD	06/21/2016	2016-10/19	
	40344	R156-55a-303b	NSC	05/11/2016	Not Printed	
	40651	R156-55b	5YR	08/08/2016	2016-17/90	
	40762	R156-55b-302c	AMD	11/07/2016	2016-19/4	
	40131	R156-55c	NSC	02/02/2016	Not Printed	

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	40748	R156-75	5YR	09/08/2016	2016-19/102
Environmental Quality, Water Quality	40489	R317-11	5YR	06/13/2016	2016-13/164
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Commerce, Administration	40949	R151-35	5YR	11/03/2016	2016-23/124
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Natural Resources, Parks and Recreation	40087	R651-401	5YR	01/07/2016	2016-3/526
	40088	R651-405	5YR	01/07/2016	2016-3/526
	40089	R651-406	5YR	01/07/2016	2016-3/527
	40447	R651-601	AMD	07/28/2016	2016-12/44
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Navajo Trust Fund, Trustees	40612	R661-17	NEW	09/21/2016	2016-15/35
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Navajo Trust Fund, Trustees	40612	R661-17	NEW	09/21/2016	2016-15/35
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Natural Resources, Parks and Recreation	40213	R651-412	AMD	04/21/2016	2016-6/22
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	40716	R649-3-32	AMD	11/01/2016	2016-18/16
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	40856	R162-2f	AMD	12/22/2016	2016-21/8
	40364	R162-2f-202b	NSC	05/11/2016	Not Printed
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	40709	R384-205	NEW	11/07/2016	2016-18/14
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	40162	R381-70	AMD	03/30/2016	2016-4/20	
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Human Services, Child and Family Services	39955	R512-305	AMD	01/21/2016	2015-24/44	
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Education, Administration	40672	R277-421	NEW	10/11/2016	2016-17/13	
<u>outdoor advertising</u>						
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Governor, Economic Development	40434	R357-16	NEW	07/15/2016	2016-11/29	
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<u>Outdoor Recreation Infrastructure Grant</u>						
Governor, Economic Development	40434	R357-16	NEW	07/15/2016	2016-11/29	
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	40064	R651-206	5YR	01/07/2016	2016-3/516	
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	40448	R651-602	AMD	07/28/2016	2016-12/46
	40065	R651-611	5YR	01/07/2016	2016-3/527
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	40618	R671-204	AMD	10/31/2016	2016-16/8
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	41079	R728-403	5YR	12/13/2016	Not Printed
	40538	R728-502	R&R	08/23/2016	2016-14/132
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Human Services, Substance Abuse and Mental Health	40653	R523-5-7	AMD	10/11/2016	2016-17/52
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	40471	R307-124	NEW	09/08/2016	2016-13/76	
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	40027	R357-13	NEW	03/14/2016	2016-2/76	
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	40968	R865-4D	5YR	11/10/2016	2016-23/140	
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	40976	R865-15O	5YR	11/10/2016	2016-23/149	

	40978	R865-16R	5YR	11/10/2016	2016-23/149
	40980	R865-20T	5YR	11/10/2016	2016-23/153
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	40981	R865-21U	5YR	11/10/2016	2016-23/155
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