

UTAH STATE BULLETIN

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

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

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

Office of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for February 2017 Medicaid Rate Changes

Effective February 1, 2017, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>.

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between December 16, 2016, 12:00 a.m., and January 03, 2017, 11:59 p.m. are included in this, the January 15, 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 February 14, 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 15, 2017, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

**Administrative Services, Fleet
Operations
R27-1
Definitions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41105

FILED: 12/16/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule change includes replacing "DFO" with "division" and the clarification of definitions.

SUMMARY OF THE RULE OR CHANGE: The changes include replacing "DFO" with "division", adding an age restriction condition, clarifying the definition of "Commute Use", adding the definition of "Employee", and clarifying the definition of "Take-home Use".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-9-401

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget because the changes pertain to definitions of terms and are technical in nature.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government because the changes pertain to definitions of terms and are technical in nature.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses because the changes pertain to definitions of terms and are technical in nature.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small business, businesses, or local government entities because the changes pertain to definitions of terms and are technical in nature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs or savings for affected persons because the changes pertain to definitions of terms and are technical in nature.

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

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

ROOM 4120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jeff Mottishaw by phone at 801-538-3601, or by Internet E-mail at jmottishaw@utah.gov
- ◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/21/2017

AUTHORIZED BY: Jeff Mottishaw, Director

R27. Administrative Services, Fleet Operations.

R27-1. Definitions.

R27-1-1. Authority.

(1) This rule is established pursuant to Section 63A-9-401, which requires the Department of Administrative Services, Division of Fleet Operations, to establish rules regarding the State Fleet.

R27-1-2. Definitions.

In addition to the terms defined in Section 63A-9-101, as used in Title 63A, Chapter 9, or these rules the following terms are defined.

(1) "Accident" means any occurrence, in which a state vehicle is involved in a mishap resulting in harm or injury to persons, or damage to property, regardless of total cost of treatments or repairs. It may also be referred to as an incident.

(2) "Accident Review Committee (ARC)" means the panel formed by each agency to review accidents in which agency employees are involved and make a determination as to whether or not said accidents were preventable.

(3) "ACD Codes" means the American Association of Motor Vehicle Administrators Code Dictionary Codes.

(4) "Agency" has the same meaning as provided in Section 63A-9-101(1)(a),(b), and (c).

(5) "Agency Motor Vehicle Policy (AMV)" means any policy written by an agency that covers any agency-specific needs involving the use of a state vehicle that are not addressed by state vehicle rules. Agencies shall not adopt policies that are less restrictive than the State vehicle rules.

(6) "Alternative Fuel Vehicles (AFV)" means any vehicle designed and manufactured by an original equipment manufacturer or a converted vehicle designed to operate either on a dual-fuel, flexible-fuel, or dedicated mode while using fuels other than gasoline or diesel. Examples of alternative fuel types are electricity, bio-diesel, fossil-fuel hybrids, compressed natural gas, propane, hydrogen, methanol, ethanol, and any other vehicle fuel source approved by the Federal government's Department of Energy

(DOE). AFVs shall be identified and tracked in ~~[DFO's]~~the division's fleet information system.

(7) "Authorized Driver" means any employee, as defined in Section 63G-7-102, of an agency who has been identified by the agency in ~~[DFO's]~~the division's Fleet Information System as having the authority, within his or her scope of employment, to operate a state vehicle on the agency's behalf, who holds a valid driver license, meets the necessary age restrictions, and has completed the specific training and other criteria required by ~~[DFO]~~the division, Risk Management, or employing agency for the vehicle type that will be operated. An Authorized Driver may also be referred to as operator, employee or customer.

(8) "Authorized Passenger" means any state employee acting within the scope of his or her employment, or any other person or animal whose transport is either necessary for the performance of the authorized driver's employment duties, or has been pre-approved by the appropriate department head to accompany an authorized driver.

(9) "Capital only lease vehicle" means any vehicle with a lease designed to recover depreciation cost, (vehicle cost less salvage value spread over the estimated useful life of the vehicle, less the incremental cost of Alternative Fuel Configuration), plus overhead costs only. Capital only leases are subject to ~~[DFO]~~division approval.

(10) "Citizen Complaints" means complaints lodged by citizens through the ~~[DFO]~~division website.

(11) "Commuter Use" means ~~[an employee driving]~~use of a state vehicle by an employee driving [from]between the employee's [place of business to the employee's place of]residence and the employee's assigned work location more than five calendar days per month. Commuter Use is subject to the Commuting Rule as outlined in IRS Publication 15-B.

(12) "Compressed Natural Gas Vehicle (CNG)" means any vehicle that may be fueled with compressed natural gas.

(13) "Department" means the Department of Administrative Services.

(14) "Division" has the same meaning as provided by Section 63A-9-101(4).

(15) "Driver Eligibility Board (DEB)" means the panel formed for the purpose of determining a state vehicle driving privileges.

(16) "Driver[s] License Points" means points placed on a drivers record by the Department of Motor Vehicles in response to driving violations.

(17) "Emergency Vehicle" means any state vehicle which is primarily used for the purpose of providing law enforcement and public safety services as defined in Section 41-6a-102(3), or fire service, or emergency medical services.

(18) "Employee" has the same meaning as provided by Section 63G-7-102(2).

(19) "Expansion vehicle" means any vehicle purchased when an agency requires an additional vehicle in order to complete the duties assigned to the requesting agency and will increase the size of the state fleet. The purchase of an expansion vehicle requires legislative approval.

~~(19)~~(20) "Extreme Duty Vehicle", a designation used for preventive maintenance purposes, means, but is not limited to, emergency vehicles and vehicles driven primarily off-road.

~~(20)~~(21) "Feature" means any option or accessory that is available from the vehicle manufacturer.

~~(21)~~(22) "Fixed costs" means, for the purposes of this rule, costs including depreciation, overhead, licensing, betterment, insurance, and title costs, as well as registration fees.

~~(22)~~(23) "Fleet Vehicle Advisory Committee" means the panel formed for the purpose of advising ~~[DFO]~~the division, after input from user agencies, as to the vehicle, included features, and equipment that will constitute the standard vehicle for each class in the fleet.

~~(23)~~(24) "FO number" means a vehicle specific number assigned to each state vehicle for tracking purposes.

~~(24)~~(25) "Fuel Network" means the state program that provides an infrastructure for fueling state vehicles.

~~(25)~~(26) "Full Service Lease" means a type of lease designed to recover depreciation costs, overhead costs and all variable costs.

~~(26)~~(27) "Heavy-duty Vehicle" means any motor vehicle having a gross vehicle weight range (GVWR) greater than 8,500 pounds. In addition to vehicles licensed for on road use, includes non-road vehicles, as defined in R27-1-2(30), with a GVWR greater than 8,500 pounds. Heavy-duty vehicles shall be tracked in ~~[DFO's]~~the division's fleet information system.

~~(27)~~(28) "Light-duty Vehicle" means any motor vehicle having a gross vehicle weight rating (GVWR) of 8,500 pounds or less. In addition to vehicles licensed for on road use, includes non-road vehicles, as defined in R27-1-2(30), with a GVWR of 8,500 pounds or less. Light-duty vehicles shall be tracked in ~~[DFO's]~~the division's fleet information system.

~~(28)~~(29) "Miscellaneous Equipment" means any equipment, enhancement or accessory that is installed on or in a motor vehicle by persons other than the original vehicle manufacturer, and other non-fleet related equipment. Includes, but is not limited to, light bars, 800 MHz radios, transits, surveying equipment, traffic counters, semaphores, and diagnostic related equipment. Miscellaneous Equipment shall be tracked in ~~[DFO's]~~the division's fleet information system.

~~(29)~~(30) "Motor Pool" generally, means any vehicle that is made available to agencies for lease on a short-term basis.

~~(30)~~(31) "Motor Vehicle" has the same meaning as provided by Section 63A-9-101(6).

~~(31)~~(32) "Motor Vehicle Review Committee (MVRC)" means the panel formed to advise the ~~[Division of Fleet Operations (DFO)]~~the division, as required by Subsection 63A-9-301(1). The duties of the MVRC are as specified in Section 63A-9-302.

~~(32)~~(33) "Moving Violation" means an infringement of the law while operating a moving vehicle.

~~(33)~~(34) "Non-Preventable Accident" means any occurrence involving an accident/incident in which everything that could have been reasonably done to prevent it was done and the accident/incident still occurred. Non-preventable accidents shall include vandalism of state vehicles being used to conduct state business.

~~(34)~~(35) "Non-road vehicle" means a vehicle, regardless of GVWR, that is not licensed for on-road use. Includes, but is not limited to, vehicles used principally for construction and other non-transportation purposes. Golf carts, farm tractors, snowmobiles, forklifts and boats are examples of vehicles in this

category. Non-road vehicles shall be tracked in ~~[DFO's]~~the division's fleet information system.

~~(35)~~(36) "Other Equipment" means vehicles and equipment not specifically identified in other standard reporting categories.

~~(36)~~(37) "Personal Use" means the use of a state vehicle to conduct an employee's personal affairs, not related to state business.

~~(37)~~(38) "Preventable Accident" means any occurrence involving a state vehicle, which results in property damage and/or personal injury, regardless of who was injured, what property was damaged, to what extent, or where it occurred, in which the authorized driver in question failed to do everything that could have reasonably been done to prevent it.

(a) Preventable accidents are not limited to collisions.

(b) As used in this rule, "preventable accidents" include, but are not limited to: damage to the interior of the state vehicle due to improperly locked doors, smoke or burn damage caused by smoking in the vehicle or lack of general care of the vehicles interior.

~~(38)~~(39) "Preventive Maintenance (PM)" means vehicle services that are conducted at regular time intervals to deter mechanical breakdowns, including, but not limited to, lube, oil and filter changes.

~~(39)~~(40) "Regular Duty Vehicle" a designation used for preventive maintenance purposes, means a vehicle that is driven primarily on paved roads under normal driving conditions.

~~(40)~~(41) "Replacement cycle" means the criteria established to determine when the replacement of a state vehicle is necessary. A replacement cycle has a time and mileage element, and is established according to vehicle type and use.

~~(41)~~(42) "Replacement vehicle" means a vehicle purchased to replace a state vehicle that has met replacement cycle criteria.

~~(42)~~(43) "Service Level Agreement (SLA)" means an agreement, signed annually, between an agency and ~~[DFO]~~the division, in which the agency agrees to follow all rules, policies and procedures published by ~~[DFO]~~the division concerning the use of state vehicles. This document also clearly defines the level of service between ~~[DFO]~~the division and agencies.

~~(43)~~(44) "Standard State Fleet Vehicle" is the vehicle designated by ~~[DFO]~~the division as the default replacement vehicle for the state.

~~(44)~~(45) "State of Utah Fuel Card" means a purchase card issued to vehicles by the fuel network program, to be used when purchasing fuel. Fluids and minor miscellaneous items that may also be purchased with the "State of Utah Fuel Card" cannot exceed the monthly monetary limits placed on such purchases by ~~[DFO]~~the division /Fuel Network, unless otherwise authorized.

~~(45)~~(46) "State vehicle" for the purposes of this rule, has the same meaning as provided by Subsection 63A-9-101(7).

~~(46)~~(47) ~~["Take-home vehicle" means a state vehicle assigned to be driven to and from an employee's place of residence and their assigned work location for more than five calendar days per month.]~~ "Take-home Use means use of a state vehicle by an employee driving a state vehicle between the employee's place of residence and the employee's assigned work location more than five calendar days per month. Take-home Use is exempt from the Commuting Rule as outlined in IRS Publication 15-B.

~~(47)~~(48) "Unique Motorized Equipment" (UME) means high-cost vehicles and equipment such as trains; locomotives; airplanes; jets; mobile power stations and helicopters. Unique equipment shall be tracked in ~~[DFO's]~~the division's fleet information system.

~~(48)~~(49) "Variable costs" means costs including, but are not limited to fuel, oil, tires, services, repairs, maintenance and preventive maintenance.

~~(49)~~(50) "Vehicle Identification Number (VIN)" means the number issued by the vehicle manufacturer to identify the vehicle in the event of a theft; this number can be found on the driver's side of the dashboard below the windshield.

~~(50)~~(51) "Vendor" means any person offering sales or services for state vehicles, such as preventive maintenance or repair services.

KEY: definitions

Date of Enactment or Last Substantive Amendment: ~~[April 20, 2009]~~2017

Notice of Continuation: November 6, 2015

Authorizing, and Implemented or Interpreted Law: 63A-9-401

**Administrative Services, Fleet
Operations
R27-3
Vehicle Use Standards**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 41106

FILED: 12/16/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule change is to simplify references to the division, correct or remove out-of-date citations, make minor grammatical corrections, clarify language, and remove and add requirements.

SUMMARY OF THE RULE OR CHANGE: A summary of the changes includes replacing references to "Division of Fleet Operations" and "DFO" with "division", removing and correcting out-of-date citations, making grammatical corrections, clarifying language, clarifying that take-home use is not a taxable fringe benefit per IRS standards, clarifying that an agency executive director may approve commute and take-home use of state vehicles, clarifying exemption documentation procedure, removing the requirement to list all authorized drivers with the division's fleet information system, replacing the phrase "blatant disregard" with "intentional falsification", and adding withdrawal/suspension/revocation penalty condition for driving under the influence, reckless driving, or felony while operating a state or personal vehicle.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-9-401(1)(d)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because the language corrections are technical in nature, and the removal and addition of requirements are similar to those already in place.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the language corrections are technical in nature, and the removal and addition of requirements are similar to those already in place.

◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the language corrections are technical in nature, and the removal and addition of requirements are similar to those already in place.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the language corrections are technical in nature, and the removal and addition of requirements are similar to those already in place.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated cost or savings to affected persons because the language corrections are technical in nature, and the removal and addition of requirements are similar to those already in place.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 FLEET OPERATIONS
 ROOM 4120 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jeff Mottishaw by phone at 801-538-3601, or by Internet E-mail at jmottishaw@utah.gov
 ◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/21/2017

AUTHORIZED BY: Jeff Mottishaw, Director

R27. Administrative Services, Fleet Operations.

R27-3. Vehicle Use Standards.

R27-3-1. Authority and Purpose.

(1) This rule is established pursuant to Section 63A-9-401(1)(d), which authorizes the ~~[Division of Fleet Operations (DFO)]~~ division to establish the requirements for the use of state vehicles, including business and personal use practices, and commute standards.

(2) This rule defines the vehicle use standards for state employees while operating a state vehicle.

R27-3-2. Agency Contact.

(1) Each agency, as defined in ~~[Subsection]~~ Section 63A-9-101, shall appoint and designate, in writing, a main contact person from within the agency to act as a liaison between the ~~[Division of Fleet Operations]~~ division and the agency.

R27-3-3. Agency Authorization of Drivers.

(1) Agencies authorized to enter information into ~~[DFO's]~~ the division's fleet information system shall, for each employee~~], as defined in section 63G-7-102(2), Utah Governmental Immunity Act, to whom the agency has granted the authority to operate a state vehicle]~~ acting as an authorized driver, directly enter into ~~[DFO's]~~ the division's fleet information system, the following information:

- (a) Driver's name;
- (b) Driver license number;
- (c) State that issued the driver license;
- (d) Each Risk Management-approved driver training program(s) taken;
- (e) Date each driver safety program(s) was completed;
- (f) The type of vehicle that each safety program is geared towards.

(2) Agencies without authorization to enter information into ~~[DFO's]~~ the division's fleet information system shall provide the information required in ~~[paragraph](1) to [DFO]the division~~ for entry into [DFO's]the division's fleet information system.

(3) For the purposes of this rule, any employee~~], as defined in section 63G-7-102(2);]~~ whose fleet information system record does not have all the information required in ~~[paragraph](1)~~ shall be deemed not to have the authority to drive state vehicles and shall not be allowed to drive either a monthly or a daily lease vehicle.

(4) To operate a state vehicle, employees~~], as defined in section 63G-7-102(2);]~~ whose names have been entered into ~~[DFO's]the division's~~ the division's fleet information system as authorized drivers shall have:

- (a) a valid driver license for the type and class of vehicle being operated;
- (b) completed ~~[the]~~ an approved driver safety course as required by ~~[DFO and]~~ the Division of Risk Management for the type or class of vehicle being operated; and
- (c) met the age restrictions imposed by ~~[DFO]the division~~ and the Division of Risk Management for the type or class of vehicle being operated.

(5) Agencies shall develop and establish procedures to ensure that any individual listed as an authorized driver is not allowed to operate a state vehicle when the individual:

(a) does not have a valid driver license for the type or class of vehicle being operated; or

(b) has not completed all training and/or safety programs required by either ~~[DFO]the division~~ or the Division of Risk Management for the type or class of vehicle being operated; or

(c) does not meet the age restrictions imposed by either ~~[DFO]the division~~ or the Division of Risk Management for the type or class of vehicle being operated.

(6) A driver license verification check shall be conducted on a regular basis in order to verify the status of the driver license of each employee~~[, as defined in section 63G-7-102(2),]~~ whose name appears in the ~~[DFO]the division~~ fleet information system as an authorized driver.

(7) In the event that an authorized driver is found not to have a valid driver license, the agency shall be notified, in writing, of the results of the driver license verification check.

(8) Any individual who has been found not to have a valid driver license shall have his or her authority to operate a state vehicle immediately withdrawn.

(9) Any employee~~[, as defined in section 63G-7-102(2),]~~ who has been found not to have a valid driver license shall not have the authority to operate a state vehicle reinstated until such time as the individual provides proof that his or her driver license is once again valid.

(10) Authorized drivers shall operate a state vehicle in accordance with the restrictions or limitations imposed upon their respective driver license.

(11) Agencies shall comply with the requirements set forth in Risk Management General Rules, R37-1-8 (3) to R37-1-8 (9).

R27-3-4. Authorized and Unauthorized Use of State Vehicles.

(1) State vehicles shall only be used for official state business.

(2) Except in cases where it is customary to travel out of state in order to perform an employee's regular employment duties and responsibilities, the use of a state vehicle outside the State of Utah shall require the approval of the director of the department that employs the individual.

(3) The use of a state vehicle for travel outside the continental U.S. shall require the approval of the director of the employing department, the director of ~~[DFO]the division~~, and the director of the Division of Risk Management. All approvals must be obtained at least thirty (30) days ~~[from]prior to~~ the departure date. The employing agency shall, prior to the departure date, provide ~~[DFO]the division~~ and the Division of Risk Management with proof that proper automotive insurance has been obtained. The employing agency shall be responsible for any damage to vehicles operated outside the United States regardless of fault.

(4) Unless otherwise authorized, the following are examples of the unauthorized use of a state vehicle:

(a) Transporting family, friends, pets, associates or other persons who are not state employees or are not serving the interests of the state.

(b) Transporting hitchhikers.

(c) Transporting acids, explosives, hazardous materials, flammable materials, and weapons and ammunition (except as authorized by federal and/or state laws). Otherwise, the transport of

the above-referenced items or materials is deemed authorized when it is specifically related to employment duties.

(d) Extending the length of time that the state vehicle is in the operator's possession beyond the time needed to complete the official purposes of the trip.

(e) Operating or being in actual physical control of a state vehicle in violation of ~~[Subsection]Section~~ 41-6a-502, (Driving under the influence of alcohol, drugs or with specified or unsafe blood alcohol concentration), ~~[Subsection]Section~~ 53-3-231, (Person under 21 may not operate a vehicle with detectable alcohol in body), or an ordinance that complies with the requirements of ~~[Subsection]Section~~ 41-6a-510, (Local DUI and related ordinances and reckless driving ordinances).

(f) Operating a state vehicle for personal use as defined in R27-1-2(~~[36]37~~). ~~[Generally, e]~~ Except for approved personal uses set forth in R27-3-5 and when necessary for the performance of employment duties, the use of a state vehicle for activities such as shopping, participating in sporting events, hunting, fishing, or any activity that is not included in the employee's job description, is not authorized.

(g) Using a state vehicle for personal convenience, such as when a personal vehicle is not operational.

(h) Pursuant to the provisions of R27-7-1 et seq., the unauthorized use of a state vehicle may result in the suspension or revocation of state driving privileges.

R27-3-5. Personal Use Standards.

(1) Personal use of state vehicles is not allowed without the direct authorization of the Legislature.

(2) An employee or representative of the state spending at least one night on approved travel to conduct state business, may use a state vehicle in the general vicinity of the overnight lodging for the following approved activities:

(a) Travel to and from restaurants and stores for meals, breaks and personal needs;

(b) Travel to and from grooming, medical, fitness or laundry facilities; and

(c) Travel to and from recreational activities, such as to theaters, parks, or to the home of friends or relatives, provided ~~[said]the~~ employee or representative has received prior approval for such travel from his or her supervisor.

(d) Pursuant to the provisions of R27-7-1 et seq., the unauthorized personal use of a state vehicle may result in the suspension or revocation of state driving privileges.

R27-3-6. Application for Commute or Take-[-]Home Use.

(1) Each petitioning agency shall, for each driver being granted commute or take-[-]home use privileges, annually submit an online ~~[take-home]~~ spreadsheet from the ~~[DFO]division~~ ~~[take-home]~~ website. ~~[Take-home a]~~ Authority is granted when the ~~[A]agency~~ ~~[E]executive~~ ~~[D]~~ director submits the spreadsheet form to ~~[DFO]the division~~ designating his/her approval.

(2) ~~[DFO]The division~~ shall enter the approved commute or take-[-]home use request into the fleet information system and provide an identification number to both the driver and the agency.

(3) All approvals for commute or take-[-]home use privileges shall expire at the end of the calendar year ~~[on]in~~ which they were issued and ~~[DFO]the division~~ shall notify the agency of

said expiration. Agencies shall be responsible for submitting any request for annual renewal of commute or take-[-]home use privileges.

(4) Commute use is [~~unless specifically exempted under R27-3-8, infra,~~] considered a taxable fringe benefit as outlined in IRS publication 15-B. All approved commute use drivers [~~will~~]shall be assessed the IRS imputed daily fringe benefit rate while using a state vehicle for commute use.

(5) For each individual with commute use privileges, the employing agency shall, pursuant to Division of Finance Policy FIACCT 10-01.00, prepare an Employee Reimbursement/Earnings Request Form and enter the amount of the commute fringe benefit into the payroll system on a monthly basis, or the Division of Finance will apply, for each working day in that month, the appropriate commute fringe benefit.

(6) Take-home use is not a taxable fringe benefit as outlined in IRS publication 15-B. All authorized take-home use drivers must submit an explanation form to the division identifying the driver, vehicle, and reason for the exemption according to IRS publication 15-B.

R27-3-7. Criteria for Commute or Take-[-]Home [~~Privilege~~]Use Approval.

(1) An agency executive director may approve [C]commute or [F][take-[-]H]home use [~~may be approved,~~]when one or more of the following conditions exist:

(a) 24-hour "Emergency On-Call." Where the agency clearly demonstrates that the nature of a potential emergency is such that an increase in response time, if a commute or take-[-]home use privilege is not authorized, could endanger a human life or cause significant property damage. Each driver is required to keep a complete list of all call-outs for renewal of the [~~take-home~~]commute or take-home use privilege the following year. Agencies may use [~~DFO's~~]the division's online forms to track commute or take-[-]home mileage.

(b) Virtual office. Where an agency clearly demonstrates that an employee is required to work [~~at home or~~]out of a vehicle[;] a minimum of eighty (80) percent of the time and the assigned vehicle is required to perform the critical duties assigned to the employee[~~in a manner that is clearly in the best interest of the state~~].

(c) When the agency clearly demonstrates that it is more practical for the employee to go directly to an alternate work-site rather than report to a specific office to pick-up a state vehicle.

(d) When a vehicle is provided to appointed or elected government officials who are specifically allowed by law to have an assigned vehicle as part of their compensation package.

(2) The trip log must be created for the first and last trip of the day for all [~~take-home~~]commute use vehicles.

R27-3-8. Exemptions from IRS Imputed Daily Fringe Benefits.

(1) In accordance with IRS publication 15-~~[b]~~B, employees with an individual permanently assigned commute use vehicle are subject to the IRS Commuting Rule Exemptions[~~exempt~~] from the [~~imputed daily fringe benefit~~]Commuting Rule for [~~commute~~]take-home use must be in accordance with IRS Publication 15-B and approved by the agency. In these cases, the agency must notify the division and the Division of Finance, or the employee will automatically have the fringe

benefit added to the employee's income.[~~when the permanently assigned vehicles are either:~~

- ~~(a) Clearly marked police and fire vehicles;~~
- ~~(b) Unmarked vehicles used by law enforcement officers if the use is specifically authorized;~~
- ~~(c) An ambulance or hearse used for its specific purpose;~~
- ~~(d) Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 lbs;~~
- ~~(e) Delivery trucks with seating for the driver only, or the driver plus a folding jump seat;~~
- ~~(f) A passenger bus with the capacity of at least 20 passengers used for its specific purpose;~~
- ~~(g) School buses;~~
- ~~(h) Tractors and other special purpose farm vehicles;~~
- ~~(i) A pick up truck with a loaded gross vehicle weight of 14,000 lbs or less, if it has been modified so it is not likely to be used more than minimally for personal purposes.~~

~~Example: According to the IRS, a pick up truck qualifies for the exemption if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade, business or function and meets either of the following requirements:~~

- ~~(i) It is equipped with at least one of the following items:~~
 - ~~(a) A hydraulic lift gate;~~
 - ~~(b) Permanent tanks or drums;~~
 - ~~(c) Permanent sideboards or panels that materially raise the level of the sides of the truck bed;~~
 - ~~(d) Other heavy equipment (such as an electronic generator, welder, boom or crane used to tow automobiles or other vehicles).~~
- ~~(ii) It is used primarily to transfer a particular type of load (other than over public highways) in a construction, manufacturing, processing, farming, mining, drilling, timbering or other similar operation for which it is specifically modified.~~

~~(j) A van with a loaded gross vehicle weight of 14,000 lbs or less, if it has been specifically modified so it is not likely to be used more than minimally for personal purposes.~~

~~Example: According to the IRS, a van qualifies for the exemption if it is clearly marked with permanently affixed decals, special painting or other advertising associated with your trade, business and has a seat for the driver only (or the driver and one other person) and either of the following items:~~

- ~~(i) permanent shelving that fills most of the cargo area; or~~
- ~~(ii) An open cargo area and the van always carries merchandise, material or equipment used in your trade, business or function.~~

~~(2) Questions relating to the imputed daily taxable fringe benefit for the use of a state vehicle and exemptions thereto should be directed to DFO.]~~

~~(2) Any agency with an exemption to the Commuting Rule must maintain a file justifying the exemption and must be prepared to explain the agency's position in the case of an audit.~~

R27-3-9. Enforcement of Commute, Take-home, and Personal Use Standards.

(1) Agencies with drivers who have been granted commute, [~~or~~]take-[-]home, or personal use privileges shall establish internal policies to enforce the commute[~~use~~], take-[-]home,[~~use~~] and personal use standards established in this rule.

Agencies shall not adopt policies that are less stringent than the standards established in ~~[these]~~[this rule[s]].

(2) Commute,~~[or]~~ take home,~~[use]~~ or personal use that is unauthorized shall result in the suspension or revocation of the commute, take-home, or personal use privilege by the agency. Additional instances of unauthorized commute or take-~~[]~~home use may result in the suspension or revocation of the state driving privilege by the agency.

R27-3-10. Use Requirements for Monthly Lease Vehicles.

(1) Agencies that have requested~~[;]~~ and received monthly lease options on state vehicles shall:

(a) Ensure that only authorized drivers ~~[whose names and all other information required by R27-3-3(1) have been entered into DFO's fleet information system, completed all the training and/or safety programs, and met the age restrictions for the type of vehicle being operated, shall]~~ operate monthly lease vehicles.

(b) Report the correct odometer reading when refueling the vehicle. In the event that an incorrect odometer reading is reported, agencies shall be assessed a fee whenever the agency fails to correct the mileage within three (3) business days of the agency's receipt of the notification that the incorrect mileage was reported. When circumstances indicate that there was an intentional falsification~~[blatant disregard]~~ of the vehicle's actual odometer reading at the time of refueling, a fee shall be assessed to the agency even though the agency corrected the error within three (3) days of the notification.

(c) Return the vehicle in good repair and in clean condition at the completion of the replacement cycle period or when the vehicle has met the applicable mileage criterion for replacement, reassignment or reallocation.

(i) Agencies shall be assessed a detailing fee for vehicles returned that are in need of extensive cleaning.

(ii) Agencies shall pay the insurance deductible associated with repairs made to a vehicle that is damaged when returned.

(d) Return the vehicle unaltered and in conformance with the manufacturer's specifications.

(e) Pay the applicable insurance deductible in the event that monthly lease vehicle in its possession or control is involved in an accident.

(f) Not place advertising or bumper stickers on state vehicles without prior approval of ~~[DFO]~~[the division].

(2) The provisions of Rule R27-4 shall govern agencies when requesting a monthly lease.

(3) Under no circumstances shall the total number of occupants in a monthly lease full-size passenger van exceed ten (10) individuals, the maximum number recommended by the Division of Risk Management.

R27-3-11. Use Requirements for Daily Motor Pool Vehicles.

(1) ~~[DFO]~~[The division] offers state vehicles for use on a daily basis at an approved daily rental rate. Drivers of a state vehicle offered through the daily pool shall:

(a) Be an authorized driver~~[whose name and all other information required by]~~ in accordance with R27-~~[3-3(4)]~~1-2(7) ~~[have been entered into DFO's fleet information system, completed~~

~~all the training and/or safety programs, and met the age restrictions for the type of vehicle being operated]~~. In the event that any of the information required by R27-3-3(1) has not been entered in ~~[DFO's]~~[the division's] fleet information system, the rental vehicle will not be released.

(b) Read the handouts, provided by ~~[DFO]~~[the division], containing information regarding the safe and proper operation of the vehicle being leased.

(c) Verify the condition of, and acknowledge responsibility for the care of, the vehicle prior to rental by filling out the daily motor pool rental form provided by daily rental personnel.

(d) Report the correct odometer reading when refueling the vehicle at authorized refueling sites, and when the vehicle is returned. In the event that incorrect odometer reading is reported, agencies shall be assessed a fee whenever the agency fails to correct the mileage within three (3) business days of the agency's receipt of the notification that the incorrect mileage was reported. When circumstances indicate that there was an intentional falsification~~[blatant disregard]~~ of the vehicle's actual odometer reading at the time of refueling, a fee shall be assessed to the agency even though the agency corrected the error within three (3) days of the notification.

(e) Return vehicles with a full tank of fuel. Agencies shall be assessed a fee for vehicles that are returned with less than a full tank of fuel.

(f) Return rental vehicles in good repair and in clean condition.

(i) Agencies shall be assessed a detailing fee for vehicles returned that are in need of extensive cleaning.

(ii) Agencies shall pay the insurance deductible associated with repairs made to a vehicle that is damaged when returned.

(g) Call to extend the reservation in the event that they need to keep rental vehicles longer than scheduled. Agencies shall be assessed a late fee, in addition to applicable daily rental fees, for vehicles that are not returned on time.

(h) Use their best efforts to return rented vehicles during regular office hours. Agencies may be assessed a late fee equal to one day's rental for vehicles that are not returned on time.

(i) Call the daily pool location, at least one hour before the scheduled pick-up time, to cancel the reservation. Agencies shall be assessed a fee for any unused reservation that has not been canceled.

(j) Not place advertising or bumpers stickers on state vehicles without prior approval from ~~[DFO]~~[the division].

(2) The vehicle shall be inspected upon its return. The agency shall either be held responsible for any damages not acknowledged prior to rental, or any applicable insurance deductibles associated with any repairs to the vehicle.

(3) Agencies are responsible for paying all applicable insurance deductibles whenever a vehicle operated by an authorized driver is involved in an accident.

(4) The ~~[DFO]~~[division] shall hold items left in daily rental vehicles for ten (10) days. Items not retrieved within the ten-day period shall be turned over to the State Surplus Property [Office] Program for sale or disposal.

R27-3-12. Daily Motor Pool Sedans, Four Wheel Drive Sport Utility Vehicle (4x4 SUV), Cargo Van, Multi-Passenger Van and Alternative Fuel Vehicle Lease Criteria.

(1) The standard state vehicle is a compact sedan, and shall be the vehicle type most commonly used when conducting state business.

(2) Requests for vehicles other than a compact sedan may be honored in instances where the agency and/or driver is able to identify a specific need in accordance with R27-4-4(4).

(a) Requests for a four wheel drive sport utility vehicle (4x4 SUV) may be granted with written approval from an employee's supervisor.

(b) Requests for a seven-passenger van may be granted in the event that the driver is going to be transporting more than three (3) authorized passengers.

(c) Requests for full-size passenger vans may be granted in the event that the driver is going to be transporting more than (6) six authorized passengers. Under no circumstances shall the total number of occupants exceed the maximum number of passengers recommended by the Division of Risk Management.

(3) Cargo vans shall be used to transport cargo only. Passengers shall not be transported in cargo area of said vehicles.

(4) Non-traditional (alternative) fuel shall be the primary fuel used when driving a bi-fuel or dual- fuel state vehicle. Drivers shall, when practicable, use an alternative fuel when driving a bi-fuel or dual-fuel state vehicle.

R27-3-13. Alcohol and Drugs.

(1) No authorized driver shall operate or be in actual physical control of a State vehicle in violation of [subsection]Section 41-6a-502, any ordinance that complies with the requirements of [subsection]Section 41-6a-510, or [subsection]Section 53-3-231.

~~(2) [Any individual on the list of authorized drivers who is convicted of Driving Under the Influence of alcohol or drugs (DUI), Reckless Driving or any felony in which a motor vehicle is used, either on-duty or off-duty, may have his or her state driving privileges withdrawn, suspended or revoked.~~

~~(3)]No operator of a state vehicle shall transport alcohol or illegal drugs of any type in a State vehicle unless they are:~~

(a) Sworn peace officers, as defined in Section 53-13-102, in the process of investigating criminal activities;

(b) Employees of the the Department of Alcoholic Beverage Control~~[Commission]~~ conducting business within the guidelines of their daily operations; or

(c) investigators for the Department of Commerce in the process of enforcing the provisions of Title 58, Chapter 37, [section 58-37], Utah Controlled Substances Act.

~~(4)~~(3) Except as provided in [paragraph 3]Subsection (2), above, any individual who uses a state vehicle for the transportation of alcohol or drugs may have his or her state driving privileges withdrawn, suspended or revoked.

R27-3-14. Violations of Motor Vehicle Laws.

(1) Authorized drivers shall obey all motor vehicle laws while operating a state vehicle.

(2) Any authorized driver who, while operating a state vehicle, receives a citation for violating a motor vehicle law shall immediately report the receipt of the citation to their respective

supervisor. Failure to report the receipt of a citation may result in the withdrawal, suspension or revocation of State driving privileges.

(3) Any driver who receives a citation for violating a motor vehicle law while operating a state vehicle shall attend an additional Risk Management-approved mandatory defensive driver training program. The failure to attend the additional mandatory defensive driver training program shall result in the loss of state driving privileges.

(4) Any driver who receives a citation for a violation of motor vehicle laws, shall be personally responsible for paying fines associated with any and all citations. The failure to pay fines associated with citations for the violation of motor vehicle laws may result in the loss of state driving privileges.

(5) Any individual on the list of authorized drivers who is convicted of Driving Under the Influence of alcohol or drugs (DUI), Reckless Driving or any felony in which a motor vehicle is used, either on-duty or off-duty, and whether in the state vehicle or their personal vehicle, may have his or her state driving privileges withdrawn, suspended or revoked.

R27-3-15. Seat Restraint Use.

(1) All operators and passengers in [S]state vehicles shall wear seat belt restraints while in a moving vehicle.

(2) All children being transported in [S]state vehicles shall be placed in proper safety restraints for their age and size as stated in [Subsection]Section 41-6a-1803.

R27-3-16. Driver Training.

(1) Any individual shall, prior to the use of a state vehicle, complete all training required by [DFO or]the Division of Risk Management, including, but not limited to, the defensive driver training program offered through the Division of Risk Management (or an approved equivalent).

(2) Each agency shall coordinate with the Division of Risk Management~~[;]~~ to provide specialty training for vehicles known to possess unique safety concerns.

(3) Each agency shall require that all employees who operate a state vehicle, or their own vehicles, on state business as an essential function of the job, or all other employees who operate vehicles as part of the performance of state business, comply with the requirements of Division of Risk Management rule R37-1-8(5).

(4) Agencies shall maintain a list of all employees who have completed the training courses required by [DFO]the division, Division of Risk Management and their respective agency.

(5) Employees operating state vehicles must have the correct license required for the vehicle they are operating and any special endorsements required in order to operate specialty vehicles.

R27-3-17. Smoking in State Vehicles.

(1) All state vehicles are designated as "nonsmoking". Agencies shall be assessed fees for any damage incurred as a result of smoking in vehicles.

KEY: state vehicle use

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

Notice of Continuation: November 6, 2015

Authorizing, and Implemented or Interpreted Law: 63A-9-401(1)(d)

**Administrative Services, Fleet
Operations
R27-4
Vehicle Replacement and Expansion of
State Fleet**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41107

FILED: 12/16/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the changes to this rule include clarifying language, correcting minor grammatical errors, replacing references to "Department of Administrative Services" with "Governor's Office of Management and Budget", replacing "Division of Fleet Operations" and "DFO" with "division", clarifying language and correcting minor grammatical errors, and removing and adding requirements.

SUMMARY OF THE RULE OR CHANGE: A summary of the changes includes replacing references to "Department of Administrative Services" with "Governor's Office of Management and Budget", replacing "Division of Fleet Operations" and "DFO" with "division", correcting some grammatical errors, clarifying some redundant language, eliminating the requirement for review by staff of miscellaneous equipment upgrades, and adding the option of a cost-benefit analysis in reallocation or reassignment of agency-owned vehicles.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-9-401(1)(a) and Subsection 63A-9-401(1)(d)(ix) and Subsection 63A-9-401(1)(d)(v) and Subsection 63A-9-401(1)(d)(x) and Subsection 63A-9-401(1)(d)(xi) and Subsection 63A-9-401(1)(d)(xii) and Subsection 63A-9-401(4)(ii)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget because the language changes are technical in nature, and the removal and addition of requirements are similar to those already in place.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local governments because the language changes are technical in nature, and the removal and addition of requirements are similar to those already in place.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses because the language changes are technical in nature, and the removal and addition of requirements are similar to those already in place.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government

entities because the language changes are technical in nature, and the removal and addition of requirements are similar to those already in place.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs or savings to affected persons because the language changes are technical in nature, and the removal and addition of requirements are similar to those already in place.

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

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

ADMINISTRATIVE SERVICES
FLEET OPERATIONS
ROOM 4120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jeff Mottishaw by phone at 801-538-3601, or by Internet E-mail at jmottishaw@utah.gov
- ◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at srudas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/21/2017

AUTHORIZED BY: Jeff Mottishaw, Director

**R27. Administrative Services, Fleet Operations.
R27-4. Vehicle Replacement and Expansion of State Fleet.
R27-4-1. Authority.**

(1) This rule is established pursuant to Subsections 63A-9-401(1)(a), 63A-9-401(1)(d)(v), 63A-9-401(1)(d)(ix), 63A-9-401(1)(d)(x), 63A-9-401(1)(d)(xi), 63A-9-401(1)(d)(xii), 63A-9-401(4)(ii), and 63A-9-401(6), which require the [~~Division of Fleet Operations (DFO)]division to: coordinate all purchases of state vehicles; make rules establishing requirements for the procurement of state vehicles, whether for the replacement or upgrade of current fleet vehicles or fleet expansion; make rules establishing requirements for cost recovery and billing procedures; make rules establishing requirements for the disposal of state vehicles; make rules establishing requirements for the reassignment and reallocation of state vehicles; and make rules establishing rate structures for state vehicles.~~

(a) All agencies exempted from the [~~DFO]~~division's replacement program shall provide [~~DFO]~~the division with a complete list of intended vehicle purchases prior to placing the order with the vendor.

(b) ~~DFO~~The division shall work with each agency to coordinate vehicle purchases to make sure all applicable mandates, including but not limited to alternative fuel mandates, and safety concerns are met.

(c) ~~DFO~~The division shall assist agencies, including agencies exempted from the ~~DFO~~The division's replacement program, in their efforts to ~~insure~~ensure that all vehicles in the possession, control, and/or ownership of agencies are entered into the fleet information system.

(2) Pursuant to Subsection 63J-1-306(8)(f)(ii), vehicles acquired by agencies, or monies appropriated to agencies for vehicle purchases, may be transferred to ~~DFO~~the division and, when transferred, become part of the Consolidated Fleet Internal Service Fund.

R27-4-2. Fleet Standards.

(1) Prior to the purchase of replacement and legislatively approved expansion vehicles for each fiscal year, the ~~DFO~~division's staff shall, on the basis of input from user agencies, recommend to DFO:

(a) a Standard State Fleet Vehicle (SSFV); and

(b) a standard vehicle and the features and miscellaneous equipment to be included in said vehicle for each vehicle class in the fleet.

(2) ~~DFO~~The division shall, after reviewing the recommendations made by the ~~DFO~~the division's staff, determine and establish, for each fiscal year:

(a) an SSFV; and

(b) ~~the~~a standard replacement vehicle, along with included features and miscellaneous equipment for each vehicle class in the fleet. ~~—A standard vehicle and the features and miscellaneous equipment to be included in said vehicle for each vehicle class in the fleet.~~

(3) ~~DFO~~The division shall establish lease rates designed to recover, in addition to overhead and variable costs, the capital cost associated with acquiring a standard replacement vehicle for each vehicle class in the fleet.

(4) ~~DFO~~The division shall establish replacement cycles according to vehicle type and expected use. The replacement cycle that applies to a particular vehicle supposes that the vehicle will be in service for a specified period of time and will be driven an optimum number of miles within that time. Whichever of the time or mileage criterion is reached first shall result in the vehicle's replacement.

R27-4-3. Delegation of Division Duties.

(1) Pursuant to the provisions of ~~UCA~~Section 63A-9-401(~~6~~7), the ~~D~~director of ~~DFO~~the division, with the approval of the ~~E~~executive director of the Department of Administrative Services, may delegate motor vehicle procurement and disposal functions to institutions of higher education by contract or other means authorized by law, provided that:

(a) The funding for the procurement of vehicles that are subject to the agreement comes from funding sources other than state appropriations, or the vehicle is procured through the federal surplus property donation program;

(b) Vehicles procured with funding from sources other than state appropriations, or through the federal surplus property donation program, ~~shall be~~are designated "do not replace;" and

(c) In the event that the institution of higher education is unable to ~~designate said vehicles as "do not replace,"~~comply with (b), the institution ~~shall~~warrants that it shall not use state appropriations to procure ~~their respective~~replacements without legislative approval.

(2) Agreements made pursuant to Section 63A-9-401(~~6~~7) shall, at a minimum, contain:

(a) a precise definition of each duty or function ~~that is~~ being ~~allowed to be performed~~delegated; ~~and~~

(b) a clear description of the standards to be met in performing each duty or function ~~allowed~~being delegated; ~~and~~

(c) a provision for periodic administrative audits by either the ~~DFO~~the division or the Department of Administrative Services; ~~and~~

(d) a representation by the institution of higher education that the procurement or disposal of the vehicles that are the subject matter of the agreement shall be coordinated with ~~DFO~~the division. The institution of higher education shall, at the request of ~~DFO~~the division, provide ~~DFO~~the division with a list of all conventional fuel and alternative fuel vehicles it anticipates to procure or dispose of in the coming year. Alternative fuel vehicles shall be purchased by the agency or institution of higher education, when necessary, to ~~insure~~ensure state compliance with federal AFV mandates; ~~and~~

(e) a representation by the institution of higher education that the purchase price is less than or equal to the state contract price for the make and model being purchased; and in the event that the state contract price is not applicable, that the provisions of Section 63-56-1 shall be complied with; ~~and~~

(f) a representation that the agreement is subject to the provisions of ~~UCA~~Section 63J-1-306, Internal Service Funds - Governance and review; ~~and~~

(g) a representation by the institution of higher education that it shall enter into ~~DFO~~the division's fleet information system all information that would be otherwise required for vehicles owned, leased, operated or in the possession of the institution of higher education; ~~and~~

(h) a representation by the institution of higher education that it shall follow state surplus rules, policies and procedures on related parties, conflict of interest, vehicle pricing, retention, sales, and negotiations; and

(i) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed.

(3) An agreement made pursuant to Section 63A-9-401(7) may be terminated by ~~DFO~~the division if the results of administrative audits conducted by either ~~DFO~~the division or the Department of Administrative Services reveal a lack of compliance with the terms of the agreement.

R27-4-4. Vehicle Replacement.

(1) All state fleet motor vehicles shall, subject to budgetary constraints, be replaced when the vehicle meets the first of either the mileage or time component of the established replacement cycle criteria.

(2) Prior to the purchase of replacement motor vehicles, ~~DFO~~the division shall provide each agency contact with a list identifying all vehicles that are due for replacement, and the Standard State Fleet Vehicle (SSFV) that will be purchased to take the place of each vehicle on the list.

(3) All vehicles replacements will default to a SSFV.

(4) Pursuant to Section 63A-9-401([4]5)(b)(iv), agencies may request a non-SSFV as long as one or more of the following justifications are cited:

- (a) Passenger space
- (b) Type of items carried
- (c) Hauling or towing capacity
- (d) Police pursuit capacity
- (e) Off-road capacity
- (f) 4x4 capacity
- (g) _Emergency service (police, fire, rescue services)

capacity

(h) Attached equipment capacity (snow plows, winches,

etc.)

(i) Other justifications as approved by the [D]director of [DFO]the division or the director's designee.

(5) Agencies may petition the [E]executive [D]director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the [D]director of [DFO]the division or the director's designee denies a request for the replacement of a motor vehicle with an non-SSFV.

(6) Agencies may request that state fleet motor vehicles in their possession or control that have a history of excessive repairs, but have not reached either the mileage or time component of the applicable replacement cycle, be replaced. The request to replace motor vehicles with a history of excessive repairs is subject to budgetary constraints and the approval of the [D]director of [DFO]the division or the director's designee.

(7) Agencies may petition the [E]executive [D]director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the [D]director of [DFO]the division or the director's designee denies a request for the replacement of motor vehicles with a history of excessive repairs.

(8) In the event that the replacement vehicle is not delivered to the agency by the vendor, the agency shall have five (5) working days to pick-up the replacement vehicle from [DFO]the division, after receiving official notification of its availability. If the vehicles involved are not exchanged within the five-day period, a daily storage fee will be assessed and the agency will be charged the monthly lease fee for both vehicles.

(9) [DFO]The division is responsible for [insuring]ensuring that the state motor vehicle fleet complies with United States Department of Energy alternative fuel vehicle (AFV) mandates. [DFO]The division may require that a certain number of replacement vehicles, regardless of the requesting agency, be alternate fuel vehicles to [insure]ensure compliance with said AFV mandates.

R27-4-5. Fleet Expansion.

(1) Any expansion of the state motor vehicle fleet requires legislative approval.

(2) The agency requesting a vehicle that will result in fleet expansion, or requesting that a vehicle currently designated "do not replace" be placed on a replacement cycle, shall be required to provide proof of the requisite legislative approval and funding for the procurement of an expansion vehicle or the placement of a "do not replace" vehicle on a replacement cycle, and any additional features and miscellaneous equipment, before [DFO]the division is authorized to purchase the expansion vehicle.

(3) For the purposes of this rule, an agency shall be deemed to have the requisite legislative approval under the following circumstances only:

(a) The procurement of expansion vehicles or the placement of a "do not replace" vehicle on a replacement cycle is explicitly authorized by the Appropriations Committee during the general legislative session; or

(b) The procurement of expansion vehicles or the placement of a "do not replace" vehicle on a replacement cycle is explicitly authorized by a special session of the legislature convened for the express purpose of approving fleet expansion.

(4) For the purposes of this rule, only the following shall constitute acceptable proof of legislative approval of the requested expansion or placement of a "do not replace" vehicle on a replacement cycle:

(a) A letter, signed by the agency's [~~Chief Financial Officer~~]chief financial officer, citing the specific line item in the appropriations bill providing said authorization; or

(b) Written verification from the agency's analyst in the Governor's Office of Planning and Budget (GOPB) indicating that the request for expansion was authorized and funded by the legislature.

(5) Prior to the purchase of an expansion motor vehicle, [DFO]the division shall provide each agency contact with the Standard State Fleet Vehicle (SSFV) that will be purchased.

(6) All expansion vehicles will default to a SSFV.

(7) Pursuant to Section 63A-9-401([4]5)(b)(iv), agencies may request a non-SSFV as long as one or more of the following justifications are cited:

- (a) Passenger space
- (b) Type of items carried
- (c) Hauling or towing capacity
- (d) Police pursuit capacity
- (e) Off-road capacity
- (f) 4x4 capacity
- (g) Emergency service (police, fire, rescue services)

capacity

(h) Attached equipment capacity (snow plows, winches,

etc.)

(i) Other justifications as approved by the [D]director of [DFO]the division or the director's designee.

(8) Agencies may petition the [E]executive [D]director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the [D]director of [DFO]the division or the director's designee denies a request for the expansion motor vehicle to be a non-SSFV.

(9) Upon receipt of proof of legislative approval of an expansion from the requesting agency, [DFO]the division shall provide to the State Division of Finance copies of the proof submitted in order for the Division of Finance to initiate the process for the formal transfer of funds necessary to procure the expansion vehicle(s) from the requesting agency to [DFO]the division. In no event shall [DFO]the division purchase expansion vehicles for requesting agencies until the Division of Finance has completed the process for the formal transfer of funds.

(10) In the event that the requesting agency receives legislative approval for placing a "do not replace" vehicle on a replacement cycle, the requesting agency shall, in addition to providing [DFO]the division with proof of approval and funding,

provide the Division of Finance with funds^[-] for transfer to ~~[DFO]the division, in an amount~~ equal to the ~~[-amount-]~~ depreciation that ~~[DFO]the division~~ would have collected for the number of months between the time that the "do not replace" vehicle was put into service and the time that the requesting agency begins paying the applicable monthly lease rate for the replacement cycle chosen. In no event shall ~~[DFO]the division~~ purchase a replacement vehicle for the "do not replace" vehicle if the requesting agency fails to provide funds necessary to cover said depreciation costs.

(11) When the expansion vehicle is procured, the vehicle shall be added to the fleet and a replacement cycle established.

(12) ~~[DFO]The division~~ is responsible for insuring that the state motor vehicle fleet complies with United States Department of Energy alternative fuel vehicle (AFV) mandates. ~~[DFO]The division~~ may require that a certain number of expansion vehicles, regardless of the requesting agency, be alternate fuel vehicles to ~~[insure in]ensure~~ compliance with said AFV mandates.

R27-4-6. Vehicle Feature and Miscellaneous Equipment Upgrade.

(1) Additional vehicle ~~[feature(s)]features~~ or miscellaneous equipment to be added to the standard replacement vehicle in a given class, as established by ~~[DFO]the division[-after reviewing the recommendations of the DFO staff]~~, that results in an increase in vehicle cost shall be deemed a vehicle feature and miscellaneous equipment upgrade. A feature or miscellaneous equipment upgrade occurs when an agency requests:

(a) That a replacement vehicle contains a non-standard feature. For example, when an agency requests that an otherwise standard replacement vehicle have a diesel rather than a gasoline engine, or that a vehicle contain childproof locks.

(b) The installation of additional miscellaneous equipment not installed by the vehicle manufacturer. For example, when an agency requests that light bars or water tanks be installed on an otherwise standard replacement vehicle.

(2) Requests for vehicle feature and miscellaneous equipment upgrades shall be made in writing and:

(a) Present reasons why the upgrades are necessary in order to meet the agency's needs, and

(b) Shall be signed by the requesting agency's director^[-] or the appropriate budget or accounting officer.

(3) All requests for vehicle feature and/or miscellaneous equipment upgrades shall be subject to review and approval by the ~~[D]director of [DFO]the division~~ or the director's designee. Vehicle feature and/or miscellaneous equipment upgrades shall be approved when in the judgment of the ~~[D]director of [DFO]the division~~ or the director's designee, the requested feature and/or miscellaneous equipment upgrades are necessary and appropriate for meeting the agency's needs.

(4) Agencies may petition the ~~[E]executive [D]director~~ of the Department of Administrative Services, or the executive director's designee, for a review in the event that the ~~[D]director of [DFO]the division~~ or the director's designee denies a request for a feature and/or miscellaneous equipment upgrade.

(5) Agencies obtaining approval for feature and/or miscellaneous equipment upgrades shall, prior to the purchase of the vehicle, pay in full to ~~director of [DFO]the division~~, a feature and/or miscellaneous equipment upgrade rate designed to recover

the total cost associated with providing the additional feature(s) and/or miscellaneous equipment, unless the requesting agency otherwise negotiates an agreement with ~~director of [DFO]the division~~ for payments to be made in installments, and provided that the terms of the installment agreement do not delay the payment of the general fund debt.

(6) In the event that an agreement providing for the payment of a feature and/or miscellaneous equipment upgrade in installments is reached, the agency shall indemnify and make ~~director of [DFO]the division~~ whole for any losses incurred resulting from damage to, loss or return of the vehicle and/or equipment prior to the receipt of all payment installments by ~~director of [DFO]the division~~.

R27-4-7. Agency Installation of Miscellaneous Equipment.

(1) The director of the ~~[Division of Fleet Operations]division~~, with the approval of the ~~[E]executive [D]director~~ of the Department of Administrative Services, may enter into Memoranda of Understanding allowing customer agencies to install miscellaneous equipment on or in state vehicles if:

(a) the agency or institution has the necessary resources and skills to perform the installations; and

(b) the agency or institution has received approval for said miscellaneous equipment as required by R27-4-6.

(2) Each memorandum of understanding for the installation of miscellaneous equipment shall, at a minimum, contain the following:

(a) a provision that monthly lease fees shall be charged to the agency from the date of the agency's receipt of the replacement vehicle as required under R27-4-9(7)(b);~~[-and]~~

(b) a provision that said agency shall indemnify and hold ~~[DFO]the division~~ harmless for any claims made by a third party that are related to the installation of miscellaneous equipment in or on state vehicles in the agency's possession and/or control;~~[-and]~~

(c) a provision that said agency shall indemnify ~~[DFO]the division~~ for any damage to state vehicles resulting from installation or de-installation of miscellaneous equipment; and

(d) a provision that agencies with permission to install miscellaneous equipment shall enter into the ~~[DFO]the division's~~ fleet information system the following information regarding the miscellaneous equipment procured for installation in or on state vehicles, whether the item is held in inventory, currently installed on a vehicle, or sent to surplus^[-]:

(i) item description or nomenclature;~~[-and]~~

(ii) manufacturer of item;~~[-and]~~

(iii) item identification information for ordering purposes;~~[-and]~~

(iv) procurement source;~~[-and]~~

(v) purchase price of item;~~[-and]~~

expected life of item in years;~~[-and]~~

(vi) warranty period;~~[-and]~~

(vii) serial number;

(viii) initial installation date;~~[-and]~~

(ix) current location of item (warehouse, vehicle number);~~[-and]~~

(x) anticipated replacement date of item;~~[-and]~~

(xi) actual replacement date of item;~~[-and]~~

(xii) date item sent to surplus; and

(xiii) SP-1 number.

(e) a provision requiring the agency or institution with permission to install ~~being permitted to install~~ miscellaneous equipment to obtain insurance from the Division of Risk Management in amounts sufficient to protect ~~itself~~ the agency from damage to, or loss of, miscellaneous equipment installed on state vehicles. Agencies or institutions with permission to install miscellaneous equipment shall hold ~~DFO~~ the division harmless for any damage to, or loss of, miscellaneous equipment installed in state vehicles.

(f) a provision that ~~DFO~~ the division shall provide training and support services for the fleet information system and charge agencies with permission to install miscellaneous equipment a Management Information System (MIS) fee to recover these costs~~[-]; and~~

(g) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed.

(3) Agreements permitting agencies or institutions to install miscellaneous equipment in or on state vehicles may be terminated if there is a lack of compliance with the terms of the agreement by the state agency or institution.

R27-4-8. Vehicle Class Differential Upgrade.

(1) For the purposes of this rule, requests for vehicles other than the SSFV established by ~~DFO~~ the division ~~after reviewing the recommendations of the DFO staff,~~ that result[s] in an increase in vehicle cost shall be deemed a vehicle class differential upgrade. For example, a vehicle class differential upgrade occurs when, regardless of additional features and/or miscellaneous equipment:

(a) The replacement vehicle requested by the agency, although within the same vehicle class as the vehicle being replaced, is not the standard replacement vehicle established by ~~DFO~~ the division for that class~~[-]; or~~

(b) The agency requests that a vehicle be replaced with a more expensive vehicle belonging to another class. For example, when an agency requests to have a standard 1/~~2-ton~~2-ton truck replaced with a standard 3/~~4-ton~~4-ton truck, or a compact sedan be replaced with a mid-size sedan.

(2) Requests for vehicle class differential upgrades shall be made in writing and:

(a) Present reasons why the upgrades are necessary in order to meet the agency's needs~~[-]; and~~

(b) Shall be signed by the requesting agency's director or the appropriate budget or accounting officer.

(3) All requests for vehicle class differential upgrades shall be subject to review and approval by the ~~D~~ director of ~~DFO~~ the division or the director's designee. Vehicle class differential upgrades shall be approved only when:

(a) In the judgment of the ~~D~~ director of ~~DFO~~ the division or the director's designee, the requested vehicle upgrade is necessary and appropriate for meeting the demands of changing operational needs for which the planned replacement vehicle is clearly inadequate or inappropriate;

(b) In the judgment of the ~~D~~ director of ~~DFO~~ the division or the director's designee, the requested vehicle upgrade is necessary and appropriate for meeting safety, environmental, or health or other special needs for drivers or passengers.

(4) Agencies may petition the ~~E~~ executive ~~D~~ director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the ~~D~~ director of ~~DFO~~ the division or the director's designee denies a request for a vehicle class differential upgrade.

(5) Agencies obtaining approval for vehicle class differential ~~upgrade(s)~~ upgrades at the end of the applicable replacement cycle shall pay to ~~DFO~~ the division, in full, prior to the purchase of the vehicle, a vehicle class differential upgrade rate designed to recover the difference in cost between the planned replacement vehicle and the actual replacement vehicle when the replacement vehicle is a more expensive vehicle belonging to the same or another class.

(6) Agencies obtaining approval for vehicle class differential ~~upgrade(s)~~ upgrades prior to the end of the current vehicle's replacement cycle shall, prior to the purchase of the replacement vehicle, pay to ~~DFO~~ the division, in full, an amount equal to the difference in cost between the actual replacement vehicle and the planned replacement vehicle, plus the amount of depreciation still owed on the vehicle being replaced, less the salvage value of the vehicle being replaced.

R27-4-9. Cost Recovery.

(1) State vehicles shall be assessed a lease fee designed to recover depreciation costs~~[-]~~ and overhead costs, including AFV and MIS fees, and where applicable, the variable costs, associated with each vehicle.

(2) Lease rates are calculated by ~~DFO~~ the division according to vehicle cost, class, the period of time that the vehicle is expected to be in service, the optimum number of miles that the vehicle is expected to accrue over that period, and the type of lease applicable:

(a) A capital only lease is designed to recover depreciation plus overhead costs, including AFV and MIS fees, only. All variable costs, such as fuel and maintenance, are not included in the lease rate.

(i) Capital only leases are subject to ~~DFO~~ the division approval; and

(ii) Shall be permitted only when the requesting agency provides proof that its staffing, facilities and other infrastructure costs, and preventive maintenance and repair costs are less than, or equal to those incurred by ~~DFO~~ the division under the current preventive maintenance and repair services contract.

(iii) ~~DFO~~ The division shall, upon giving approval for a capital only lease, issue a delegation agreement to each agency.

(b) A full-service lease is designed to recover depreciation and overhead costs, including AFV and MIS fees, as well as all variable costs.

(3) ~~DFO~~ The division shall review agency motor vehicle utilization on a quarterly basis to identify vehicles in an agency's possession or control that, on the basis of the applicable replacement cycle, are either being under-utilized or over-utilized.

(4) ~~DFO~~ The division shall provide the results of the motor vehicle utilization review to each agency for use in agency efforts to ~~insure~~ ensure full utilization of all state fleet motor vehicles in its possession or control.

(5) In the event that a vehicle is turned in for replacement as a result of reaching the optimum mileage allowed under the

applicable replacement cycle mileage schedule~~[;]~~ prior to the end of the period of time that the vehicle is expected to be in service, a rate containing a shorter replacement cycle period that reflects actual utilization of the vehicle being replaced may be implemented for said vehicle's replacement.

(6) In the event that a vehicle is turned in for replacement as scheduled, but is not in compliance with optimum mileage allowed under the applicable replacement cycle, a rate containing a longer replacement cycle period that reflects actual utilization of the vehicle being replaced may be implemented for said vehicle's replacement.

(7) ~~[DFØ]~~The division shall begin the monthly billing process when the agency receives the vehicle.

(a) Agencies that choose to keep any vehicle on the list of vehicles recommended for replacement after the receipt of the replacement vehicle, pursuant to the terms of a memorandum of understanding between the leasing agencies and ~~[DFØ]~~the division that allows the agency to continue to possess or control an already replaced vehicle, shall continue to pay a monthly lease fee on the vehicle until it is turned over to the State Surplus Property Program for resale. Vehicles that are kept after the receipt of the replacement vehicle shall be deemed expansion vehicles for vehicle count report purposes.

(b) Agencies that choose to install miscellaneous equipment to the replacement vehicle, in house, shall be charged a monthly lease fee from date of receipt of the replacement vehicle. If ~~[DFØ]~~the division performs the installation, the billing process shall not begin until the agency has received the vehicle from ~~[DFØ]~~the division.

R27-4-10. Executive Vehicle Replacement.

(1) Executive ~~[V]~~vehicles shall be available to only those with employment positions that have an assigned vehicle as part of a compensation package in accordance with state statute.

(a) Each fiscal year ~~[DFØ]~~the division shall establish a standard executive vehicle type rate and purchase price.

(b) Executives may elect to replace their assigned vehicle at the beginning of each elected term, or appointment period, or as deemed necessary for the personal safety and security of the elected or appointed official.

(c) When the executive leaves office, the vehicle shall be sold in accordance with State Surplus Property Program policies and procedures.

(2) Executives shall have the option of choosing a vehicle other than the standard executive vehicle based on the standard executive vehicle purchase price.

(a) The alternative vehicle selection should not exceed the standard executive vehicle purchase price parameter guidelines.

(b) In the event that the agency chooses an alternative ~~[a]~~ vehicle that exceeds the standard vehicle purchase price guidelines, the agency shall pay for the difference in price between the vehicle requested and the standard executive vehicle purchase price.

R27-4-11. Capital Credit or Reservation of Vehicle Allocation for Surrendered Vehicles.

(1) This section implements that part of Item 59 of S.B. 1 of the 2002 General Session which requires the ~~[Division of Fleet Operations]~~division to "create a capitalization credit program that will allow agencies to divest themselves of vehicles without seeing

a future capitalization cost if programs require replacement of the vehicle."

(2) In the event that an agency voluntarily surrenders a vehicle to ~~[DFØ]~~the division under the capitalization credit program, the agency shall receive a capital credit equal to: the total depreciation collected by ~~[DFØ]~~the division on the vehicle (D), plus the estimated salvage value for the vehicle (S), for use towards the purchase of the replacement vehicle.

(3) Prior to the purchase of the replacement vehicle, the surrendering agency shall pay ~~[DFØ]~~the division~~[;]~~ an amount equal to the difference between the purchase price of the replacement vehicle and the amount of the capital credit.

(4) ~~[DFØ]~~The division shall, in the event that an agency voluntarily surrenders a vehicle to ~~[DFØ]~~the division, hold the vehicle allocation open, or maintain the capital credit for the surrendering agency, for a period not to exceed the remainder of the fiscal year within which the surrender took place, plus an additional five fiscal years.

(5) The surrendering agency's failure to request the return of the vehicle surrendered prior to the end of the period established in ~~[R27-4-11](4)~~~~[; above;]~~ shall result in the removal of the surrendered vehicle or allotment from the state fleet, the loss of the agency's capital credit, and~~[effect]~~ a reduction in state fleet size.

(6) ~~[DFØ]~~The division shall not hold vehicle allocations or provide capital credit to an agency when the vehicle that is being surrendered:

(a) has been identified for removal from the state fleet in order to comply with legislatively mandated reductions in state fleet size;~~[or]~~

(b) is identified as a "do not replace" vehicle in the fleet information system;~~[or]~~

(c) is a state vehicle not purchased by ~~[DFØ]~~the division;

or

(d) is a seasonal vehicle that has already been replaced.

(7) Any agency that fails to request the return of a voluntarily surrendered vehicle prior to the end of the period set forth in ~~[R27-4-11](4)~~~~[; above;]~~ must comply with the requirements of R27-4-5, Fleet Expansion, to obtain a vehicle to replace the one surrendered.

R27-4-12. Inter-agency Vehicle Reassignment or Reallocation Guidelines.

(1) ~~[DFØ]~~The division is responsible for state motor vehicle fleet management, and in the discharge of that responsibility, one of ~~[DFØ's]~~the division's duties is to ~~[insure]~~ensure that the state is able to obtain full utilization of, and the greatest residual value possible for, state vehicles.

(2) ~~[DFØ]~~The division shall, on a quarterly basis, conduct a review of state fleet motor vehicle utilization to determine whether the vehicles are being utilized in accordance with the mileage requirements contained in the applicable replacement cycles.

(3) ~~[DFØ]~~The division shall provide the results of the motor vehicle utilization review to each agency for use in agency efforts to ~~[insure]~~ensure full utilization of all state fleet vehicles in its possession or control.

(4) In conducting the review, ~~[DFØ]~~the division shall collect the following information on each state fleet vehicle:

(a) year, make and model;

- (b) vehicle identification number (VIN);
 - (c) actual miles traveled per month;
 - (d) ~~as applicable,~~ driver and/or program each vehicle is assigned to;
 - (e) location of the vehicle; ~~and~~
 - (f) class code and replacement cycle.
- (4) Agencies shall be responsible for verifying the information gathered by ~~[DFO]the division.~~

(5) Actual vehicle utilization shall be compared to the scheduled mileage requirements contained in the applicable replacement cycle~~;~~ and used to identify vehicles that may be candidates for reassignment or reallocation, reclassification, or elimination.

(6) In the event that intra-agency reassignment or reallocation of vehicles fails to bring vehicles into compliance with applicable replacement cycle mileage schedules within a replacement cycle, ~~or a cost-benefit analysis on the time the vehicle is used does not warrant the vehicle to remain within the agency.~~ ~~[DFO]the division~~ may, in the exercise of its state motor vehicle fleet management responsibilities, reassign, reallocate or eliminate the replacement ~~of~~ vehicles for vehicles that are chronically out of compliance with applicable ~~utilization standards~~~~[replacement cycle mileage requirements to other agencies to ensure that all vehicles in the state fleet are fully-utilized].~~

(7) Agencies required to relinquish vehicles due to a reassignment or reallocation may petition the ~~[E]executive [D]director of the [Department of Administrative Services]Governor's Office of Management and Budget,~~ or the executive director's designee, for a review of the reallocation or reassignment made by ~~[DFO]the division.~~ ~~[However, v]Vehicles~~ that are the subject matter of petitions for review shall remain with the ~~[agencies]agency[to which they have been reassigned or reallocated]~~ until such time as the ~~[E]executive [D]director of the [Department of Administrative Services]Governor's Office of Management and Budget~~ or the executive director's designee renders a decision on the matter.

R27-4-13. Reassignment or Disposal of Underutilized State Vehicles.

(1) After vehicles have been reviewed in accordance with Section R27-4-12, and chronically underutilized vehicles have been identified, ~~[DFO]the division~~ shall initiate the steps necessary to reassign or dispose of the vehicle.

(2) At a minimum, the steps taken by ~~[DFO]the division~~ prior to reassignment or disposal must include:

(a) A review of the vehicle's history with the assigned agency;

(b) A [R]review the vehicle history with, and~~[receive]~~ direction from, the ~~[E]executive [D]director of the Department of Administrative Services,~~ or their designee, regarding the proposed action; ~~and~~

(c) If approved by the ~~[E]executive [D]director,~~ ~~[give]~~ notice to the agency that ~~[they have]the agency has~~ rights per Subsection R27-4-4(7) to petition the ~~[E]executive [D]director of the Governor's Office of Management and Budget~~ for further review.

(3) If the assigned agency voluntarily turns in the underutilized vehicle, a capital credit shall be established in accordance with Section R27-4-11.

(4) If the assigned agency disagrees with the action, ~~[they]the agency~~ may exercise ~~[their]its~~ right to have a review of the proposed action with the ~~[E]executive [D]director of the Governor's Office of Management and Budget~~ per Subsection R27-4-12(7).

(5) If there is agreement between ~~[DFO]the division~~ and the ~~[E]executive [D]director of the Governor's Office of Management and Budget,~~ then ~~[DFO]the division~~ shall give notice to the agency that it has been given authority to reassign or dispose of the vehicle in question.

(6) ~~[DFO]The division~~ shall reassign the vehicle to another fleet location, or begin the process of disposing of the vehicle.

KEY: fleet expansion, vehicle replacement

Date of Enactment or Last Substantive Amendment: ~~[April 22, 2014]~~**2017**

Notice of Continuation: September 23, 2016

Authorizing, and Implemented or Interpreted Law: 63A-9-401(1)(a); 63A-9-401(1)(d)(v); 63A-9-401(1)(d)(ix); 63A-9-401(1)(d)(x); 63A-9-401(1)(d)(xi); 63A-9-401(1)(d)(xii); 63A-9-401(4)(ii)

Commerce, Occupational and Professional Licensing **R156-16a-304** Continuing Education

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 41110

FILED: 12/19/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Optometrist Licensing Board and Division are proposing this filing to update the Optometry Practice Act Rule to implement legislative changes made by H.B. 186, Volunteer Health Care Continuing Education Credit, which was passed during the 2016 General Session. This filing also makes formatting changes for clarification and correction.

SUMMARY OF THE RULE OR CHANGE: This section is amended to provide that an optometrist may fulfill a portion of the optometrist's continuing education requirement by providing volunteer services within the scope of license in a qualified health care facility; for every four hours of such volunteer services, the licensee may receive one hour of continuing education credit, up to 15% of the required continuing education. Formatting changes were also made for clarification and correction, including correcting the reference to the continuing education requirements for optometrists who are controlled substance prescribers.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Title 16a, Chapter 101

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: The proposed amendments apply only to those persons who are required to be licensed as an optometrist 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 potential savings cannot be estimated, as it will vary depending on circumstances.

◆ SMALL BUSINESSES: Optometrists who operate small businesses and provide volunteer services may be impacted by the cost of record keeping and lost revenue if they substitute time they could be billing for professional services to provide volunteer health care services in lieu of obtaining continuing education. However, these health care professionals will save on the cost of attendance at a continuing education course, and they may receive "goodwill" benefits in their community from their volunteer services. The amount of the costs or savings cannot be estimated, as it will vary from business to business depending on the amount of volunteer services provided.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Licensees will bear the cost of the services provided, relative to their time spent providing the services and documenting such services for continuing education credit. The uninsured, underserved, and indigent population will benefit financially from increased availability of free or reduced-cost health care services and from improved health. The amount of the costs or savings cannot be estimated as it will vary from business to business depending on the amount of volunteer services provided.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A licensee will bear the cost of the services provided, relative to the licensee's time spent providing the services and documenting such services for continuing education credit. The Division, however, is not able to determine any exact costs, as it would vary depending on licensee circumstances.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment to this section permits an optometrist to satisfy up to 15% of the continuing education requirement by providing volunteer health care services and will have a negligible impact on businesses. Other amendments to the rule require that continuing professional education hours required for controlled substance prescribers shall be in accordance with Section 58-37-65 and Section R156-37-402. There are also considerable formatting changes to the rule.

These other changes to the rule 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 02/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/21/2017

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-16a. Optometry Practice Act Rule.

R156-16a-304. Continuing Education.

In accordance with Section 58-16a-304, the standards for the 30 hours of qualified continuing professional education are as follows:~~[the following:]~~

(1) ~~[With the exception of Subsections (2) and (3), only courses approved by the Council on Optometric Professional Education (COPE) or optometry-related courses approved by the Council on Medical Education will be accepted.]~~ Except for the special courses and volunteer hours described in Subsections R156-16a-304(2), (3) and (4), all qualified continuing professional education must be:

(a) courses approved by the Council on Professional Education (COPE); or

(b) optometry-related courses approved by the Council on Medical Education.

(2) A maximum of two hours of continuing professional education ~~[will be accepted for]~~ may be courses in certification or recertification in cardiopulmonary resuscitation (CPR) or Basic Life Support (BCLS).

(3) A maximum of two hours of continuing professional education may come from the Division of Occupational and Professional Licensing for training regarding the use of the Utah Controlled Substance Database.

(4) Licensees may fulfill up to 15% of their continuing education requirement by providing volunteer services within the scope of their license at a qualified location, in accordance with Section 58-13-3. For every four documents hours of volunteer services, the licensee may earn one hour of continuing education.

~~[(4)]~~ Qualified continuing professional education hours for licensees who have not been licensed for the entire two-year~~[two year]~~ renewal cycle will be prorated from the date of licensure.

([5]6) A licensee shall ~~[be responsible for maintaining]~~ maintain competent records of completed qualified continuing professional education for a period of four years after close of the ~~two-year~~ two-year renewal cycle ~~licensure period~~ to which the records pertain. It is the responsibility of the licensee to demonstrate that their continuing professional education meets the requirements of this section.

([6]7) Hours in excess of the 30 hours obtained in one ~~two-year licensure~~ renewal cycle cannot be transferred to the next renewal cycle.

([7]8) A licensee who has a serious health problem or who has left the United States for an extended period of time, which may prevent the licensee from being able to comply with the professional continuing education requirements established under this section, may be excused from completing some or all of the requirements established under this section by submitting a written request to the Division and receiving Division approval.

(9) Additional continuing professional education hours required for controlled substance prescribers shall be in accordance with Section 58-37-6.5 and Section R156-37-402.

KEY: optometrists, licensing

Date of Enactment or Last Substantive Amendment: ~~October 22, 2009~~ **2017**

Notice of Continuation: February 21, 2012

Authorizing, and Implemented or Interpreted Law: 58-16a-101; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Occupational and
Professional Licensing
R156-67
Utah Medical Practice Act Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 41111
FILED: 12/19/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Physicians Licensing Board and Division are proposing this filing to update this rule to implement legislative changes made by H.B. 186, Volunteer Health Care Continuing Education Credit, which was passed during the 2016 General Session. This filing also makes formatting changes and deletes a reference to testing prerequisites that no longer need to be included in the rule.

SUMMARY OF THE RULE OR CHANGE: Subsection R156-67-302d(1) incorrectly references a statutory citation and this amendment is updating the citation to Subsection 58-67-302(1)(f). Section R156-67-302e is being deleted in its entirety because it is no longer necessary; all testing prerequisites listed in this section are already required for

physicians and surgeons prior to graduation and entrance to residency programs. The amendments to Subsection R156-67-304(1) make minor formatting changes throughout for clarification; and Subsection R156-67-304(2) provides that physicians/surgeons may fulfill a portion of their continuing education requirement by providing volunteer health care services within the scope of license in a qualified health care facility. For every four hours of such volunteer services, a licensee may receive one hour of continuing education credit, up to 15% of the required continuing education.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-67-101 and Subsection 58-1-106(1) and Subsection 58-1-202(1)

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:** Changes to Section R156-67-302d update a statutory citation only and will have no impact on local government. The proposed amendments in Section R156-67-304 apply only to those persons who are required to be licensed as a physician/surgeon 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 potential savings cannot be estimated, as it will vary depending on circumstances.

◆ **SMALL BUSINESSES:** Changes to Section R156-67-302d update a statutory citation only and will have no impact on small businesses. The proposed amendments in Section R156-67-304 may impact small businesses operated by health care professionals who choose to provide volunteer services. These small businesses may be impacted by the cost of record keeping and lost revenue if owners and employees substitute time they could be billing for professional services to provide volunteer health care services in lieu of obtaining continuing education. However, these health care professionals will save on the cost of attendance at a continuing education course, and they may receive "goodwill" benefits in their community from their volunteer services. The amount of the costs or savings cannot be estimated, as it will vary from business to business depending on the amount of volunteer services provided.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Changes to Section R156-67-302d update a statutory citation only and will have no impact on other persons. The proposed amendments in Section R156-67-304 may impact licensees who choose to obtain continuing education credit by providing volunteer health care services. These licensees will bear the cost relative to their time spent providing the service and documenting such services for continuing education credit. The uninsured, underserved, and indigent population will

benefit financially from increased availability of free or reduced-cost health care services. The amount of the cost to licensees cannot be estimated, as it varies depending on circumstances.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Changes to Section R156-67-302d update a statute citation only and will have no impact on affected persons. The proposed amendments in Section R156-67-304 may impact a licensee who chooses to obtain continuing education credit by providing volunteer services, relative to the licensee's time spent providing the services and documenting the services for credit. The compliance and documentation cost cannot be estimated, as it varies depending on circumstances.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Section R156-67-302e is deleted in its entirety because it is no longer necessary; all testing prerequisites listed in this subsection are already required for physicians and surgeons prior to graduation and entrance to residency programs. No fiscal impact on businesses will result from this change. The amendment to Section R156-67-304 permits a physician/surgeon to satisfy up to 15% of the continuing education requirement by providing volunteer health care services and will have a negligible impact on businesses. There are also formatting changes to Sections R156-67-302d and R156-67-304, which 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 02/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/21/2017

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-67. Utah Medical Practice Act Rule.
R156-67-302d. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-67-302(1)(g), the required licensing examination sequence is as follows [the following]:

(a) the FLEX components I and II on which the applicant shall have achieved a score of not less than 75 on each component part;

(b) the NBME examination parts I, II, and III on which the applicant shall achieve a passing score of not less than 75 on each part;

(c) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;

(d) the LMCC examination, Parts 1 and 2;

(e) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;

(f) the FLEX component 1 and the USMLE step 3; or

(g) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(h) In accordance with Subsection 58-67-302.5(1)(g), all applicants who are foreign medical graduates shall pass the FMGEMS unless they pass the USMLE steps 1 and 2.

(i) Candidates who fail any combination of the USMLE, FLEX and NBME three times must provide a narrative regarding the failure and may be requested to meet with the Board and Division.

(2) In accordance with Subsections 58-67-302(1)(g) and (2)(e), an applicant may be required to take the SPEX examination if the applicant:

(a) has not practiced in the past five years;

(b) has had disciplinary action within the past five years;

or

(c) has had a substance abuse disorder or physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.[]

~~R156-67-302c. Qualifications for Licensure -- Requirements for Admission to the Examinations.~~

~~(1) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME.~~

~~(2) Requirements for admission to the USMLE step 3 are:~~

~~(a) completion of the education requirements as set forth in Subsections 58-67-302(1)(d) and (e);~~

~~(b) passing scores on USMLE steps 1 and 2, or the FLEX component 1, or the NBME parts I and II;~~

~~(c) have passed the first USMLE step taken, either 1 or 2, within seven years if enrolled in a medical doctorate program and ten years if enrolled in a medical doctorate/doctorate of philosophy program; and~~

~~(d) have not failed a combination of USMLE step 3, FLEX component 2 and NBME part III, three times.]~~

R156-67-304. Qualified Continuing Professional Education.

(1) In accordance with Subsection 58-67-304(1), the [The] qualified continuing professional education requirements [set forth in Subsection 58-67-304(1)] shall consist of 40 hours [in] during each [preceding two year] two-year licensure cycle, as follows: [-]

(a) A minimum of 34 of the required hours shall be in category 1 offerings as established by the ACCME.

(b) A maximum of six hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Up to 15% of the required hours may come from providing volunteer health care services within the scope of the licensee's license at a qualified location, in accordance with Section 58-13-3 concerning charity health care. One hour of continuing education credit may be earned for every four documented hours of volunteer services.

([e]d) Participation in a residency program approved by the AOA or the ACCME shall [an ACGME approved residency program shall be considered to] meet the continuing education requirement in a pro-rata amount equal to any part of [that two-year]the two-year period.

(2) Continuing education under this section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50-[-]minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

KEY: physicians, licensing

Date of Enactment or Last Substantive Amendment:
~~[2016]~~2017

Notice of Continuation: February 8, 2016

Authorizing, and Implemented or Interpreted Law: 58-67-101; 58-1-106(1); 58-1-202(1)

Commerce, Occupational and
Professional Licensing
R156-68-304
Qualified Continuing Professional
Education

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41112

FILED: 12/19/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Osteopathic Physician and Surgeon's Licensing Board and Division are proposing this filing to update the Utah Osteopathic Medical Practice Act Rule to implement legislative changes made by H.B. 186, Volunteer

Health Care Continuing Education Credit, which was passed during the 2016 General Session. This filing also makes formatting changes.

SUMMARY OF THE RULE OR CHANGE: This section is amended to make minor formatting changes throughout for clarification and to provide that an osteopathic physician/surgeon may fulfill a portion of the continuing education requirement by providing volunteer services within the scope of license in a qualified health care facility. For every four hours of such volunteer services, the licensee may receive one hour of continuing education credit, up to 15% of the required continuing education.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-68-101 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:** The proposed amendments apply only to those persons who are required to be licensed as an osteopathic physician/surgeon 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 potential savings cannot be estimated, as it will vary depending on circumstances.

◆ **SMALL BUSINESSES:** The proposed amendments may impact small businesses operated by health care professionals who choose to provide volunteer services. These small businesses may be impacted by the cost of record keeping and lost revenue if owners and employees substitute time they could be billing for professional services to provide volunteer health care services in lieu of obtaining continuing education. However, these health care professionals will save on the cost of attendance at a continuing education course, and they may receive "goodwill" benefits in their community from their volunteer services. The amount of the costs or savings cannot be estimated, as it will vary from business to business depending on the amount of volunteer services provided.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments may impact licensees who choose to obtain continuing education credit by providing volunteer health care services. These licensees will bear the cost relative to their time spent providing the service and documenting such services for continuing education credit. The uninsured, underserved, and indigent population will benefit financially from increased availability of free or reduced-cost health care services. The amount of the cost to licensees cannot be estimated, as it varies depending on circumstances.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments may impact a licensee who chooses to obtain continuing education credit by providing volunteer services, relative to the licensee's time spent providing the services and documenting the services for credit. The compliance and documentation cost cannot be estimated, as it varies depending on circumstances.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment to this section permits an osteopathic physician/surgeon to satisfy up to 15% of the continuing education requirement by providing volunteer health care services and will have a negligible impact on businesses. There are also formatting changes to the rule which 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 02/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/21/2017

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-68. Utah Osteopathic Medical Practice Act Rule.
R156-68-304. Qualified Continuing Professional Education.**

(1) In accordance with Subsection 58-68-304(1), the [The] qualified continuing professional education requirements [set forth in Subsection 58-68-304(1)] shall consist of 40 hours [in] during each [preceding two year] two-year licensure cycle as follows: [-]

(a) A minimum of 34 of the required hours shall be in category 1 offerings as established by the AOA or ACCME.

(b) A maximum of 6 hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Up to 15% of the required hours may come from providing volunteer health care services within the scope of the licensee's license at a qualified location, in accordance with Section 58-13-3 concerning charity health care. One hour of continuing education credit may be earned for every four documented hours of volunteer services.

~~[(e)](d)~~ Participation in a residency program approved by the AOA or the ACCME [an AOA or ACCME approved residency program] shall ~~[be considered to]~~ meet the continuing education requirement in a pro-rata amount equal to any part of the two-year [that two year] period.

(2) Continuing education under this section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50-[-]minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

KEY: osteopaths, licensing, osteopathic physician
Date of Enactment or Last Substantive Amendment: [2016]2017
Notice of Continuation: February 7, 2013
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-68-101

**Human Services, Administration
R495-885
Employee Background Screenings**

**NOTICE OF PROPOSED RULE
(Amendment)**

**DAR FILE NO.: 41114
FILED: 12/22/2016**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment changes the implementation date.

SUMMARY OF THE RULE OR CHANGE: While many divisions and offices of the Department of Human Services (DHS) do employee background screenings, this rule would streamline a process Department wide. In the assessment of processes and resources, it has been determined that DHS will be buying into the DACS background screening database system owned and managed by the Department of Health. This memorandum of understanding (MOU) is nearly complete between the two departments, and programming on the system will be done in 2017. Until then, the status quo processes of background checking will continue in DHS. To

ideally manage employee background screenings, the DACS system will be used. This will also be the pilot for moving all background screenings done by the Office of Licensing into that system that was largely built with federal funds and is utilized now by the Department of Health.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-1-118 and Section 62A-2-120

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--This amendment changes only the implementation date and affects only DHS. No other entities are affected fiscally in the community.
- ◆ LOCAL GOVERNMENTS: None--This amendment changes only the implementation date and affects only DHS. No other entities are affected fiscally in the community.
- ◆ SMALL BUSINESSES: None--This amendment changes only the implementation date and affects only DHS. No other entities are affected fiscally in the community.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This amendment changes only the implementation date and affects only DHS. No other entities are affected fiscally in the community.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This amendment changes only the implementation date and affects only DHS. No other entities are affected fiscally in the community.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts by changing this date.

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

HUMAN SERVICES
ADMINISTRATION
ROOM 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:

- ◆ Diane Moore by phone at 801-538-4235, by FAX at 801-538-4553, or by Internet E-mail at dmoore@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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/21/2017

AUTHORIZED BY: Diane Moore, Director

R495. Human Services, Administration.

R495-885. Employee Background Screenings.

R495-885-1. Authority and Purpose.

(1) This Rule is authorized by Sections 62A-1-118 and 62A-2-120.

(2) This Rule clarifies the standards for Department of Human Services' employee and volunteer background screening.

(3) This Rule is created to hold DHS employees and volunteers to high standards of conduct, protect children and vulnerable adults, and promote public trust.

R495-885-2. Definitions.

(1) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(2) "Child" is defined in Section 62A-2-101.

(3) "Department" or "DHS" means the Department of Human Services.

(4) "Direct Access" is defined in Section 62A-2-101.

(5) "Director" means the Director of each DHS Office or Division, and includes the Director's designee.

(6) "Directly Supervised" is defined in 62A-2-101.

(7) "Employee" means a prospective employee who has received a job offer from DHS or a current employee of DHS, and includes paid interns.

(8) "Executive Director" means the Executive Director of DHS or the Deputy Director designated by the Executive Director.

(9) "FBI rap back" is defined in Section 53-10-108.

(10) "Fingerprints" means an individual's fingerprints as copied electronically through a live-scan fingerprinting device or on two ten-print fingerprint cards.

(11) "Volunteer" means an individual who donates services without pay or other compensation, except expenses actually and reasonably incurred and pre-approved by the supervising agency, and includes unpaid interns.

(12) "Vulnerable adult" is defined in Section 62A-2-101.

R495-885-3. Employees and Volunteers with Direct Access.

(1) The Department finds that a criminal history or identification as a perpetrator of abuse or neglect is directly relevant to an individual's employment or volunteer activities within DHS.

(2) All Department employees and volunteers who may have direct access and who may not be directly supervised at all times must have an annual background screening clearance in accordance with Sections 62A-1-118 and 62A-2-120, which shall include retention of fingerprints by BCI for FBI rap back.

(3) Department employees and volunteers who may have direct access and may not be directly supervised at all times shall:

(a) Submit a background screening application to their respective Division or Office on a form created by the Department; and

(b) Submit fingerprints to the Department via a DHS-operated live-scan machine or;

two ten-print fingerprint cards produced by a law enforcement agency, an agency approved by the BCI, or another entity pre-approved by the Department

(c) not be required to submit fingerprints to DHS if they have submitted fingerprints for retention

(i) to BCI for an Office or Division clearance, and the Office or Division ensures that the minimum standards set forth in Section 62A-2-120 are enforced; or

(ii) to the Department of Health for employees and volunteers of the Utah State Developmental Center per code, or

(iii) to the Office of Licensing as an individual associated with a license as long as the fingerprints are retained by BCI for FBI rap back.

(4) The DHS Office of Licensing shall access information to perform the background checks described in Sections 62A-1-118 and 62A-2-120.

(a) The DHS Office of Licensing will not duplicate fingerprint-based criminal background checks on Department employees or volunteers who have a current fingerprint-based criminal background clearance pursuant to R495-885-3(3).

(b) The fingerprints submitted by DHS employees who are required to obtain a background screening pursuant to Section 62A-2-120 as an individual associated with a licensee shall be utilized to perform the screening required by this R495-885. Screening results shall be reviewed in accordance with both the standards required by Section 62A-2-120 and this R495-885.

(5) Except as described in R495-885-5, Department employees and volunteers who would automatically be denied a background screening approval as described in Section 62A-2-120(5)(a) are not eligible for work with the Department.

(6) Except as described in R495-885-5, Department employees and volunteers who have any offense or finding described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

(7) Each Division and Office shall develop and implement a protocol to ensure renewal background screening applications are submitted to the DHS Office of Licensing annually for all database systems that are not included in the FBI rap back fingerprint process.

R495-885-4. Employees and Volunteers with No Direct Access.

(1) The Department finds that a criminal history is directly relevant to an individual's employment activities within DHS.

(2) The Department is not authorized to perform the checks described in Sections 62A-1-118 and 62A-2-120 for employees with no direct access.

(3) Each Division and Office will identify which of their positions includes no potential for direct access that is not directly supervised.

(4) Each employee who does not potentially have direct access shall submit an "Authorization and Waiver for Criminal History Check" form to a Department of Human Resources Management, DHS Field Office authorizing DHRM to perform name-based background checks.

(5) Except as described in R495-885-5, Department employees who would automatically be denied a background screening approval based upon the offenses described in Section 62A-2-120(5)(a) are not eligible for work with the Department.

(6) Except as described in R495-885-5, Department employees who have any offense described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

(7) Volunteers who do not have a background screening clearance pursuant to R495-885-3 will be directly supervised.

R495-885-5. Background Screening Review.

(1) The Office of Licensing or the Department of Human Resources Management, DHS Field Office shall notify the Director of the background screening results of each prospective employee, employee, and volunteer.

(2) The Director shall review the background screening results of each prospective employee, employee, and volunteer.

(3) Review criteria for prospective or probationary employees and volunteers:

(a) Automatic denial offenses outlined in 62A-2-120(5) are not eligible for review by the DHS Employee and Volunteer Comprehensive Review Committee:

(b) The Director has sole discretion to determine whether to deny employment or refer a prospective or probationary employee or volunteer with the following background screening findings to the DHS Employee and Volunteer Comprehensive Review Committee:

(i) All other circumstances outlined in 62A-2-120(6)(a), or

(ii) any MIS supported or substantiated findings (for individuals with direct access only)

(c) The determinations of the Director and the DHS Employee and Volunteer Comprehensive Review Committee are final, and a prospective or probationary employee or volunteer has no right to appeal.

(4) Review process for non-probationary employees:

(a) The following background screening findings shall be submitted to the Director:

(i) Automatic denial offenses outlined in 62A-2-120(5) (a),

(ii) All other circumstances outlined in 62A-2-120(6)(a), or

(iii) any MIS supported or substantiated findings.

(b) The Director may consult with the Executive Director and/or the Office of Licensing, and shall evaluate whether the non-probationary employee may present a risk of harm to a child or vulnerable adult or does not meet DHS high standards of conduct or promote public trust.

(c) The Executive Director may, in his/her sole discretion, approve the non-probationary employee for continued employment, including defining permissible and impermissible DHS-wide work-related activities, or consult the Department of Human Resource Management regarding termination of employment. The determination of the Executive Director is final.

R495-885-6. DHS Employee and Volunteer Comprehensive Review Committee.

(1) The Director of the following Department divisions and offices shall appoint one member and one alternate to serve on the DHS Employee and Volunteer Comprehensive Review Committee:

(a) the Executive Director's Office;

(b) the Division of Aging and Adult Services;

(c) the Division of Child and Family Services;

(d) the Division of Juvenile Justice Services;

(e) the Division of Services for People with Disabilities;

- (f) the Division of Substance Abuse and Mental Health;
- (g) the Office of the Public Guardian; and
- (i) the Office of Licensing.

(2) DHS Employee and Volunteer Comprehensive Review Committee members and alternates shall be professional staff persons who are familiar with the programs they represent.

(3) The appointed Office of Licensing member shall chair the DHS Employee and Volunteer Comprehensive Review Committee as a non-voting member.

(4) Five voting members shall constitute a quorum.

(5) The DHS Employee and Volunteer Comprehensive Review Committee shall conduct a comprehensive review of a prospective or probationary employee or volunteer's background screening application, criminal history records, abuse, neglect or exploitation records, and related circumstances, in accordance with Section 62A-2-120(6).

R495-885-7. DHS Employee and Volunteer Comprehensive Review Process.

(1) The Office or Division may inform the prospective or probationary employee or volunteer that the results of a background screening indicate they have a criminal history or supported or substantiated findings of abuse or neglect, and the employee or volunteer may:

- (a) voluntarily withdraw a pending employment or volunteer application;
- (b) voluntarily terminate probationary employment; or
- (c) request further review and submit any written statements or records that the employee or volunteer wants the DHS Employee and Volunteer Comprehensive Review Committee to consider, including but not limited to non-redacted documents relating to the results, the nature and seriousness of the offense or incident; the circumstances under which the offense or incident occurred; the age of the employee or volunteer when the offense or incident occurred; whether the offense or incident was an isolated or repeated incident; whether the offense or incident directly relates to abuse of a child or vulnerable adult, evidence of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed.

(i) an employee or volunteer who wants the DHS Employee and Volunteer Comprehensive Review Committee to consider documents relating to the screening results shall submit the documents to the Office or Division within 15 calendar days of notification by the Office of Division.

(2) The Office or Division shall gather information from a prospective or probationary employee or volunteer who requests review and submit it to the DHS Employee and Volunteer Comprehensive Review Committee.

(a) The Division may redact any personally identifying information of the prospective or probationary employee or volunteer that does not compromise the content of the review.

(3) The DHS Employee and Volunteer Comprehensive Review Committee shall evaluate the information provided by the Office or Division and any information provided by the prospective or probationary employee or volunteer. The DHS Employee and Volunteer Comprehensive Review Committee shall consider:
the date of the offense or incident;

- (a) the nature and seriousness of the offense or incident;
- (b) the circumstances under which the offense or incident occurred;
- (c) the age of prospective or probationary employee or volunteer when the offense or incident occurred;
- (d) whether the offense or incident was an isolated or repeated incident;
- (e) whether the offense or incident directly relates to abuse of a child or vulnerable adult,
- (f) whether approval would likely create a risk of harm to a child or a vulnerable adult;
- (g) whether the information may be relevant to the employment or volunteer activities of that person;
- (h) whether the relevant information should be relied upon to deny employment or volunteer activities, and
- (i) that the background screening approval may be transferred to other DHS Offices or Divisions.

(4) The DHS Employee and Volunteer Comprehensive Review Committee may approve the background screening of a prospective or probationary employee or volunteer only after a simple majority of the voting members of the DHS Employee and Volunteer Comprehensive Review Committee determines that approval will not likely create a risk of harm to a child or vulnerable adult or the prospective employee does not meet DHS high standards of conduct or promote public trust, and identify permissible and impermissible DHS-wide work-related activities.

(5) The DHS Employee and Volunteer Comprehensive Review Committee shall recommend denial of the background screening of a prospective or probationary employee or volunteer when it finds that approval will likely create a risk of harm to a child or vulnerable adult in any DHS Office or Division or the prospective or probationary employee or volunteer does not meet DHS high standards of conduct or promote public trust.

(6) Except as described below, a prospective employee or a volunteer whose background screening has been denied shall not be accepted as a volunteer or hired as an employee. A probationary employee whose background screening has been denied shall have no direct access and employment shall be terminated.

(a) A Director may, in his/her sole discretion, appeal the decision of the DHS Employee and Volunteer Comprehensive Review Committee to the Executive Director.

R495-885-8. Division/Office Responsibilities.

(1) The Department shall notify the DHS Office of Licensing within five months of the termination of each employee for whom fingerprints have been retained under Section 62A-2-120 to enable the Office of Licensing to notify BCI and ensure the destruction of fingerprints.

(2) Each Division and Office shall ensure that an employee or volunteer who previously was screened based upon having no direct access shall, prior to having any direct access, be screened and approved in accordance with R495-885.

R495-885-9. Compliance.

The Department will set an implementation schedule to be in compliance with this rule no later than ~~[December 31, 2016]~~December 31, 2017.

KEY: background, employees, human services, screenings
Date of Enactment or Last Substantive Amendment: [~~May 11,~~
2016]2017
Authorizing, and Implemented or Interpreted Law: 62A-1-118;
62A-2-120

**Public Service Commission,
 Administration
 R746-1
 Public Service Commission
 Administrative Procedures Act Rule**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41116

FILED: 12/28/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Public Service Commission (Commission) has determined that its existing rules governing administrative procedures (Rule R746-100) need to be updated, reorganized, and clarified. Therefore, the Commission proposes to repeal Rule R746-100 and enact this new rule to govern its administrative proceedings. (EDITOR'S NOTE: The proposed repeal of Rule R746-100 is under Filing No. 41115 in this issue, January 15, 2017, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Existing provisions are reorganized and clarified. Specifically, lengthy subsections of text are broken apart and each substantive provision numbered according to the statutory numbering scheme. In addition, the new rule makes some substantive changes to existing provisions and introduces new regulations as follows: 1) definitions and regulations that are set forth in statute are eliminated from the rules; 2) defined terms that are not used again in the body of the rule are deleted from the definition section; 3) requests for agency action that are defined to include informal proceedings: a) an unopposed petition for a certificate of public convenience and necessity; b) an unopposed request for acknowledgment or approval of a telecommunications utility's name change; and c) an unopposed request for acknowledgment or approval of a merger, acquisition, or similar organizational restructuring that does not alter or affect the services provided by a telecommunications utility; 4) language that is informational or explanatory, but that does not set forth a requirement or prohibition is eliminated, see Subsection R746-100-3(B)(1) for example; 5) rules governing representation of parties are clarified by reference to the Utah Supreme Court Rules of Professional Practice; 6) rules governing filing of petitions, testimony, etc. are updated to require electronic filing, either by e-mail or through a secure server, except in extenuating circumstances, and also new language requires specific

information in electronic file names, with potential penalties for failure to comply; 7) an existing rule, which requires that a motion to dismiss be filed before a responsive pleading is filed, is deleted; 8) new language establishes the Commission's obligation to comply with the Utah Government Records Access and Management Act; 9) an existing rule, which requires parties to file joint exhibits prior to hearing, is deleted; 10) an existing rule, which allows a non-party to provide sworn testimony subject to cross examination, is deleted; and 11) the rules governing provision of, use of, and access to confidential and highly confidential information are significantly modified, per requests and recommendations of the public utilities that regularly deal with such information.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-1-1 and Section 54-1-3 and Section 54-1-6 and Section 54-3-21 and Section 54-4-1 and Section 54-4-1.5 and Section 54-4-2 and Section 54-7-17 and Title 63G, Chapter 4

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Adds Rules Governing the Utah State Bar, published by Utah Judicial Counsel Organization, 11/01/2012

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** To facilitate electronic filing, the Commission will incur costs to build a secure, dedicated server. Thereafter, it will cost the Commission \$513.82 per month to maintain the server.
- ◆ **LOCAL GOVERNMENTS:** Local governments are not required to enforce or comply with the Commission's rules governing administrative proceedings. No fiscal impact to local government is anticipated.
- ◆ **SMALL BUSINESSES:** Small businesses that participate in administrative proceedings before the Commission will be required to file petitions, testimony, etc. electronically, either by e-mail or through the Commission's secure server. A business that will access the Commission's secure server must provide the Commission with the static public IP address from which information will be sent, as well as an SSH key. In addition, the business must install on its local machine an SFTP client that supports TLSv1.2. Where each affected business has its own unique IT infrastructure, initial set-up costs will vary and cannot be estimated. However, such costs, if any, should be minimal. In addition, this rule filing relieves small businesses of the requirement to provide multiple paper copies of their filings, which will result in savings over time. The Commission does not have data available to calculate the aggregate effect in dollars; however, it is likely that the savings resulting from the electronic filing system will outweigh any initial costs over time.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Affected persons will be required to file petitions, testimony, etc. electronically, either by e-mail or through the Commission's secure server. A person that will access the Commission's secure server must provide the Commission with the static public IP address from which information will be

sent, as well as an SSH key. In addition, affected persons must install on their local machine an SFTP client that supports TLSv1.2. Where each affected person has a unique IT infrastructure, initial set-up costs will vary and cannot be estimated. However, such costs, if any, should be minimal. In addition, this rule filing relieves affected persons of the requirement to provide multiple paper copies of their filings, which will result in savings over time. The Commission does not have data available to calculate the aggregate effect in dollars; however, it is likely that the savings resulting from the electronic filing system will outweigh any initial costs over time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To comply, affected persons will be required to file petitions, testimony, etc. electronically, either by e-mail or through the Commission's secure server. An affected person that will access the Commission's secure server must provide the Commission with the static public IP address from which information will be sent, as well as an SSH key. In addition, affected person must install on their local machine an SFTP client that supports TLSv1.2. Where each affected person has a unique IT infrastructure, initial set-up costs will vary and cannot be estimated. However, such costs, if any, should be minimal. In addition, this rule filing relieves affected persons of the requirement to provide multiple paper copies of their filings, which will result in savings over time. The Commission does not have data available to calculate the aggregate effect in dollars; however, it is likely that the savings resulting from the electronic filing system will outweigh any initial costs over time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As explained in the rule analysis, businesses that will file records through the Commission's secure server might incur minimal initial set-up costs, which will be offset over time by elimination of the paper filing requirement.

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jennie Jonsson by phone at 801-530-6763, or by Internet E-mail at jjonsson@utah.gov
- ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/21/2017

AUTHORIZED BY: Jennie Jonsson, Administrative Law Judge

R746. Public Service Commission, Administration.

R746-1. Public Service Commission Administrative Procedures Act Rule.

R746-1-101. Title and Organization.

This rule R746-1 is:

- (1) known as the "Public Service Commission Administrative Procedures Act Rule"; and
- (2) organized into the following Parts:
 - (a) Part 100: General provisions;
 - (b) Part 200: Complaints and pleadings;
 - (c) Part 300: Motions;
 - (d) Part 400: Pre-hearing briefs, comments, and testimony;
 - (e) Part 500: Discovery;
 - (f) Part 600: Confidential and highly confidential information;
 - (g) Part 700: Hearings; and
 - (h) Part 800: Post-hearing proceedings.

R746-1-102. Authority.

This rule is adopted under Utah Code Section 54-1-1.

R746-1-103. Definitions.

- (1) "Applicant" means any person:
 - (a) applying for a license, right, or authority; or
 - (b) requesting agency action from the Commission.
- (2) "Commission" is defined at Utah Code Subsection 54-2-1(4).
- (3) "Complainant" means a person that files a complaint with the Commission, pursuant to R746-1-201.
- (4) "Division" means the Division of Public Utilities, State of Utah Department of Commerce.
- (5) "Intervenor" means a person that:
 - (a) files with the Commission a petition for intervention in a pending matter; and
 - (b) receives Commission approval to participate as a party.
- (6) "Office" means the Office of Consumer Services, State of Utah Department of Commerce.
- (7) "Party" means a person that is entitled to participate in a proceeding, pursuant to Utah Code Subsection 63G-4-103(1)(f).
- (8) "Person" is defined at Utah Code Subsection 63G-4-103(1)(g).
- (9) "Presiding officer" is defined at Utah Code Subsection 63G-4-103(1)(h).
 - (10)(a) "Proceeding" or "adjudicative proceeding" means an action before the Commission, initiated by:
 - (i) a notice of agency action, pursuant to Utah Code Subsection 63G-4-201(1)(a);
 - (ii) a request for agency action, pursuant to Utah Code Subsection 63G-4-201(1)(b); or

_____ (iii) a filing made pursuant to Utah Code Subsection 54-7-12(5).

_____ (b) "Proceeding" does not include:

_____ (i) an informal or preliminary inquiry or investigation undertaken by the Commission to determine whether a proceeding is warranted; or

_____ (ii) rulemaking pursuant to Utah Code Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.

_____ (11) "Respondent" means a person:

_____ (a) against whom a notice of agency action or request for agency action is directed; or

_____ (b) required, or permitted by statute, to respond to an application, petition, or other request for agency action.

_____ (12) "Responsive pleading" means any rejoinder to an initial pleading, including:

_____ (a) an answer;

_____ (b) a protest or opposition; or

_____ (c) other similar filing.

R746-1-104. Designation of Adjudicative Proceedings.

_____ (1) The following requests for agency action shall be adjudicated as informal proceedings:

_____ (a) an unopposed application for a certificate of public convenience and necessity;

_____ (b) a request for acknowledgment or approval of a telecommunications utility's name change; and

_____ (c) an unopposed request for acknowledgment or approval of a merger, acquisition, or similar organizational restructuring that does not alter or affect the services provided by a telecommunications utility.

_____ (2) A request for agency action not listed in Subsection R746-1-104(1) shall be adjudicated as a formal proceeding.

R746-1-105. Utah Rules of Civil Procedure.

_____ The Utah Rules of Civil Procedure and case law interpreting these rules are persuasive authority in Commission adjudications unless otherwise provided by:

_____ (1) Title 63G, Chapter 4, Administrative Procedures Act;

_____ (2) Utah Administrative Code R746; or

_____ (3) an order of the Commission.

R746-1-106. Computation of Time.

_____ (1) Unless Subsection R746-1-106(2) applies, periods of time in Commission proceedings shall be computed pursuant to Utah Code Sections 68-3-7 and 68-3-8.

_____ (2) Subsection R746-1-106(1) is superseded by any conflicting:

_____ (a) order of the Commission;

_____ (b) statute; or

_____ (c) rule.

R746-1-107. Representation of Parties.

_____ A party may:

_____ (1) be represented by:

_____ (a) an attorney licensed to practice in Utah; or

_____ (b) an attorney licensed in a foreign state, pursuant to Rule 14-801 of the Utah Supreme Court Rules of Professional Practice, which is incorporated by reference;

_____ (2) represent oneself individually; or

_____ (3) if not an individual, represent itself through an officer or employee.

R746-1-108. Intervention.

_____ A person that wishes to intervene in a proceeding shall comply with Utah Code Section 63G-4-207.

R746-1-109. Deviation from Rules.

_____ (1) A party may move the Commission to deviate from a specified rule.

_____ (2) The party making the motion to deviate has the burden to demonstrate that the rule imposes a hardship that outweighs the benefit(s) of the rule.

R746-1-201. Complaints.

_____ A person that files a complaint with the Commission shall demonstrate:

_____ (1) that the person has attempted to work with the utility to resolve the complaint;

_____ (2) that the Division has reviewed the complaint and determined that Commission action is warranted; and

_____ (3) that the complaint has been served on the public utility, pursuant to R746-1-203(1)(f).

R746-1-202. Title of Pleadings.

_____ (1) This Subsection R746-1-202 does not apply to complaints.

_____ (2) A person that files a pleading shall include the following information in the title:

_____ (a)(i) name and bar number of attorney preparing the pleading; or

_____ (ii) if no attorney is involved, name of the person signing the pleading;

_____ (b) address, telephone number, and e-mail address of the person identified in Subsection R746-1-202(2)(a);

_____ (c) nature of the request;

_____ (d) description of the action or relief requested;

_____ (e) type of pleading; and

_____ (f) docket number, if known.

R746-1-203. Form and Content of Complete Filing.

_____ (1) In order to be considered complete, a filing other than a complaint shall:

_____ (a) be presented as a functional and searchable spreadsheet document, portable document file (PDF), or other electronic word processing document, as applicable;

_____ (b) unless Subsection R746-1-203(5) applies, be filed electronically;

_____ (i) by e-mail to psc@utah.gov, if the filing is strictly non-confidential; or

_____ (ii) through the Commission's secure file transfer protocol (SFTP) server;

_____ (c) be identified by an electronic file name that includes the following information, as applicable, in the following order:

_____ (i) docket number;

_____ (ii) identification of the type of filing, such as:

_____ (A) testimony, specified as:

(I) confidential or redacted; and
(II) direct rebuttal, surrebuttal, etc.;
(B) exhibit or workpaper:
(I) including exhibit or workpaper number; and
(II) specified as confidential or redacted;
(C) motion, including description; or
(D) response or reply to specified motion;
(iii) last name of the person providing the content of the filing; and
(iv) name of the party on whose behalf the filing is made;
(d) be type-written in 12-point font, double spaced, and in a format that, if printed, would require 8-1/2 x 11-inch paper;
(e) per Utah Rule of Civil Procedure 11, be signed by an individual who has read the filing and believes that it is supported in fact and in law, which individual may include:
(i) the party;
(ii) the party's counsel; or
(iii) other authorized representative of the party; and
(f) include a certificate of service:
(i) stating that a true and correct copy of the filing was served upon each of the parties;
(ii) identifying the manner of service; and
(iii) identifying the date of service.
(2)(a) An electronic filing that does not comply with R746-1-203(1)(c) shall be rejected and, if re-filed, may be deemed untimely.
(b) In creating an electronic filing name pursuant to R746-1-203(1)(c), a person may use abbreviations that are reasonably calculated to convey the required information.
(3) An initial pleading shall:
(a) comply with Utah Code Subsection 63G-4-201(3)(a); and
(b) if a statute, rule, regulation, or other authority requires the Commission to act within a specific time period, include a specific section setting forth:
(i) a reference or citation to the statute, rule, regulation, or other authority;
(ii) the applicable time period; and
(iii) the expiration date of the applicable time period, identified by day, month, and year.
(4) A person that is requested by the Commission or by another party to provide a paper copy of a filing shall do so within a reasonable time.
(5)(a) A person that is unable to use e-mail or the Commission's SFTP server for electronic filing may file by paper or by disc if:
(i) the filing is accompanied by a motion for permission to deviate from the electronic filing rule; and
(ii) if submitted on paper, the filing is typed in a font of at least 12 points and double-spaced on 8-1/2 by 11-inch paper.
(b) If the SFTP server is unable to receive a document on the day it is due, the filing shall be deemed timely if uploaded to the SFTP server during business hours of the first business day on which the SFTP server again becomes available.

R746-1-204. Effective Date of Filing.

(1) If filed with the Commission during regular business hours, a complete filing is effective on the date filed.

(2) If filed with the Commission after regular business hours, a complete filing is effective on the next business day.

R746-1-205. Amendment of Complaint or Initial Pleading.

(1) A party that has filed a complete and effective complaint or initial pleading may amend the filing without leave of the Commission at any time before:

(a) a responsive pleading has been filed; or
(b) the time for filing a responsive pleading has expired.
(2) If a defect in a complaint or initial pleading does not affect the substantial rights of the parties, it does not require amendment.

(3) After a responsive pleading has been filed or the deadline for filing a responsive pleading has passed, a party may amend an initial pleading only with leave from the Commission.

R746-1-206. Responsive Pleadings.

A response to a complaint or an initial pleading shall be filed in accordance with Utah Code Section 63G-4-204, unless the Commission establishes a different response deadline.

R746-1-301. Motions.

Unless otherwise ordered by the Commission, briefing on a motion shall be as follows:

(1) Any response shall be filed within 15 days of the service date of the motion.
(2) Any reply shall be filed within 10 days of the service date of the response.

R746-1-401. Pre-hearing Briefs, Comments, and Testimony - General Requirements.

(1) Parties to a docket shall file briefs, comments or testimony, as applicable, as required in the Commission's scheduling order.

(2) Pre-hearing filings and accompanying exhibits shall:
(a) utilize a sequential line numbering system; and
(b) comply with Subsection R746-1-203(1).
(3) If a filing includes any calculation, the calculation shall be provided in the original format with formulas intact.

R746-1-402. Pre-hearing Testimony - Inclusion in Record.

(1)(a) A party may move the Commission to accept pre-hearing testimony into evidence without having it read under oath.

(b) Any such motion shall be subject to objection and argument.

(2) Pre-hearing testimony that is entered into evidence shall be subject to cross-examination.

R746-1-501. Discovery.

(1) Parties shall attempt to complete informal discovery through written requests for information and records (data requests).

(2) If a party considers informal discovery pursuant to Subsection R746-1-501(1) to be insufficient, the party may move the Commission for formal discovery according to Rules 26 through 37 of the Utah Rules of Civil Procedure, with the following exceptions and modifications:

(a)(i) If no responsive pleading is required in a proceeding, parties may begin discovery immediately upon the filing and service of an initial pleading.

(ii) If a responsive pleading is required, discovery shall not begin until ten days after the time limit for filing the responsive pleading.

(b) Rule 26(a)(4) of the Utah Rules of Civil Procedure, which restricts discovery, shall not apply. The opinions, conclusions, and data developed by experts engaged by parties shall be freely discoverable unless a protective order is issued by the Commission.

(c) Discovery requests, regardless of how denominated, discovery responses, and transcripts of depositions shall not be filed with the Commission.

(d) Any reference in an applicable Rule of Civil Procedure to "the court" shall be considered a reference to the Commission.

(3) On request from a party or on the presiding officer's own initiative, the presiding officer may include in a scheduling order deadlines for:

(a) filing a petition for intervention;

(b) objecting to a discovery request;

(c) responding to a discovery request;

(d) serving disclosures of evidence to be presented at hearing;

(e) completing discovery;

(f) filing dispositive and evidentiary motions; and

(g) filing pre-hearing testimony.

(4) An intervenor shall serve any request for discovery on the other parties to the docket.

(5) A party that requires a subpoena for discovery purposes shall:

(a) present the subpoena to the Commission for signature; and

(b) serve the subpoena pursuant to Utah Rule of Civil Procedure 45(b)(1).

R746-1-601. Identification of Information Claimed to Be Confidential or Highly Confidential in Commission Proceedings.

(1) A party to a docket may request that information provided to another party or included in the record be treated as confidential by:

(a) placing the information on a document with yellow background;

(b) highlighting the information with shading, text boxes, borders, asterisks, or other conspicuous formatting; and

(c) including the following designation, as applicable, on each page containing confidential information:

(i) "CONFIDENTIAL - - SUBJECT TO UTAH PUBLIC SERVICE COMMISSION RULES R746-1-602 and 603"; or

(ii) "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER".

(2)(a) A person that files or is requested to provide information that the person considers to be highly confidential shall promptly:

(i) negotiate with the other parties mutually agreeable protections; or

(ii) petition the Commission for an order granting additional protective measures.

(b) The petitioning party shall set forth:

(i) the particular basis for the claim;

(ii) the specific, additional protective measures requested, which may include restricting or prohibiting specific individuals from accessing information; and

(iii) the reasonableness of the requested, additional protection.

(c) Any other party may oppose the petition or propose alternative protective measures.

(d) If the Commission grants a petition for additional protective measures, the party providing the highly confidential information shall:

(i) place the information on a document with a pink background;

(ii) highlight the information with shading, text boxes, borders, asterisks, or other conspicuous formatting; and

(iii) include the following designation, as applicable, on each page containing highly confidential information:

(A) "HIGHLY CONFIDENTIAL - - SUBJECT TO UTAH PUBLIC SERVICE COMMISSION RULES R746-1-602 and 603"; or

(B) "HIGHLY CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER".

(3) A person that files with the Commission a document containing confidential or highly confidential information shall:

(a) file a redacted version for public access; and

(b) ensure that the line numbering and formatting in the redacted version match, as closely as practicable, that appearing in the unredacted version.

R746-1-602. Persons Entitled to Review Confidential and Highly Confidential Information.

(1)(a) The following persons are entitled to receive and review confidential and highly confidential information:

(i) Commission, including counsel and staff;

(ii) Division, including counsel and staff; and

(iii) Office, including counsel and staff.

(b)(i) Except as provided in Subsection R746-1-602(2), the following persons are entitled to receive and review confidential and highly confidential information after signing a non-disclosure agreement:

(A) counsel or other designated representative of each party, including, to the extent reasonably necessary, the counsel's or representative's:

(I) paralegals;

(II) administrative assistants; and

(III) clerical staff;

(B) persons designated by a party as an expert witness, including, to the extent reasonably necessary, the experts':

(I) administrative assistants; and

(II) clerical staff;

(C) persons employed by the parties, to the extent reasonably necessary; and

(D) any other person that signs a non-disclosure agreement.

(ii) Subsection R746-1-602(1)(b)(i) is superseded by any conflicting:

(A) agreement of the parties; or

(B) order of the Commission.

(c) The non-disclosure agreement required under Subsection R746-1-602(1)(b) shall read substantially as follows: "I have reviewed Public Service Commission of Utah Rule R746-1-603 and/or the Protective Order entered by the Public Service Commission of Utah in Docket No. XX-XXX-XX with respect to the review and use of confidential information and agree to comply with the terms and conditions of the rule and/or Protective Order."

(2)(a) A person, including an expert who is employed or retained by a party, may not receive confidential or highly confidential information if, in performing the person's normal job functions, the person could use the information to the competitive disadvantage of the person providing the information.

(b) The party that wishes to restrict or deny access to confidential or highly confidential information under Subsection R746-1-602(2)(a) has the burden to demonstrate the competitive disadvantage claimed.

R746-1-603. Treatment of Confidential and Highly Confidential Information.

(1) A person that receives confidential or highly confidential information may not use or disclose the information except:

(a) for the purpose of the Commission proceeding in which it was obtained, provided that the use within the Commission proceeding maintains confidentiality; or

(b) outside of a Commission proceeding, as required by law, provided that the person complies with Subsection R746-1-603(2).

(2) A person that is required by law to disclose confidential or highly confidential information outside of a Commission proceeding shall, prior to providing the information:

(a) give notice of the disclosure requirement, by telephone and in writing, to the person that first provided the information; and

(b) cooperate with the person that first provided the information to obtain a protective order or similar assurance of confidentiality.

(3) Notes made pertaining to, or as the result of, a review of confidential or highly confidential information shall be treated according to this Subsection R746-1-603.

R746-1-604. Challenge to Claim of Confidentiality.

(1) A party may challenge another party's claim of confidentiality by filing a motion for an in camera proceeding.

(2) If granted, the record of an in camera proceeding shall be marked, as applicable, substantially as follows:

(a) "CONFIDENTIAL--SUBJECT TO RULE R746-1-604"; or

(b) "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER".

(3)(a) An in camera hearing may be transcribed only upon:

(i) agreement of the parties; or

(ii) order of the Commission.

(b) Any transcription of an in camera hearing shall be separately bound, segregated, and withheld from any person not a party to the in camera hearing.

(4) Following an in camera hearing, if the Commission issues an order overturning a party's claim of confidentiality, the order:

(a) shall be subject to Utah Code Section 63G-4-301; and

(b) shall go into effect no sooner than 10 days after issuance.

R746-1-605. Receipt of Confidential and Highly Confidential Information into Evidence.

(1)(a) A party that considers it necessary to discuss confidential information in a filing shall, to the extent possible, refer to the information by title, exhibit number, or other non-confidential description.

(b) A party that is not able to comply with Subsection R746-1-605(1)(a) shall:

(i) place the confidential information in a separate section of the filing;

(ii) mark the separate section "CONFIDENTIAL"; and

(iii) ensure that the confidential section of the filing is served only on:

(A) counsel of record or other designated representative of the party (one copy each) who has signed a nondisclosure agreement;

(B) counsel for the Division; and

(C) counsel for the Office.

(2)(a) A party that proposes to use another person's confidential or highly confidential information as evidence in a Commission proceeding shall arrange with the owner of the information circumstances that will allow the information to be used while keeping trade secrets and proprietary material confidential.

(b) If efforts taken pursuant to Subsection R746-1-605(2) fail, the owner of the information shall move the Commission to segregate and withhold any portion of the record that would reveal trade secrets or proprietary information.

(c) If the Commission grants a motion to segregate and withhold a record, the moving party shall mark the record, as applicable, substantially as follows:

(i) "CONFIDENTIAL/HIGHLY CONFIDENTIAL--SUBJECT TO PUBLIC SERVICE COMMISSION OF UTAH RULE R746-1-605"; or

(ii) "CONFIDENTIAL/HIGHLY CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER".

(3) A party that considers it necessary to discuss a segregated confidential record during a Commission proceeding shall move the Commission for an in camera hearing.

(4)(a) Other than the Division, the Office, and counsel for a party, a person that obtains another person's confidential or highly confidential information during a proceeding shall, within 30 days after the docket is concluded:

(i) return to the owner of the information all records in the party's possession that reference the confidential information; or

(ii) certify that the information has been:

(A) turned over, in its entirety, to the person's counsel; or

(B) destroyed.

(b) The Division, the Office, and counsel for a party may retain confidential information as part of notes, workpapers, and other documents:

- _____ (i) constituting work product; and
- _____ (ii) subject to privilege or other applicable disclosure restriction.

R746-1-606. Commission Compliance with the Utah Government Records Access and Management Act.

_____ (1) A party's marking information as confidential or highly confidential does not ensure a classification of "private," "protected," or "classified" under the Utah Government Records Access and Management Act, Utah Code Title 63G, Chapter 2.

_____ (2) A party whose confidential or highly confidential information is requested pursuant to Utah Code Title 63, Chapter 2, shall collaborate with the Commission to determine how the information should be classified under the statute.

R746-1-701. Witness Subpoenas.

_____ (1) A party that wishes to subpoena a witness for hearing shall:

_____ (a) file the subpoena with the presiding officer at least 20 days prior to hearing;

_____ (b) serve the subpoena on the witness pursuant to Utah Rule of Civil Procedure 45(b)(1); and

_____ (c) pay the witness the statutory mileage and witness fees, unless the witness waives payment.

_____ (2) Failure to obey the Commission's subpoena shall be considered contempt pursuant to Utah Code Subsection 54-7-23(2).

R746-1-702. Continuance of Scheduled Hearing.

_____ (1) A person requesting to continue a scheduled hearing shall demonstrate that:

_____ (a) the request is supported by good cause; or

_____ (b) all parties stipulate to the continuance.

_____ (2) Unless otherwise ordered by the presiding officer, any objection to a request for continuance shall be filed no later than five days following the date on which the request is filed and served.

R746-1-703. Closing a Hearing.

_____ A party that wishes to close a hearing shall comply with Utah Code Subsection 54-3-21(4).

R746-1-704. Public Witness Evidence.

_____ A person not a party to a docket may:

_____ (1) file comments prior to hearing; or

_____ (2) appear during any public witness portion of a hearing to provide unsworn testimony.

R746-1-705. Exhibits Offered at Hearing.

_____ (1) Parties shall:

_____ (a) mark their exhibits before hearing;

_____ (b) provide the original of each exhibit to the court reporter, if applicable; and

_____ (c) provide a copy of each exhibit to:

_____ (i) the presiding officer; and

_____ (ii) each party.

_____ (2) If an exhibit offered at hearing contains information claimed to be confidential or highly confidential, the party offering the exhibit shall comply with Subsection R746-1-605.

R746-1-801. Post-hearing Proceedings.

_____ (1) Proceedings on review shall be in accordance with Utah Code Section 54-7-15.

_____ (2) A person that challenges a finding of fact in a proceeding brought under Subsection R746-1-801(1) shall marshal the record evidence that supports the challenged finding, as set forth in State v. Nielsen, 2014 UT 10, Sections 33-44, 326 P.3d 645.

_____ (3) Following the filing of a petition pursuant to Subsection R746-1-801(1), opposing parties may file responsive memoranda or pleadings within 15 days.

_____ (4) A petition for rehearing pursuant to Utah Code Section 54-7-15 is required in order for a party to exhaust its administrative remedies prior to appeal.

KEY: public utilities, administrative proceedings, electronic filings, confidential information

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, and Implemented or Interpreted Law: 54-1-1; 54-1-3; 54-1-6; 54-3-21; 54-4-1; 54-4-1.5; 54-4-2; 54-7-17; 63G-4

Public Service Commission,
Administration

R746-100

Practice and Procedures Governing
Formal Hearings

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 41115

FILED: 12/28/2016

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Public Service Commission (Commission) has determined that Rule R746-100 needs to be updated, reorganized, and clarified. Therefore, the Commission proposes to repeal Rule R746-100 and enact a new rule to govern its administrative proceedings. The new Rule R746-1 is filed concurrently with this repeal. (EDITOR'S NOTE: The proposed new Rule R746-1 is under Filing No. 41116 in this issue, January 15, 2017, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R746-100 is repealed in its entirety, and the rules governing administrative proceedings before the Commission are set forth in the new Rule R746-1 which is filed concurrently with this repeal.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-1-1 and Section 54-1-3 and Section 54-1-6 and Section 54-3-21 and Section 54-4-1 and Section 54-4-1.5 and Section 54-4-2 and Section 54-7-17 and Title 63G, Chapter 4

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Repealing Rule R746-100 does not create costs for the state. Certain provisions that are included in the replacement Rule R746-1 do create a fiscal impact, which is discussed in the rule analysis set forth in that filing.
- ◆ LOCAL GOVERNMENTS: Local governments are not required to enforce or comply with the Commission's rules governing administrative proceedings. No fiscal impact to local government is anticipated.
- ◆ SMALL BUSINESSES: Repealing Rule R746-100 will not create costs for small businesses. Certain provisions that are included in the replacement Rule R746-1 could create a fiscal impact, which is discussed fully in the rule analysis set forth in that filing.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Repealing Rule R746-100 does not create costs for affected persons. Certain provisions that are included in the replacement Rule R746-1 could create a fiscal impact, which is discussed fully in the rule analysis set forth in that filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This filing repeals Rule R746-100. No compliance is required. Therefore, there are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: A new rule governing administrative proceedings before the Commission, Rule R746-1, will be made effective at the same time Rule R746-100 is repealed. The new rule requires affected businesses use an electronic filing system to submit petitions, testimony, evidence, and other records to the Commission in an administrative proceeding. The potential fiscal impact of this requirement, which is anticipated to be minimal, is discussed fully in the rule analysis for Rule R746-1.

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jennie Jonsson by phone at 801-530-6763, or by Internet E-mail at jjonsson@utah.gov
- ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 02/21/2017

AUTHORIZED BY: Jennie Jonsson, Administrative Law Judge

R746. Public Service Commission, Administration.~~**[R746-100. Practice and Procedures Governing Formal Hearings.**~~~~**R746-100-1. General Provisions and Authorization.**~~

~~_____ A. Procedure Governed -- Sections 1 through 14 of this rule shall govern the formal hearing procedures before the Public Service Commission of Utah, Sections 15 and 16 shall govern rulemaking proceedings before the Commission.~~

~~_____ B. Consumer Complaints -- Consumer complaints may be converted to informal proceedings, pursuant to Section 63G-4-202.~~

~~_____ C. No Provision in Rules -- In situations for which there is no provision in these rules, the Utah Rules of Civil Procedure shall govern, unless the Commission considers them to be unworkable or inappropriate.~~

~~_____ D. Words Denoting Number and Gender -- In interpreting these rules, unless the context indicates otherwise, the singular includes the plural, the plural includes the singular, the present or perfect tenses include future tenses, and the words of one gender include the other gender. Headings are for convenience only, and they shall not be used in construing any meaning.~~

~~_____ E. Authorization -- This rule is authorized pursuant to Section 54-1-1 which requires the Commission to exercise its rulemaking powers and Subsection 54-1-2.5 which establishes the requirements for Commission procedure, including Hearings, Practice and Procedure, Chapter 7 of Title 54.~~

~~**R746-100-2. Definitions.**~~

~~_____ A. "Applicant" is a party applying for a license, right, or authority or requesting agency action from the Commission.~~

~~_____ B. "Commission" is the Public Service Commission of Utah. In appropriate context, it may include administrative law judges or presiding officers designated by the Commission.~~

~~_____ C. "Complainant" is a person who complains to the Commission of an act or omission of a person in violation of law, the rules, or an order of the Commission.~~

~~_____ D. "Consumer complaint" is a complaint of a retail customer against a public utility.~~

~~_____ E. "Division" is the Division of Public Utilities, State of Utah Department of Commerce.~~

~~_____ F. "Ex Parte Communication" means an oral or written communication with a member of the Commission, administrative law judge, or Commission employee who is, or may be reasonably expected to be, involved in the decision-making process, relative to the merits of a matter under adjudication unless notice and an opportunity to be heard are given to each party. It shall not, however, include requests for status reports on a proceeding covered by these rules.~~

~~_____ G. "Formal proceeding" is a proceeding before the Commission not designated informal by rule, pursuant to Section 63G-4-202.~~

~~_____ H. "Informal proceeding" is a proceeding so designated by the Commission.~~

~~_____ I. "Party" is a participant in a proceeding defined by Subsection 63G-4-103(1)(f).~~

J. "Interested person" is a person who may be affected by a proceeding before the Commission, but who does not seek intervention. An interested person may not participate in the proceedings except as a public witness, but shall receive copies of notices and orders in the proceeding.

K. "Intervenor" is a person permitted to intervene in a proceeding before the Commission.

L. "Office" is the Office of Consumer Services, State of Utah Department of Commerce.

M. "Person" means an individual, corporation, partnership, association, governmental subdivision, or governmental agency.

N. "Petitioner" is a person seeking relief other than the issuance of a license, right, or authority from the Commission.

O. "Presiding officer" is a person conducting an adjudicative hearing, pursuant to Subsection 63G-4-103(1)(h)(i), and may be the entire Commission, one or more commissioners acting on the Commission's behalf, or an administrative law judge, presiding officer, or hearing officer appointed by the Commission. It may also include the Secretary of the Commission when performing duties identified in Section 54-1-7.

P. "Proceeding" or "adjudicative proceeding" is an action before the Commission initiated by a notice of agency action, or request for agency action, pursuant to Section 63G-4-201. It is not an informal or preliminary inquiry or investigation undertaken by the Commission to determine whether a proceeding is warranted, nor is it a rulemaking action pursuant to Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.

Q. "Public witness" is a person expressing interest in an issue before the Commission but not entitled or not wishing to participate as a party.

R. "Respondent" is a person against whom a notice of agency action or request for agency action is directed or responding to an application, petition or other request for agency action.

R746-100-3. Pleadings.

A. Pleadings Enumerated -- Applications, petitions, complaints, orders to show cause, and other traditional initiatory pleadings may be filed with the Commission. Traditional pleadings will be considered requests for agency action, pursuant to Section 63G-4-201, concerning adjudicative proceedings. Answers, protests, and other traditional responsive pleadings may be filed with the Commission and will be considered responses, subject to the requirements of Section 63G-4-204.

1. The following filings are not requests for agency action or responses, pursuant to Sections 63G-4-201 and 63G-4-204:

- a. motions, oppositions, and similar filings in existing Commission proceedings;
- b. informational filings which do not request or require affirmative action, such as Commission approval.

B. Docket Number and Title --

1. Docket number -- Upon the filing of an initiatory pleading, or upon initiation of a generic proceeding, the Commission shall assign a docket number to the proceeding which shall consist of the year in which the pleading was filed, a code identifying the public utility appearing as applicant, petitioner, or respondent, or generic code designation and another number showing its numerical position among the filings involving the utility or generic proceeding filed during the year.

2. Headings and titles -- Pleadings shall bear a heading substantially as follows:

TABLE

Name of Attorney preparing or Signer of Pleading	
Address	
Telephone Number	
BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH	

In the Matter of the)
Application, petition,) Docket Number
etc. for complaints,)
names of both complainant) Type of pleading
and respondent should)
appear)

C. Form of Pleadings --

1. With the exception of consumer complaints, pleadings shall be double spaced and in a font of at least 12 points.

2. Pleadings shall be presented for filing on paper 8-1/2 x 11 inches, shall include the docket number, if known, and shall be dated and time stamped upon receipt by the Commission.

3. Pleadings also shall be presented as an electronic word processing document that is substantially the same as the paper version filed, and may be transmitted electronically to the e-mail address the Commission designates for such purposes or presented in electronic media (i.e., compact disc (CD)), using a Commission-approved format.

4. In electronic pleadings, each file shall be identified by an electronic file name that includes at least the following, if applicable to the specific file:

- a. the word "direct" "rebuttal" or "surrebuttal";
- b. the last name of the witness; and
- c. the word "exhibit" or "workpapers" followed by any applicable identification number or letter.

5. Pleadings over five pages shall be double sided and three-hole punched.

6. A filing is not complete until the original and all required copies -- both paper and electronic -- are provided to the Commission in the form described. If an electronic document is filed in Portable Document Format (PDF) and PDF is not the format of the filing party's source document:

- a. the electronic document shall also be provided in its original format; and
- b. the PDF document shall include footnote references describing the name and location of the source document in the filed electronic media.

D. Certificate of Service -- a Certificate of Service must be attached to all pleadings filed with the Commission, certifying that a true and correct copy of the pleading was served upon each of the parties in the manner and on the date specified. A filing is not complete without this certificate of service.

E. Pleadings Containing Confidential and Highly Confidential Information --

1. Pleadings, including all accompanying documents, containing information claimed to be confidential or highly confidential, as described in R746-100-16, shall be filed in

accordance with R746-100-3(C) and shall conform to the following additional requirements:

a. The paper version of a pleading containing confidential information shall be filed on yellow paper with the confidential portion of the pleading denoted by shading, highlighting, or other readily identifiable means. Both the paper and the electronic versions presented for filing shall be designated confidential in accordance with R746-100-16(A)(1)(b).

b. The paper version of a pleading containing highly confidential information shall be filed on pink paper with the highly confidential portions of the pleadings denoted by shading, highlighting, or other readily identifiable means. Both the paper and electronic versions presented for filing shall be designated highly confidential in accordance with R746-100-16(A)(1)(g).

c. A non-confidential version also shall be filed in electronic form, from which all confidential and highly confidential information must be redacted. All copies of this version shall clearly be labeled as "Non-Confidential - Redacted Version."

F. Amendments to Pleadings -- The Commission may allow pleadings to be amended or corrected at any time. Initiatory pleadings may be amended without leave of the Commission at any time before a responsive pleading has been filed or the time for filing the pleading has expired. Defects in pleadings which do not affect substantial rights of the parties shall be disregarded.

G. Signing of Pleadings -- Pleadings shall be signed by the party, or by the party's attorney or other authorized representative if the party is represented by an attorney or other authorized representative, and shall show the signer's address. The signature shall be considered a certification by the signer that he has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

H. Consumer Complaints --

1. Alternative dispute resolution, mediation procedures -- Before a proceeding on a consumer complaint is initiated before the Commission, the Commission shall try to resolve the matter through referral first to the customer relations department, if any, of the public utility complained of and then to the Division for investigation and mediation. Only after these resolution efforts have failed will the Commission entertain a proceeding on the matter.

2. Request for agency action -- Persons requesting Commission action shall be required to file a complaint in writing, requesting agency action. The Commission shall not act on illegible or incomplete complaints and shall return those complaints to the complainant with instructions for correction or completion.

3. The Division of Public Utilities may participate in a consumer complaint proceeding as determined by the Division or as requested by the Commission.

I. Content of Pleadings --

1. Pleadings filed with the Commission shall include the following information as applicable:

a. if known, the reference numbers, docket numbers, or other identifying symbols of relevant tariffs, rates, schedules, contracts, applications, rules, or similar matter or material;

b. the name of each participant for whom the filing is made or, if the filing is made for a group of participants, the name of the group, if the name of each member of the group is set forth in a previously filed document which is identified in the filing being made;

c. if statute, rule, regulation, or other authority requires the Commission to act within a specific time period for a matter at issue, a specific section of the pleading, located after the heading or caption, entitled "Proceeding Time Period," shall include: reference or citation to the statute, rule, regulation, or other authority; identification of the time period; and the expiration date of the time period identified by day, month, and year;

d. the specific authorization or relief sought;

e. copies of, or references to, tariff or rate sheets relevant to the pleading;

f. the name and address of each person against whom the complaint is directed;

g. the relevant facts, if not set forth in a previously filed document which is identified in the filing being made;

h. the position taken by the participant filing a pleading, to the extent known when the pleading is filed, and the basis in fact and law for the position;

i. the name, address, and telephone number of an individual who, with respect to a matter contained in the filing, represents the person for whom the filing is made;

j. additional information required to be included by Section 63G-4-201, concerning commencement of adjudicative proceedings, or other statute, rule, or order.

J. Motions -- Motions may be submitted for the Commission's decision on either written or oral argument, and the filing of affidavits in support or contravention of the motion is permitted. If oral argument is sought, the party seeking oral argument shall arrange a hearing date with the secretary of the Commission and provide at least five days written notice to affected parties, unless the Commission determines a shorter time period is needed.

K. Responsive Pleadings --

1. Responsive pleadings to applications, petitions, or requests for agency action shall be filed in accordance with Section 63G-4-204.

2. Response and reply pleadings may be filed to pleadings other than applications, petitions or requests for agency action.

R746-100-4. Filing and Service.

A. Filing of Pleadings -- Pleadings shall be filed with the Commission in the format described in R746-100-3(C), and the number of original and paper copies shall be as specified at <http://www.psc.utah.gov/filingrequirements.html>.

B. Notice -- Notice shall be given in conformance with Section 63G-4-201.

C. Required Public Notice -- When applying for original authority or rate increase, the party seeking authority or requesting Commission action shall publish notice of the filing or action requested, in the form and within the times as the Commission may order, in a newspaper of general circulation in the area of the state in which the parties most likely to be interested are located.

D. Times for Filing -- Responsive pleadings to requests for agency action shall be filed with the Commission and served upon opposing parties within 30 days after service of the request for agency action or notice of request for agency action, which ever was first received. Motions directed toward initiatory pleadings shall be filed before a responsive pleading is due; otherwise objections shall be raised in responsive pleadings. Motions directed

toward responsive pleadings shall be filed within ten days of the service of the responsive pleading. Response or reply pleadings to other than applications, petitions or requests for agency action shall be filed within 15 calendar days and 10 calendar days, respectively, of the service date of the pleading or document to which the response or reply is addressed. Absent a response or reply, the Commission may presume that there is no opposition.

~~E. Computation of Time -- The time within which an act shall be done shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday, or a state holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, nor a state holiday.~~

~~R746-100-5. Participation:~~

~~Parties to a proceeding before the Commission, as defined in Section 63G-4-103, may participate in a proceeding including the right to present evidence, cross-examine witnesses, make argument, written and oral, submit motions, and otherwise participate as determined by the Commission. The Division and Office shall be given full participation rights in any case.~~

~~R746-100-6. Appearances and Representation:~~

~~A. Taking Appearances -- Parties shall enter their appearances at the beginning of a hearing or when designated by the presiding officer by giving their names and addresses and stating their positions or interests in the proceeding. Parties shall, in addition, fill out and submit to the Commission an appearance slip, furnished by the Commission.~~

~~B. Representation of Parties -- Parties may be represented by an attorney licensed to practice in Utah; an attorney licensed in a foreign state, when joined of record by an attorney licensed in Utah; may also represent parties before the Commission. Upon motion, reasonable notice to each party, and opportunity to be heard, the Commission may allow an attorney licensed in a foreign state to represent a party in an individual matter based upon a showing that local representation would impose an unreasonable financial or other hardship upon the party. The Commission may, if it finds an irresolvable conflict of interest, preclude an attorney or firm of attorneys, from representing more than one party in a proceeding. Individuals who are parties to a proceeding, or officers or employees of parties, may represent their principals' interests in the proceeding.~~

~~R746-100-7. Intervention and Protest:~~

~~Intervention -- Persons wishing to intervene in a proceeding for any purpose, including opposition to proposed agency action or a request for agency action filed by a party to a proceeding, shall do so in conformance with Section 63G-4-207.~~

~~R746-100-8. Discovery:~~

~~A. Informal discovery -- The Commission encourages parties to exchange information informally. Informational queries termed "data requests" which have been typically used by parties practicing before the Commission may include written interrogatories and requests for production as those terms are used in the Utah Rules of Civil Procedure. Informal discovery is appropriate particularly with respect to the clarification of pre-filed testimony and exhibits before hearing so as to avoid unnecessary~~

~~on-the-record cross-examination. The Commission may require an informal exchange of information as it judges appropriate. The Commission, on its own motion or the motion of a party, may require the parties to participate in an informal meeting to exchange information informally and otherwise simplify issues and expedite the proceeding.~~

~~B. Formal Discovery -- Discovery shall be made in accordance with Rules 26 through 37, Utah Rules of Civil Procedure, with the following exceptions and modifications:~~

~~C. Exceptions and Modifications --~~

~~1. If no responsive pleading is required in a proceeding, parties may begin discovery immediately upon the filing and service of an initiatory pleading. If a responsive pleading is required, discovery shall not begin until ten days after the time limit for filing the responsive pleading.~~

~~2. Rule 26(a)(4), Utah Rules of Civil Procedure, restricting discovery shall not apply, and the opinions, conclusions, and data developed by experts engaged by parties shall be freely discoverable.~~

~~3. At any stage of a proceeding, the Commission may, on its own motion or that of a party, convene a conference of the parties to establish times for completion of discovery, the scope of, necessity for, and terms of, protective orders, and other matters related to discovery.~~

~~4. Formal discovery shall be initiated by an appropriate discovery request served on the party or person from whom discovery is sought. Discovery requests, regardless of how denominated, discovery responses, and transcripts of depositions shall not be filed with the Commission unless the Commission orders otherwise.~~

~~5. In the applicable Rules of Civil Procedure, reference to "the court" shall be considered reference to the Commission.~~

~~R746-100-9. Prehearing Conference and Prehearing Briefs:~~

~~A. Prehearing Conferences -- Upon the Commission's motion or that of a party, the presiding officer may, upon written notice to parties of record, hold prehearing conferences for the following purposes:~~

~~1. formulating or simplifying the issues, including each party's position on each issue;~~

~~2. obtaining stipulations, admissions of fact, and documents which will avoid unnecessary proof;~~

~~3. arranging for the exchange of proposed exhibits or prepared expert or other testimony, including a brief description of the evidence to be presented and issues addressed by each witness;~~

~~4. determining procedures to be followed at the hearing;~~

~~5. encouraging joint pleadings, exhibits, testimony and cross-examination where parties have common interests, including designation of lead counsel where appropriate;~~

~~6. agreeing to other matters that may expedite the orderly conduct of the proceedings or of a settlement. Agreements reached during the prehearing conference shall be recorded in an appropriate order unless the participants stipulate or agree to a statement of settlement made on the record.~~

~~B. Prehearing Briefs -- The Commission may require the filing of prehearing briefs which shall conform to the format described in R746-100-3(C) and may include:~~

~~1. the issues, and positions on those issues, being raised and asserted by the parties;~~

~~2. brief summaries of evidence to be offered, including the names of witnesses, exhibit references and issues addressed by the testimony;~~

~~3. brief descriptions of lines of cross-examination to be pursued.~~

~~C. Final prehearing conferences -- After all testimony has been filed, the Commission may at any time before the hearing hold a final prehearing conference for the following purposes:~~

~~1. determine the order of witnesses and set a schedule for witnesses' appearances, including times certain for appearances of out-of-town witnesses;~~

~~2. delineate scope of cross-examination and set limits thereon if necessary;~~

~~3. identify and prenumber exhibits.~~

R746-100-10. Hearing Procedure.

~~A. Time and Place -- When a matter is at issue, the Commission shall set a time and place for hearing. Notice of the hearing shall be served in conformance with Sections 63G-4-201(2)(b) and 63G-4-201(3)(c) at least five days before the date of the hearing or shorter period as determined by the Commission.~~

~~B. Continuance -- Continuances may be granted upon good cause shown. The Commission may impose the costs in connection with the continuance as it judges appropriate.~~

~~C. Failure to Appear -- A party's default shall be entered and disposed of in accordance with Section 63G-4-209.~~

~~D. Subpoenas and Attendance of Witnesses -- Commissioners, the secretary to the Commission, and administrative law judges or presiding officers employed by the Commission are delegated the authority to sign and issue subpoenas. Parties desiring the issuance of subpoenas shall submit them to the Commission. The parties at whose behest the subpoena is issued shall be responsible for service and paying the person summoned the statutory mileage and witness fees. Failure to obey the Commission's subpoena shall be considered contempt.~~

~~E. Conduct of the Hearing --~~

~~1. Generally -- Hearings may be held before the full Commission, one or more commissioners, administrative law judges or presiding officers employed by the Commission as provided by law and as the Commission shall direct. Hearings shall be open to the public, except where the Commission closes a hearing for the presentation of proprietary, trade secret or confidential material. Failure to obey the rulings and orders of the presiding officer may be considered contempt.~~

~~2. Before commissioner or administrative law judge -- When a hearing is conducted before less than the full Commission, before an administrative law judge or presiding officer, the presiding officer shall ensure that the taking of evidence and subsequent matters proceed as expeditiously as practicable. The presiding officer shall prepare and certify a recommended decision to the Commission. Except as otherwise ordered by the Commission or provided by law, the presiding officer may schedule and otherwise regulate the course of the hearing; recess, reconvene, postpone, or adjourn the hearing; administer oaths; rule on and receive evidence; cause discovery to be conducted; issue subpoenas; hold conferences of the participants; rule on, and dispose of, procedural matters, including oral or written motions; summarily dispose of a proceeding or part of a proceeding; certify a question to the Commission; permit or deny appeal of an interlocutory ruling;~~

~~and separate an issue or group of issues from other issues in a proceeding and treat the issue or group of issues as a separate phase of the proceeding. The presiding officer may maintain order as follows:~~

~~a. ensure that disregard by a person of rulings on matters of order and procedure is noted on the record or, if appropriate, is made the subject of a special written report to the Commission;~~

~~b. if a person engages in disrespectful, disorderly, or contumacious language or conduct in connection with the hearing, recess the hearing for the time necessary to regain order;~~

~~c. take appropriate action, including removal from the proceeding, against a participant or counsel, if necessary to maintain order.~~

~~3. Before full Commission -- In hearings before the full Commission, the Commission shall exercise the above powers and any others available to it and convenient or necessary to an orderly, just, and expeditious hearing.~~

~~F. Evidence --~~

~~1. Generally -- The Commission is not bound by the technical rules of evidence and may receive any oral or documentary evidence; except that no finding may be predicated solely on hearsay or otherwise incompetent evidence. Further, the Commission may exclude non-probative, irrelevant, or unduly repetitious evidence. Testimony shall be under oath and subject to cross-examination. Public witnesses may elect to provide unsworn statements.~~

~~2. Exhibits --~~

~~a. Except as to oral testimony and items administratively noticed, material offered into evidence shall be in the form of an exhibit. Exhibits shall be premarked. Parties offering exhibits shall, before the hearing begins, provide copies of their exhibits to the presiding officer, other participants or their representatives, and the original to the reporter, if there is one, otherwise to the presiding officer. If documents contain information the offering participant does not wish to include, the offering party shall mark out, excise, or otherwise exclude the extraneous portion on the original. Additions to exhibits shall be dealt with in the same manner.~~

~~b. Exhibits shall be premarked, by the offering party, in the upper right corner of each page by identifying the party, the witness, docket number, and a number reflecting the order in which the offering party will introduce the exhibit.~~

~~c. Exhibits shall conform to the format described in R746-100-3(C) and be double-sided and three-hole punched. They shall also be adequately footnoted and if appropriate, accompanied by either narrative or testimony which adequately explains the following: Explicit and detailed sources of the information contained in the exhibit; methods used in statistical compilations, including explanations and justifications; assumptions, estimates and judgments, together with the bases, justifications and results; formulas or algorithms used for calculations, together with explanations of inputs or variables used in the calculations. An exhibit offered by a witness shall also be presented as an electronic document, an exact copy of the paper version, using a format previously approved by the Commission.~~

~~3. Administrative notice -- The presiding officer may take administrative or official notice of a matter in conformance with Section 63G-4-206(1)(b)(iv).~~

~~4. Stipulations -- Participants in a proceeding may stipulate to relevant matters of fact or the authenticity of relevant~~

documents. Stipulations may be received in evidence, and if received, are binding on the participants with respect to any matter stipulated. Stipulations may be written or made orally at the hearing.

~~5. Settlements --~~

~~a. Cases may be resolved by a settlement of the parties if approved by the Commission. Issues so resolved are not binding precedent in future cases involving similar issues.~~

~~b. Before accepting an offer of settlement, the Commission may require the parties offering the settlement to show that each party has been notified of, and allowed to participate in, settlement negotiations. Parties not adhering to settlement agreements shall be entitled to oppose the agreements in a manner directed by the Commission.~~

~~G. Prefiled Testimony -- If a witness's testimony has been reduced to writing and filed with the Commission before the hearing, in conformance with R746-100-3(C), at the discretion of the Commission, the testimony may be placed on the record without being read into the record; if adverse parties shall have been served with, or otherwise have had access to, the prefiled, written testimony for a reasonable time before it is presented. Except upon a finding of good cause, a reasonable amount of time shall be at least ten days. The testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness. To aid in the identification of text and the examination of witnesses, written testimony shall have each line of written text numbered consecutively throughout the entire written testimony. Internal charts, exhibits or other similar displays included within or attached to written testimony need not be included within the document's internal line numbering. If admitted, the testimony shall be marked and incorporated into the record as an exhibit. Parties shall have full opportunity to cross-examine the witness on the testimony. Unless the Commission orders otherwise, parties shall have witnesses present summaries of prefiled testimony orally at the hearing. Witnesses may be required to reduce their summaries to writing and either file them with their prefiled testimony or deliver them to parties of record before or at the hearing. At the hearing, witnesses shall read their summaries into the record. Opposing parties may cross-examine both on the original prefiled testimony and the summaries.~~

~~H. Joint Exhibits -- Both narrative and numerical joint exhibits, detailing each party's position on each issue, shall be filed with the Commission before the hearing. These joint exhibits shall:~~

~~a. be updated throughout the hearing;~~

~~b. depict the final positions of each party on each issue at the end of the hearing; and~~

~~c. be in conformance with R746-100-3(C).~~

~~I. Recording of Hearing and Transcript -- Hearings may be recorded by a shorthand reporter licensed in Utah; except that in non-contested matters, or by agreement of the parties, hearings may be recorded electronically.~~

~~1. Unless otherwise ordered by the Commission, scheduling conferences and technical conferences will not be recorded.~~

~~2. If a party requests that a scheduling conference or technical conference be recorded, the Commission may require that party to pay some or all of the costs associated with recording.~~

~~J. Order of Presentation of Evidence -- Unless the presiding officer orders otherwise, applicants or petitioners,~~

~~including petitioners for an order to show cause, shall first present their case in chief, followed by other parties, in the order designated by the presiding officer, followed by the proposing party's rebuttal.~~

~~K. Cross-Examination -- The Commission may require written cross-examination and may limit the time given parties to present evidence and cross-examine witnesses. The presiding officer may exclude friendly cross-examination. The Commission discourages and may prohibit parties from making their cases through cross-examination.~~

~~L. Procedure at Conclusion of Hearing -- At the conclusion of proceedings, the presiding officer may direct a party to submit a written proposed order. The presiding officer may also order parties to present further matter in the form of oral argument or written memoranda.~~

R746-100-11. Decisions and Orders.

~~A. Generally -- Decisions and orders may be drafted by the Commission or by parties as the Commission may direct. Draft or proposed orders shall contain a heading similar to that of pleadings and bear at the top the name, address, and telephone number of the persons preparing them. Final orders shall have a concise summary of the case containing the salient facts, the issues considered by the Commission, and the Commission's disposition of them. A short synopsis of the order, placed at the beginning of the order, shall describe the final resolutions made in the order.~~

~~B. Recommended Orders -- If a case has been heard by less than the full Commission, or by an administrative law judge, the official hearing the case shall submit to the Commission a recommended report containing proposed findings of fact, conclusions of law, and an order based thereon.~~

~~C. Final Orders of Commission -- If a case has been heard by the full Commission, it shall confer following the hearing. Upon reaching its decision, the Commission shall draft or direct the drafting of a report and order, which upon signature of at least two Commissioners shall become the order of the Commission. Dissenting and concurring opinions of individual commissioners may be filed with the order of the Commission.~~

~~D. Deliberations -- Deliberations of the Commission shall be in closed chambers.~~

~~E. Effective Date -- Copies of the Commission's final report and order shall be served upon the parties of record. Orders shall be effective the date of issuance unless otherwise stated in the order. Upon petition of a party, and for good cause shown, the Commission may extend the time for compliance fixed in an order.~~

~~F. Review or Rehearing -- Petitions for review or rehearing shall be filed within 30 days of the issuance date of the order in accordance with Section 63G-4-301 and served on other parties of record.~~

~~1. A party asking the Commission to modify a fact-finding must marshal the record evidence that supports the challenged finding, as set forth in State v. Nielsen, 2014 UT 10, paragraphs 33-44, 326 P.3d 645.~~

~~2. Following the filing of a petition for review, opposing parties may file responsive memoranda or pleadings within 15 days.~~

~~3. Proceedings on review shall be in accordance with Section 54-7-15.~~

~~4. A petition for reconsideration pursuant to Section 63G-4-302 is not required in order for a party to exhaust its administrative remedies prior to appeal.~~

R746-100-12. Appeals.

~~Appeals from final orders of the Commission shall be to a court of appropriate jurisdiction.~~

R746-100-13. Ex Parte Communications.

~~A. Ex Parte Communications Prohibited -- To avoid prejudice, real or perceived, to the public interest and persons involved in proceedings pending before the Commission:~~

~~B. Persons Affected -- Except as permitted in R746-100-13(C), no person who is a party, or the party's counsel, agent, or other person acting on the party's behalf, shall engage in ex parte communications with a commissioner, administrative law judge, presiding officer, or any other employee of the Commission who is, or may reasonably be expected to be, involved in the decision-making process regarding a matter pending before the Commission. No commissioner, administrative law judge, presiding officer, or other employee of the Commission who is, or may reasonably be expected to be, involved in the decision-making process shall request or entertain ex parte communications.~~

~~C. Exceptions -- The prohibitions contained in R746-100-13(B) do not apply to a communication:~~

~~1. from an interceder who is a local, state, or federal agency which has no official interest in the outcome and whose official duties are not affected by the outcome of the on-the-record proceedings before the Commission to which the communication relates;~~

~~2. from a party, or the party's counsel, agent, or other person acting on the party's behalf if the communication relates to matters of procedure only;~~

~~3. from a person when otherwise authorized by law;~~

~~4. related to routine safety, construction, and operational inspections of project works by Commission employees undertaken to investigate or study a matter pending before the Commission;~~

~~5. related to routine field audits of the accounts or the books or records of a company subject to the Commission's accounting requirements not undertaken to investigate or study a matter pending in issue before the Commission in a proceeding;~~

~~6. related solely to a request for supplemental information or data necessary for an understanding of factual materials contained in documents or other evidence filed with the Commission in a proceeding covered by these rules and which is made in the presence of or after coordination with counsel.~~

~~D. Records of Ex Parte Communications -- Written communications prohibited by R746-100-13(B), sworn statements reciting the substance of oral communications, and written responses and sworn statements reciting the substance of oral responses to prohibited communications shall be delivered to the secretary of the Commission who shall place the communication in the case file, but separate from the material upon which the Commission can rely in reaching its decision. The secretary shall serve copies of the communications upon parties to the proceeding and serve copies of the sworn statement to the communicator and allow him a reasonable time to file a response.~~

~~E. Treatment of Ex Parte Communications -- A commissioner, administrative law judge, presiding officer, or an employee of the Commission who receives an oral offer of a communication prohibited by R746-100-13(B) shall decline to hear the communication and explain that the matter is pending for determination. If unsuccessful in preventing the communication,~~

~~the recipient shall advise the communicator that the communication will not be considered. The recipient shall, within two days, prepare a statement setting forth the substance of the communication and the circumstances of its receipt and deliver it to the secretary of the Commission for filing. The secretary shall forward copies of the statement to the parties.~~

~~F. Rebuttal -- Requests for an opportunity to rebut on the record matters contained in an ex parte communication which the secretary has associated with the record may be filed in writing with the Commission. The Commission may grant the requests only if it determines that fairness so requires. If the communication contains assertions of fact not a part of the record and of which the Commission cannot take administrative notice, the Commission, in lieu of receiving rebuttal material, normally will direct that the alleged factual assertion on proposed rebuttal be disregarded in arriving at a decision. The Commission will not normally permit a rebuttal of ex parte endorsements or oppositions by civic or other organizations by the submission of counter endorsements or oppositions.~~

~~G. Sanctions -- Upon receipt of a communication knowingly made in violation of R746-100-13(B), the presiding officer may require the communicator, to the extent consistent with the public interest, to show cause why the communicator's interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.~~

~~H. Time When Prohibitions Apply -- The prohibitions contained in this rule shall apply from the time at which a proceeding is noticed for hearing or the person responsible for the communication has knowledge that it will be noticed for hearing or when a protest or a request to intervene in opposition to requested Commission action has been filed, whichever occurs first.~~

R746-100-14. Rulemaking.

~~A. How initiated --~~

~~1. By the Commission -- When the Commission perceives the desirability or necessity of adopting a rule, it shall draft or direct the drafting of the rule. During the drafting process, the Commission may request the opinion and assistance of any appropriate person. It may also, in its discretion, conduct public hearings in connection with the drafting. When the Commission is satisfied with the draft of the proposed rule, it may formally propose it in accordance with the Utah Rulemaking Act, 63G-3-301.~~

~~2. By others -- Persons may petition the Commission for the adoption of a rule. The petitions shall be accompanied by a draft of the rule proposed. Upon receipt the Commission shall review the petition and draft and if it finds the proposed rule desirable or necessary, it shall proceed as with proposed rules initiated by the Commission, including amending or redrafting. If the Commission finds the proposal unnecessary or undesirable, it shall so notify the petitioner in writing, giving reasons for its findings. No public hearing shall be required in connection with the Commission's review of a petition for rulemaking.~~

~~B. Hearing Procedure -- Hearings conducted in connection with rulemaking shall be informal, subject to requirements of decorum and order. Absent a finding of good cause to proceed otherwise, testimony and statements shall be unsworn, and there shall be no opportunity for participants to cross-examine. The Commission shall have the right, however, to freely question witnesses. Public hearings shall be recorded by shorthand reporter~~

or electronically, at the discretion of the Commission, and the Commission may allow or request the submission of written materials:

R746-100-15. Deviation from Rules.

The Commission may order deviation from a specified rule upon notice, opportunity to be heard and a showing that the rule imposes an undue hardship which outweighs the benefits of the rule.

R746-100-16. Use of Information Claimed to Be Confidential or Highly Confidential in Commission Proceedings.

A. Information, documents and material submitted or requested in or relating to any Commission proceeding which is claimed to be confidential will be treated as follows:

1.a. Nature of Confidential Information. A person (Providing Party) required or requested to provide documents, data, information, studies, and other materials of a sensitive, proprietary or confidential nature (Confidential Information) to the Commission or to any party in connection with a Commission proceeding may request protection of such information in accordance with the terms of this rule. Confidential treatment shall be requested only to the extent a good faith reasonable basis exists for claiming that specific information constitutes a trade secret or is otherwise of such a highly sensitive or proprietary nature that public disclosure would be inappropriate. Confidential treatment shall be requested narrowly as to only that specific information for which protection is reasonably required.

b. Identification of Confidential Information. All documents, data, information, studies and other materials filed in conjunction with a Commission proceeding, made available to proceeding participants, whether made available pursuant to interrogatories, requests for information, subpoenas, depositions, or other modes of discovery or otherwise, that are claimed to be Confidential Information, shall be furnished pursuant to the terms of this rule or any superseding Protective Order, and shall be treated by all persons accorded access thereto pursuant to this rule or Protective Order, and shall neither be used nor disclosed by any recipient thereof except for the purpose of the proceeding in which it was obtained and solely in accordance with this rule or superseding Protective Order. All material claimed to be Confidential Information shall be so marked by the person producing it by stamping or noting the same with a designation substantially as follows: "CONFIDENTIAL -- SUBJECT TO UTAH PUBLIC SERVICE COMMISSION RULE 746-100-16" or "CONFIDENTIAL -- SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL -- SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket number)." All copies of documents so marked shall be made on yellow paper.

c. Line Numbering in Redacted Documents. Parties shall ensure that line numbering in any redacted version of a document shall conform to and retain the general formatting and line numbering used in the unredacted version of the document. Individuals providing electronic documents to the Commission should file both a confidential and non-confidential version each clearly marked as such. For purposes hereof, notes made pertaining to or as the result of a review of Confidential Information shall be

considered Confidential Information and subject to the terms of this rule:

d. Use of Confidential Information and Persons Entitled to Review. The Commission, Division of Public Utilities, and Office of Consumer Services shall be provided with Confidential Information and may use the Confidential Information as these agencies deem necessary to perform their statutory functions, provided they shall protect the confidentiality of the information as required by Utah law. Other than these state agencies, all Confidential Information made available pursuant to this rule shall be given solely to counsel for the participants (which may include counsels' paralegals, administrative assistants and clerical staff to the extent reasonably necessary for performance of work on the matter), and shall not be used nor disclosed except for the purpose of the proceeding in which they are provided and in accordance with this rule; provided, however, that access to any specific Confidential Information may be authorized by counsel, solely for the purpose of the proceeding, to those persons indicated by the participants as being their experts in the matter (including such experts' administrative assistants and clerical staff, and persons employed by the participants, to the extent reasonably necessary for performance of work on the matter). Persons designated as experts shall not include persons employed by the participants who could use the information in their normal job functions to the competitive disadvantage of the person providing the Confidential Information. The Commission, the Division of Public Utilities, and the Office of Consumer Services, and their respective counsel and staff, pursuant to the applicable provisions of Title 54, Utah Code Ann., the Rules of Civil Procedure and the Rules of the Commission, may have access to any Confidential Information made available pursuant to this rule or Protective Order and shall be bound by the terms of this rule, except as otherwise stated herein and except for the requirement of signing a nondisclosure agreement. Further, nothing herein shall prevent disclosure as required by law pursuant to interrogatories, administrative requests for information or documents, subpoena, civil investigative demand or similar process, provided, however, that the person being required to disclose Confidential Information shall promptly give prior notice by telephone and written notice of such requirement of disclosure by electronic mail facsimile and overnight mail to the person that provided such Confidential Information, addressed to the providing person and attorneys of record for such person, so that the person that provided the Confidential Information may seek appropriate restrictions on disclosure or an appropriate protective order. The disclosing person will not oppose action by, and will cooperate with the person that provided the Confidential Information to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

e. Nondisclosure Agreement. Prior to giving or obtaining access to Confidential Information, as contemplated in (1)(b) above, counsel or any experts shall agree in writing to comply with and be bound by this rule and any Protective Order. Confidential Information shall not be disclosed to any person who has not signed a Nondisclosure Agreement in the form which is provided below or referenced in the Protective Order. The Nondisclosure Agreement shall require the person to whom disclosure is to be made to read a copy of this rule and any applicable Protective Order and to certify

in writing that he or she has reviewed the same and has consented to be bound by the terms. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the person with whom the signatory is associated. Such agreement shall be delivered to the providing person and counsel for the providing person prior to the expert gaining access to the Confidential Information.

The Nondisclosure Agreement may be in the following form:

"Nondisclosure Agreement. I have reviewed Public Service Commission of Utah Rule 746-100-16 and/or the Protective Order entered by the Public Service Commission of Utah in Docket No. XX-XXX-XX with respect to the review and use of confidential information and agree to comply with the terms and conditions of the rule and/or Protective Order." Thereafter there shall be lines upon which shall be placed the individual's signature, the typed or printed name of the individual, identification or name of the individual's employer or firm employing the individual (if any), the business address for the individual, identification or name of the party in the proceeding with which the individual is associated, and the date the nondisclosure agreement is executed by the individual.

f. Additional protective measures. To the extent a Providing Party reasonably claims that additional protective measures, beyond those required under this rule for Confidential Information, are warranted for certain highly proprietary, highly sensitive or highly confidential material (Highly Confidential Information), the Providing Party shall promptly inform the requester (Requesting Party) of the claimed highly sensitive nature of identified material and the additional protective measures requested by the Requesting Party. If the Providing Party and Requesting Party are unable to promptly reach agreement on the treatment of Highly Confidential Information, the Providing Party shall petition the Commission for an order granting additional protective measures. The Providing Party shall set forth the particular basis for the claim, the need for the specific, additional protective measures, and the reasonableness of the requested, additional protection. A Requesting Party and any other party may respond to the petition and oppose or propose alternative protective measures to those requested by the Providing Party. Disputes between the parties shall be resolved by the Commission.

g. Identification of Highly Confidential Information. All documents, data, information, studies and other materials filed in conjunction with a Commission proceeding, made available to proceeding participants, whether made available pursuant to interrogatories, requests for information, subpoenas, depositions, or other modes of discovery or otherwise, that are claimed to be Highly Confidential, shall be furnished pursuant to the terms of this rule or any superceding Protective Order, and shall be treated by all persons accorded access thereto pursuant to this rule or Protective Order, and shall neither be used nor disclosed by any recipient thereof except for the purpose of the proceeding in which it was obtained and solely in accordance with this rule or superceding Protective Order. All material claimed to be Highly Confidential shall be so marked by the person producing it by stamping or noting the same with a designation substantially as follows: "HIGHLY CONFIDENTIAL-SUBJECT OF UTAH PUBLIC COMMISSION RULE 746-100-16," "HIGHLY CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER," or

"HIGHLY CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket number)." All copies of documents so marked shall be made on pink paper.

2.a. Challenge to Confidentiality or Proposed Additional Protective Measures. This rule establishes a procedure for the expeditious handling of Confidential Information; it shall not be construed as an agreement, or ruling on the confidentiality of any document.

b. In the event that persons are unable to agree that certain documents, data, information, studies, or other matters constitute Confidential Information or Highly Confidential Information referred to in (A)(1)(c) above, or in the event that persons are unable to agree on the appropriate treatment of Highly Confidential Information, the person objecting to the classification as Confidential Information or the person claiming Highly Confidential Information and the need for additional protective measures shall forthwith submit the disputes to the Commission for resolution.

c. Any person at any time upon at least ten (10) days prior notice, when practicable, may seek by appropriate pleading, to have documents that have been designated as Confidential Information or Highly Confidential Information, or which were accepted into the sealed record in accordance with this rule or a Protective Order, removed from the protective requirements of this rule or the Protective Order, or from the sealed record and placed in the public record. If the confidential, or proprietary nature of this information is challenged, resolution of the issue shall be made by the Commission after proceedings in camera which shall be conducted under circumstances such that only those persons duly authorized to have access to such confidential matter shall be present. The record of such in camera hearings shall be marked substantially as follows "CONFIDENTIAL-SUBJECT TO RULE 746-100-16" "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER," or "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket number)" unless the Commission determines, and so provides by order, that such marking need not occur. It shall be transcribed only upon agreement by the parties, or order of the Commission, and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this rule or Protective Order, unless and until released from the restrictions of this rule or Protective Order, either through agreement of the parties, or after notice to the parties and hearing, pursuant to an order of the Commission. In the event the Commission should rule in response to such a pleading that any information should be removed from the protective requirements of this rule or Protective Order, or from the protection of the sealed record, such order of the Commission shall not be effective for a period of ten (10) days after entry of the order.

3.a. Receipt into Evidence. At least ten (10) days prior to the use of or substantive reference to any Confidential Information as evidence, if practicable, the person intending to use such Confidential Information shall make that intention known to the providing person. The requesting person and the providing person shall make a good faith effort to reach an agreement so that the Confidential Information can be used in a manner which will not reveal its trade secret, confidential or proprietary nature. If such efforts fail, the providing person shall separately identify, within

five (5) business days, which portions, if any, of the documents to be offered or referenced on the record containing Confidential Information shall be placed in the sealed record. Only one (1) copy of documents designated by the providing person to be placed in a sealed record shall be made and only for that purpose. Otherwise, persons shall make only general references to Confidential Information in any proceedings.

b. Seal. While in the custody of the Commission, Confidential Information provided pursuant to this rule or a Protective Order shall be marked substantially as follows: "~~CONFIDENTIAL--SUBJECT TO PUBLIC SERVICE COMMISSION OF UTAH RULE 746-100-16,~~" "~~CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER,~~" or "~~CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX-XXX-XX~~ (reflecting the appropriate docket number)."

c. In Camera Hearing. Any Confidential Information that must be orally disclosed to be placed in a sealed record of a proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the Confidential Information under this rule or Protective Order. Similarly, cross-examination on or substantive reference to Confidential Information, as well as that portion of the record containing references thereto, shall be similarly marked and treated.

d. Appeal. Sealed portions of the record in any proceeding may be forwarded to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations, but under seal as designated herein, for the information and use of the court.

e. Return. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this rule or Protective Order, and shall be returned to the providing person or counsel for the providing person within 30 days after final order, settlement, or other conclusion of the matters in which they were used, including administrative or judicial review thereof. Alternatively, a person receiving Confidential Information pursuant to the terms of this rule or Protective Order may certify, within 30 days after final order, settlement, or other conclusion of the matter including administrative or judicial review thereof, that the Confidential Information has been destroyed. Counsel who are provided access to Confidential Information pursuant to the terms of this rule or Protective Order may retain the Confidential Information, their notes, work papers or other documents as their attorneys' work product created with respect to their use and access to Confidential Information in the matter. An expert witness, accorded access to Confidential Information pursuant to this rule or Protective Order, shall provide to counsel for the person on whose behalf the expert was retained or employed, the expert's notes, work papers or other documents pertaining or relating to any Confidential Information. Counsel shall retain these experts' documents with counsel's documents. In order to facilitate their ongoing responsibility, this provision shall not apply to the Commission, the Division of Public Utilities or the Office of Consumer Services, which may retain Confidential Information obtained under this rule or Protective Order subject to the other terms of this rule or Protective Order. Any party that intends to use or disclose Confidential Information obtained pursuant to this rule or a

Protective Order in any subsequent Commission docket or proceedings, shall do so in accordance with the terms of this rule or any applicable protective orders issued in such other subsequent Commission dockets or proceedings and only after providing notice of such intent to the providing person along with an identification of the original source of the Confidential Information.

4. Use in Proceedings. Where reference to Confidential Information is required in pleadings, cross-examinations, briefs, arguments, or motions, it shall be by citation of title, or exhibit number, or by some other noneconfidential description. Any further use of, or substantive references to Confidential Information shall be placed in a separate section of the pleading, brief, or document and submitted under seal. This sealed section shall be served only on counsel of record (one copy each), who have signed a Nondisclosure Agreement and counsel for the Division of Public Utilities and Office of Consumer Services. All the protections afforded in this rule apply to materials prepared and distributed under this paragraph.

5. Use in Decisions and Orders. The Commission will attempt to refer to Confidential Information in only a general, or conclusory form and will avoid reproduction in any decision of Confidential Information to the greatest possible extent. If it is necessary for a determination in a proceeding to discuss Confidential Information other than in a general, or conclusory form, it shall be placed in a separate section of an Order, or Decision, under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed a Nondisclosure Agreement and counsel for the Division of Public Utilities and Office of Consumer Services. Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed a Nondisclosure Agreement.

6. Segregation of Files. Those parts of any writing, depositions reduced to writing, written examination, interrogatories and answers thereto, or other written references to Confidential Information in the course of discovery, if filed with the Commission, will be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this rule or Protective Order, unless such Confidential Information is released from the restrictions of this rule or Protective Order, either through agreement of the parties, or after notice to the parties and hearing, pursuant to an order of the Commission and/or final order of a court having jurisdiction.

7. Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access to any Confidential Information by reason of this rule or Protective Order shall neither use, nor disclose the Confidential Information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of Commission proceedings, and then solely as contemplated herein, and shall take reasonable precautions to keep the Confidential Information secure in accordance with the purposes and intent of this rule or a Protective Order.

8. Reservation of Rights. Persons affected by the terms of this rule or a Protective Order retain the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this rule or a Protective Order in response to interrogatories,

~~requests for information, other modes of discovery, or cross-examination on the grounds of relevancy or materiality. This rule or a Protective Order shall in no way constitute any waiver of the rights of any person to contest any assertion by another person or finding by the Commission that any information is a trade secret, confidential, or privileged, and to appeal any assertion or finding.~~

~~**KEY: — government hearings, public utilities, rules and procedures, confidential information**~~

~~**Date of Enactment or Last Substantive Amendment: October 8, 2015**~~

~~**Notice of Continuation: November 28, 2012**~~

~~**Authorizing, and Implemented or Interpreted Law: 54-1-1; 54-1-3; 54-1-6; 54-3-21; 54-4-1; 54-4-1.5; 54-4-2; 54-7-17; 63G-4]**~~

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Office of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Agriculture and Food, Administration **R51-2** Administrative Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 41120
FILED: 01/03/2017

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 promulgated under Subsection 4-2-2(1)(i) and Section 4-1-3.5 to comply with the Title 63G, Chapter 4, the Administrative Procedures Act. Additionally, Section 4-2-12 allows the department to initiate actions against a person or firm that may be in violation of any code provisions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the Department 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: This rule establishes and governs the administrative proceedings of the Utah Department of Agriculture and Food and is required in order for the Department to accomplish this administrative function.

Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,
DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ADMINISTRATION
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
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

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 01/03/2017

Public Safety, Peace Officer Standards and Training **R728-409**

Suspension, Revocation, or Relinquishment of Certification

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 41108
FILED: 12/19/2016

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 establish procedures for the suspension, revocation, or relinquishment of a respondent's certification. 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:

- ◆ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov
- ◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
- ◆ Wade Breur by phone at 801-256-2329, or by Internet E-mail at wbreur@utah.gov

AUTHORIZED BY: Scott Stephenson, Director

EFFECTIVE: 12/19/2016

**Public Safety, Peace Officer Standards
and Training
R728-410
Guidelines Regarding Annual Statutory
Training**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 41109
FILED: 12/19/2016

**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 provide procedures regarding the reporting of annual statutory training to maintain peace officer certification. 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:

- ◆ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov
- ◆ Kim Gibb by phone at 801-556-8198, by FAX at 801-964-4482, or by Internet E-mail at kgibb@utah.gov
- ◆ Wade Breur by phone at 801-256-2329, or by Internet E-mail at wbreur@utah.gov

AUTHORIZED BY: Scott Stephenson, Director

EFFECTIVE: 12/19/2016

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).

Health, Disease Control and
Prevention, Laboratory Services

R438-12

Rule for Law Enforcement Blood Draws

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 41119

FILED: 01/03/2017

EXTENSION REASON AND NEW DEADLINE: The Department of Health would like to request a 120-day extension in order to move this rule from Title R438 to Title R426. The Department will need this time to get the language moved and vetted before filing. Rule R438-12 will be repealed when Title R426 is amended. The new deadline is 05/20/2017.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Robyn Atkinson by phone at 801-965-2424, by FAX at 801-969-3704, or by Internet E-mail at rmatkinson@utah.gov

AUTHORIZED BY: Joseph Miner, Executive Director

EFFECTIVE: 01/03/2017

Money Management Council,
Administration

R628-17

Limitations on Commercial Paper and
Corporate Notes

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 41118

FILED: 12/29/2016

EXTENSION REASON AND NEW DEADLINE: The Money Management Council requests an extension for the five-year review of Rule R628-17 as the Council was discussing potential legislation in the last two meetings and was unable to review the rule at that time. The new deadline is 05/09/2017.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

AUTHORIZED BY: Marina Scott, Chair

EFFECTIVE: 12/29/2016

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

Agriculture and Food

Animal Industry

No. 40802 (AMD): R58-17. Aquaculture and Aquatic Animal Health

Published: 10/15/2016

Effective: 12/19/2016

Alcoholic Beverage Control

Administration

No. 40922 (AMD): R81-3-14. Type 5 Package Agencies

Published: 11/15/2016

Effective: 01/03/2017

No. 40924 (NEW): R81-4. Retail Licenses

Published: 11/15/2016

Effective: 01/03/2017

No. 40923 (AMD): R81-8. Manufacturer Licenses (Distillery, Winery, Brewery)

Published: 11/15/2016

Effective: 01/03/2017

Commerce

Occupational and Professional Licensing

No. 40899 (AMD): R156-17b. Pharmacy Practice Act Rule

Published: 11/15/2016

Effective: 12/22/2016

No. 40902 (AMD): R156-17b. Pharmacy Practice Act Rule

Published: 11/15/2016

Effective: 12/22/2016

No. 40896 (AMD): R156-24b. Physical Therapy Practice Act Rule

Published: 11/15/2016

Effective: 12/29/2016

No. 40897 (AMD): R156-31b. Nurse Practice Act Rule

Published: 11/15/2016

Effective: 12/22/2016

No. 40917 (AMD): R156-37-402. Continuing Professional Education for Controlled Substance Prescribers

Published: 11/15/2016

Effective: 12/22/2016

No. 40916 (AMD): R156-37f. Controlled Substance Database Act Rule

Published: 11/15/2016

Effective: 12/22/2016

No. 40928 (AMD): R156-37f. Controlled Substance Database Act Rule

Published: 11/15/2016

Effective: 12/22/2016

No. 40903 (AMD): R156-55c. Plumber Licensing Act Rule

Published: 11/15/2016

Effective: 12/22/2016

No. 40905 (AMD): R156-70a-304. Continuing Education

Published: 11/15/2016

Effective: 12/22/2016

Real Estate

No. 40856 (AMD): R162-2f. Real Estate Licensing and Practices Rules

Published: 11/01/2016

Effective: 12/22/2016

NOTICES OF RULE EFFECTIVE DATES

Environmental Quality

Environmental Response and Remediation

No. 40755 (AMD): R311-203. Underground Storage Tanks:

Technical Standards

Published: 10/01/2016

Effective: 01/03/2017

No. 40755 (CPR): R311-203. Underground Storage Tanks:

Technical Standards

Published: 12/01/2016

Effective: 01/03/2017

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 40870 (AMD): R414-1-5. Incorporations by Reference

Published: 11/01/2016

Effective: 12/19/2016

Human Resource Management

Administration

No. 40927 (AMD): R477-1. Definitions

Published: 11/15/2016

Effective: 01/01/2017

No. 40926 (AMD): R477-4-6. Rehire

Published: 11/15/2016

Effective: 01/01/2017

Labor Commission

Industrial Accidents

No. 40919 (AMD): R612-300-14. Advance Practice

Registered Nurse

Published: 11/15/2016

Effective: 12/22/2016

Public Service Commission

Administration

No. 40900 (AMD): R746-312. Electrical Interconnection

Published: 11/15/2016

Effective: 12/22/2016

End of the Notices of Rule Effective Dates Section

**2017 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, 2017 through January 03, 2017. 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
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-2	Administrative Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food	41120	5YR	01/03/2017	Not Printed
ALCOHOLIC BEVERAGE CONTROL					
<u>Administration</u>					
R81-3-14	Type 5 Package Agencies	40922	AMD	01/03/2017	2016-22/16
R81-4	Retail Licenses	40924	NEW	01/03/2017	2016-22/17
R81-8	Manufacturer Licenses (Distillery, Winery, Brewery)	40923	AMD	01/03/2017	2016-22/19
ENVIRONMENTAL QUALITY					
<u>Environmental Response and Remediation</u>					
R311-203	Underground Storage Tanks: Technical Standards	40755	AMD	01/03/2017	2016-19/60
R311-203	Underground Storage Tanks: Technical Standards	40755	CPR	01/03/2017	2016-23/118
HEALTH					
<u>Disease Control and Prevention, Laboratory Services</u>					
R438-12	Rule for Law Enforcement Blood Draws	41119	EXT	01/03/2017	Not Printed

RULES INDEX - BY KEYWORD (SUBJECT)

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KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>alcoholic beverages</u>					
Alcoholic Beverage Control, Administration	40922	R81-3-14	AMD	01/03/2017	2016-22/16
	40924	R81-4	NEW	01/03/2017	2016-22/17
	40923	R81-8	AMD	01/03/2017	2016-22/19
<u>appellate procedures</u>					
Agriculture and Food, Administration	41120	R51-2	5YR	01/03/2017	Not Printed
<u>fees</u>					
Environmental Quality, Environmental Response and Remediation	40755	R311-203	AMD	01/03/2017	2016-19/60
	40755	R311-203	CPR	01/03/2017	2016-23/118
<u>government hearings</u>					
Agriculture and Food, Administration	41120	R51-2	5YR	01/03/2017	Not Printed
<u>hazardous substances</u>					
Environmental Quality, Environmental Response and Remediation	40755	R311-203	AMD	01/03/2017	2016-19/60
	40755	R311-203	CPR	01/03/2017	2016-23/118
<u>petroleum</u>					
Environmental Quality, Environmental Response and Remediation	40755	R311-203	AMD	01/03/2017	2016-19/60
	40755	R311-203	CPR	01/03/2017	2016-23/118
<u>sobriety tests</u>					
Health, Disease Control and Prevention, Laboratory Services	41119	R438-12	EXT	01/03/2017	Not Printed
<u>underground storage tanks</u>					
Environmental Quality, Environmental Response and Remediation	40755	R311-203	AMD	01/03/2017	2016-19/60
	40755	R311-203	CPR	01/03/2017	2016-23/118

**2016 COMPLETE RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

This Rules Index is a complete index that reflects all effective changes to Utah's administrative rules for 2016. The Index lists changes made effective from January 2, 2016 through January 1, 2017. 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).

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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
R33-24	Unlawful Conduct	40569	AMD	08/22/2016	2016-14/44

Risk Management

R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	40282	AMD	06/01/2016	2016-8/6
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AGRICULTURE AND FOOD

Administration

R51-3	Government Records Access and Management Act	40234	5YR	02/29/2016	2016-6/27
R51-4	ADA Complaint Procedure	40235	5YR	02/29/2016	2016-6/27

Animal Industry

R58-2	Diseases, Inspections and Quarantines	40476	5YR	06/09/2016	2016-13/160
R58-4	Use of Animal Drugs and Biologicals in the State of Utah	40478	5YR	06/09/2016	2016-13/160
R58-14	Holding Live Raccoons or Coyotes in Captivity	40477	5YR	06/09/2016	2016-13/161
R58-17	Aquaculture and Aquatic Animal Health	40802	AMD	12/19/2016	2016-20/10
R58-18	Elk Farming	40584	AMD	09/19/2016	2016-14/46
R58-20	Domesticated Elk Hunting Parks	40585	AMD	09/19/2016	2016-15/6
R58-24	Community Spay and Neuter Grants	40637	5YR	08/02/2016	2016-17/87

Horse Racing Commission (Utah)

R52-7	Horse Racing	39951	AMD	02/02/2016	2015-24/4
R52-7	Horse Racing	40703	5YR	08/25/2016	2016-18/41
R52-7-5	Occupation Licensing and Registration	40366	AMD	06/23/2016	2016-10/8

Marketing and Development

R65-2	Utah Cherry Marketing Order	40367	REP	06/23/2016	2016-10/11
R65-8	Management of the Junior Livestock Show Appropriation	40233	5YR	02/29/2016	2016-6/28
R65-8-2	Establishment of a Forum	40369	AMD	06/23/2016	2016-10/13

Plant Industry

R68-4	Standardization, Marketing, and Phytosanitary Inspection of Fresh Fruits, Vegetables, and Other Plant and Plant Products	40201	5YR	02/08/2016	2016-5/23
R68-7	Utah Pesticide Control Rule	40232	5YR	02/29/2016	2016-6/28
R68-9	Utah Noxious Weed Act	39965	AMD	02/02/2016	2015-24/8
R68-12	Quarantine Pertaining to Mint Wilt	40365	REP	06/23/2016	2016-10/14
R68-18	Quarantine Pertaining to Karnal Bunt	40200	5YR	02/08/2016	2016-5/23

RULES INDEX

Regulatory Services

R70-330	Raw Milk for Retail	40268	5YR	03/16/2016	2016-8/91
R70-370	Butter	40270	5YR	03/16/2016	2016-8/91
R70-370	Butter	40361	AMD	06/23/2016	2016-10/15
R70-380	Grade A Condensed and Dry Milk Products and Condensed and Dry Whey	40269	5YR	03/16/2016	2016-8/92
R70-380	Grade A Condensed and Dry Milk Products and Condensed and Dry Whey	40368	AMD	06/23/2016	2016-10/16
R70-410	Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes	40149	5YR	01/20/2016	2016-4/77
R70-530	Food Protection	39950	AMD	02/02/2016	2015-24/12
R70-550	Utah Inland Shellfish Safety Program	40360	AMD	06/23/2016	2016-10/18
R70-920	Packaging and Labeling of Commodities	40634	5YR	08/02/2016	2016-17/87
R70-930	Method of Sale of Commodities	40635	5YR	08/02/2016	2016-17/88
R70-940	Standards and Testing Motor Fuel	40636	5YR	08/02/2016	2016-17/88

ALCOHOLIC BEVERAGE CONTROL

Administration

R81-1	Scope, Definitions, and General Provisions	40376	5YR	05/02/2016	2016-10/73
R81-2	State Stores	40378	5YR	05/02/2016	2016-10/74
R81-3	Package Agencies	40379	5YR	05/02/2016	2016-10/74
R81-4A	Restaurant Liquor Licenses	40381	5YR	05/02/2016	2016-10/75
R81-4F	Reception Center Licenses	40838	5YR	09/28/2016	2016-20/94
R81-5	Club Licenses	40382	5YR	05/02/2016	2016-10/76
R81-6	Special Use Permits	40383	5YR	05/02/2016	2016-10/76
R81-7	Event Permits	40384	5YR	05/02/2016	2016-10/77
R81-8	Manufacturer Licenses (Distillery, Winery, Brewery)	40385	5YR	05/02/2016	2016-10/77
R81-9	Liquor Warehousing Licenses	40386	5YR	05/02/2016	2016-10/78
R81-10C	Beer-Only Restaurant Licenses	40835	5YR	09/28/2016	2016-20/95
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R156-11a	Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule	40589	AMD	09/08/2016	2016-15/8
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R156-15A	State Construction Code Administration and Adoption of Approved State Construction Code Rule	40526	5YR	06/20/2016	2016-14/171
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R156-17b	Pharmacy Practice Act Rule	40902	AMD	12/22/2016	2016-22/29
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R156-17b-614a	Operating Standards - General Operating Standards, Class A and B Pharmacy	40407	AMD	07/11/2016	2016-11/7
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R909-19	Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification	39953	AMD	01/21/2016	2015-24/58

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R918-5	Construction or Improvement of Highway	40474	EXD	06/08/2016	2016-13/173
R918-5	Construction or Improvement of Highway	40729	NEW	10/24/2016	2016-18/28
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R926-3	Class B and Class C Road Funds	40750	5YR	09/08/2016	2016-19/118
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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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<u>Academic Pathways to Teaching</u> Education, Administration	40509	R277-511	NEW	08/12/2016	2016-13/39
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	40909	R15-3	NSC	11/04/2016	Not Printed
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Public Safety, Driver License	40586	R708-46	5YR	07/07/2016	2016-15/82	
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Agriculture and Food, Animal Industry	40802	R58-17	AMD	12/19/2016	2016-20/10	
<u>archeology</u>						
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<u>architects</u>						
Administrative Services, Purchasing and General Services	40563	R33-15	NSC	07/15/2016	Not Printed	
Commerce, Occupational and Professional Licensing	40058	R156-3a	5YR	01/07/2016	2016-3/507	
	40763	R156-3a	AMD	11/07/2016	2016-19/2	

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Heritage and Arts, Administration	40103	R450-3	NEW	05/26/2016	2016-3/484	
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Education, Administration	40508	R277-490	AMD	08/11/2016	2016-13/36	
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	39848	R307-801	CPR	05/05/2016	2016-5/18	
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	39848	R307-801	CPR	05/05/2016	2016-5/18	
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	40507	R277-404	AMD	08/11/2016	2016-13/31	
	41032	R277-404	5YR	11/29/2016	2016-24/51	
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Education, Administration	40884	R277-409	NEW	12/08/2016	2016-21/12	
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Commerce, Occupational and Professional Licensing	40942	R156-41	5YR	11/03/2016	2016-23/126	
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	40792	R277-603	AMD	11/07/2016	2016-19/19	
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Public Safety, Fire Marshal	40522	R710-5	AMD	08/23/2016	2016-14/57	
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Commerce, Administration	40293	R151-14	5YR	03/31/2016	2016-8/92	
Commerce, Consumer Protection	41037	R152-20	5YR	12/01/2016	2016-24/48	
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Transportation, Operations, Aeronautics	40663	R914-1	AMD	10/12/2016	2016-17/83	

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Education, Administration	40329	R277-204	REP	08/12/2016	2016-9/26	
	40330	R277-205	REP	08/12/2016	2016-9/28	
	40331	R277-206	REP	08/12/2016	2016-9/29	
	40338	R277-214	NEW	08/12/2016	2016-9/51	
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	40338	R277-214	NEW	08/12/2016	2016-9/51	
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	40227	R628-12	5YR	02/26/2016	2016-6/35	
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Public Safety, Peace Officer Standards and Training	40538	R728-502	R&R	08/23/2016	2016-14/132	
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	40474	R918-5	EXD	06/08/2016	2016-13/173	
	40729	R918-5	NEW	10/24/2016	2016-18/28	
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	40641	R916-2	5YR	08/03/2016	2016-17/96	
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	40403	R657-5	AMD	07/11/2016	2016-11/42	
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Health, Center for Health Data, Vital Records and Statistics	40600	R436-5	5YR	07/13/2016	2016-15/82
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Health, Family Health and Preparedness, Children with Special Health Care Needs	40633	R398-5	NSC	08/22/2016	Not Printed
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birth defects

Health, Family Health and Preparedness, Children with Special Health Care Needs	40633	R398-5	NSC	08/22/2016	Not Printed
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Blue Mountain Dine'

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	40090	R651-204	NSC	02/02/2016	Not Printed
	40063	R651-205	5YR	01/07/2016	2016-3/515
	40064	R651-206	5YR	01/07/2016	2016-3/516
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	40066	R651-207	5YR	01/07/2016	2016-3/516
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	40191	R651-211	NSC	02/25/2016	Not Printed
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	40072	R651-213	5YR	01/07/2016	2016-3/519
	40073	R651-214	5YR	01/07/2016	2016-3/520
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	40076	R651-217	5YR	01/07/2016	2016-3/522
	40077	R651-218	5YR	01/07/2016	2016-3/522
	40078	R651-219	5YR	01/07/2016	2016-3/523
	40079	R651-220	5YR	01/07/2016	2016-3/523
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	40081	R651-222	5YR	01/07/2016	2016-3/524

	40082	R651-224	5YR	01/07/2016	2016-3/525
	40083	R651-226	5YR	01/07/2016	2016-3/525
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	40357	R616-2-3	AMD	07/01/2016	2016-10/64
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	40009	R313-22	NSC	01/15/2016	Not Printed
	39991	R313-22	CPR	05/09/2016	2016-7/44
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Commerce, Occupational and Professional Licensing	40298	R156-15A	AMD	06/07/2016	2016-9/4
	40526	R156-15A	5YR	06/20/2016	2016-14/171
	40622	R156-15A-231	AMD	09/26/2016	2016-16/6
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Agriculture and Food, Regulatory Services	40361	R70-370	AMD	06/23/2016	2016-10/15

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	40796	R277-914	AMD	11/07/2016	2016-19/26	
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Public Safety, Criminal Investigations and Technical Services, Criminal Identification	40596	R722-360	NSC	08/01/2016	Not Printed	
	40597	R722-390	NSC	08/01/2016	Not Printed	
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	40358	R616-3-3	AMD	07/01/2016	2016-10/66	
Workforce Services, Rehabilitation	40593	R993-300	NEW	10/01/2016	2016-15/67	
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	40357	R616-2-3	AMD	07/01/2016	2016-10/64	
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	40165	R728-409-14	NSC	02/17/2016	Not Printed	
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	40468	R909-19	5YR	06/02/2016	2016-13/170	
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	40023	R661-5	NEW	02/29/2016	2016-2/109	
	40025	R661-7	NEW	02/29/2016	2016-2/113	
	40607	R661-7	AMD	10/24/2016	2016-15/28	
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	40162	R381-70	AMD	03/30/2016	2016-4/20	
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	40160	R430-50	AMD	03/30/2016	2016-4/49	
	39895	R430-90	AMD	01/31/2016	2015-22/57	
	40159	R430-90	AMD	03/30/2016	2016-4/53	
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	40096	R527-40	AMD	03/09/2016	2016-3/485	
	40053	R527-200	5YR	01/05/2016	2016-3/512	
	40654	R527-201	5YR	08/08/2016	2016-17/94	
	40054	R527-250	5YR	01/05/2016	2016-3/513	
	41082	R527-253	5YR	12/14/2016	2017-1/112	
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	39938	R512-31	AMD	01/07/2016	2015-23/33
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	40257	R512-43	AMD	05/09/2016	2016-7/29
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Commerce, Occupational and Professional Licensing	40208	R156-73	5YR	02/11/2016	2016-5/25
<u>Choose Life Adoption Support</u>					
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	40258	R512-44	AMD	05/09/2016	2016-7/34
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Agriculture and Food, Animal Industry	40584	R58-18	AMD	09/19/2016	2016-14/46
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	40364	R162-2f-202b	NSC	05/11/2016	Not Printed
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Environmental Quality, Air Quality	40408	R307-230	LNR	05/10/2016	2016-11/67
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<u>nurses</u>					
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<u>nutrient limits</u>					
Environmental Quality, Water Quality	39981	R317-1-3	AMD	02/25/2016	2016-1/40
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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
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	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
	40652	R156-55c	5YR	08/08/2016	2016-17/91
	40903	R156-55c	AMD	12/22/2016	2016-22/51
	40748	R156-75	5YR	09/08/2016	2016-19/102
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Commerce, Administration	40949	R151-35	5YR	11/03/2016	2016-23/124
<u>off-highway vehicles</u>					
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
<u>office equipment</u>					
Navajo Trust Fund, Trustees	40612	R661-17	NEW	09/21/2016	2016-15/35
<u>office equipment purchase program</u>					
Navajo Trust Fund, Trustees	40612	R661-17	NEW	09/21/2016	2016-15/35
<u>offset</u>					
Environmental Quality, Air Quality	40193	R307-403-2	NSC	02/25/2016	Not Printed
<u>OHV education standards</u>					
Natural Resources, Parks and Recreation	40213	R651-412	AMD	04/21/2016	2016-6/22
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	40302	R649-1-1	NSC	04/15/2016	Not Printed
	40711	R649-2	5YR	08/26/2016	2016-18/54
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	40444	R649-3-23	NSC	06/13/2016	Not Printed
	40716	R649-3-32	AMD	11/01/2016	2016-18/16
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	40715	R649-9	5YR	08/26/2016	2016-18/56
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Education, Administration	41003	R277-512	5YR	11/15/2016	2016-23/128
<u>onsite professional</u>					
Environmental Quality, Water Quality	40489	R317-11	5YR	06/13/2016	2016-13/164
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<u>operational requirements</u>					
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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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Public Safety, Highway Patrol	39850	R714-500	AMD	01/21/2016	2015-22/144
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Health, Disease Control and Prevention, Health Promotion	40549	R384-205	EMR	07/01/2016	2016-14/167

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<u>osteopathic physician</u>					
Commerce, Occupational and Professional Licensing	40865	R156-68	AMD	12/08/2016	2016-21/6
<u>osteopaths</u>					
Commerce, Occupational and Professional Licensing	40865	R156-68	AMD	12/08/2016	2016-21/6
<u>out of school time child care programs</u>					
Health, Child Care Center Licensing Committee	39898	R381-70	AMD	01/31/2016	2015-22/40
	40162	R381-70	AMD	03/30/2016	2016-4/20
<u>out-of-home care</u>					
Human Services, Child and Family Services	39955	R512-305	AMD	01/21/2016	2015-24/44
<u>out-of-school time</u>					
Education, Administration	40795	R277-715	NEW	11/07/2016	2016-19/25
<u>out-of-state</u>					
Education, Administration	40672	R277-421	NEW	10/11/2016	2016-17/13
<u>outdoor advertising</u>					
Transportation, Preconstruction, Right-of-Way Acquisition	40936	R933-5	5YR	11/02/2016	2016-23/164
<u>outdoor recreation</u>					
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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<u>overdoses</u>					
Health, Disease Control and Prevention, Health Promotion	40549	R384-205	EMR	07/01/2016	2016-14/167
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	39849	R307-110-28	AMD	02/04/2016	2015-21/45
	39845	R307-328-4	AMD	02/04/2016	2015-21/47
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Transportation, Operations, Traffic and Safety	39941	R920-4	AMD	01/07/2016	2015-23/46
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	40080	R651-221	5YR	01/07/2016	2016-3/524
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	40447	R651-601	AMD	07/28/2016	2016-12/44
	40448	R651-602	AMD	07/28/2016	2016-12/46
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<u>Partnerships for Student Success</u>					
Education, Administration	40680	R277-924	NEW	10/11/2016	2016-17/32
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Health, Health Care Financing, Coverage and Reimbursement Policy	40181	R414-320	5YR	02/01/2016	2016-4/78
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	40847	R428-12	AMD	11/21/2016	2016-20/37	
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	40266	R315-319	CPR	09/01/2016	2016-15/72	
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	40747	R884-24P-33	AMD	11/07/2016	2016-19/89	
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	40392	R477-9	AMD	07/01/2016	2016-10/56	
	40925	R477-14	5YR	10/31/2016	2016-22/115	
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Tax Commission, Auditing	40976	R865-150	5YR	11/10/2016	2016-23/149	
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	40218	R156-17b-614a	AMD	04/21/2016	2016-6/11	
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	40218	R156-17b-614a	AMD	04/21/2016	2016-6/11	
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Commerce, Occupational and Professional Licensing	40131	R156-55c	NSC	02/02/2016	Not Printed
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Environmental Quality, Air Quality	40766	R307-110-17	AMD	12/08/2016	2016-19/36
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Navajo Trust Fund, Trustees	40026	R661-8	NEW	02/29/2016	2016-2/115
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	40709	R384-205	NEW	11/07/2016	2016-18/14	
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	40040	R414-303-8	AMD	03/08/2016	2016-2/89	
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Transportation, Operations, Construction	40683	R916-7	NEW	10/24/2016	2016-18/26	
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Commerce, Occupational and Professional Licensing	40764	R156-76-502	AMD	11/07/2016	2016-19/6
<u>professional land surveyors</u>					
Commerce, Occupational and Professional Licensing	40594	R156-22-302b	NSC	08/01/2016	Not Printed
<u>professional practices</u>					
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