

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
Filed June 02, 2017, 12:00 a.m. through June 15, 2017, 11:59 p.m.

Number 2017-13  
July 01, 2017

Nancy L. Lancaster, Managing Editor

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

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

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

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

Office of Administrative Rules, Salt Lake City 84114

Unless otherwise noted, all information presented in this publication is in the public domain and may be reproduced, reprinted, and redistributed as desired. Materials incorporated by reference retain the copyright asserted by their respective authors. Citation to the source is requested.

Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.

I. Utah. Office of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

# TABLE OF CONTENTS

---

<b>SPECIAL NOTICES</b> .....	<b>1</b>
Environmental Quality	
Air Quality	
Public Notice of Section 110(l) Demonstration.....	1
<b>EXECUTIVE DOCUMENTS</b> .....	<b>3</b>
Governor	
Administration	
Executive Order Creating an Executive Water Finance Board, Utah	
Exec. Order No. 2017-5.....	3
<b>NOTICES OF PROPOSED RULES</b> .....	<b>7</b>
Administrative Services	
Finance	
No. 41798 (Amendment): R25-7 Travel-Related Reimbursements for	
State Employees.....	8
Purchasing and General Services	
No. 41799 (Amendment): R33-26 State Surplus Property.....	14
Education	
Administration	
No. 41768 (Amendment): R277-101 Utah State Board of Education	
Procedures.....	21
No. 41769 (Repeal): R277-103 USOE Government Records and Management	
Act.....	24
No. 41770 (Repeal): R277-111 Sharing of Curriculum Materials by Public	
School Educators.....	25
No. 41771 (Repeal): R277-115 Material Developed with State Public	
Education Funds.....	27
No. 41772 (New Rule): R277-120 Licensing of Material Developed with	
Public Education Funds.....	28
No. 41773 (New Rule): R277-121 Board Waiver of Administrative Rules.....	30
No. 41774 (Repeal): R277-408 Grants for Online Testing.....	31
No. 41775 (Amendment): R277-410 Accreditation of Schools.....	33
No. 41776 (Amendment): R277-460 Distribution of Substance Abuse	
Prevention Account.....	36
No. 41777 (Repeal): R277-467 Distribution of Funds Appropriated for Library	
Media Materials and Electronic Resources.....	38
No. 41778 (Amendment): R277-479 Charter School Special Education Student	
Funding Formula.....	39
No. 41779 (Amendment): R277-484 Data Standards.....	41
No. 41780 (Amendment): R277-485 Loss of Enrollment.....	46
No. 41781 (Amendment): R277-488 Critical Languages Program.....	47
No. 41782 (Amendment): R277-489 Early Intervention Program.....	50
No. 41783 (New Rule): R277-493 Kindergarten Supplemental Enrichment Program.....	53
No. 41784 (New Rule): R277-514 Deaf Education in Public Schools.....	54
No. 41785 (Amendment): R277-520 Appropriate Licensing and Assignment	
of Teachers.....	56
No. 41786 (Amendment): R277-531 Public Educator Evaluation Requirements	
(PEER).....	60
No. 41787 (Amendment): R277-533 District Educator Evaluation Systems.....	62
No. 41788 (Amendment): R277-609-4 LEA Responsibilities to Develop Plans.....	65
No. 41789 (Repeal): R277-618 Educator Peer Assistance and Review Pilot	
Program (PAR Program).....	67
No. 41790 (Repeal): R277-720 Child Nutrition Programs.....	68
No. 41791 (Amendment): R277-733 Adult Education Programs.....	69
No. 41792 (Amendment): R277-735 Corrections Education Programs.....	78

TABLE OF CONTENTS

No. 41793 (New Rule): R277-753 LEA Reporting Requirements for Section 504 Students.....	82
No. 41794 (Amendment): R277-911 Secondary Career and Technical Education.....	84
No. 41795 (Amendment): R277-923 American Indian and Alaskan Native Education State Plan Pilot Program.....	89
Environmental Quality	
Air Quality	
No. 41814 (Amendment): R307-101-2 Definitions.....	91
No. 41809 (New Rule): R307-304 Solvent Cleaning.....	98
No. 41810 (Amendment): R307-335 Degreasing and Solvent Cleaning Operations.....	100
No. 41824 (Amendment): R307-343 Emissions Standards for Wood Furniture Manufacturing Operations.....	103
No. 41816 (Amendment): R307-344 Paper, Film, and Foil Coatings.....	108
No. 41817 (Amendment): R307-345 Fabric and Vinyl Coatings.....	111
No. 41818 (Amendment): R307-346 Metal Furniture Surface Coatings.....	114
No. 41819 (Amendment): R307-347 Large Appliance Surface Coatings.....	118
No. 41826 (Amendment): R307-348 Magnet Wire Coatings.....	121
No. 41820 (Amendment): R307-349 Flat Wood Panel Coatings.....	123
No. 41821 (Amendment): R307-350 Miscellaneous Metal Parts and Products Coatings.....	126
No. 41825 (Amendment): R307-351 Graphic Arts.....	132
No. 41822 (Amendment): R307-352 Metal Container, Closure, and Coil Coatings.....	138
No. 41823 (Amendment): R307-353 Plastic Parts Coatings.....	142
No. 41827 (Amendment): R307-354 Automotive Refinishing Coatings.....	146
No. 41830 (Amendment): R307-355 Control of Emissions from Aerospace Manufacture and Rework Facilities.....	150
Health	
Disease Control and Prevention, Epidemiology	
No. 41831 (Amendment): R386-703 Injury Reporting Rule.....	157
Human Resource Management	
Administration	
No. 41805 (Amendment): R477-1 Definitions.....	159
No. 41806 (Amendment): R477-2 Administration.....	164
No. 41807 (Amendment): R477-6 Compensation.....	167
No. 41808 (Amendment): R477-8 Working Conditions.....	172
Human Services	
Services for People with Disabilities	
No. 41802 (Amendment): R539-10 Short-Term Limited Waiting List Services.....	176
Natural Resources	
Wildlife Resources	
No. 41832 (Amendment): R657-6 Taking Upland Game.....	179
No. 41833 (Amendment): R657-54 Taking Wild Turkey.....	180
Science Technology and Research Governing Authority	
Administration	
No. 41804 (Repeal and Reenact): R856-1 USTAR Technology Acceleration Program Grants.....	182
No. 41812 (Repeal and Reenact): R856-2 USTAR University-Industry Partnership Program Grants.....	188
No. 41813 (Repeal and Reenact): R856-3 USTAR University Technology Acceleration Grants.....	195
No. 41815 (Repeal and Reenact): R856-4 USTAR Science Technology Initiation Grant.....	201
No. 41828 (Repeal and Reenact): R856-5 USTAR Energy Research Triangle Professors Grant.....	207
No. 41829 (Repeal and Reenact): R856-6 USTAR Energy Research Triangle Scholars Grant.....	214

<b>NOTICES 120-DAY (EMERGENCY) RULES.....</b>	<b>221</b>
Administrative Services	
Finance	
No. 41797: R25-7 Travel-Related Reimbursements for State Employees.....	221
<b>FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION.....</b>	<b>229</b>
Administrative Services	
Debt Collection	
No. 41743: R21-1 Transfer of Collection Responsibility of State Agencies.....	229
Auditor	
Administration	
No. 41764: R123-3 State Auditor Adjudicative Proceedings.....	230
No. 41765: R123-4 Public Petitions for Declaratory Orders.....	230
No. 41766: R123-5 Audit Requirements for Audits of Political Subdivisions and Nonprofit Organizations.....	231
Commerce	
Securities	
No. 41718: R164-9 Registration by Coordination.....	231
No. 41719: R164-10 Registration by Qualification.....	232
No. 41720: R164-11 Registration Statement.....	232
No. 41721: R164-12 Sales Commission.....	233
No. 41722: R164-14 Exemptions.....	233
No. 41723: R164-15 Federal Covered Securities.....	233
No. 41726: R164-26 Consent to Service of Process.....	234
Education	
Administration	
No. 41732: R277-101 Utah State Board of Education Procedures.....	235
No. 41733: R277-410 Accreditation of Schools.....	235
No. 41734: R277-460 Distribution of Substance Abuse Prevention Account.....	236
No. 41735: R277-484 Data Standards.....	236
No. 41736: R277-485 Loss of Enrollment.....	237
No. 41737: R277-488 Critical Languages Program.....	237
No. 41738: R277-489 Early Intervention Program.....	238
No. 41739: R277-520 Appropriate Licensing and Assignment of Teachers.....	238
No. 41740: R277-733 Adult Education Programs.....	239
No. 41741: R277-735 Corrections Education Programs.....	239
No. 41742: R277-911 Secondary Career and Technical Education.....	240
Environmental Quality	
Water Quality	
No. 41800: R317-801 Utah Sewer Management Program (USMP).....	240
Health	
Health Care Financing, Coverage and Reimbursement Policy	
No. 41803: R414-60A Drug Utilization Review Board.....	241
No. 41811: R414-60B Preferred Drug List.....	241
Human Services	
Recovery Services	
No. 41724: R527-378 Withholding of Social Security Benefits.....	242
No. 41725: R527-601 Establishing or Modifying an Administrative Award for Child Support.....	242
No. 41727: R527-928 Lost Checks.....	243
Insurance	
Administration	
No. 41731: R590-122 Permissible Arbitration Provisions.....	243
No. 41729: R590-149 Americans with Disabilities Act (ADA) Grievance Procedures.....	244
No. 41730: R590-173 Credit for Reinsurance.....	245
No. 41728: R590-240 Procedure to Obtain Exemption of Student Health Programs From Insurance Code.....	245

TABLE OF CONTENTS

---

Natural Resources

Oil, Gas and Mining Board

No. 41744: R641-100 General Provisions..... 246  
No. 41745: R641-101 Parties..... 246  
No. 41746: R641-102 Appearances and Representations..... 247  
No. 41747: R641-103 Intervention..... 247  
No. 41748: R641-104 Pleadings..... 248  
No. 41749: R641-105 Filing and Service..... 248  
No. 41750: R641-106 Notice and Service..... 249  
No. 41750: R641-106 Notice and Service..... 249  
No. 41751: R641-107 Prehearing Conference..... 249  
No. 41752: R641-108 Conduct of Hearings..... 250  
No. 41753: R641-109 Decisions and Orders..... 250  
No. 41754: R641-110 Rehearing and Modification of Existing Orders..... 251  
No. 41755: R641-111 Declaratory Rulings..... 251  
No. 41756: R641-112 Rulemaking..... 252  
No. 41757: R641-113 Hearing Examiners..... 252  
No. 41758: R641-114 Exhaustion of Administrative Remedies..... 253  
No. 41759: R641-115 Deadline for Judicial Review..... 253  
No. 41760: R641-116 Judicial Review of Formal Adjudicative Proceedings..... 254  
No. 41761: R641-117 Civil Enforcement..... 254  
No. 41762: R641-118 Waivers..... 255  
No. 41763: R641-119 Severability..... 255

Wildlife Resources

No. 41834: R657-14 Commercial Harvesting of Protected Aquatic Wildlife..... 256

Transportation

Operations, Traffic and Safety

No. 41767: R920-4 Special Road Use or Event..... 256

**NOTICES OF RULE EFFECTIVE DATES..... 259**

**RULES INDEX**

**BY AGENCY (CODE NUMBER)**

**AND**

**BY KEYWORD (SUBJECT)..... 261**

# SPECIAL NOTICES

---

## Environmental Quality Air Quality

### Public Notice of Section 110(l) Demonstration

Section 110(l) of the Clean Air Act (CAA) indicates that EPA cannot approve a state implementation plan (SIP) revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. When the SIP is revised, the Act requires that an analysis is conducted to verify that the SIP will not be relaxed in a way that would be impermissible under Section 110(l).

The Utah Air Quality Board is proposing amendments to three SIP rules that trigger the 110(l) requirements. These include: Rule R307-343, *Emissions Standards for Wood Furniture Manufacturing Operations*; Rule R307-335, *Degreasing and Solvent Cleaning Operations*; and new Rule R307-304, *Solvent Cleaning*.

Comments will be accepted by the Utah Division of Air Quality (DAQ) from July 1 to July 31, 2017. The 110(l) demonstration will be posted on the DAQ website at <https://deq.utah.gov/NewsNotices/notices/air/Pubrule.htm>.

*Comments may be submitted by e-mail to [Jkarmazyn@utah.gov](mailto:Jkarmazyn@utah.gov) or by mail to: Joel Karmazyn, DAQ, PO Box 144820, 195 North 1950 West, Salt Lake City, UT 84114-4820*

**End of the Special Notices Section**





# EXECUTIVE DOCUMENTS

---

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

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

---

## Executive Order Creating an Executive Water Finance Board, Utah Exec. Order No. 2017-5

### EXECUTIVE ORDER

#### Executive Order Creating an Executive Water Finance Board

**WHEREAS**, Utah has been ranked by the United States Census Bureau as the fastest growing state in the country with a population growth rate that is double the national average;

**WHEREAS**, Utah is one of the driest states in the nation and water use and conservation is a topic of significant concern;

**WHEREAS**, the United States Geological Survey indicates that Utah has one of the highest per capita municipal and industrial water use rates in the nation;

**WHEREAS**, assuming current municipal and industrial water usage rates continue unchanged, the demand for water will exceed supply in coming decades;

**WHEREAS**, most of Utah's projected population growth will occur in areas that will require a combination of increased conservation, new water resources, and more efficient use of existing infrastructure;

**WHEREAS**, the federal government has greatly reduced its participation in paying for water projects;

**WHEREAS**, new development and growth frequently occurs in agricultural areas and conversion of that land may allow for conversion of those existing water resources;

**WHEREAS**, more judicious use of existing water could delay the need for the construction of new major water development projects;

**WHEREAS**, the estimated costs of repair and replacement for existing infrastructure is billions of dollars for the coming decades;

**WHEREAS**, expanding water infrastructure is expensive, and requires increases in local water rates and potential increases in taxes statewide;

**WHEREAS**, state funds are currently allocated to finance certain water projects;

**WHEREAS**, current requests and proposals for future water projects involve the use of state tax dollars and state bonding capacity--often with delayed and indeterminate repayment schedules in excess of several decades;

**WHEREAS**, Utah's water user rates are among the lowest in the country, due both to a favorable natural topographic condition and public policy decisions to subsidize water use;

**WHEREAS**, the Legislature has appropriated funds for rebates to improve outdoor watering efficiency, which may help to reduce future per capita demand for outdoor water;

**WHEREAS**, technological advancements and analytical tools that provide additional information to water users have proven successful in reducing water use in implemented locations throughout the state;

**WHEREAS**, many customers have not been paying the true cost of water due to tax subsidies and failure to build budgetary reserves for repairing and replacing existing infrastructure;

**WHEREAS**, Utah needs a comprehensive view of water management and other strategies, including an understanding of the role of meaningful price signals on water demand;

**WHEREAS**, it is in the best interest of the taxpayer and the state to ensure the highest return on every taxpayer dollar invested;

**WHEREAS**, a prudent study of the fiscal implications of water delivery must be considered prior to state commitment to and involvement in any major water project;

**WHEREAS**, while other committees and task forces have been established to review water policy, none focus on the financial, budgetary, and economic impacts of significant, state-sponsored water projects and none have the required expertise to thoroughly analyze the financing models, bonding scenarios, and budgetary impacts of such projects.

**NOW THEREFORE**, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and laws of the State of Utah, do hereby establish the Executive Water Finance Board and order the following:

1. Purpose

There is established an Executive Water Finance Board to provide detailed review and analysis of proposed major water projects that would rely on state funding and financing to:

- a. ensure the State of Utah maintains a financial policy related to water that is fiscally prudent and sustainable;
- b. ensure Utah's limited water resources are used wisely;
- c. conduct financial and economic reviews and analysis of proposed water projects that may rely on state funding and/or financing; and
- d. examine the financial and economic aspects of both the demand for and the supply of water

2. Membership

a. The Executive Water Finance Board shall include, but not be limited to, the following members appointed by the Governor:

- i. a representative of the Governor's Office of Management and Budget;
- ii. the State Planning Coordinator;
- iii. the State Treasurer, or their designee;
- iv. a representative of the private sector with extensive experience in bonding and financial markets;
- v. a representative of local government with extensive experience in water related issues and water infrastructure;
- vi. an individual with extensive experience in economics; and
- vii. a representative of the Department of Natural Resources

b. members shall be appointed to serve 4 year terms.

### 3. Governance

- a. the Governor shall appoint the chair of the Board;
- b. the chair shall establish the Board's agenda and meeting schedule;
- c. the Board shall be staffed by the Governor's Office of Management and Budget;
- d. the Board shall meet as often as is needed.

### 4. Duties

The Board shall:

- a. analyze the fiscal and economic impacts of proposed water supply projects;
- b. provide a public forum in which to discuss water funding and financing scenarios, data, and the potential conservation impacts of changes in water prices;
- c. recommend strategies to minimize the financial burden to state taxpayers related to water projects, use state funds invested in water in the most prudent manner possible, and use market-driven solutions to more efficiently direct existing resources;
- d. review and make recommendations related to the impact of proposals and plans that impact water demand, including water prices and water demand data; and
- e. make an annual report to the Governor on the status of water funding, financing, and other relevant issues by December 15th of each year.

5. This Board is authorized and shall carry out the provisions of this order until July 1, 2027, at which point it may be reauthorized.

**IN WITNESS, WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, on this, the 13th day of June 2017.

(State Seal)

**Gary R. Herbert**  
Governor

Attest:

**Spencer J. Cox**  
Lieutenant Governor

2017/005/EO

**End of the Executive Documents Section**



## NOTICES OF PROPOSED RULES

---

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between June 02, 2017, 12:00 a.m., and June 15, 2017, 11:59 p.m. are included in this, the July 01, 2017, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least July 31, 2017. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through October 29, 2017, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

---

**The Proposed Rules Begin on the Following Page**

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

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41798

FILED: 06/09/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Due to the increase in consumer price index for food, the Division of Finance has determined that reimbursement rates should also increase. Also, the reimbursement rate will increase per mile for a private vehicle. This is because the rate is based on the Utah Division of Fleet Operations costs for mileage reimbursements, which increased.

**SUMMARY OF THE RULE OR CHANGE:** The rule increases reimbursement rates for in-state food reimbursements, and increases mileage reimbursements for use of a private vehicle. (Editor's Note: A corresponding 120-day (emergency) rule that is effective as of 07/01/2017 is under Filing No. 41797 in this issue, July 1, 2017, of the Bulletin.)

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will potentially be an increased cost to the state as in-state food per diem rates have increased, and mileage reimbursement rates have increased for private vehicles. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

◆ **LOCAL GOVERNMENTS:** There will potentially be an increased cost to certain local governments as in-state food per diem rates have increased, and mileage reimbursement rates have increased for private vehicles. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

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

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

travel, and people will see a slight increase in their mileage reimbursement if using a private vehicle. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

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

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I have reviewed these changes with the Division of Finance Director and believe these changes are reasonable and warranted. After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 ADMINISTRATIVE SERVICES  
 FINANCE  
 ROOM 2110 STATE OFFICE BLDG  
 450 N STATE ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017**

**AUTHORIZED BY:** John Reidhead, Director

**R25. Administrative Services, Finance.**

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

**R25-7-1. Purpose.**

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

**R25-7-2. Authority and Exemptions.**

This rule is established pursuant to:

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

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

**R25-7-3. Definitions.**

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

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

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

(4) "Finance" means the Division of Finance.

(5) "Home-Base" means the location the employee leaves from and/or returns to.

(6) "Per diem" means an allowance paid daily.

(7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(8) "Rate" means an amount of money.

(9) "Reimbursement" means money paid to compensate an employee for money spent.

(10) "State employee" means any person who is paid on the state payroll system.

**R25-7-4. Eligible Expenses.**

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

**R25-7-5. Approvals.**

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

**R25-7-6. Reimbursement for Meals.**

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is [~~\$41.00~~]\$42.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00
Dinner	[ <del>\$17.00</del> ] <u>\$18.00</u>
Total	[ <del>\$41.00</del> ] <u>\$42.00</u>

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

TABLE 2

Out-of-State Travel Meal Allowances

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

(4) When traveling to a Tier I premium location (Anchorage, Chicago, Hawaii, New York City, San Francisco, and Seattle), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to [~~\$66~~]\$67 per day.

When traveling to a Tier II premium location (Atlanta, Baltimore, Boston, Dallas, Los Angeles, San Diego, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to [~~\$57~~]\$58 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the premium location allowance as follows:

Tier I Location

(i) If breakfast is provided deduct \$15, leaving a premium allowance for lunch and dinner of actual up to [~~\$51~~]\$52.

(ii) If lunch is provided deduct \$20, leaving a premium allowance for breakfast and dinner of actual up to [~~\$46~~]\$47.

(iii) If dinner is provided deduct [~~\$31~~]\$32, leaving a premium allowance for breakfast and lunch of actual up to \$35.

Tier II Location

(i) If breakfast is provided deduct \$13, leaving a premium allowance for lunch and dinner of actual up to [~~\$44~~]\$45.

(ii) If lunch is provided deduct \$17, leaving a premium allowance for breakfast and dinner of actual up to [~~\$40~~]\$41.

(iii) If dinner is provided deduct [~~\$27~~]\$28, leaving a premium allowance for breakfast and lunch of actual up to \$30.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel (as shown

above) or to be reimbursed the actual meal cost, with original receipts, not to exceed the United States Department of State Meal and Incidental Expenses (M and IE) rate for their location.

(a) The traveler may ~~combine the~~ use both reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

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

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

TABLE 3

The Day Travel Begins

1st Quarter a.m. 12:00-5:59 *B, L, D	2nd Quarter a.m. 6:00-11:59 *L, D	3rd Quarter p.m. 12:00-5:59 *D	4th Quarter p.m. 6:00-11:59 *no meals
In-State [ <del>\$41.00</del> ] <u>\$42.00</u>	[ <del>\$31.00</del> ] <u>\$32.00</u>	[ <del>\$17.00</del> ] <u>\$18.00</u>	\$0
Out-of-State \$46.00	\$36.00	\$22.00	\$0

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

(b) The days at the location.

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

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

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

TABLE 4

The Day Travel Ends

1st Quarter a.m. 12:00-6:00 *no meals	2nd Quarter a.m. 6:01-12:00 *B	3rd Quarter p.m. 12:01-6:00 *B, L	4th Quarter p.m. 6:01-11:59 *B, L, D
In-State \$0	\$10.00	\$24.00	[ <del>\$41.00</del> ] <u>\$42.00</u>
Out-of-State \$0	\$10.00	\$24.00	\$46.00

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

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

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

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

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

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

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

(c) Dinner is paid when the employee leaves their home base and returns ~~[at 6]~~ after 6:00 p.m. ~~[or later.]~~

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

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

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

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

**R25-7-8. Reimbursement for Lodging.**

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

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

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

TABLE 5

Cities with Differing Rates

Beaver	\$75.00 plus tax and mandatory fees
Blanding	\$75.00 plus tax and mandatory fees
Bluff	\$90.00 plus tax and mandatory fees
Brigham City	\$80.00 plus tax and mandatory fees
Bryce Canyon City	\$75.00 plus tax and mandatory fees
Cedar City	\$80.00 plus tax and mandatory fees
Duchesne	\$80.00 plus tax and mandatory fees
Ephraim	\$75.00 plus tax and mandatory fees
Farmington	\$85.00 plus tax and mandatory fees
Fillmore	\$75.00 plus tax and mandatory fees



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **R25-7-9. Reimbursement for Incidentals.**

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

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

(a) Tips for doormen and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above \$19.99.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of \$20 or more.

(3) Registration should be paid in advance on a state warrant, or with a state ~~[purchase]~~purchasing card~~[-]; [-or with a state travel card.]~~

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.

(5) Allowances for personal telephone calls made while out of town on state business overnight may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.

(a) Four nights or less - actual amount up to \$2.50 per night.

(b) Five to eleven nights - actual amount up to \$20.00

(c) Twelve nights to thirty nights - actual amount up to \$30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to \$18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of \$5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

#### **R25-7-10. Reimbursement for Transportation.**

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

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

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

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

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

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

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

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

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

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

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

(b) Reimbursement for a private vehicle will be at the rate of ~~[38]~~40 cents per mile or 53 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use

either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 53 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of ~~[38]~~40 cents per mile.

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

(d) Any exceptions to this mileage reimbursement rate guidance must be approved in writing by the employees Executive Director or designee.

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

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

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

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

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

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

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of ~~[38]~~40 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

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

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

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

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

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

(d) If the travel time taken for driving during the employee's normal work week is greater than that which would

have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

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

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

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

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

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

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

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

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

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

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

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

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

(d) Reimbursement will be made at 53 cents per mile.

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

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

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

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

**Date of Enactment or Last Substantive Amendment: ~~[March 10], 2017~~**

**Notice of Continuation: April 15, 2013**

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

**Administrative Services, Purchasing  
and General Services  
R33-26  
State Surplus Property**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41799

FILED: 06/12/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the rule change is to bring the rule into compliance with laws set forth in statute regarding the disposal of surplus property.

**SUMMARY OF THE RULE OR CHANGE:** The changes to this rule include correcting capitalization errors; correcting the formatting of statute and rule citations; the addition of the definitions of "state agency" and "state surplus property"; the addition of Section R33-26-200 which outlines the disposition of surplus property; the addition of an exception for directors and state officials to sell or gift surplus state-owned electronic devices via on-line auction if certain conditions are met; the addition of Subsection R33-26-202(3) which allows for the transfer of state surplus property from one state agency directly to another without Division of Purchasing approval, the removal of Sections R33-26-203, R33-26-701, and R33-26-801; and the addition of Section R33-26-900 which provides the website for the state surplus property rates and fees.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 63A, Chapter 2

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. This rule simply outlines the internal procedures that state agencies must follow to dispose of surplus property in accordance with the laws set forth in statute.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. This rule simply outlines the internal procedures that state agencies must follow to dispose of surplus property in accordance with the laws set forth in statute.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule simply outlines the internal procedures that state agencies must follow to dispose of surplus property in accordance with the laws set forth in statute.
- ◆ **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 governments. This rule simply outlines the internal procedures that state

agencies must follow to dispose of surplus property in accordance with the laws set forth in statute.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated costs or savings for affected persons. This rule simply outlines the internal procedures that state agencies must follow to dispose of surplus property in accordance with the laws set forth in statute.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Fay Tan by phone at 801-538-3524, or by Internet E-mail at [ftan@utah.gov](mailto:ftan@utah.gov)
- ◆ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at [kbeers@utah.gov](mailto:kbeers@utah.gov)
- ◆ Simone Rudas by phone at 801-538-3240, or by Internet E-mail at [srudas@utah.gov](mailto:srudas@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017**

**AUTHORIZED BY:** Kent Beers, Director

**R33. Administrative Services, Purchasing and General Services.**

**R33-26. State Surplus Property.**

**R33-26-101. State-Owned Surplus Property -- General.**

This rule sets forth policies and procedures which govern the acquisition and disposition of [s]State-owned and federal surplus property items, and vehicles. It applies to all [s]State and local public agencies and eligible non-profit educational and health institutions when dealing with federal surplus property. It also applies to all state agencies unless specifically exempted by law and to the general public when dealing with the [s]State [s]Surplus [p]Property agency.

**R33-26-102. Requirements.**

Under the provisions of Section 63A[~~Chapter~~]-2[~~Section~~]-103, the Division of Purchasing and General Services shall manage and administer the State's surplus property program, including:

(1) The federal surplus property program as the Utah State Agency for Surplus Property and in compliance with 41 CFR 102-37 and Public Law 94-519 through a State Plan of Operation. The standards and procedures governing the contract between the state and the federal government are contained in the Plan of Operation.

(2) The disposition of state[-]-owned surplus property items, including vehicles and non-vehicle surplus property.

(3) Information technology equipment.

### **R33-26-103. Definitions.**

All definitions in Section 63A-2-101.5 shall apply to Rule R33-26. In addition the following definitions shall apply to Rule R33-26:

~~(1) [Terms used in the Surplus Property Rules are defined in Section 63A-2-101.5.~~

~~(2) In addition:~~

~~(a) ]~~"All-terrain type I vehicle" means any motor vehicle 52 inches or less in width, having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain;

~~(b) ]~~"All-terrain type II vehicle" means any other motor vehicle, not defined in ~~[Subsection (2), (11), or (22)]~~Section 103 designed for or capable of travel over unimproved terrain and includes a class A side-by-side vehicle. "All-terrain type II vehicle" does not include golf carts, any vehicle designed to carry a person with a disability, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.

(3) "Aircraft" means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

(4) "Bundled sale" means the act of packaging or grouping multiple State-owned surplus property items together for the purpose of offering those items for sale in a single transaction in which the buyer receives all surplus property items bundled together and sold in the transaction.

(5) "Camper" means any structure designed, used, and maintained primarily to be mounted on or affixed to a motor vehicle that contains a floor and is designed to provide a mobile dwelling, sleeping place, commercial space, or facilities for human habitation or for camping.

(6) "Disposition" means the act of selling, disposing, or transferring state-owned vehicle and non-vehicle property, declared to be surplus property, to the care, custody, or possession of another person.

(7) "Division" means the Division of Purchasing and General Services within the Department of Administrative Services created under Section 63A-2-101.

(8) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(9) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

(10) "Motorcycle" means a motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

(11) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.

(12) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(13) As used in this section "Personal handheld electronic device":

(a) means an electronic device that is designed for personal handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and,

(b) includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.

(14) "Personal Watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

(15)(a) "Pickup truck" means a two-axle motor vehicle with motive power manufactured, remanufactured, or materially altered to provide an open cargo area.

(b) "Pickup truck" includes motor vehicles with the open cargo area covered with a camper, camper shell, tarp, removable tarp, or similar structure.

(16) "Reconstructed vehicle" means every vehicle type required to be registered in this state that is materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(17)(a) "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either self-propelled or pulled by another vehicle.

(b) "Recreational vehicle" includes:

(i) a travel trailer;

(ii) a camping trailer;

(iii) a motor home;

(iv) a fifth wheel trailer; and

(v) a van.

(18) "Road tractor" means every motor vehicle designed and used for drawing other vehicles and constructed so it does not carry and load either independently or any part of the weight of a vehicle or load this is drawn.

(19) "Sailboat" means any vessel having one or more sails and propelled by wind.

(20) "Semitrailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests or is carried by another vehicle.

(21)(a) "Special mobile equipment" means every vehicle:

(i) not designed or used primarily for the transportation of persons or property;

(ii) not designed to operate in traffic; and

(iii) only incidentally operated or moved over the highways.

(b) "special mobile equipment" includes:

(i) farm tractors;

(ii) on or off-road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, and trenchers;

(iii) ditch-digging apparatus; and  
 (iv) forklifts, warehouse equipment, golf carts, electric carts, etc.

(22) "State agency" means any executive branch department, division, or other agency of the state.

(23) "State-owned surplus property item":

(a) means state-owned property as defined in Section 63A-2-101.5 and Section R33-26-103 whether acquired by purchase, seizure, donation, or otherwise:

(i) that is no longer being used by the state or no longer usable by the state;

(ii) that is out of date;

(iii) that is damaged and cannot be repaired or cannot be repaired at a cost that is less than the property's value;

(iv) whose useful life span has expired; or

(v) that the state agency possessing the property determines is not required to meet the needs or responsibilities of the state agency;

(b) includes:

(i) a motor vehicle as defined in Section R33-26-103;

(ii) equipment;

(iii) furniture;

(iv) information technology equipment; and

(v) supplies; and

(c) does not include:

(i) real property;

(ii) an asset of the School and Institutional Trust Lands Administration, established in Section 53C-1-201;

(iii) a firearm or ammunition; or

(iv) an office or household item made of aluminum, paper, plastic, cardboard, or other recyclable material, without any meaningful value except for recycling purposes.

(24) "Trailer" means a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(~~23~~25) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle without motive power, designed as a temporary dwelling for travel, recreational, or vacation use that does not require a special highway movement permit when drawn by a self-propelled motor vehicle.

(~~24~~26) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

[~~25~~25) "USASP" means Utah State Agency for Surplus Property.]

(~~26~~27) "Vehicle" means:

[~~27~~27) (a) as defined in Rule R33-25-103:]

(~~i~~)a) all-terrain vehicle type I and II,

(~~ii~~)b) aircraft,

(~~iii~~)c) camper,

(~~iv~~)d) farm tractor,

(~~v~~)e) motor boat,

(~~vi~~)f) motorcycle,

(~~vii~~)g) motor vehicle,

(~~viii~~)h) off highway vehicle,

(~~ix~~)i) personal watercraft,

(~~x~~)j) pickup truck,

(~~xii~~)k) reconstructed vehicle,

(~~xiii~~)l) recreational vehicle,

(~~xiiii~~)m) road tractor,

(~~xv~~)n) sailboat,

(~~xvi~~)o) semitrailer,

(~~xvii~~)p) special mobile equipment,

(~~xviii~~)q) trailer,

(~~xix~~)r) travel trailer,

(~~xx~~)s) truck tractor,

(~~xxi~~)t) vessel; and

(~~27~~28) "Vessel" means every type of watercraft, other

than a seaplane on the water, used or capable of being used as a means of transportation on water.

### **R33-26-200. Disposition of State-Owned Surplus Property Items**

(1) The State surplus property program shall be administered by the Department of Administrative Services, Division of Purchasing and General Services.

(2) Disposition of State-owned surplus property items shall be through the following methods:

(a) Online auction;

(b) Live auction;

(c) Pick up, sale, and disposal;

(d) Disposal;

(e) Destruction;

(f) Direct sale to the public;

(g) Donation to a public school or state administered program; or

(h) Another method approved by the director of the divisions.

(3) State agencies shall complete Form SP-1 and electronically transmit it to the State Surplus Property agency.

(a) Completion of Form SP-1 meets the requirements set forth in Subsection 63A-2-401(7) for a state agency to declare State property as surplus.

(i) Form SP-1 may be accessed at: surplus.utah.gov;

(ii) The following information must be included on Form SP-1:

(A) a minimum of two digital photographs for each State-owned surplus property item being listed for sale;

(B) a brief description of the State-owned surplus property item detailing its condition;

(C) an estimate of the State-owned surplus property item's value;

(D) the location of the State-owned surplus property item; and

(E) the contact information of the person assigned by the state agency to assist the public with the transaction.

(4) Online auction shall be the primary method used for the disposition of non-vehicle State-owned surplus property items.

(a) Online auctions shall be administered by the State Surplus Property agency.

(b) Each state agency will be responsible for:

(i) Storing State-owned surplus property items on site until the online auction has been completed and each State-owned surplus property item is:

(A) picked up by the person to whom the item has been sold to via online auction;

\_\_\_\_\_ (B) disposed of or donated by the state agency;  
\_\_\_\_\_ (C) picked up by the vendor under contract with the division; or  
\_\_\_\_\_ (D) picked up by a local vendor under contract with the state agency;  
\_\_\_\_\_ (ii) Assigning an employee of the agency to assist the public with the online auction including:  
\_\_\_\_\_ (A) answering questions about the State-owned surplus property item;  
\_\_\_\_\_ (B) providing directions;  
\_\_\_\_\_ (C) scheduling the pickup;  
\_\_\_\_\_ (D) other miscellaneous tasks; and  
\_\_\_\_\_ (iii) Developing internal policies regarding employees:  
\_\_\_\_\_ (A) assisting the public with lifting and transporting State-owned surplus property items;  
\_\_\_\_\_ (B) transporting State-owned surplus property items with a minimal value of less than \$100 to charities for donation;  
\_\_\_\_\_ (C) receiving State-owned surplus property items with a minimal value of less than \$100 as a donation by the state agency.  
\_\_\_\_\_ (c) A state agency may seek an exception from the requirement to dispose of State-owned surplus property items through online auction in accordance with Subsection 63A-2-401(3).  
\_\_\_\_\_ (i) State agencies that are granted an exception must:  
\_\_\_\_\_ (A) complete Form SP-1 and transmit it to the State Surplus Property agency; and  
\_\_\_\_\_ (B) coordinate with the State Surplus Property agency to schedule a date and time for State-owned surplus property items to be delivered.  
\_\_\_\_\_ (ii) State agencies may contract with the State Surplus Property agency to have items identified in subsection (4)(c)(i) picked up and delivered to the State Surplus Property agency in accordance with the authorized fee schedule.  
\_\_\_\_\_ (iii) State agencies may contract with a vendor to have items identified in subsection (4)(c)(i) picked up and delivered to the State Surplus Property agency.  
\_\_\_\_\_ (5) The State Surplus Property agency shall administer the disposition of State-owned surplus vehicles.  
\_\_\_\_\_ (a) State-owned surplus vehicles may be sold at the agency location or delivered to the State Surplus Property agency for disposition.  
\_\_\_\_\_ (6) State-owned surplus electronic data devices shall be disposed of in accordance with  
Rule R33-26-202.  
\_\_\_\_\_ (7)(a) State-owned surplus property items with a minimal value may be disposed of as waste by a state agency in accordance with Subsection 63A-2-411.  
\_\_\_\_\_ (b) State-owned surplus property items that do not appreciate in value that had an initial purchase price of less than \$100 or deemed to be valued at less than \$100 by the State Surplus Property agency:  
\_\_\_\_\_ (i) may be disposed of as waste by a state agency by the means described in Subsection 63A-2-411(3); or  
\_\_\_\_\_ (ii) may be packaged together and sold as a bundled sale.  
\_\_\_\_\_ (8) The State Surplus Property agency is not authorized to accept or dispose of hazardous waste or any item containing hazardous waste. State agencies must dispose of hazardous waste and items containing hazardous waste in accordance with applicable laws.

\_\_\_\_\_ (9) State agencies that cannot or elect not to dispose of a surplus item having a minimal value of less than \$100 as waste in the trash, donate the item to a charity, or donate the item to an employee of the state agency, may contract with a vendor to dispose of the item, recycle the item, or repurpose the item.

\_\_\_\_\_ (a) State agencies may contract with the State Surplus Property agency to have items identified in Subsection (9) picked up and delivered to the State Surplus Property agency in accordance with the authorized fee schedule.

\_\_\_\_\_ (b) State agencies may contract with a private sector vendor to have items identified in Subsection (9) picked up and delivered to the State Surplus Property agency.

### **R33-26-201. Non-vehicle Disposition Procedures.**

(1) State-owned, non-vehicle personal property shall not be destroyed, sold, transferred, traded-in, traded, discarded, donated or otherwise disposed of unless the procedures set forth in this Rule are followed.

(2) This rule applies to and includes any residue that may be remaining from agency cannibalization of property.

(3) When a department ~~or~~ state agency ~~of state government~~ determines that state-owned non-vehicle personal property is in excess ~~to~~ of current needs, it will:

(a) transfer the state-owned non-vehicle surplus property items directly to another department or agency of the state without involvement of the division; or

(b) notify ~~state surplus property~~ the State Surplus Property agency that the ~~department or~~ agency has a State-owned surplus property item.

### **R33-26-202. Disposal of State-Owned Surplus Electronic Data Devices.**

(1) For the purpose of this rule, Electronic Data Device means an electronic device capable of downloading, storing or transferring State-owned data. Electronic Data Devices include:

- (a) Computers;
- (b) Tablets (iPad[s], Surface Pro, Google Nexus, Samsung Galaxy, etc.);
- (c) Smart phones;
- (d) Personal Digital Assistants (PDAs);
- (e) Digital copiers and multifunction printers;
- (f) Flash drives and other portable data storage devices;

and

- (g) Other similar devices.

(2) The State has determined that the security risk of a potential data breach resulting from the improper disposal or sale of an electronic data device, as defined in this rule, outweigh the potential revenue that may be received by the State from the sale of an electronic data device deemed surplus property. Therefore, the State has adopted this Administrative Rule regarding the proper disposal of State-owned surplus electronic data devices:

(a) Each State agency shall ensure that all surplus State-owned electronic data devices are disposed of in accordance with the following procedures.

(b) Surplus State-owned electronic devices defined under this Rule may not be sold or gifted via on-line auction or any other means.

~~(i) An exception for directors and other State officials may be granted by the Director of the Division of Purchasing after receiving documentation from:~~

~~(A) the Executive Director of the Department of Technology Services certifying that all connectivity to sensitive, confidential, protected, and classified State data has been removed from the State-owned electronic data device and that the State-owned electronic data device no longer has access to the State's network; and~~

~~(B) the State Surplus Property agency regarding the market value of the State-owned electronic data device.~~

~~(c) Surplus State-owned electronic data devices must be disposed of through the vendor under contract with the State, unless a separate contractual agreement has been entered into with the manufacturer or supplier of the device for proper destruction and disposal.~~

~~(d) The Division of Purchasing shall enter into a contract with a vendor for the destruction and proper disposal of all State-owned surplus electronic data devices.~~

~~(e) Proper disposal includes:~~

~~(i) Recycling components and parts after the State-owned electronic data device has been destroyed to the point that State-owned data cannot be retrieved;~~

~~(ii) Disposal in a landfill approved for electronic waste after the State-owned electronic data device has been destroyed to the point that State-owned data cannot be retrieved; or~~

~~(iii) Resale by the contractor of [€]computers, digital copiers and multifunction printers that have had the hard drive destroyed[ may be resold by the contractor].~~

~~(f) State agencies shall request assistance from the Department of Technology Services (DTS) to destroy the hard drives of computers and other State-owned surplus electronic data devices purchased through DTS prior to the agency transferring the devices to the vendor under contract with the State.~~

~~(g) State agencies shall contact the vendor under contract with the State to destroy and properly dispose of all other State-owned surplus electronic data communication devices.~~

~~(3) Subject to Subsections (1) and (2), except as it relates to a vehicle or federal surplus property items, the transfer of surplus property items from one state agency directly another does not require approval by the division, the director of the division, or any other person.~~

~~**[R33-26-203. Information Technology Equipment.**~~

~~(1) Subject to Subsections R33-26-202(1) and (2), State-owned information technology equipment may be transferred directly to public institutions, such as schools and libraries, by the owning agency, contingent upon certification and approval from the Department of Technology Services that all State-owned data has been removed from the equipment.~~

~~(2) Subject to Subsections R33-26-202(1) and (2), pursuant to the provisions of Section 63A-2-407, state-owned information technology equipment may be transferred directly to non-profit entities for distribution to, and use by, persons with a disability as defined in Subsection 62A-5-101(9). However, interagency transfers shall have priority over transfers under this subsection.~~

~~(3) Prior to submitting information technology equipment to the state surplus property contractor, another department or~~

~~agency, or donating it directly to public institutions or non-profit entities, agencies shall comply with the provisions of Section R33-26-202.~~

~~(4) Subject to Subsections R33-26-202(1) and (2), except as it relates to a vehicle or federal surplus property, the transfer of surplus property from one agency directly to another does not require approval by the division, the director of the division, or any other person.]~~

**R33-26-204. Federal Surplus Property.**

(1) Federal [S]surplus [P]property items are [is-]not available for sale to the general public. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program.

(2) Public auctions of federal surplus property are authorized under certain circumstances and conditions. The division shall coordinate such auctions when deemed necessary or appropriate. Federal surplus property auctions are primarily conducted online, but are regulated and accomplished by the U.S. General Services Administration.

**R33-26-205. Related Party Transactions.**

(1) The division has a duty to the public to ensure that State-owned surplus property is disposed of in accordance with [Section]Title 63A,[-]Chapter 2. A conflict of interest may exist or appear to exist when a related party attempts to purchase a State-owned surplus property item.

(2) A related party is defined as someone who may fit into any of the following categories pertaining to the State-owned surplus property item in question:

- (a) has purchasing authority;
- (b) has maintenance authority;
- (c) has disposition or signature authority;
- (d) has authority regarding the disposal price;
- (e) has access to restricted information; and
- (f) [has]may be perceived to be a related party using other criteria which may prohibit independence.

**R33-26-206. Priorities.**

(1) Public agencies are given priority for the purchase of [s]State-owned surplus property items.

(2) Property that is determined by the Division to be unique, in short supply or in high demand by public agencies may be held for a period of up to 30 days before being offered for sale to the general public by [s]Surplus [p]Property.

(3) For this [R]rule, the entities listed below, in priority order, are considered to be public agencies:

- (a) state [A]agencies;
- (b) state [U]universities, [€]colleges, and [€]community [€]colleges;
- (c) other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies;
- (d) other tax-[-]supported educational entities; then
- (e) non-profit health and educational institutions.
- (4) State-owned [personal]surplus property items that [is]are not purchased by or transferred to public agencies may be offered for public sale.



(5) The division shall make the determination as to whether property is subject to hold period. The decision shall consider the following:

- (a) the cost to the [s]State;
- (b) the potential liability to the [s]State;
- (c) the overall best interest of the [s]State.

**R33-26-301. Accounting and Reimbursement Procedures.**

(1) The division will record and maintain records of all transactions related to the acquisition and sale of all [s]State and federal surplus property items.

(2) The division may maintain a federal working capital reserve not to exceed one year's operating expenses. In the event the division accumulates funds in excess of the allowable working capital reserve, they will reduce the Retained Earnings balance accordingly. The only exception is where the division is accumulating excess funds in anticipation of the purchase of new facilities or capital items. Prior to the accumulation of excess funds, the division must obtain the written approval of the Executive Director of the Department of Administrative Services.

**R33-26-302. Reimbursement.**

(1) Reimbursement to state agencies from the sale of their vehicles and non-vehicle items will be made through the Division of Finance ~~[on]~~ via interagency transfers or warrant requests. The division is authorized to deduct operating costs from the selling price of all vehicles and non-vehicle items. In all cases property will be priced to ~~[sale]~~ sell for fair market value. Items that are not marketable for whatever reason may be discounted in price or disposed of by abandonment, donation, or sold as scrap.

(2) Payment for vehicles, non-vehicle items, information technology equipment, federal surplus property, and personal handheld devices shall be as follows:

(a) ~~[p]~~ Payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank financial cards, and personal checks. Personal checks may not be accepted for amounts exceeding \$100. Two-party checks shall not be accepted;

(b) ~~[p]~~ Payment received from governmental entities, school districts, special districts, and higher education institutions shall be in the form of agency or subdivision check or purchasing card;

(c) ~~[p]~~ Payment made by governmental entities, school districts, special districts, and higher education institutions shall be at the time of purchase and prior to removal of the property purchased; or

(d) ~~[the]~~ The division director or designee may make exceptions to the payment provisions of this rule for good cause. A good cause exception requires a weighing of:

- (i) the cost to the [s]State;
- (ii) the potential liability to the [s]State; and
- (iii) the overall best interest of the [s]State.

(3) The division shall initiate formal collection procedures in the event that a check from the general public, state subdivisions, or other agencies is returned to the division for "insufficient funds" ~~[?]~~.

(a) ~~[i]~~ In the event that a check is returned to the division ~~[is returned]~~ for "insufficient funds," the division may:

(i) prohibit the debtor from making any future purchases from the division until the debt is paid in full; and

(ii) have the division accountant send a certified letter to the debtor stating that the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees associated with the collection process, such as returned check fees; and if the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.

(b) ~~[d]~~ Debts for which payments have not been received in full within the 15 day period referred to above ~~[?]~~ shall be assigned to the Office of State Debt Collection in accordance with statute.

**R33-26-401. Public Sale of State-Owned Vehicles.**

(1) State-owned excess vehicles may be purchased at any time by the general public, subject to any holding period that may be assigned by the division and subject to the division's operating days and hours.

(2) Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.

(3) The frequency of public auctions, for either State-owned vehicles or federal surplus property will be regulated by current law as applicable, the volume of items held in inventory by the division, and the profitability of conducting auctions versus other approaches to disposing of surplus property.

(4) State-owned vehicles available for sale may not have any ancillary or component parts or equipment removed, destroyed, or detached, from the vehicle prior to sale without the approval of the division.

(5) State agencies are prohibited from removing ancillary or component parts or equipment from vehicles intended for surplus unless:

(a) the state agency intends on using the ancillary or component parts or equipment on other agency vehicles;

(b) the state agency in possession of the vehicle intends to transfer the ancillary or component parts or equipment to another state agency; or

(c) the state agency has obtained prior approval from the division to remove ancillary or component parts or equipment from the vehicle intended for surplus.

**R33-26-601. Utah State Agency for Surplus Property Adjudicative Proceedings.**

As required by the Utah Administrative Procedures Act, this Rule provides the procedures for adjudicating disputes brought before the division under the authority granted by Section 63A-2-401 and ~~[Section]~~ Title 63G, ~~[?]~~ Chapter 4, et seq.

**R33-26-602. Proceedings to Be Informal.**

All matters over which the division has jurisdiction including bid validity determination and sales issues, which are subject to Title 63G, Chapter 4, will be informal in nature for purposes of adjudication. The Director of the Division of Purchasing and General Services or his designee will be the presiding officer.

**R33-26-603. Procedures Governing Informal Adjudicatory Proceedings.**

(1) No response needs to be filed to the notice of agency action or request for agency action.

(2) The division may hold a hearing at the discretion of the director of the Division of Purchasing and General Services or his designee unless a hearing is required by statute. A request for hearing must be made within ten days after receipt of the notice of agency action or request for agency action.

(3) Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence and comment on the issues.

(4) A hearing will be held only after timely notice of the hearing has been given.

(5) No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information and materials not restricted by law.

(6) No person may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.

(7) Any hearing held under this rule is open to all parties.

(8) Within thirty days after the close of any hearing, the director of the Division of Purchasing and General Services or his designee shall issue a written decision stating the decision, the reasons for the decision, time limits for filing an appeal with the director of the superior agency, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.

(9) The decision rendered by the Director of the Division of Purchasing and General Services or his designee shall be based on the facts in the division file and if a hearing is held, the facts based on evidence presented at the hearing.

(10) The agency shall notify the parties of the agency order by promptly mailing a copy thereof to each at the address indicated in the file.

(11) Whether a hearing is held or not, an order issued under the provisions of this rule shall be the final order and then may be appealed to the appropriate district court.

**[R33-26-701. Disposition of State Surplus Property:**

(1) The Division shall administer the disposition of State surplus property through the following methods:

- ~~(a) Online auction;~~
- ~~(b) Live auction;~~
- ~~(c) Pick up, sale, and disposal;~~
- ~~(d) Disposal;~~
- ~~(e) Destruction;~~
- ~~(f) Direct sale to the public; or~~
- ~~(g) Another method approved by the Director of the Division.~~

(2) State agencies shall complete an SP-1 Form and electronically transmit it to State Surplus Property

(a) Completion of Form SP-1 meets the requirements set forth in Utah Code 63A-2-401(7) for a state agency to declare State property as surplus.

(b) The SP-1 Form may be accessed at <http://purchasing.utah.gov/stateagencylinks.html>.

(c) Information required on SP-1 Form

(A) a minimum of two digital photographs for each State surplus property item being listed for sale

~~(B) a brief description of the State surplus property item detailing its condition~~

~~(C) an estimate of the State surplus property's value~~

~~(D) the location of the State surplus property; an~~

~~(E) the contact information of the person assigned by the state agency to assist the public with the transaction.~~

~~(3) Online auction shall be the primary method used for the disposition of non-vehicle state surplus property.~~

~~(a) Online auctions shall be administered by State Surplus Property.~~

~~(b) Each state agency will be responsible for~~

~~(i) Storing State surplus property on site until the online auction has been completed and the State surplus property is~~

~~(A) picked up by the person to whom the item has been sold to via online auction~~

~~(B) disposed of or donated by the state agency~~

~~(C) picked up by the vendor under contract with State Surplus Property; or~~

~~(D) picked up by a local vendor under contract with the state agency;~~

~~(ii) Assigning an employee of the agency to assist the public with the online auction including:~~

~~(A) answering questions about the State surplus property item~~

~~(B) providing directions~~

~~(C) scheduling the pickup~~

~~(D) other miscellaneous tasks; an~~

~~(iii) Developing internal policies regarding employees~~

~~(A) assisting the public with lifting and transporting State surplus property items~~

~~(B) transporting State surplus property items with a minimal value of less than \$100 to charities for donation~~

~~(C) receiving State surplus property items with a minimal value of less than \$100 as a donation by the state agency~~

~~(e) A state agency may seek an exception from the requirement to dispose of surplus property through online auction in accordance with Utah Code 63A-2-401(3).~~

~~(i) State agencies that are granted an exception must~~

~~(A) complete an SP-1 Form and transmit it to State Surplus Property; and~~

~~(B) coordinate with State Surplus Property to schedule a date and time for State surplus property items to be picked.~~

~~(4) The Division shall administer the disposition of surplus state owned vehicles through any method identified in R33-26-701(1).~~

~~(a) Surplus vehicles may be sold at the agency location or delivered to State Surplus Property for disposition.~~

~~(5)(a) For agencies along the Wasatch Front, State Surplus Property will contract with a vendor to pick up State surplus property items with a minimal value of less than \$100 that cannot be disposed of by a state agency as waste in the trash, donated to a charity, or donated to an employee of the state agency.~~

~~(b) For agencies with offices outside the Wasatch Front, the agency may contract with a local vendor using the Small Purchase set forth in Utah Code 63G-6a-408 and Administrative Rule R33-4-104 to dispose of State surplus property items with a minimal value of less than \$100 that cannot be disposed of by a state agency as waste in the trash, donated to a charity, or donated to an employee of the state agency.~~

~~**R33-26-801. — Donation, Disposal, or Destruction of State Surplus Property:**~~

~~(1)(a) State surplus property with a minimal value of less than \$100 may be disposed of as waste by a state agency in accordance with Utah Code 63A-2-411.~~

~~(b) State surplus property items that do not appreciate in value, with an initial purchase price of less than \$100 or deemed to be valued at less than \$100 by the State Surplus Property manager:~~

~~(i) may be disposed of as waste by a state agency by the means described in Utah Code 63A-2-411(3); or~~

~~(ii) State surplus Property items with a minimal value may be packaged together and sold as a bundled sale.]~~

**R33-26-900. Charges and Fees Assessed for State Surplus Property Agency Services**

(1) In accordance with Section 63A-2-405, the State Surplus Property agency will charge rates and fees, as approved by the Rate Setting Committee as set forth in Sections 63J-1-410 and 504, for services associated with the disposition of surplus property items.

(2) The current approved rate and fee schedule is available at: surplus.utah.gov.

**KEY: government purchasing, procurement rules, state surplus property, general procurement provisions**

**Date of Enactment or Last Substantive Amendment: [December 23, 2015]2017**

**Authorizing, and Implemented or Interpreted Law: 63A-2**

Education, Administration  
**R277-101**  
Utah State Board of Education  
Procedures

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 41768  
FILED: 06/09/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-101 is amended to remove text that does not specifically pertain to public participation in Utah State Board of Education (Board) meetings. That text is being placed in a new rule. Technical and conforming changes are also provided.

SUMMARY OF THE RULE OR CHANGE: Text that that does not specifically pertain to public participation in Board meetings is removed; text is reorganized and renumbered; and various other technical changes are made to the text.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Removing and reorganizing text and making technical and conforming changes to the rule will likely not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: The amendments to this rule will likely not result in a cost or savings to local government. This rule provides procedures for public participation in Board meetings and does affect local government.

◆ SMALL BUSINESSES: The amendments to this rule will likely not result in a cost or savings to small businesses. This rule and the amendments provide procedures for public participation in Board meetings and do not affect small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to this rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. This rule and the amendments provide procedures for public participation in Board meetings and do not affect persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Removing and reorganizing text and making technical and conforming changes to the rule will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.****R277-101. Public Participation in Utah State Board of Education [Procedures]Meetings.****R277-101-2]1. Authority and Purpose.**

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

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

~~(b)~~ ~~[Section 52-4-1]Title 52, Chapter 4, Open and Public Meetings Act~~, which directs that the ~~deliberations and actions of the Board be [taken]conducted~~ openly~~[and that its deliberations be conducted openly];~~ and~~[by]~~

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

~~[B-](2)~~ The purpose of this rule is to describe procedures to be followed by the Board in its conduct of the public's business in order to:

~~(1)a)~~ hear from those who desire to be heard on public education matters in the state;

~~(2)b)~~ effectively and efficiently utilize the time of the Board;

~~[-----](3) enable staff to provide timely and essential information;]~~ and

~~(4)c)~~ balance desire for public information with other demands on the Board's time.

**R277-101-1]2. Definitions.**

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

~~[-----]B. "Board leadership" means the Leadership Committee as defined in the Board Bylaws.]~~

~~[C-]"Chair" means;~~

~~(1) the duly elected Chairperson of the Board[-];~~

~~(2) a Vice-chair when conducting a meeting of the Board[-];~~ or

~~(3) the Chair of a Board standing committee.~~

~~[-----]D. "Conflict of interest" means a business, family, monetary or relationship concern that may cause a reasonable person to be unduly influenced or that creates the appearance of undue influence.~~

~~[-----]E. "Health, safety, and welfare of students" means such concerns as adequate and safe buildings and facilities and transportation vehicles, required immunizations and health screenings, required criminal background checks and reviews on potential teachers and employees, required curriculum that allows for complete transferability of credit and other similar standards and protections.~~

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

~~[-----]G. "Official action" taken by local education agency (LEA) boards means action taken in appropriately advertised board meetings, where votes and minutes are recorded and available for public review.~~

~~[-----]H. "State or federal law or regulations" means federal law and regulations including Department of Agriculture regulations that govern the Child Nutrition Program as it operates in Utah public schools, the Individuals with Disability Education Act~~

~~(IDEA), including federal and state implementing regulations and state administrative rules.~~

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

**R277-101-3. Public Participation.**

~~[A-](1) [Citizens] The general public may attend meetings of the Board, unless a meeting is closed in accordance with Section 52-4-204. [The Board welcomes public participation during Board meetings.]~~

~~[B-](2) [Citizens]The general public may speak to the Board regarding any issue when acknowledged and recognized by the Board Chair during scheduled public comment[-].~~

~~[-----](a) to issues not on the agenda during the time designated for public comment.]~~

~~(i)a) The chair may give [P]priority [shall be given to those] to an individual[s] or group[s] who[-, prior to the meeting, have submitted] submits a written request to address the Board prior to the meeting, including a brief description of the issue to be addressed.~~

~~(ii)b) [No action shall be taken by the] The Board may not take action during the public comment portion of [the]a meeting.~~

~~(iii)c) [At the Board's discretion, a] A Board member may request that an item raised during public comment be placed on a future agenda for possible action in accordance with Board bylaws.~~

~~(iv)d)i) The Chair may limit the time available for individual comments[-]. [number of comments and time limits shall be stated prior to the public comment portion of the agenda.]~~

~~(v)ii) The Chair may request groups to designate a spokesperson.~~

~~(iii) The Board shall include in its meeting agenda the amount of time set aside for public comment and the restrictions on individual speakers or group spokespersons.~~

~~(b)3)a) A member of the general public may speak to items on the agenda;~~

~~(i) during the time designated for public comment[-];~~ or

~~(ii) at the discretion of and as invited by the Chair, when the item is properly before the Board or a committee.~~

~~(b) The Chair may request that public comment[s] be provided in writing.~~

~~[C-](4) All presentations to the Board or one of its committees shall exemplify courteous behavior and appropriate language.~~

~~[D-](5) The Chair may invite [A]additional comment[s] to the Board or a committee[s] [may only be made as recognized and invited by the Board Chair during a meeting]in the Chair's discretion.~~

~~(6) In accordance with Subsection 53-4-202(6)(b), at the discretion of the Chair, the Board may discuss a topic raised by the public in an open meeting even if the item was not included in the public meeting notice.~~

~~(7) At the discretion of the Chair, a member of the public may request to comment in the committee meeting by raise of hand.~~

**[R277-101-4. Reconsideration on Previous Board Action.**

~~[-----]A. The Board has discretion to reconsider any decision it has made.~~

~~\_\_\_\_\_ B. A motion to reconsider shall be made in a meeting of the Board that satisfies requirements of Section 52-4 by a Board member who voted on the prevailing side of the previous Board vote.~~

~~\_\_\_\_\_ C. A motion to reconsider requires a second.~~

~~\_\_\_\_\_ D. A motion to reconsider a previous Board decision shall be ruled in order by the Board Chair only with adequate time for Board members to receive information and discuss the issue, as determined by the presiding Board officer.~~

~~\_\_\_\_\_ E. The Board Chair shall determine the procedures for the reconsideration discussion; for instance:~~

~~\_\_\_\_\_ (1) The Board Chair shall determine if the Board shall accept public testimony and how long the discussion shall continue;~~

~~\_\_\_\_\_ (2) The Board Chair shall determine if the reconsideration vote may take place at the next regularly scheduled Board meeting if such meeting allows time for adequately providing information to Board members;~~

~~\_\_\_\_\_ (3) The Board Chair shall determine if more information is necessary prior to a vote, even if the Board vote is to be held at the same Board meeting.~~

~~\_\_\_\_\_ F. The Board shall consider and hear available evidence, including documentation of detrimental or positive consequences specifically to LEAs or other entities, that may occur if the Board reverses a previous decision.~~

~~\_\_\_\_\_ G. The motion to reconsider shall pass if two-thirds of the total membership of the Board votes in favor of the motion.~~

~~\_\_\_\_\_ H. If a motion to reconsider fails, the Board shall not reconsider a motion on the same or substantially similar motion to reconsider in the same meeting.~~

~~\_\_\_\_\_ I. A Board vote taken upon reconsideration of the same or substantially similar issue is the administrative decision by the Board.~~

**R277-101-5. Board Waiver of Administrative Rules.**

~~\_\_\_\_\_ A. Criteria for waiver of Board Rules:~~

~~\_\_\_\_\_ (1) The Board shall consider waiver requests consistent with its constitutional responsibility for general control and supervision of the public education system.~~

~~\_\_\_\_\_ (2) Prior to waiver, the Board shall consider whether a local board's or local charter governing board's request could be accomplished through means other than waiver of Board rules.~~

~~\_\_\_\_\_ (3) The Board shall waive rules only following a thorough review of available data and shall make data driven decisions.~~

~~\_\_\_\_\_ (4) The Board shall not waive rules:~~

~~\_\_\_\_\_ (a) that are required by and adopt criteria from federal or state law or regulations;~~

~~\_\_\_\_\_ (b) that negatively affect the health, safety or welfare of public education students;~~

~~\_\_\_\_\_ (c) if the waiver could reasonably result in discrimination or harassment of public school students or employees;~~

~~\_\_\_\_\_ (d) that benefit one element or segment of the public education system to the detriment of another.~~

~~\_\_\_\_\_ (5) Waivers shall always include an effective time period for the waiver, public review and accountability provisions and a sunset date.~~

~~\_\_\_\_\_ (6) Prior to consideration by the Board, waivers requested by charter schools shall be presented to and considered by the State~~

~~Charter School Board. Information and documentation of this action shall be available to the Board.~~

~~\_\_\_\_\_ (7) All Board evaluations, considerations, and decisions shall be made in the Board's sole discretion.~~

~~\_\_\_\_\_ B. Procedures for waiver of Board rules:~~

~~\_\_\_\_\_ (1) A local board of education or a charter school governing board may request a waiver from Board rule(s) in writing consistent with USOE timelines and on forms available from the USOE by submitting to the Board a written request showing a vote by the local board requesting the waiver in an open board meeting.~~

~~\_\_\_\_\_ (2) Complete waiver requests shall be reviewed first by a Board Committee during a regularly scheduled Board meeting.~~

~~\_\_\_\_\_ (3) The Board Committee designated by Board leadership shall review the request, solicit additional information or testimony, if helpful, and make a recommendation for consideration by the full Board of Education.~~

~~\_\_\_\_\_ (4) Board leadership or a Board Committee shall make a reasonable determination of the time or Committee meetings necessary for careful review of request(s) for waiver of Board rules; Board leadership may consolidate consideration of duplicate or similar requests.~~

~~\_\_\_\_\_ (5) At a minimum, the following shall be required from LEAs seeking a waiver of Board rules:~~

~~\_\_\_\_\_ (a) student achievement data that support the requested waiver;~~

~~\_\_\_\_\_ (b) data demonstrating the cost effectiveness, without sacrificing student achievement, of the waiver request;~~

~~\_\_\_\_\_ (c) a draft proposed agreement that outlines USOE and local board responsibilities, data gathering and reporting timelines if a waiver is granted by the Board.~~

~~\_\_\_\_\_ (6) Upon direction by the Board, an LEA shall make a presentation to an assigned Board Committee.~~

~~\_\_\_\_\_ (7) Board leadership shall notify the local board of a proposed timeline for the Board to consider the request for waiver and provide a written decision, including an agreement between the Board and the local governing board, to the local board.~~

~~\_\_\_\_\_ C. Public process and documents:~~

~~\_\_\_\_\_ (1) Materials presented to the Board by the local board shall be public documents.~~

~~\_\_\_\_\_ (2) Materials and draft agreements between the Board and the local board shall be protected draft documents.~~

~~\_\_\_\_\_ (3) Final agreements between the Board and local governing boards shall be public documents and available for review by the public upon request consistent with the provisions of Title 63G, Chapter 2.~~

~~\_\_\_\_\_ (4) Any breach of confidentiality while the discussion of agreements is in progress may compromise the fairness of the Board decision and may delay the discussion or Board decision or both.]~~

**KEY: school boards, open government**

**Date of Enactment or Last Substantive Amendment: [April 22, 2013]2017**

**Notice of Continuation: August 1, 2012**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 52-4-1; 53A-1-401[(3)]**

Education, Administration  
**R277-103**  
 USOE Government Records and  
 Management Act

**NOTICE OF PROPOSED RULE**

(Repeal)  
 DAR FILE NO.: 41769  
 FILED: 06/09/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-103 is repealed because it is largely repetitive of provisions Title 63G, Chapter 2, Government Records Access and Management Act.

SUMMARY OF THE RULE OR CHANGE: Rule R277-103 provides procedures for appropriate public access to government records, which is already laid out in Title 63G, Chapter 2, Government Records Access and Management Act. Consequently, Rule R277-103 is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Repealing Rule R277-103 will likely not result in a cost or savings to the state budget. The language in this rule is largely repetitive of provisions in state law.

◆ LOCAL GOVERNMENTS: Repealing Rule R277-103 will likely not result in a cost or savings to local government. The language in this rule is largely repetitive of provisions in state law.

◆ SMALL BUSINESSES: Repealing Rule R277-103 will likely not result in a cost or savings to the small businesses. The language in this rule is largely repetitive of provisions in state law.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Repealing Rule R277-103 will likely not result in a cost or savings to the persons other than small businesses, businesses, or local government entities. The language in this rule is largely repetitive of provisions in state law.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Repealing Rule R277-103 will likely not result in any compliance costs for affected persons. The language in this rule is largely repetitive of provisions in state law.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that repealing this rule will not result in a fiscal impact to businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.**

~~[R277-103. USOE Government Records and Management Act. R277-103-1. Definitions.~~

- ~~\_\_\_\_\_ A. "Board" means the Utah State Board of Education.~~  
~~\_\_\_\_\_ B. "GRAMA" means the Government Records and Management Act as enacted by the 1992 Utah Legislature, Sections 63G-2-201 through 6G-2-310.~~  
~~\_\_\_\_\_ C. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.~~  
~~\_\_\_\_\_ D. "Superintendent" means the State Superintendent of Public Instruction.~~  
~~\_\_\_\_\_ E. "USOE" means the Utah State Office of Education.~~

**R277-103-2. Authority and Purpose.**

- ~~\_\_\_\_\_ A. This rule is authorized by Section 63G-2-204 which allows a governmental entity to make rules regarding the entity's records and by Section 53A-1-401(3) which authorizes the Board to adopt rules in accordance with its responsibilities.~~  
~~\_\_\_\_\_ B. The purpose of this rule is to provide procedures for appropriate public access to government records.~~

**R277-103-3. Allocation of Responsibilities Within the USOE.**

- ~~\_\_\_\_\_ Both the USOE and the Board shall be considered a single governmental entity for the purposes of this rule and the Superintendent shall be considered the head of the entity.~~

**R277-103-4. Requests for Access.**

- ~~\_\_\_\_\_ A. Requests for access to USOE government records should be written and directed to the USOE Records Officer, 250 East 500 South, P.O. Box 144200, Salt Lake City, Utah 84111-4200.~~  
~~\_\_\_\_\_ B. Response to a request submitted to persons other than the designee or not made in writing may be delayed.~~  
~~\_\_\_\_\_ C. Appeals to access determinations shall be directed to the Deputy Superintendent of Public Instruction according to time limits and provisions of Section 63G-2-401.~~

**R277-103-5. Fees.**

~~\_\_\_\_\_ A. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the USOE by contacting the designated Records Officer located at 250 East 500 South, Salt Lake City, Utah 84111.~~

~~\_\_\_\_\_ B. Payment of past fees or future estimated fees expected to exceed \$50.00 or both may be required before the USOE Records Officer begins to process a request.~~

~~\_\_\_\_\_ C. There shall be no charge made by the Board or the USOE for:~~

- ~~\_\_\_\_\_ (1) inspection of records;~~  
~~\_\_\_\_\_ (2) a reasonable request that requires the segregation of records; or~~  
~~\_\_\_\_\_ (3) an inspection of the requested records to determine the requester's right to access.~~

~~\_\_\_\_\_ D. Waiver of Fees~~

~~\_\_\_\_\_ (1) Fees for duplication and compilation of a record may be waived under the circumstances described in Section 63G-2-203(4) or other circumstances as determined by the USOE on a case by case basis, including cumulative costs of less than \$2.00, for use by LEAs or other entities under the general control of the Board, or an affidavit from the requester claiming impecuniosity.~~

~~\_\_\_\_\_ (2) Requests for waivers shall be made to the designated USOE Records Officer.~~

**R277-103-6. The USOE as Custodian of District Records.**

~~\_\_\_\_\_ A. When the USOE acts as the custodian of LEA records and does not regularly use or access that LEA's data or information, the USOE may refer requests for that information to the LEA.~~

~~\_\_\_\_\_ B. If the USOE acts as a custodian of records, information or data for LEAs, the USOE shall request from those LEAs the following:~~

- ~~\_\_\_\_\_ (1) Designation of what data may be provided to whom upon request;~~  
~~\_\_\_\_\_ (2) Notice of classification(s) if the data are classified; and~~  
~~\_\_\_\_\_ (3) The name and title of an LEA records officer or contact person to whom the USOE shall direct requests for access to the information or records.~~

**R277-103-7. Other Requests.**

~~\_\_\_\_\_ A. For Research Purposes~~

~~\_\_\_\_\_ (1) Access to private or controlled records for research purposes is allowed by Section 63G-2-202(8).~~

~~\_\_\_\_\_ (2) Such requests shall be made to the designated Records Officer.~~

~~\_\_\_\_\_ B. To Amend a Record~~

~~\_\_\_\_\_ (1) An individual may contest the accuracy or completeness of a document pertaining to him owned by the USOE pursuant to Section 63G-2-603.~~

~~\_\_\_\_\_ (2) The request to amend shall be made in writing to the designated Records Officer.~~

~~\_\_\_\_\_ (3) Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act, Section 63G-4.~~

**KEY: student government records**

**Date of Enactment or Last Substantive Amendment: September 21, 2012**

**Notice of Continuation: August 1, 2012**

**Authorizing, and Implemented or Interpreted Law: 63G-2-101 through 310; 63G-2-204; 63G-4; 53A-1-401(3)]**

## Education, Administration **R277-111** Sharing of Curriculum Materials by Public School Educators

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 41770

FILED: 06/09/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-111 is repealed because the standards and procedures in this rule and Rule R277-115, which is also being repealed, are combined into one new Rule R277-120. (Editor's Note: The proposed repeal of Rule R277-115 is under Filing No. 41771 and the proposed new Rule R277-120 is under Filing No. 41772 in this issue, July 1, 2017, of the Bulletin.)

**SUMMARY OF THE RULE OR CHANGE:** Rule R277-111 provides information and assurance to public school educators about sharing materials created or developed by educators primarily for use in their own classes or assignments. This rule allows and encourages educators to use valuable time and resources to improve instruction and instructional practices with assistance from appropriate materials developed by other educators. The standards and procedures in this rule are being added into the new Rule R277-120, and therefore, Rule R277-111 is being repealed in its entirety.

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Repealing Rule R277-111 will likely not result in a cost or savings to the state budget. The standards and procedures in this rule are provided for in a new rule.

◆ **LOCAL GOVERNMENTS:** Repealing Rule R277-111 will likely not result in a cost or savings to local government. The standards and procedures in this rule are provided for in a new rule.

◆ **SMALL BUSINESSES:** Repealing Rule R277-111 will likely not result in a cost or savings to small businesses. The standards and procedures in this rule are provided for in a new rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Repealing Rule R277-111 will likely not result in a cost or

savings to persons other than small businesses, businesses, or local government entities. The standards and procedures in this rule are provided for in a new rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Repealing Rule R277-111 will likely not result in any compliance costs for affected persons. The standards and procedures in this rule are provided for in a new rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that repealing this rule will not result in a fiscal impact to businesses.

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

## **R277. Education, Administration.**

### **[~~R277-111. Sharing of Curriculum Materials by Public School Educators.~~**

#### **~~R277-111-1. Definitions.~~**

- ~~A. "Board" means the Utah State Board of Education.~~
- ~~B. "Creative Commons License" means copyright licenses that grant certain rights such as the right to distribute the copyrighted work without changes, at no charge. Works licensed under a Creative Commons License is protected by copyright applicable law. Creative Commons Licenses are non-exclusive and non-revocable.~~
- ~~C. "LEA" means a local education agency, including local school boards/public school districts, charter schools and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.~~
- ~~D. "LEA materials" means materials purchased or developed by an LEA using LEA funds or resources, including materials, resources or activities which the LEA requested employees to create, develop or compile during the employees' contract time.~~
- ~~E. "Material(s)" means all copyrightable works, including writings, lectures, musical or dramatic compositions, sound~~

~~recordings, films, videotapes and other pictorial or technological reproductions, computer programs, listings, charts, manuals, codes, instructions and software.~~

~~F. "Non-commercial use" means use or exchange without payment or compensation of any kind.~~

~~G. "Personally developed materials" means materials developed by an educator. These materials may be developed on the educator's contract time using school resources, on the educator's personal time using personal resources, as an individual employment assignment, or in conjunction with other colleagues.~~

~~H. "Teacher curriculum materials" means lesson plans, educator research materials, activities, teaching strategies or other printed or electronic materials developed by the public educator.~~

#### **~~R277-111-2. Authority and Purpose.~~**

~~A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of Public Education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and by Section 53A-1-402(1)(c) which directs the Board to encourage school productivity and cost effectiveness measures.~~

~~B. The purpose of this rule is to provide information and assurance to public school educators about sharing materials created or developed by educators primarily for use in their own classes or assignments. The intent of this rule is to allow or encourage educators to use valuable time and resources to improve instruction and instructional practices with assistance from appropriate materials developed by other educators.~~

#### **~~R277-111-3. Educators Sharing Materials.~~**

~~A. Utah educators may share materials for noncommercial use that educators have developed primarily for use in their own classes, courses or assignments.~~

~~B. Utah educators may only share materials that they developed personally and may not unilaterally share materials that were purchased or developed by or on behalf of their public employer or the State.~~

~~C. Utah educators may only share materials that are consistent with R277-515 Utah Educator Professional Standards. For example, educators may not share materials that advocate illegal activities or that are inconsistent with their legal and role model responsibilities as public employees and licensed educators.~~

~~D. Utah educators may share materials under a Creative Commons License and shall be personally responsible for understanding and satisfying the requirements of a Creative Commons License.~~

~~E. The presumption of this rule is that materials may be shared. The presumption is that Utah educators need not seek permission from their employers to share personally developed materials.~~

~~F. Public educators may not sell teacher curriculum materials developed in whole or in part with public education funds or developed within the employee's scope of employment to Utah educators.~~

#### **~~R277-111-4. LEA Rights.~~**

~~A. Utah LEAs may develop and make available a policy that directs employees to seek review and approval before employees share materials that were developed on contract time,~~



~~developed partially or jointly with LEA funding, as part of an LEA assignment or if materials reference or imply LEA use or endorsement.~~

~~B. Utah LEAs may prohibit their employees from sharing materials that were purchased with LEA funds or which are licensed specifically for LEA use.~~

~~KEY: curriculum materials, sharing~~

~~Date of Enactment or Last Substantive Amendment: March 10, 2015~~

~~Notice of Continuation: January 15, 2015~~

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

**Education, Administration  
R277-115**

**Material Developed with State Public  
Education Funds**

**NOTICE OF PROPOSED RULE  
(Repeal)**

DAR FILE NO.: 41771  
FILED: 06/09/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-115 is repealed because the standards and procedures in this rule and Rule R277-111, which is also being repealed, are combined into one new Rule R277-120. (Editor's Note: The proposed repeal of Rule R277-111 is under Filing No. 41770 and the proposed new Rule R277-120 is under Filing No. 41772 in this issue, July 1, 2017, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R277-115 provides that education materials developed by LEAs or a public education employee using state public education funds are available to Utah educators, that educators licensed by the Board of Education are not personally enriched, consistent with the Utah Public Employees Ethics Act, by developing education materials as part of their public education employment, and that the board receives appropriate and accurate acknowledgment for materials produced or provided or both by the board for LEAs. This rule is being added to the new Rule R277-120, and therefore, Rule R277-115 is being repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Repealing Rule R277-115 will likely not result in a cost or savings to the state budget. The standards and procedures in this rule are provided for in a new rule.

◆ LOCAL GOVERNMENTS: Repealing Rule R277-115 will likely not result in a cost or savings to local government. The standards and procedures in this rule are provided for in a new rule.

◆ SMALL BUSINESSES: Repealing Rule R277-115 will likely not result in a cost or savings to small businesses. The standards and procedures in this rule are provided for in a new rule.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Repealing Rule R277-115 will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. The standards and procedures in this rule are provided for in a new rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Repealing Rule R277-115 will likely not result in any compliance costs for affected persons. The standards and procedures in this rule are provided for in a new rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that repealing this rule will not result in a fiscal impact to businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.**

~~[R277-115. Material Developed with State Public Education Funds.~~

~~**R277-115-1. Definitions.**~~

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

~~B. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.~~

~~C. "Material" means all copyrightable works, including writings, lectures, musical or dramatic compositions, sound~~

recordings, films, videotapes and other pictorial reproductions, computer programs, listings, flow charts, manuals, codes, instructions, and software.

~~D. "Utah Public Employees Ethics Act" means the provisions established in Section 67-16-1-14.~~

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

**R277-115-2. Authority and Purpose.**

~~A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.~~

~~B. The purpose of this rule is to provide that education materials developed by LEAs or a public education employee using state public education funds are available to Utah educators, that educators licensed by the Board are not personally enriched, consistent with the Utah Public Employees Ethics Act, by developing education materials as part of their public education employment and that the Board receives appropriate and accurate acknowledgment for materials produced or provided or both by the Board for LEAs.~~

**R277-115-3. Reprint or Reproduction of Materials Funded or Provided by the Board.**

~~A. The Board or its designee may grant permission to a requester to reprint or reproduce material that was developed or provided for use by public educators with funds controlled by the Board.~~

~~(1) Requests for permission to reprint or reproduce materials shall be submitted to the Board in writing or electronically and shall describe:~~

- ~~(a) the specific material to be reproduced or reprinted;~~
- ~~(b) the number of copies requested;~~
- ~~(c) the purpose and intended recipient of the materials;~~
- ~~(d) any proposed cost to recipients.~~

~~(2) Requests shall be reviewed and granted on a case-by-case basis.~~

~~(3) Any authorized use of Board materials shall require the materials to state in a conspicuous place that the materials were produced or distributed or both using public State Board of Education funds and that the material is reprinted or reproduced with permission from the Board.~~

~~(4) The Board may request a copy of the reproduction or reprinted material to be sent to the Board.~~

~~B. An individual, entity or organization may not expressly assert or imply Board authorization, including use of the Board seal, of the use of materials reprinted or reproduced with Board funds without express authorization by the Board or its designee.~~

**R277-115-4. Materials Developed or Distributed by LEAs Using Public Education Funds.**

~~A. If an LEA develops education materials with public education funds, the LEA shall make the materials available to Utah educators upon request at a cost not to exceed the LEA's actual cost.~~

~~B. An LEA may request that the materials are attributed to the LEA that developed the materials.~~

~~C. If a public education employee creates or develops education materials as part of the employee's public education employment, the materials are the property of the employer. Sale or other use of the materials may not personally enrich the public employee, consistent with Section 67-16-4(1)(e).~~

~~KEY: copyright, materials~~

~~Date of Enactment or Last Substantive Amendment: September 21, 2012~~

~~Notice of Continuation: August 1, 2012~~

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

Education, Administration  
**R277-120**  
Licensing of Material Developed with  
Public Education Funds

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 41772

FILED: 06/09/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-120 is created to incorporate the standards and procedures related to the licensing of materials developed by the Utah State Board of Education (Board) and local education agencies (LEAs) with public education funds from Rule R277-111 and Rule R277-115, which are being repealed, into one rule. This new rule is also formatted in accordance with the Rulewriting Manual for Utah. (Editor's Note: The proposed repeal of Rule R277-111 is under Filing No. 41770 and the proposed repeal of Rule R277-115 is under Filing No. 41771 in this issue, July 1, 2017, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This new rule provides standards and procedures related to the licensing and sharing of public education materials funded by the Board, public education materials funded by an LEA, and classroom materials developed by Utah educators.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Combining the standards and procedures from two rules scheduled to be repealed into this one new rule will likely not result in a cost or savings to the state budget.

◆ LOCAL GOVERNMENTS: Combining the standards and procedures from two rules scheduled to be repealed into this

one new rule will likely not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** Combining the standards and procedures from two rules scheduled to be repealed into this one new rule will likely not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Combining the standards and procedures from two rules scheduled to be repealed into this one new rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Combining the standards and procedures from two rules scheduled to be repealed into this one new rule will likely not result in any compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.**

**R277-120. Licensing of Material Developed with Public Education Funds.**

**R277-120-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Article X, Section 3 of the Utah Constitution, which vests general control and supervision over public education in the Board;
  - (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53A-1-402(1)(e), which directs the Board to encourage school productivity and cost effectiveness measures.

- (2) The purpose of this rule is to:
  - (a) establish requirements for licensing of courseware and materials produced with public education funds; and
  - (b) promote a policy that education materials produced with public funds be openly, publicly, and freely accessible for use by others.

**R277-120-2. Definitions.**

- (1)(a) "CC-BY license" means a copyright license developed by Creative Commons, which allows other users to:
  - (i) copy and redistribute the material in any medium or format; and
  - (ii) remix, transform, and build upon the material.
- (b) Under a CC-BY license, a licensee may share the materials in any manner, including commercially.
- (c) Under a CC-BY license, a licensee shall:
  - (i) give appropriate credit to the licensor;
  - (ii) provide a link to the license; and
  - (iii) indicate if the licensee made changes to the licensor's work.
- (2) "Public education materials" means courseware and materials developed with public education funds and includes:
  - (a) syllabi;
  - (b) instructional materials;
  - (c) modules;
  - (d) textbooks, including teacher's editions;
  - (e) student guides;
  - (f) supplemental materials;
  - (g) formative and summative assessment supports;
  - (h) laboratory activities;
  - (i) simulations;
  - (j) musical or dramatic compositions;
  - (k) audio, video or photographic material;
  - (l) manuals;
  - (m) codes; and
  - (n) software.
- (3) "Utah Education Network" or "UEN" means an online education materials resource maintained by the Utah Education and Telehealth Network offering services to educators and students throughout the state of Utah.

**R277-120-3. Public Education Materials Funded by the Board.**

- (1) The Superintendent shall share public education materials developed with funds controlled by the Board under a CC-BY license.
- (2) The Superintendent shall share materials developed in accordance with Subsection (1) through UEN, where appropriate, or through other appropriate means of making public education materials available to educators and the public.
- (3)(a) An individual or entity that shares or adapts public education materials identified in Subsection (1) shall:
  - (i) provide attribution to the Board;
  - (ii) provide a link to the license; and
  - (ii) indicate if any changes were made to the original materials.
- (b) An individual or entity may make attribution in any reasonable manner, but not in any way that implies the Board

endorses any adaptation of the materials without express authorization of the Board.

(4) The Superintendent may request a copy of shared or adapted public education materials be provided to the Board.

(5) If an employee of the Board develops public education materials as part of the employee's employment, the public education materials shall be the property of the Board, subject to licensing in accordance with this R277-120-3.

**R277-120-4. Public Education Materials Funded by an LEA.**

(1) An LEA shall develop and maintain a policy regarding public education materials developed with the LEA's funds.

(2) A policy developed in accordance with Subsection (1) shall identify:

(a) whether the LEA will share public education materials with a CC-BY license or another license approved by the LEA's governing board;

(b) whether use of LEA developed public education materials will require attribution to the LEA;

(c) whether the LEA will charge third parties for use of the materials;

(d) whether the LEA reserves the right to review and approve materials developed by employees on contract time; and

(e) whether the LEA restricts employees from sharing materials purchased with LEA funds or specifically licensed for LEA use.

(3) An LEA may not charge an educator in a Utah public school for use of materials developed with LEA funds.

**R277-120-5. Classroom Materials Developed by Utah Educators.**

(1)(a) A public education employee may not sell public education materials developed in whole or in part with funds from the Board or an LEA.

(b) If a public education employee sells public education materials subject to Subsection (1)(a) for personal gain, the employee may be subject to the provisions of Section 67-16-4.

(2) An LEA may review and approve materials developed by educators on contract time consistent with a policy adopted in accordance with Subsection R277-120-4(d).

(3)(a) A Utah licensed educator need not seek permission from the educator's LEA to share classroom materials developed using the educator's personal time and resources.

(b) An educator may share materials developed in accordance with Subsection (3)(a) through a CC-BY license.

(4)(a) A Utah licensed educator may only share materials that are consistent with the Utah Professional Educator Standards contained in R277-515.

(b) An educator may not share materials that advocate illegal activities or materials that are inconsistent with the educator's legal and role model responsibilities.

(5) The Superintendent may offer professional development programs that offer support, guidance, and instruction to educators who wish to create, use, or continuously improve public education materials shared in accordance with this R277-120.

**KEY: licensing, materials**

**Date of Enactment or Last Substantive Amendment: 2017**

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

**Education, Administration**  
**R277-121**  
**Board Waiver of Administrative Rules**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 41773

FILED: 06/09/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-121 is created to provide a rule that specifically applies to Utah State Board of Education (Board) waiver of administrative rules. That language is removed from Rule R277-101 and reenacted in this Rule R277-121. (Editor's Note: The proposed amendment to Rule R277-101 is under Filing No. 41768 in this issue, July 1, 2017, of the Bulletin.)

**SUMMARY OF THE RULE OR CHANGE:** This new rule defines terms; provides provisions for waiver requests and Board review of waiver requests; and provides provisions for an annual review of approved waivers.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art X, Sec 3 and Section 53A-1-401 and Section 53A-1a-511

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Implementation of this new Rule R277-121 will likely not result in a cost or savings to the state budget. Provisions regarding waiver of Board rules are currently in Rule R277-101.

◆ **LOCAL GOVERNMENTS:** Implementation of this new Rule R277-121 could result in a cost or savings to a school district or charter school seeking a waiver from Board rule under this rule depending on the waiver. Costs and/or savings are very speculative at this time.

◆ **SMALL BUSINESSES:** Implementation of this new R277-121 will likely not result in a cost or savings to small businesses. This new rule applies to public education and does not affect businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Implementation of this new Rule R277-121 will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. Provisions regarding waiver of Board rules are currently in Rule R277-101.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Implementation of this new Rule R277-121 will likely not result in any compliance costs for affected persons. Provisions regarding waiver of Board rules are currently in Rule R277-101.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.**  
**R277-121. Board Waiver of Administrative Rules.**  
**R277-121-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and
  - (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to establish procedures for an LEA to request a waiver from a Board rule.

**R277-121-2. Procedures for Waiver Requests.**

- (1)(a) An LEA board may request a waiver from a Board rule by filing a written request with the Superintendent.
- (b) A written request under Subsection (1)(a) shall include:
  - (i) verification that the LEA board voted to request the waiver in an open meeting;
  - (ii) student achievement data that supports the requested waiver;

- (iii) data demonstrating the cost effectiveness of the waiver request;
- (iv) a proposed agreement with the Board that includes:
  - (A) a proposed effective date;
  - (B) provisions for public review and accountability;
  - (C) data gathering and reporting timelines;
  - (D) a sunset date; and
  - (v) in the case of a charter school, a recommendation from the board of the school's authorizer.
- (2) An LEA board may not request a waiver from a Board rule:
  - (a) that is required by or adopts criteria from a federal statute, federal regulation, or state law;
  - (b) that would negatively affect the health, safety, or welfare of public education students;
  - (c) that could reasonably result in discrimination or harassment of public school students or employees;
  - (d) that would benefit one element of the public education system to the detriment of another; or
  - (e) when the concerns giving rise to an LEA board's request could be addressed through means other than waiver of Board rules.

**R277-121-3. Board Review of Waiver Requests.**

- (1) The Board Executive Committee may assign a waiver request made under this Rule R277-121 to a Board standing committee.
- (2) The standing committee assigned in accordance with Subsection (1):
  - (a) may solicit additional information or testimony;
  - (b) shall review the request in an open meeting; and
  - (c) shall make a recommendation for consideration by the full Board.
- (3) The Board Executive Committee may consolidate consideration of duplicate or similar requests.
- (4) The Board shall consider available data in evaluating an LEA waiver request and shall make data driven decisions.

**R277-121-4. Annual Review of Approved Waivers.**

- (1) An LEA that receives a waiver from Board rule in accordance with this R277-121 for more than one year shall annually report to a Board committee:
  - (a) student achievement data that supports continuation of the requested waiver; and
  - (b) data demonstrating the cost effectiveness of the waiver, if applicable.

**KEY: Utah State Board of Education, waivers, administrative rules**  
**Date of Enactment or Last Substantive Amendment: 2017**  
**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401**

Education, Administration  
**R277-408**  
 Grants for Online Testing

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 41774

FILED: 06/09/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-408 is repealed because the state funding for grants for online testing has been eliminated.

SUMMARY OF THE RULE OR CHANGE: Rule R277-408 provides for grants to LEAs to implement uniform online testing required under U-PASS testing requirements, including meeting technology standards established by the Board of Education aligned with Utah's core standards, and provide local matching funds. State funding for grants for online testing has been eliminated. Consequently, Rule R277-408 is repealed in its entirety.

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

## ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Repealing Rule R277-408 will likely not result in a cost or savings to the state budget. The rule is no longer necessary because the grants for online testing have been phased out due to the elimination of funding for the grants.

◆ LOCAL GOVERNMENTS: Repealing Rule R277-408 will likely not result in a cost or savings to local government. The rule is no longer necessary because the grants for online testing have been phased out due to the elimination of funding for the grants.

◆ SMALL BUSINESSES: Repealing Rule R277-408 will likely not result in a cost or savings to small businesses. The rule is no longer necessary because the grants for online testing have been phased out due to the elimination of funding for the grants.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Repealing Rule R277-408 will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. The rule is no longer necessary because the grants for online testing have been phased out due to the elimination of funding for the grants.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Repealing Rule R277-408 will likely not result in any compliance costs for affected persons. The rule is no longer necessary because the grants for online testing have been phased out due to the elimination of funding for the grants.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that repealing this rule will not result in a fiscal impact to businesses.

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

EDUCATION

ADMINISTRATION

250 E 500 S

SALT LAKE CITY, UT 84111-3272

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.****[R277-408. Grants for Online Testing.****R277-408-1. Definitions.**

- \_\_\_\_\_ A. "Board" means the Utah State Board of Education.  
 \_\_\_\_\_ B. "LEA" means a local education agency, including local school boards/public school districts, and charter schools.  
 \_\_\_\_\_ C. "U-PASS testing requirements" as defined in Section 53A-1-602, include Criterion-Referenced tests (CRT) or Adaptive tests, Board-designated 10th grade test, and Direct Writing Assessment (DWA).  
 \_\_\_\_\_ D. "USOE" means the Utah State Office of Education.  
 \_\_\_\_\_ E. "Utah's core standards" means a statement of what students enrolled in public schools are expected to know and be able to do at specific grade levels or following completion of identified courses.

**R277-408-2. Authority and Purpose.**

\_\_\_\_\_ A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-708(4) which directs the Board to make rules establishing procedures for grant applications and awards that satisfy the minimum requirements of Section 53A-1-708(4), and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

\_\_\_\_\_ B. The purpose of the rule is to provide for grants to LEAs to implement uniform online testing required under U-PASS testing requirements, including meeting technology standards established by the Board aligned with Utah's core standards, and provide local matching funds.

**R277-408-3. Applications for Funding.**

\_\_\_\_\_ A. The USOE shall provide applications for LEAs to apply for available online testing grant funds before May 15 annually.

~~B. LEAs may submit applications for funds for online delivery of required U-PASS tests.~~  
~~C. Grant applications shall provide the following:~~  
~~(1) names of participating schools within the LEA;~~  
~~(2) U-PASS assessments that shall be provided within and by the LEA;~~  
~~(3) U-PASS assessments that shall be provided online;~~  
~~(4) a budget for use of grant funds;~~  
~~(5) an assurance from the applicant that online testing shall be implemented at 100 percent of students and assessments as required under Section 53A-1-708(4);~~  
~~(6) an assurance that the LEA shall meet the technology standards for online adaptive testing, as provided in R277-408-4;~~  
~~(7) an assurance that personally identifiable student data shall only be released to appropriate entities consistent with the law and this rule;~~  
~~(8) participation in the online readiness tool as per USOE direction; and~~  
~~(9) the amount and source of the matching funds that shall be used by the LEA to satisfy the requirements of Section 53A-1-708(4)(f).~~  
~~D. Applications shall be submitted for funding to the USOE before June 15 annually.~~

**~~R277-408-4. Online Adaptive Testing Technology Standards.~~**

~~A. The USOE shall provide online adaptive testing technology standards to LEAs before January 15, 2013.~~  
~~B. Technology standards shall include:~~  
~~(1) minimum hardware requirements;~~  
~~(2) minimum bandwidth requirements; and~~  
~~(3) minimum operating system and software requirements.~~

**~~R277-408-5. Appropriate Use of Funds.~~**

~~Online grant funds may be used for the following:~~  
~~A. computer equipment and peripherals, including electronic data capture devices designed for electronic test administration and scoring;~~  
~~B. software;~~  
~~C. networking equipment;~~  
~~D. upgrades of existing equipment or software;~~  
~~E. upgrades of existing physical plant facilities; and~~  
~~F. personnel to provide technical support, coordination, management, and teacher professional development (combined expenditure for personnel shall not exceed 10 percent of the grant funds allocated to an LEA).~~

**~~R277-408-6. Distribution of Funds.~~**

~~A. The USOE shall notify successful grant applicants before July 1, 2012.~~  
~~B. The USOE shall notify successful grant applicants of the base and per pupil funds that LEAs shall receive, based on required and complete information submitted in grant applications, before July 15, 2012.~~  
~~C. If LEAs that received notice of funding choose not to participate in the grant award or otherwise fail to meet eligibility requirements for funds under Section 53A-1-708 or this rule, the funds designated for those LEAs shall be distributed to other eligible LEAs after August 15, 2012.~~

**KEY: online testing, grants**

**Date of Enactment or Last Substantive Amendment: August 8, 2012**

**Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1-708(4); 53A-1-401(3)]**

**Education, Administration  
R277-410  
Accreditation of Schools**

**NOTICE OF PROPOSED RULE  
(Amendment)  
DAR FILE NO.: 41775  
FILED: 06/09/2017**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-410 is amended to update the rule and remove outdated language.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to Rule R277-410 provide removal of any references to accrediting bodies, outdated language, and provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.

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

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** Updating the rule and removing outdated language will likely not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** Updating the rule and removing outdated language will likely not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** Updating the rule and removing outdated language will likely not result in a cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Updating the rule and removing outdated language will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Updating the rule and removing outdated language will likely not result in any compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

## R277. Education, Administration.

### R277-410. Accreditation of Schools.

#### R277-410-[2]1. Authority and Purpose.

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

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

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

~~(c)~~ S~~[ub]~~section 53A-1-402~~(+)(e)(i)~~, which directs the Board to ~~[adopt]~~establish rules ~~[for]~~governing school accreditation~~[-]~~; and Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities].

~~[B-](2)~~ The purpose of this rule is to ~~[specify]~~accreditation procedures and responsibility for public schools for which accreditation is required or sought voluntarily and for nonpublic schools which voluntarily request AdvancED Northwest accreditation~~]~~require qualifying secondary schools to be accredited.

#### R277-410-[1]2. Definitions.

For the purposes of this rule:

"Qualifying secondary school" means a public school that:

(1) includes any of grades 9-12; or

(2) offers credits toward high school graduation.

~~[A-]~~ "Accreditation" means the formal process for internal and external review and approval under the Standards for the Northwest Accreditation Commission, a division of AdvancED Education Inc., (AdvancED);

~~B-]~~ "AdvancED" means the provider of accreditation services based on standards, student performance and stakeholder involvement and nonprofit resource offering school improvement and accreditation services to education providers;

~~C-]~~ "Board" means the Utah State Board of Education;

~~D-]~~ "Elementary school" for the purpose of this rule means grades no higher than grade 6;

~~E-]~~ "Junior high school" for purposes of this rule means grades 7 through 9;

~~F-]~~ "Middle school" for the purpose of this rule means grades no lower than grade 5 and no higher than grade 8 in any combination;

~~G-]~~ "Northwest" means the Northwest Accreditation Commission, the regional accrediting association of which Utah is a member. Northwest is an accreditation division of AdvancED;

~~H-]~~ "Secondary school" for the purpose of this rule means a school that includes grades 9-12 that offers credits toward high school graduation or diplomas or both in whatever kind of school the grade levels exist;

~~I-]~~ "State Council" means the State Accreditation Council, which is composed of 15-20 public school administrators, school district personnel, private and special purpose school representatives, and USOE personnel. The members are selected to provide statewide representation and volunteer their time and service;

~~J-]~~ "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.]

#### R277-410-3. Accreditation of Public Schools.

~~[A-]~~ The Superintendent has responsibility to facilitate accreditation by the Board for Utah public schools. The Board is not responsible for the accreditation of nonpublic schools, including private, parochial, or other independent schools;

~~B-]~~ A Utah public secondary school, as defined in R277-410-1H and consistent with R277-481-3A(2), shall be a member of AdvancED Northwest and be accredited by AdvancED Northwest;

~~C-]~~ A Utah public elementary or middle school that desires accreditation shall be a member of AdvancED Northwest and meet the requirements of R277-410-5 and R277-410-6. AdvancED Northwest accreditation is optional for Utah elementary and middle schools;

~~D-]~~ An AdvancED Northwest accredited school shall complete and file reports in accordance with AdvancED Northwest protocols;

~~E-]~~ If a school includes grade levels for which accreditation is both mandatory and optional, the school shall be accredited in its entirety;]

~~(1)~~ A qualifying secondary school shall obtain accreditation from a regional accrediting body.

~~(2)~~ If a qualifying secondary school does not obtain accreditation before the beginning of the school's second year of operation, the credit awarded by the qualifying secondary school is considered earned from a non-accredited source as described in Section R277-705-3:

~~(a)~~ for the school's first year of operation; and

~~(b)~~ until the school becomes accredited.

~~(3)(a)~~ In addition to standards set by an accrediting body, the Superintendent shall establish Utah-specific assurances demonstrating compliance with state law and Board rule.

~~(b)~~ The Superintendent shall ensure that qualified secondary schools meet the Utah-specific assurances described in Subsection (3)(a).

~~(4)~~ The Superintendent may require on-site visits as part of the accreditation process.



**~~R277-410-4. Accreditation Status; Reports.~~**

~~A. The Board accepts the AdvancED Northwest Standards for Quality Schools as the basis for its accreditation standards for school accreditation.~~

~~B. A Utah public school seeking accreditation shall meet additional specific Utah assurances in addition to required AdvancED Northwest standards.~~

~~C. A school shall complete reports as required by AdvancED Northwest and submit the report to the appropriate recipients.~~

~~D. A school shall have a complete school evaluation and site visit at least once every five years to maintain its accreditation.~~

~~E. The Board or Superintendent may require on-site visits as often as necessary when the Superintendent receives notice of accreditation problems, as determined by the Superintendent, AdvancED Northwest, or its State Council.~~

~~F. The school's accreditation status is recommended by the State Council following a review of the report of the school's External Review. Final approval of the status is determined by the AdvancED Commission and approved by the Board.~~

**R277-410-5. Accreditation Procedures.**

A. The evaluation of secondary schools for the purpose of accreditation is a cooperative activity in which the school, the school district, the Superintendent, and AdvancED Northwest share responsibilities. A school's internal review, development, and implementation of a school improvement plan are crucial steps toward accreditation.

B. A school seeking AdvancED Northwest accreditation for the first time shall submit a membership application to AdvancED. The accepted application shall be forwarded to the AdvancED Managing Office Director.

(1) If a school's application for membership is accepted by AdvancED, the Utah AdvancED Managing Office shall schedule an on-site Readiness Review. Upon successful completion of the Readiness Review, the school may become a candidate for accreditation. Candidate schools are not accredited until such status is officially granted.

(2) A school may remain in candidacy for no more than two years prior to hosting an External Review Team accreditation visit. The External Review Team shall be staffed with at least two qualified educators verifying a school's compliance with accreditation standards. Following approval by both the Utah AdvancED Council and the AdvancED Commission, the school shall receive accreditation. A school may request an External Review accreditation visit prior to year two if the school has sufficient student and financial data.

C. AdvancED Northwest accredited schools shall be subject to:

(1) compliance with AdvancED Northwest membership requirements;

(2) satisfactory review by the AdvancED State Council, AdvancED Northwest Commission and Board approval;

(3) a site visit at least every five years by an external review team to review the internal review materials, visit classes, and talk with staff and students as follows:

(a) The external review team shall present its finding in the form of a written report in a timely manner. The report shall be

provided to the school, school district superintendent or local charter board chair, and other appropriate parties.

(b) AdvancED staff shall review the external review team report, and consult with the Utah AdvancED Council. The AdvancED Commission shall grant accreditation status if appropriate.

D. Following review and acceptance, accreditation external review team reports are public information and are available upon request.

**R277-410-6. Elementary School Accreditation.**

A. Elementary schools desiring accreditation shall be members of AdvancED Northwest and meet the standards required for such accreditation as outlined in this rule.

B. The accreditation of Utah elementary schools is optional; interested elementary schools may apply to AdvancED Northwest for accreditation.

C. Accreditation shall take place under the direction of AdvancED Northwest.

**R277-410-7. Junior High and Middle School Accreditation.**

A. Junior high and middle schools desiring accreditation shall be members of AdvancED Northwest and meet the standards required for such accreditation as outlined in this rule.

B. The accreditation of Utah middle schools is optional; interested middle schools may apply to AdvancED Northwest for accreditation.

C. Public junior high and middle schools that include grade 9 shall be members of AdvancED Northwest and be visited and assigned status by AdvancED Northwest.

D. The AdvancED Northwest accreditation standards provided in this rule are applicable to a junior high or middle school in the school's entirety if the school includes grade 9 consistent with R277-410-6C.

**R277-410-8. Board Accreditation Standards.**

A. Board accreditation standards include AdvancED Standards for Quality Schools and Utah-specific requirements. Each standard requires the school to respond to a series of indicator statements and provide evidence of compliance as directed.

B. Utah-specific assurances include essential information sought from schools to demonstrate alignment with Utah law and Board rules. Utah-specific assurances are available from the USOE Teaching and Learning Section: ]

**R277-410-[9]4. Transfer or Acceptance of Credit.**

~~[A-](1) A[Utah public]qualifying secondary school[s] shall accept transfer credits from an accredited qualifying secondary school[s] consistent with Section 53A-13-108.5 and Section R277-705-3.~~

[B-](2) A[Utah public]qualifying secondary school[s] may accept transfer credits from other credit sources consistent with Section R277-705-3.

**KEY: accreditation, public schools, nonpublic schools**

**Date of Enactment or Last Substantive Amendment: [August 26, 2015]2017**

**Notice of Continuation: July 1, 2015**

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

Education, Administration  
**R277-460**  
Distribution of Substance Abuse  
Prevention Account

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41776

FILED: 06/09/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-460 is amended to provide changes in funding a program administrator and staff and to update the rule in accordance with the Rulemaking Manual for Utah.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to Rule R277-460 give the Superintendent the authority to increase administration program support from .5 FTE to a full FTE due to the increased need in program support. The amendments also provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art X, Sec 3 and Section 51-9-405 and Section 53A-1-401 and Section 53A-13-102

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The amendments to this rule will likely not result in a cost or savings to the state budget. Funds are available in the Substance Abuse Prevention Account to cover additional costs.
- ◆ **LOCAL GOVERNMENTS:** The amendments to this rule will likely not result in a cost or savings to local government. Funds are available in the Substance Abuse Prevention Account to cover additional costs.
- ◆ **SMALL BUSINESSES:** The amendments to this rule will likely not result in a cost or savings to small businesses. This program applies to public education program administration and should not affect small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to this rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. Funds are available in the Substance Abuse Prevention Account to cover additional costs.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The amendments to this rule will likely not result in any compliance costs for affected persons. Funds are available in

the Substance Abuse Prevention Account to cover additional costs.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.**

**R277-460. Distribution of Substance Abuse Prevention Account.**

**R277-460-[2]1. Authority and Purpose.**

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

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

(b) Section 53A-13-102, which directs the Board to adopt rules providing for instruction on the harmful effects of controlled substances;[-and by]

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

(d) Section 51-9-405, which provides for funds from the Substance Abuse Prevention Account to be allocated to the [USOE]Board for:

([1]i) substance abuse prevention and education;

([2]ii) substance abuse prevention training for teachers and administrators; and

([3]iii) [school district, charter school or consortia]LEA programs to supplement, not supplant, existing local prevention efforts in cooperation with local substance abuse authorities.

[B-](2) The purpose of this rule is to provide for the distribution of the [USOE]Board's share of the money from the Substance Abuse Prevention Account.

**R277-460-1.2. Definitions.**

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

~~[B.](1)~~ "Educational materials" means visual and auditory media, curricula, textbooks, and other disposable or non-disposable items that enhance student understanding of the subject matter.

~~[C.]~~ C. "Evaluation" means a review by a person or group which assesses procedures, results and products specific to a program.]

~~[D.](2)~~ "Local [S]ubstance [A]buse [A]uthority" means the person or group designated by the Legislature as the county authority to receive public funds for substance abuse prevention and treatment.

~~[E.](3)~~ "Substance abuse [P]revention education activities and intervention" means proactive educational activities designed to eliminate any illegal use of controlled substances.

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

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

~~[H.]~~ H. "Utah Substance Abuse Prevention Guiding Principles" means criteria established by the Utah Division of Substance Abuse and Mental Health to be used in selecting or developing substance abuse prevention materials.]

**R277-460-3. Fund Allocations.**

~~[A.](1)~~ Before making the distributions described in Subsections (2) and (3), [F]the [USOE]Superintendent shall retain sufficient substance abuse prevention funds to pay for the salary, benefits, and indirect costs of a [~~5~~ FTE] [P]rogram [A]administrator at a salary level to be determined by the [Board]Superintendent and support staff costs for the program administrator.

~~[B.](2)~~ [The remaining funds shall be allocated as follows]After the allocation of substance abuse prevention funds is retained as described in Subsection (1), the Superintendent may use up to 45% to:

~~[1]a)~~ [An amount not to exceed fifteen percent shall remain at the USOE to]purchase educational materials to support and supplement existing [Utah's S]ubstance [A]buse [P]revention [Program, Prevention Dimensions:]efforts;

~~[2]b)~~ [An amount not to exceed fifteen percent shall remain at the USOE to]encourage and support statewide substance abuse prevention training for school district[~~f~~] and charter school teachers and administrators[~~;~~]; and

~~[3]c)~~ [An amount not to exceed fifteen percent shall remain at the USOE to]promote [Utah's S]ubstance [A]buse [P]revention [Program and encourage its]in the classroom[ use by Utah educators].

~~[4]3)~~ [A minimum of fifty-five percent]At least 55% of the substance abuse prevention funds remaining after the allocation described in Subsection (1) shall be distributed to [school districts, charter schools or consortia]LEAs for use by the [school district,]LEAs or individual schools within the LEA[~~;~~ charter schools or consortia in a cooperative substance abuse prevention effort] based on application.

**R277-460-4. Applications.**

~~[A.](1)~~ [Applications shall be provided by the USOE]The Superintendent shall develop an application for LEAs that are

~~interested in applying for substance abuse prevention funds available as described in this R277-460.~~

~~[B.](2)~~ [School districts, charter schools or consortia]An LEA shall submit the LEA's application[s] to the specialist designated by the [USOE]Superintendent.

~~[C.]~~ The USOE specialist shall make funding recommendations to the USOE Finance Committee as soon as reasonably possible after the application deadline.]

~~[D.](3)(a)~~ [Awards per school districts, charter schools or consortia]Substance abuse prevention funds shall be distributed to LEAs based on funds available[~~and specific~~] from the Substance Abuse Prevention Account.

~~(b)~~ The Superintendent shall describe the available funding amounts[~~shall be provided~~] in the [USOE]Board application described in Subsection (1).

~~[E.]~~ Only applications for funding that propose projects or programs consistent with the Utah Substance Abuse Prevention Guiding Principles shall be considered for funding.]

~~[(1)4]~~ [Applications]An LEA's application for substance abuse prevention funds shall [address]include the following:

(a) the applicant's intention to collaborate with the local substance abuse authority and community groups[ ~~within the school district~~], including shared plans and strategies for substance abuse prevention education, activities, and intervention;

(b) the applicant's plan for professional development on substance abuse[~~and teachers' use of Prevention Dimensions materials within their classrooms~~];

(c) the use of funds to implement applicant's plan;

(d) teacher reports of classroom implementation and plans for classroom monitoring visits;

(e) applicant's enhancement of [Prevention Dimensions]substance abuse curriculum with additional substance abuse activities and strategies; and

(f) applicant's implementation of [Prevention Dimensions]substance abuse curriculum with school-based behavioral/health or coordinated school health initiatives.

~~[F.]~~ Projects receiving funding shall be notified of funding approval by the USOE Finance Committee.]

**R277-460-5. Limitations on Funds.**

~~[A.](1)~~ [Funds shall be used by the USOE, school districts, charter schools and consortia]The Superintendent and LEAs shall use substance abuse prevention funds exclusively for purposes set forth in Section 51-9-405.

~~[B.](2)~~ Transfer of funds between line items or the extension of project completion dates may be made only with prior written approval of the Superintendent[USOE].

~~[C.](3)~~ [Funds received by school districts, charter schools or consortia]An LEA [shall]may not [be used]use funds received under this R277-460 to supplant;

~~(a)~~ funds [either] currently available [school district or charter school funds]to the LEA; or

~~(b)~~ funds available from other state or local sources.

**R277-460-6. Evaluation and Reports.**

~~[A.](1)~~ An applicant that [accepts a USOE]receives [S]ubstance [A]buse [P]revention funds [award]shall provide the [USOE]Superintendent with a year-end [evaluation]report on or before July 1 of the fiscal year in which the award was made.

~~[(B)](2)~~ The year-end report described in Subsection (1) shall include:

~~[(1)]a~~ an expenditure report;

~~[(2)]b~~ a narrative description of activities funded; and

~~[(3)]c~~ ~~[copies of all products and materials developed with USOE Substance Abuse Prevention funds.]~~ an action research or data project report.

~~[(C)](3)~~ The ~~[USOE]~~ Superintendent may require additional evaluation or audit procedures from an award recipient to demonstrate the use of funds consistent with the law and Board rules.

(4) The Superintendent shall annually report the following information to the Board's Finance Committee:

(a) the number of LEAs receiving substance abuse prevention funds;

(b) a summary of the LEAs' use of program funds; and

(c) a description of how the Superintendent is using the funds described in Subsections R277-460-3(1) and (2).

**~~[R277-460-7. Waivers.~~**

~~The Superintendent may grant a written request for a waiver of a requirement or deadline which a school district, charter school or consortia finds unduly restrictive.]~~

**KEY: public schools, substance abuse prevention**

**Date of Enactment or Last Substantive Amendment: ~~[October 11, 2011]~~ 2017**

**Notice of Continuation: May 15, 2013**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-13-102; 51-9-405**

## Education, Administration

### **R277-467**

## Distribution of Funds Appropriated for Library Media Materials and Electronic Resources

### **NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 41777

FILED: 06/09/2017

### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-467 is repealed because the provisions of the rule are repetitive of the statutory provisions.

**SUMMARY OF THE RULE OR CHANGE:** Rule R277-467 distributes an on-going appropriation, subject to budget constraints, to LEAs. The appropriation is designated for school library media materials and electronic resources.

These provisions are already laid out in statute. Consequently, Rule R277-467 is repealed in its entirety.

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Repealing Rule R277-467 will likely not result in a cost or savings to the state budget. The provisions of this rule are in statute.

◆ **LOCAL GOVERNMENTS:** Repealing Rule R277-467 will likely not result in a cost or savings to local government. The provisions of this rule are in statute.

◆ **SMALL BUSINESSES:** Repealing Rule R277-467 will likely not result in a cost or savings to small businesses. The provisions of this rule are in statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Repealing R277-467 will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. The provisions of this rule are in statute.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Repealing Rule R277-467 will likely not result in any compliance costs for affected persons. The provisions of this rule are in statute.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that repealing this rule will not result in a fiscal impact to businesses.

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

EDUCATION

ADMINISTRATION

250 E 500 S

SALT LAKE CITY, UT 84111-3272

or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017**

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

**R277. Education, Administration.**

~~[R277-467. Distribution of Funds Appropriated for Library Media Materials and Electronic Resources.~~

**R277-467-1. Definitions:**

- ~~A. "Board" means the Utah State Board of Education.~~  
~~B. "Electronic resources" means databases, CDs, DVDs, software, online materials, or other items in electronic format which may be included in the school library media collection and made available for use.~~  
~~C. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.~~  
~~D. "Library media materials" means trade books including electronic versions, that support the school curriculum or are provided for recreational reading interests. This definition does not include textbooks or materials used solely for classroom instruction or classroom libraries.~~  
~~E. "USOE" means the Utah State Office of Education.~~

**R277-467-2. Authority and Purpose.**

- ~~A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public schools in the Board, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.~~  
~~B. The purpose of this rule is to distribute an on-going appropriation, subject to budget constraints, to LEAs. The appropriation is designated for school library media materials and electronic resources.~~

**R277-467-3. Distribution of Funds.**

- ~~A. Each Utah LEA shall receive an allocation from the annual appropriation as follows:~~  
~~(1) 25 percent shall be divided equally among all LEAs; and~~  
~~(2) 75 percent shall be divided among public schools based on each public school's average daily membership as compared to the total average daily membership of all public schools.~~  
~~B. An LEA may not use money appropriated in this allocation to supplant other monies used to purchase library media materials or electronic resources.~~  
~~C. LEAs shall spend these fund allocations only for library media materials and electronic resources that shall be part of the school library collection and available for general use and checkout by students and staff or both.~~

**R277-467-4. Accountability and Evaluation.**

~~The USOE may review LEAs' use of funds to determine if funds were expended consistently with the purpose of this rule and the appropriation.~~

**KEY: libraries, educational media**

**Date of Enactment or Last Substantive Amendment: August 8, 2012**

**Notice of Continuation: June 15, 2012**

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

Education, Administration  
**R277-479**  
 Charter School Special Education  
 Student Funding Formula

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41778

FILED: 06/09/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-479 is amended to update the rule in accordance with the Rulewriting Manual for Utah.

**SUMMARY OF THE RULE OR CHANGE:** Rule R277-479 is amended to provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art X, Sec 3 and Section 53A-1-401 and Section 53A-15-301 and Subsection 53A-1-402(1)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** Providing technical and conforming changes to the rule will likely not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** Providing technical and conforming changes to the rule will likely not result in a cost or savings to local government. This rule provides procedures for public participation in Board meetings and does affect local government.
- ◆ **SMALL BUSINESSES:** Providing technical and conforming changes to the rule will likely not result in a cost or savings to small businesses. This rule and the amendments provide procedures for public participation in Board meetings and do not affect small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Providing technical and conforming changes to the rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Providing technical and conforming changes to the rule will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

## R277. Education, Administration.

### R277-479. Funding for Charter School [Special Education Student Funding Formula] Students With Disabilities on an IEP. R277-479-[2]1. Authority and Purpose.

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

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

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

(c) Subsection 53A-1-402(1), which directs the Board to adopt rules regarding services for persons with disabilities[;]; and

(d) Section 53A-15-301, which directs the Board to set standards for state funds appropriated for students with disabilities[;]; ~~and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.~~

[B-](2) The purpose of this rule is to specify standards and procedures for funding of charter school [special education] students [funding] with disabilities on an IEP.

### R277-479-[1]2. Definitions.

[A-](1) "Base" ~~[for purposes of this rule,]~~ means prior year special education add-on WPU.

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

[C-](2) "Charter school[s]" means a school[s] authorized [as charter schools] by [chartering entities] a charter school authorizer under;

(a) Section[s] 53A-1a-515[;];

~~(b) Section 53A-1a-521[;]; [and this rule or by the Board under] or~~

(c) Section 53A-1a-505.

~~[D-](3) ["Chartering entities" means entities that authorize charter schools under Section 53A-1a-501.3(3).] "Charter school authorizer" or "authorizer" has the same meaning as that term is defined in Subsection 53A-1a-501.3(4).~~

[E-](4) "Estimated enrollment" means a charter school's projected student enrollment in the school's first year of operation as approved by the [USOE] Superintendent.

[F-](5) "Foundation[;]" ~~[for purposes of this rule,]~~ means the average of self-contained and resource special education students ~~[self-contained and resource]~~ average daily membership ~~[(ADM)]~~ over the previous five years.

[G-](6) "Negative growth adjustment" means prior year special education add-on WPU minus weighted negative growth.

[H-](7) "New charter school[;]" ~~[for the purpose of this rule,]~~ means a charter school with less than five years of operation.

[I-](8) "Positive growth adjustment" means prior year special education add-on WPU plus weighted growth.

[J-](9) "Prevalence rate" means the percentage of students with disabilities within the total student enrollment.

[K-](10) "Previous five years[;]" ~~[for the purpose of this rule,]~~ means the five year span between the seventh and second prior fiscal year.

[L-](11) "Significant expansion" means a substantial increase in the number of students attending a charter school due to a significant event, such as the addition of new grade levels or additions of sites, that is unlikely to occur on a regular basis.

[M-](12) "Special education" means specially designed instruction and related services to meet the unique needs of a student with a disability ~~[under]~~ in accordance with R277-750.

[N-](13) "State Charter School Board" or "SCSB" means ~~[the board designated in] the charter school authorizer created in accordance with Section 53A-1a-501.5.~~

[O-](14) "Student with a disability" means a student, evaluated in accordance with Utah State Board of Education Special Education Rules, and determined to be eligible for special education and related services.

[P-](15) "Total enrollment[;]" ~~[for the purposes of this rule,]~~ means the total number of all students enrolled in ~~[the] all campuses of a school [(including all multiple sites)]~~ as of the October 1 UTREx update.

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

[S-](14) "Utah eTranscript and Record Exchange" or ~~[("UTREx")]~~ means a system that allows:

(a) individual detailed student records to be exchanged electronically among public education LEAs and the [USOE] Superintendent[;]; and

(b) ~~[allows]~~ electronic transcripts to be sent to any post-secondary institution ~~[private or public, in-state or out-of-state,]~~ that participates in the e-transcript service.

### R277-479-3. Charter School Special Education Add-On Funding.

~~[A-]~~ Foundation]

(1) For existing charter schools, the Superintendent shall calculate the foundation [is calculated] based on the average ADM of students with disabilities for the previous five years.

(2)(a) ~~[New] For new charter schools, the Superintendent shall calculate the foundation]~~

~~(a) For new charter schools, a five year average cannot be calculated; the calculation of foundation shall be] based on the average special education ADM for the number of years the new charter school has been in operation beyond the first year.~~

~~(b) In [the]its first operational year, a new charter school shall receive special education funding [shall be]based on estimated enrollment.~~

~~(b)c Unless [the]a new charter school[is approved purpose is specific to the needs of] identifies a purpose and target population in its application focusing on students with disabilities, the estimate of students with disabilities for a new charter school shall be 10 percent of the estimated enrollment.~~

(3) The foundation is the minimum amount a charter school may receive for special education-add on funding.

~~[B. Growth adjustments]~~

~~(1) Positive Growth Adjustment]~~

(4)(a) The Superintendent shall apply a positive growth adjustment to a charter school's foundation for weighted growth.

(a)b Weighted growth is determined by comparing special education ADM and total ADM from the third and second prior fiscal years.

(b)c The rate of growth in special education ADM [is limited to]may not exceed the rate of growth in total ADM.

(d) The Superintendent shall multiply positive weighted growth~~[If the percentage determined for growth is positive, it is multiplied]~~ by a factor of 1.53 and add~~[ed]~~ the result to ~~[the base]a~~ charter school's foundation.

(e)c The~~[re is no]~~ Superintendent may not impose a funding cap ~~[imposed]~~based on the charter prevalence rate because ~~[some]a~~ charter school~~[s are]~~is designed and authorized specifically to serve students with disabilities.

(d)f When there is no growth, either because ~~[the]a~~ charter school is new or because the same number of students ~~[is]are~~ enrolled, the~~[n there is no]~~ Superintendent may not apply a positive growth adjustment.

~~(2)5(a) [Negative Growth Adjustment]The Superintendent shall apply a negative growth adjustment to a charter school's base for decline in special education ADM.~~

~~(a)b [If the charter school experiences a decline in special education ADM of students with disabilities, a negative growth adjustment shall be applied.]The negative growth adjustment is the base multiplied by the percentage of enrollment decline.~~

(c) The Superintendent shall subtract the result calculated under Subsection (5)(b) ~~[This number is then subtracted]~~ from the base to determine WPU.

(b)d When there is no decline in ~~[the]a~~ charter school's enrollment of students with disabilities, either because the charter school is new or because the same number of students ~~[is]are~~ enrolled, the~~[n there is no]~~ Superintendent may not apply a negative growth adjustment to the charter school's allotment.

(e)c If ~~[the]a~~ negative growth adjustment brings the WPU ~~[to lower than]below~~ the foundation, the charter school shall receive the foundation WPU.

~~[C. Significant expansion adjustment]~~

~~(+)6(a) If an authorizer approves a significant expansion for a [C]charter school[s], [identified by the school's chartering entity as having significant expansion receive]during the first and second years of expansion, the Superintendent shall apply an additional funding adjustment after the entire add-on WPU formula is calculated [in the first and second years of expansion].~~

~~(b) After [that period,] the first and second years of a charter school's expansion, the special education formula provided in this R277-479-3 shall account for the expansion.~~

(2)c The Superintendent shall calculate a significant expansion adjustment ~~[will]by [estimate]~~ estimating the number of students with disabilities who will enroll as part of the expansion, and ~~[provide]providing~~ funding for these anticipated students.

(a)d(i) The Superintendent shall base the estimate under Subsection (6)(c)~~[shall be based]~~ on ~~[the]a~~ projected expansion adjustment ~~[as determined by the USOE.]calculated by the Superintendent accounting for expansion information provided by a charter school's authorizer.~~

(ii) ~~[This]The Superintendent shall multiply the projection [shall be multiplied]by the prevalence rate of students with disabilities for the charter school for the most recent year calculated in the add-on formula.~~

~~(b) The result shall be the estimated ADM of students with disabilities who enroll with the expansion. This number is equal to the significant expansion adjustment WPU, which is added as an expansion supplement to the add-on WPU allocated to each charter school.]~~

(iii) The Superintendent shall allocate the resulting significant expansion adjustment WPU as an expansion supplement to the charter school's add-on WPU.

**KEY: charter schools, students with disabilities**

**Date of Enactment or Last Substantive Amendment: [May 8, 2012]2017**

**Notice of Continuation: March 15, 2017**

**Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1-402(1); 53A-15-301; 53A-1-401(3)**

## Education, Administration R277-484 Data Standards

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 41779

FILED: 06/09/2017

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-484 is amended to update required data and deadlines provisions and provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to Rule R277-484 provide new and revised definitions, remove unnecessary language, restructure the rule, and provide technical and conforming changes in accordance with the Rulewriting Manual for Utah.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art X, Sec 3 and Section 53A-1-401 and Section 53A-1-413

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Changes to the rule are primarily restructuring and technical which will likely not result in any compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017**

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

**R277. Education, Administration.**

**R277-484. Data Standards.**

**R277-484-[2]1. Authority and Purpose.**

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

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

~~(b)~~ Section 53A-1-401~~[(3)]~~, which ~~[permits]allows~~ the Board to ~~[adopt rules in accordance with its responsibilities]make~~ rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;~~[-and specifically allows the Board to interrupt disbursements of state aid to any LEA which fails to comply with rules.]~~

~~(c)~~ Subsection 53A-1-401(8)(a), which allows the Board to take corrective action against an education entity that fails to comply with Board rules; and

~~(d)~~ Subsection 53A-1-413(8), which requires the Board to ensure LEA inclusion of data in an LEA's Student Information System.

~~[B-](2)~~ The ~~[Board, through its chief executive officer, the State-]Superintendent [of Public Instruction, -]~~ is required to perform certain data collection related duties essential to the operation of statewide educational accountability and financial systems as mandated in state and federal law.

~~[C-](3)~~ The purpose of this rule is to support the operation of required educational accountability and financial systems by ensuring timely submission of data by LEAs.

**R277-484-[1]2. Definitions.**

~~[A-](1)~~ "Annual Financial Report" means an account of LEA revenue and expenditures by source and fund sufficient to meet the reporting requirements specified in Subsections 53A-1-301(3)(d) and (e).

~~[B-](2)~~ "Annual Program Report" means an account of LEA revenue and expenditures by source and program sufficient to meet the reporting requirements specified in Subsections 53A-1-301(3)(d) and (e).

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

~~[D-](3)~~ "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "[{CACTUS}]" ~~[means the database maintained on all licensed Utah educators. The database includes information such as:~~

- ~~(1) personal directory information;~~
- ~~(2) educational background;~~
- ~~(3) endorsements;~~
- ~~(4) employment history;~~
- ~~(5) professional development information;~~
- ~~(6) completion of employee background checks; and~~
- ~~(7) a record of disciplinary action taken against the educator.]~~ means the same as that term is defined in Subsection R277-512(1)(a).

~~[E-](4)~~ "Data Warehouse" means the database of demographic information, course taking, and test results maintained by the USOE on all students enrolled in Utah schools.



~~[F.](5) "EDEN" means the Education Data Exchange Network, the mechanism by which state education agencies are mandated to submit data to the U.S. Department of Education.~~

~~[G. "ESEA" means the federal Elementary and Secondary Education Act, also known as the No Child Left Behind Act.]~~

~~[H.](6) "LEA" [means local education agency, including local school boards/public school districts, charter schools, and] includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.~~

~~[I.](7) "MSP" means Minimum School Program, the set of state supported K-12 public school funding programs.~~

~~[J. "MST" means Mountain Standard Time.]~~

~~[K.](8) "Schools interoperability framework" or "[SIF]" means an open global standard for seamless, real time data transfer and usage for Utah public schools.~~

(9) "Student achievement backpack" has the same meaning as that term is defined in Subsection 53A-1-413(1)(d).

~~[L.](10) "Student information system" or "[SIS]" means a student data collection system used for Utah public schools.~~

~~[M. "USOE" means Utah State Office of Education.]~~

~~[N.](11) "Utah eTranscript and Record Exchange" or "[UTREx]" means a system that allows individual detailed student records to be exchanged electronically between public education LEAs and the [USOE]Board, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.~~

(12) "Utah Student Record Store" has the same meaning as that term is defined in Subsection 53A-1-413(1)(e).

~~[O.](13) "Year" means both the school year and the fiscal year for [LEAs in]a Utah LEA, which runs from July 1 through June 30.~~

**R277-484-3. Deadlines for Data Submission.**

~~[For the purpose of submission of student level data, each Utah LEA shall participate in UTREx.]~~

(1) An LEA shall submit student level data to the Board through UTREx.

(2) An LEA[s] shall by 5:00 p.m. Mountain Standard Time on the date specified in Table 1 submit [data to the USOE as directed by the USOE through the following]reports [by 5:00 p.m. MST on the date and]in the format specified by the [USOE]Superintendent[.].

(3) If a deadline in Table 1 falls on a weekend or state holiday in a given year, an LEA shall submit the report on the next business day following the date specified in Table 1.

TABLE 1  
Reporting Deadlines

Report	Deadline
Adult Education - Final Report - Prior Year	July 15
Adult Education - Final Audit Report - Prior Year	September 15
Annual Assurance Letter - R277-108	October 1
Annual Financial Report - Prior Year	October 1
Annual Program Report - Prior Year	October 1

Bus Driver Credentials Report - Current Year	December 15
Bus Inventory Report	July 15
CACTUS - Final Update - Current Year	June 29
CACTUS - Midyear Update - Current Year	November 15
Charter School Projections	September 15
Classified Personnel Report - Prior Year	July 15
Community Development and Renewal Agency Representative List	February 28
Driver Education Report - Prior Year	July 15
Emergency Preparedness Compliance Statement - Prior Year	July 1
Emergency Response Plan - Prior Year	July 1
Enrollment and Transfer Student Documentation Audit - Current Year	November 1
ESEA Choice and Supplemental Services Report - Prior Year	July 15
Financial Audit Report - Prior Year	November 30
Fire Drill Compliance Statement - Prior Year	July 1
Free and Reduced Price Lunch October 31 Enrollment Survey - Current Year	November 15
Home Schooled Students Report - Prior Year	July 15
Immunization Status Report (to Utah Department of Health) - Final	June 15
Immunization Status Report - Current Year	November 1
LEA Budget - Next Fiscal Year	July 15
LEA Budget - Next Fiscal Year - Planned Truth in Taxation Process	August 15
Membership Audit Report - Prior Year	September 15
Negotiations Report - Current Year	November 1
Other Emergency (Earthquake and School Violence) Drills Compliance Statement - Prior Year	July 1
Pupil Transportation - Schedule A1 (Miles, Minutes, Students Report) - Current Year Projected	November 1
Pupil Transportation Schedule B (Miscellaneous Expenditure Report) - Prior Year	November 1
Pupil Transportation Statistics Year End Report- Prior Year	July 15
Redevelopment Agency Taxing Entity Committee Representative List	February 28
UTREx - Complete December 1 Update - Current Year	December 10
UTREx - Complete October 1 Update - Current Year	October 10
UTREx - Revised December 1 Update - Current Year - Significant Errors Identified by the Superintendent or LEA	December 15
UTREx - Revised October 1 Update - Current Year Significant Errors Identified by the Superintendent or LEA	October 15
UTREx - Final Comprehensive Update - Prior Year	July 7

~~[A. February 28 - Community Development and Renewal Agency and/or Redevelopment Agency Taxing Entity Committee Representative List.~~

~~B. June 15  
(1) Immunization Status Report (to Utah Department of Health) - final;~~

~~(2) Safe School Incidents Report - for current year.~~

~~C. June 29 - CACTUS - final update for current year.~~

~~D. July 1~~

~~(1) Fire Drill Compliance Statement - for prior year;~~

~~(2) Other Emergency (Earthquake and School Violence) Drills Compliance Statement - for prior year;~~

~~\_\_\_\_\_ (3) Emergency Preparedness Compliance Statement – for prior year;~~  
~~\_\_\_\_\_ (4) Emergency Response Plan – for prior year;~~  
~~\_\_\_\_\_ E. July 7 – UTREx – final comprehensive update for prior year;~~  
~~\_\_\_\_\_ F. July 15~~  
~~\_\_\_\_\_ (1) Adult Education – final report for prior year;~~  
~~\_\_\_\_\_ (2) Classified Personnel Report – for prior year;~~  
~~\_\_\_\_\_ (3) Driver Education Report – for prior year;~~  
~~\_\_\_\_\_ (4) ESEA Choice and Supplemental Services Report – for prior year;~~  
~~\_\_\_\_\_ (5) Fee Waivers Report – for prior year;~~  
~~\_\_\_\_\_ (6) Home Schooled Students Report – for prior year;~~  
~~\_\_\_\_\_ (7) Teacher Benefits Report – for prior year;~~  
~~\_\_\_\_\_ (8) Pupil Transportation Statistics – for prior year;~~  
~~\_\_\_\_\_ (a) Bus Inventory Report;~~  
~~\_\_\_\_\_ (b) Year End Pupil Transportation Statistics Reports;~~  
~~\_\_\_\_\_ (9) Copy of local school board-adopted budget – for next fiscal year, unless the local school board provides documentation of planned truth-in-taxation process;~~  
~~\_\_\_\_\_ G. August 15 – copy of the local school board-adopted budget – for next fiscal year, if the local school board provides documentation of planned truth-in-taxation process;~~  
~~\_\_\_\_\_ H. September 15~~  
~~\_\_\_\_\_ (1) Membership Audit Report – for prior year;~~  
~~\_\_\_\_\_ (2) Adult Education – Financial Audit for prior year;~~  
~~\_\_\_\_\_ I. October 1~~  
~~\_\_\_\_\_ (1) Annual Financial Report (AFR) – for prior year;~~  
~~\_\_\_\_\_ (2) Annual Program Report (APR) – for prior year;~~  
~~\_\_\_\_\_ (3) Annual assurance letter required for compliance information and documentation for identified programs and funds, pursuant to R277-108;~~  
~~\_\_\_\_\_ J. Seven business days after October 1 – UTREx – complete update required as of October 1 for current year;~~  
~~\_\_\_\_\_ K. October 15 – UTREx – revised update as of October 1 for current year, if significant errors are identified by the USOE or the LEA;~~  
~~\_\_\_\_\_ L. November 1~~  
~~\_\_\_\_\_ (1) Enrollment and Transfer Student Documentation Audit Report – for current year;~~  
~~\_\_\_\_\_ (2) Immunization Status Report – for current year;~~  
~~\_\_\_\_\_ (3) Pupil Transportation Statistics for state funding;~~  
~~\_\_\_\_\_ (a) Schedule A1 (Miles, Minutes, Students Report) – projected for current year;~~  
~~\_\_\_\_\_ (b) Schedule B (Miscellaneous Expenditure Report) – for prior year;~~  
~~\_\_\_\_\_ (4) Negotiations report – for current year;~~  
~~\_\_\_\_\_ M. November 15~~  
~~\_\_\_\_\_ (1) CACTUS – update for current year; and~~  
~~\_\_\_\_\_ (2) Free and Reduced Price Lunch Enrollment Survey – as of October 31 for current year;~~  
~~\_\_\_\_\_ N. November 30 – Financial Audit Report – for prior year;~~  
~~\_\_\_\_\_ O. Seven business days after December 1 – UTREx – complete update required as of December 1 for current year;~~  
~~\_\_\_\_\_ P. December 15 – Bus Driver Credentials Report – for current year;~~  
~~\_\_\_\_\_ M. December 15 – UTREx – revised update as of December 1 for current year if significant errors are identified by the USOE or the LEA.]~~

#### **R277-484-4. Adjustments to Deadlines.**

~~[\_\_\_\_\_ A. Deadlines in R277-484 that fall on a weekend or state holiday in a given year shall be moved to the first workday after the date specified for that year.]~~

~~[~~B.~~(1) An LEA may seek an extension of a deadline to ensure continuation of funding and provide more accurate information to allocation formulas by submitting a written request to the [USOE]Superintendent no later than[. The request shall be received by the USOE Director of School Finance at least] 24 hours before the specified deadline in [Section 3]Table 1.~~

~~\_\_\_\_\_ (2) An extension request [and]shall include:~~

~~\_\_\_\_\_ ([1]a) The reason[is] for the extension request;~~

~~\_\_\_\_\_ ([2]b) The signatures of the LEA business administrator and [LEA]superintendent[ or director; and~~

~~\_\_\_\_\_ ([3]c) The date by which the LEA [shall]proposes to submit the report.~~

~~[\_\_\_\_\_ C. In processing the request for the extension, the USOE Director of School Finance shall:]~~

~~[~~(1) Take~~(3) If an LEA requests an extension under Subsection (1), the Superintendent may do any of the following after taking into consideration the pattern of LEA compliance with reporting deadlines and the urgency of the need for the data to be submitted[; and either]:~~

~~\_\_\_\_\_ ([2]a) Approve the request and allow the MSP fund transfer process to continue; or~~

~~\_\_\_\_\_ ([3]b) [Recommend denial of the request and forward it to the USOE Associate Superintendent for Business and Operations for a final decision on whether or not to]Deny the request and stop the MSP fund transfer process[; or~~

~~\_\_\_\_\_ (c) Recommend corrective action to the Board in accordance with Rule R277-114.~~

~~[~~D.~~(4) If, after receiving an extension, [the]an LEA fails to submit the report by the designated date, the MSP fund transfer process shall be stopped and the procedures described in Section [8]R277-484-7 shall apply.~~

~~[~~E.~~(5) An [E]extension[s] shall apply only to the [report(s) and date(s)]specific reports and dates for which an extension was requested[ specified in the request].~~

~~[~~F.~~(6) [Exceptions – Deadlines]The Superintendent may not extend deadlines for the following reports[ may not be extended]:~~

~~[\_\_\_\_\_ (1) CACTUS Update:~~

~~\_\_\_\_\_ (a) June 29;~~

~~\_\_\_\_\_ (b) November 15;~~

~~\_\_\_\_\_ (2) UTREx Update:~~

~~\_\_\_\_\_ (a) July 7 UTREx – final comprehensive update for prior year;~~

~~\_\_\_\_\_ (b) Seven business days after October 1 – UTREx – complete update required as of October 1;~~

~~\_\_\_\_\_ (c) October 15 UTREx – revised update as of October 1;~~

~~\_\_\_\_\_ (d) Seven business days after December 1 – UTREx – complete update required as of December 1;~~

~~\_\_\_\_\_ (e) December 15 – UTREx – revised update as of December 15.]~~

~~\_\_\_\_\_ (a) AFR;~~

~~\_\_\_\_\_ (b) APR;~~

~~\_\_\_\_\_ (c) Mid-year or Final CACTUS updates;~~

~~\_\_\_\_\_ (d) a Financial Audit Report; or~~

~~\_\_\_\_\_ (e) any UTREx updates.~~

**R277-484-5. Official Data Source and Required LEA Compatibility.**

~~[A-]~~(1) The ~~[USOE]~~Superintendent shall load operational data collections into the Data Warehouse as of the submission deadlines specified.

~~[B-]~~(2) The Data Warehouse shall be the sole official source of data for annual:

~~([1]a)~~ school performance reports required under Section 53A-3-602.5;

~~([2]b)~~ determination of ~~[adequate yearly progress as required under the Utah Comprehensive Accountability System (UCAS)]~~state and federal accountability reports; and

~~([3]c)~~ submission of data files to the U.S. Department of Education via EDEN.

~~[C-]~~(3)(a) An LEA[s] shall use an ~~[USOE-approved]~~SIS approved by the Superintendent to ensure compatibility with ~~[USOE]~~Board data collection systems.

~~(b)~~ The ~~[USOE]~~Superintendent shall maintain[s] a list of approved student information systems.

~~([1]4)~~ Prior to the ~~[USOE]~~Superintendent granting approval for an LEA to initiate or replace a student information system that was not previously approved, the LEA shall ~~[comply with the following]:~~

~~(a)~~ ~~[LEA shall]~~send written request for approval to ~~[USOE's Director of Information Technology]~~the Superintendent no later than November 15 of the year prior to the year the LEA proposes to use the SIS for production software;

~~(b)~~ ~~[LEA shall]~~submit documentation to the ~~[USOE]~~Superintendent that the new or modified student information system is ~~[School Interoperability Framework (SIF)]~~certified;

~~(c)~~ ~~[LEA shall]~~submit documentation to the ~~[USOE]~~Superintendent that an SIF agent can meet the UTREx specifications profile for Vertical Reporting Framework (VRF);~~]~~ and eTranscripts;

~~(d)~~ ~~[LEA shall]~~ensure that a new student information system can generate valid data collection by submitting an actual file to the ~~[USOE]~~Superintendent for review;

~~(e)~~ ~~[LEA shall]~~ensure that the new student information system can generate the Statewide Student Identifier (SSID) request file by submitting an actual file to the ~~[USOE]~~Superintendent for review.

~~([2]5)~~(a) The ~~[USOE]~~Superintendent shall review documentation and grant or deny an LEA~~[requests]~~ submission under Subsection (4) within 30 calendar days.

~~(3)~~ LEA requests and approval shall be completed by January 15 of the school year prior to the year the LEA proposes to use the software for production data.

~~(b)~~ An ~~[A]~~approved replacement system[s] shall run in parallel ~~[for a period of at least three months]~~to a state-approved system for a period of at least three months and be able to generate duplicate reports to previously generated information.

~~[D-]~~(6) ~~[No later than October 1, 2013, all public education LEAs shall begin submitting]~~An LEA shall submit daily updates to the ~~[USOE]~~Board Clearinghouse using all School Interoperability Framework (SIF) objects defined in the UTREx Clearinghouse specification.~~[None]~~compliance with this requirement may result in interruption of MSP funds consistent with R277-484-8-;

~~[E-]~~(7) An LEA shall electronically submit ~~[A]~~all public high school transcripts requested by a public education post-secondary school~~[s shall be electronically submitted to those public education post-secondary schools]~~ if the post-secondary school~~[s are]~~ is capable of receiving transcripts through the electronic transcript service designated by the ~~[USOE. This process is mandatory for all public high schools as of October 1, 2013]~~Superintendent.

~~(8)~~ No later than June 30, 2017, an LEA shall ensure that data collected in the Utah Student Record Store for a Student Achievement Backpack is integrated into the LEA's SIS and is made available to a student's parent or guardian and an authorized LEA user in an easily accessible viewing format.

~~(9)~~ Failure to comply with any of the requirements of this Section R277-484-5 may result in a recommendation for corrective action in accordance with Rule R277-114.

**~~[R277-484-6. Use of Data for Allocation of Funds.~~**

~~The USOE School Finance Section shall publish by June 30 annually on its website a description of how data shall be used to allocate funds to LEAs in each MSP program in the following fiscal year.]~~

**R277-484-7.6. Adjustments to Summary Statistics Based on Compliance Audits.**

~~[A-]~~(1) For the purpose of allocating MSP funds and projecting enrollment, ~~the Superintendent may modify~~ LEA level aggregate membership and fall enrollment counts ~~[may be modified by the USOE]~~on the basis of the values in the Membership and Enrollment audit reports, respectively, when an ~~[USOE]~~audit report review team agrees that an adjustment is warranted by the evidence of an audit~~].~~

~~([1]2)~~ ~~[the]~~An audit report review team shall make ~~[its]~~a determination under Subsection (1) within 60 working days of the authorized audit report deadline~~].~~

~~([2]3)~~ The Superintendent may only adjust values ~~[can only be adjusted]~~downward ~~[when]~~if an audit report~~[s are]~~ is received after ~~[the]~~an authorized deadline~~[s].~~

**R277-484-8.7. Financial Consequences of Failure to Submit Reports on Time.**

~~[A-]~~(1) If an LEA fails to submit a report by its deadline as specified in ~~[Section 3]~~Table 1, consistent with procedures outlined in R277-114, ~~[the USOE shall stop the MSP fund transfer process on the day after the deadline,]~~the Superintendent may recommend corrective action, including stopping the LEA's MSP funds transfer process, unless the LEA has obtained an extension of the deadline in accordance with the procedure described in Section R277-484-4~~], to the following extent:~~

~~(1)~~ 10% of the total monthly MSP transfer amount in the first month, 25% in the second month, and 50% in the third and subsequent months for any report other than June 15 Immunization Status report].

~~(2)~~ The Superintendent may recommend ~~[E-]~~loss of up to 1.0 WPU from Kindergarten or Grades 1-12 programs, depending on the grade level and aggregate membership of the student, in the current year Mid Year Update for each student whose prior year immunization status was not accounted for in accordance with Utah Code 53A-11-301 as of June 15.

~~[B. If the USOE has stopped the MSP fund transfer process for an LEA, the USOE shall:~~

~~(1) upon receipt of a late report from that LEA, restart the transfer process within the month (if the report is submitted by 10:00 a.m. on or before the tenth working day of the month) or in the following month (if the report is submitted after 10:00 a.m. on or after the tenth working day of the month); and~~

~~(2) appropriately inform the Board at its next regularly scheduled meeting;~~

~~(3) inform the chair of the governing board if LEA staff are not responsive in correcting ongoing problems with data.]~~

**KEY: data standards, reports, deadlines**

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

**Notice of Continuation:** December 31, 2012

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-1-401~~(3)~~; 53A-1-401(8)(a); 53A-1-413(8); 53A-1-301(3) (d) and (e)

## Education, Administration

### R277-485

#### Loss of Enrollment

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41780

FILED: 06/09/2017

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-485 is amended to update the rule in accordance with the Rulewriting Manual for Utah, and to clarify eligibility procedures, including a new petitioning procedure for LEAs seeking funding under this rule and Section 53A-17a-139.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-485 provide technical and conforming changes in accordance with the Rulewriting Manual for Utah and provide language to clarify eligibility procedures.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-17a-139

#### ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to local government.

♦ **SMALL BUSINESSES:** Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Changes to the rule are primarily restructuring and technical which will likely not result in any compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

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

#### DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

#### R277. Education, Administration.

##### R277-485. Loss of Enrollment.

##### R277-485-~~2~~1. Authority and Purpose.

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

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

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

~~(c)~~ Section 53A-17a-139, which allows the Board to increase funds for a school district in order to avoid penalizing it for an excessive loss in student enrollment due to factors beyond its control.

~~[B:]~~(2) The purpose of this rule is to ~~[compensate a school district financially for an excessive loss in student~~

~~enrollment due to factors beyond its control.] establish guidelines for funding under Section 53A-17a-139.~~

#### **R277-485-1.2. Definitions.**

~~[A-](1)~~ "ADM" means average daily membership derived from end-of-year data.

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

~~[C-](2)~~ "Carryforward balance" means the ~~[unspent]~~unobligated amount of MSP ~~[Uniform School Fund monies]~~basic program education funds from the previous fiscal year.

~~[D-](3)~~ "Historical Mean ADM" means the mean of the two highest ADMs in the three years preceding the prior year.

~~[E-](4)~~ "Local Effort" means the prior year sum of tax rates imposed by the local school board.

~~[F-](5)~~ "Lost ADM" means the difference between prior year ADM and Historical Mean ADM.

~~[G-](6)~~ "Mid-year update" means the annual Minimum School Program allocation report prepared by the ~~[USOE]~~Superintendent ~~[and provided after]~~by January 1 annually.

~~[H-](7)~~ "Minimum School Program" or "~~[MSP]~~" means the state supported Minimum School Program as defined in ~~Title 53A[-], Chapter 17a.~~

~~[I-](8)~~ "Weighted Pupil Unit" or "~~[WPU]~~" means the unit of measure of factors that is computed in accordance with the MSP for the purpose of determining the costs of a program on a uniform basis for each district.

#### **R277-485-3. Eligibility.**

~~[A-](1)~~ A school district ~~[shall be eligible for]~~may receive funding under this rule if the district's lost ADM is at least four percent less than the district's historical mean ADM.

~~(2)~~ A school district that seeks funding under this rule shall file a petition with the Superintendent no later than September 15 that demonstrates that a loss of enrollment occurred due to unpredictable factors beyond the district's control.

~~(3)~~ The Superintendent shall refer a petition filed in accordance with Subsection (2) to the Finance Committee to review and make a recommendation to the Board.

~~[B-](4)~~ ~~A~~ ~~[C]~~charter school[s-are] may not ~~[eligible for]~~receive funding under this rule.

#### **R277-485-4. Funding.**

~~[A-](1)~~ The Superintendent shall allocate~~[source of]~~ funding to ~~[the]~~an eligible district under Subsection R277-485-3(1) ~~[shall be the current]~~ using the unencumbered MSP carryforward balance.

~~(2)~~ The Superintendent may only award funds to a district under ~~[F]~~this rule ~~[shall provide funds to school districts only-]~~after all other authorized uses of the carryforward balance have been carried out.

~~[B-](3)~~ The total amount of funds made available for distribution shall be equal to the lesser of:

~~(1)~~a) the sum of lost ADM in eligible districts multiplied by 25 percent of the current year value of the WPU; or

~~(2)~~b) 25 percent of the current unencumbered MSP carryforward balance.

~~[C-](4)~~ The Superintendent shall distribute ~~[A-]~~available funds ~~[shall be distributed]~~in proportion~~[at]~~ to lost ADM (90

percent) and prior year local effort (10 percent) among eligible districts.

~~[D-](5)~~ The Superintendent may not fund an eligible district ~~[F]~~if there are not any current year unencumbered MSP funds~~[-eligible districts shall not be funded].~~

~~(6)~~ The Superintendent shall distribute funds annually in one lump sum with the mid-year update of the current year MSP.

#### **~~[R277-485-5. Implementation.~~**

~~Funds shall be distributed annually in one lump sum with the mid-year update of the current year MSP.]~~

#### **KEY: students, enrollment**

**Date of Enactment or Last Substantive Amendment:** ~~[May 8, 2012]~~2017

**Notice of Continuation:** April 8, 2013

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; ~~53A-1-401;~~ 53A-17a-139

## Education, Administration **R277-488** Critical Languages Program

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41781

FILED: 06/09/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-488 is amended to update the rule in accordance with the Rulewriting Manual for Utah.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to Rule R277-488 provide technical and conforming changes in accordance with the Rulewriting Manual for Utah, and provide some changes in terminology.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art X, Sec 3 and Section 53A-1-401 and Section 53A-15-104 and Section 53A-15-105

#### ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to local government.

♦ **SMALL BUSINESSES:** Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Changes to the rule are primarily restructuring and technical which will likely not result in a cost or savings to persons

other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Changes to the rule are primarily restructuring and technical which will likely not result in any compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

## R277. Education, Administration.

### R277-488. Critical Languages and Dual Language Immersion Program.

#### R277-488-[2]1. Authority and Purpose.

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

~~(a) Utah Constitution Article X, Section 3, which vests general control and supervision [of]over public education in the Board[-]; [by Section 53A-15-104 which directs the State Superintendent of Public Instruction and the Board to track, monitor, and may expand the Critical Languages Program and dual immersion programs subject to student interest and available funding, and by]~~

~~(b) Section 53A-15-104, which requires the Board to establish a Critical Languages Program;~~

~~(c) Section 53A-15-105, which requires the Board to establish a Dual Language Immersion program; and~~

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

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

~~(a) establish criteria and procedures for distributing funds to elementary and secondary schools participating in the Dual Language Immersion Program and Critical Languages Program[ and funds to elementary schools participating in the Dual Language Program. The intent of this appropriation is to];~~

~~(b) increase the number of students who reach proficiency in [a critical language]world languages;[ as well as]~~

~~(c) build overall [foreign]world language capacity in the state of Utah; and[+ø]~~

~~(d) increase the number of biliterate and bilingual students.~~

#### R277-488-[1]2. Definitions.

~~[A. "ACTFL OPI" means the American Council of Teachers of Foreign Language Oral Proficiency Interview which is an oral test, offered at most Utah colleges and universities.~~

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

~~C. "Credentialed international teacher" means a teacher sponsored under a separate Memoranda of Understanding between the USOE and China, Spain, Mexico, France or Taiwan. The Memoranda of Understanding are hereby incorporated by reference. Sponsored teachers shall satisfy all conditions of the Memoranda of Understanding prior to working with Utah students.]~~

~~[D-](1) "Critical languages" means those languages described under Section 53A-15-104(1).~~

~~[E-](2) "Critical Languages Program" means the program described under Section 53A-15-104.~~

~~[F-](3) "Dual language immersion" or "DLI" means a distinctive dual language education program in which native English speakers and active speakers of another language are integrated for academic content.~~

~~[G. Dual language immersion instructional models are:~~

~~(1) "One-way" immersion is a program in which a student population consists of English language speakers with limited to no proficiency in the foreign immersion language. In such a model, less than 30 percent of the students have a native language other than English.~~

~~(2) "Two-way" immersion is a program in which a student population consists of a majority of English language speakers and a minority of language speakers other than English with dominance in their first language and home language support for this language. A 1:1 ratio is ideally maintained for these two language groups, but a minimum of one-third of each language group (such as 2:1 ratio) is required.]~~

~~[H-](4) "Secondary school" means grades 7-12 in whatever schools the grade levels exist.~~

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

#### R277-488-3. Critical Language Program Requirements.

~~[A-](1) A secondary school that desires to offer critical languages, [{}through traditional instruction or a visiting guest teacher program{}], shall submit an application, [provided by the USOE and available each April 1-]to the [USOE]Superintendent no later than May 1.~~

~~[B-](2) An LEA[The] application shall be on a form provided by the Superintendent annually by April 1, which shall designate:~~

([1]a) the name of the school district or charter school;  
 ([2]b) a plan and procedure to notify students and parents of the names of the critical language[~~(s)~~] that will support the dual language immersion continuation into secondary schools consistent with Subsection 53A-15-104(1); and

([3]c) requirements for the visiting guest teacher exchange program, including:

([a]i) programs shall operate under a Memorandum of Understanding between the [USOE]Board and the country providing qualified guest teachers;

([b]ii) international teacher expenses shall be paid as provided by the designated Memorandum of Understanding; and

([e]iii) satisfaction of all other conditions provided by individual Memoranda of Understanding[~~shall be satisfied~~].

[C](3) A [S]school[s] applying for either the traditional instruction or the visiting guest teacher program shall use materials identified and recommended by the [USOE]Superintendent, including texts and consumables, purchased with funds appropriated by the Legislature.

#### **R277-488-4. Dual Language Immersion Program Requirements.**

[A](1) The Superintendent shall disburse DLI program funds[~~shall provide funds~~] by July 1 of each fiscal year [~~the Legislature continues to provide funding for the program~~] subject to state appropriation.

(2) The [Dual Language Immersion programs]DLI program shall support [~~the following foreign~~] world languages approved by the Superintendent.[~~]~~

- ~~(1) Chinese;~~
- ~~(2) French;~~
- ~~(3) Portuguese; and~~
- ~~(4) Spanish.~~

~~B. An elementary school that desires to participate in the Dual Language Immersion Program shall submit an application, provided by the USOE and available annually by April 14 to the USOE by May 14.]~~

(3) The Superintendent shall provide an application for an LEA to receive funding for DLI programs by April 14 annually.

(4) An LEA shall submit an application described in Subsection (3) no later than May 14 annually to be considered for elementary and secondary school DLI program funding in the subsequent school year.

~~[C. The application shall provide for an immersion model that uses 50 percent of instruction in English and 50 percent of instruction in another language including:]~~

(5) An application for DLI program funds shall include a plan that includes:

(a) 50 percent of instruction in English and 50 percent of instruction in another language;

([1]b) an [identified,] instructional model [(one-way or two-way)]identified in R277-488-2(4)(b), and language choice (Chinese, French, Portuguese or Spanish);

(c) a language approved by the Superintendent;

([2]d) [beginning]a timeline that begins the instructional model in kindergarten[, or grade 1[or both]], and [adding]adds an additional grade each year; and

([3]e) a plan and procedure in place to notify students and parents of the availability of at least one [dual language immersion]DLI course[~~identified in Section 53A-15-104(1)~~].

~~[D](6) The Superintendent shall give [P]priority in DLI program funding [shall be given]to [schools in school districts or charter schools]an LEA that:~~

~~(a) does not currently teach the requested language choice;~~[~~and~~]

~~([a]b) demonstrates adequate local funding and infrastructure to begin a program or expand existing programs;~~

~~([b]c) demonstrates community interest and students committed and prepared to participate in a new or expanded program, including prepared instructors for the program;~~

~~([e]d) [have]has adequate interest, resources, and infrastructure, but does not presently have a DLI program~~[~~under R277-488~~]; and

~~([d]e) [have]has a demonstrated community need for improved or expanded [foreign]world language instruction in a specific school or community;~~[~~and~~

~~(e) allow language programs to include all languages identified in Section 53A-15-105].~~

~~[E](7) [Schools]A school receiving DLI program funds shall hire qualified language teachers who:~~

~~([1]a) have a world language endorsement in the language of instruction [(Chinese, French, Portuguese or Spanish for a one-way dual language immersion program)]and a [Dual Language Immersion]DLI endorsement~~[~~in the language of instruction (Chinese, French, Portuguese or Spanish for both a one-way and two-way dual language immersion program)~~]; and

~~([2]b) are Utah licensed elementary or secondary educators;~~[~~and~~].

~~[ (3) have completed a criminal background check, including review of identified offenses by the USOE.]~~

#### **~~R277-488-5. [USOE Responsibilities and]Dual Language Immersion Funds.~~**

~~[A. Applications for the expanded Critical Languages Program and Dual Immersion Program shall be provided by the USOE.]~~

~~[B](1) Secondary and elementary schools shall be selected for funding for [both programs]the DLI program based on an evaluation of applications by [a USOE-designated committee which shall include statewide experts]the Superintendent.~~

~~[C](2) The Superintendent shall make an[A]award[s] shall be made) to an individual elementary or secondary school[s] and allocate funds [allocated]to [school districts and charter schools]the school's LEA to be fully distributed to [designated]the school[s] based on the annual legislative funding allocation.~~

~~[D. Each secondary school selected for funding shall receive a base allocation per critical language offered at the school, designated in Section 53A-15-104(6)(a).~~

~~E. Each elementary school selected for funding shall receive a base allocation per dual language immersion offered at the elementary school, designated in Section 53A-15-104(6)(a).]~~

~~[F](3) The Superintendent shall notify a [N]new school[s] eligible for funding of a funds award for the subsequent fiscal year[shall be notified by the USOE] by June 1 annually[and shall receive funds in the subsequent fiscal year].~~

**R277-488-6. Evaluation and Reports.**

~~[A-](1)~~ Each school selected for funding shall ~~[be required to]~~ submit an annual evaluation report to the ~~[USOE consistent with Section 53A-15-104]~~ Superintendent.

~~[B-](2)~~ The ~~[USOE]~~ Superintendent may request additional data from a secondary or elementary school[s] that receives funding.

**KEY: critical languages, dual language immersion**

**Date of Enactment or Last Substantive Amendment:** ~~[August 8, 2012]~~ 2017

**Notice of Continuation:** June 15, 2012

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-15-104; 53A-15-105; 53A-1-401~~(3)~~

Education, Administration  
**R277-489**  
 Early Intervention Program

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 41782  
 FILED: 06/09/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-489 is amended to update provisions in the rule regarding the application process; entry and exit assessments; use of assessment data; and update the rule in accordance with the Rulemaking Manual for Utah.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to Rule R277-489 provide provisions to clarify the Early Intervention Program application process; provide for required use of a uniform kindergarten entry and exit assessments; provide provisions for the use of entry and exit assessment data; and provide technical and conforming changes to the rule in accordance with the Rulemaking Manual for Utah.

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

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** Changes to the rule will likely not result in a cost or savings to the state budget. Funding was provided for in the 2017 General Session for a uniform kindergarten assessment for local education agencies (LEAs) participating in certain programs.

♦ **LOCAL GOVERNMENTS:** Changes to the rule will likely not result in a cost or savings to local government. Schools, based on the assessments, may be eligible to receive early intervention program funding.

♦ **SMALL BUSINESSES:** Changes to the rule will likely not result in a cost or savings to small businesses. The early

intervention program applies to public education and does not affect businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Changes to the rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. Funding was provided for in the 2017 General Session for a state-mandated uniform kindergarten assessment for LEAs participating in certain programs.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There could be compliance costs in the form of withholding of funds for LEAs participating in the program that fail to provide complete, accurate, and timely reporting as required by this rule. Any costs would be very speculative and, it is anticipated that LEAs will comply with the requirements of this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.  
 R277-489. Early Intervention Program.  
 R277-489-~~(2)~~1. Authority and Purpose.**

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

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

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



~~(c)~~ Section 53A-17a-167, which directs the Board to distribute funds appropriated for the [E]early [H]intervention [P]program ~~consistent with state law,~~ and k-3 reading software program to LEAs that apply for the funds.

~~[B-](2)~~ The purpose of this rule is to establish criteria and procedures ~~[for application and reporting procedures]~~ to administer the early intervention program and the k-3 reading software program.

**R277-489-~~[1]2~~. Definitions.**

~~[A-](1)~~ "Adaptive learning technology and assessments" means technology tools and software that adjust the presentation of educational material according to a [students'] student's weaknesses and strengths, as indicated by the student's responses to questions.

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

~~[C-](2)~~ "Early intervention program" means a program that provides additional instruction to kindergarten age students ~~[either]:~~

~~(a)~~ as an extended period before or after school, on Saturdays, or during the summer; or

~~(b)~~ through other means.

~~[D-](3)~~ "Enrollment" means class enrollment of not more than the student enrollment of other kindergarten classes within the school.

~~[E-]~~ "Kindergarten readiness assessment" means an assessment based on research and data that determines a child's readiness to begin kindergarten, as determined by the school district or charter school.

~~[F-]~~ "LEA" means a local education agency, including local school boards/public school districts and charter schools.

~~[G-](4)~~ "LEA plan" means the [E]early [H]intervention [P]program plan submitted by an LEA[s] and approved and accepted for funding by the [Board]Superintendent.

~~[H-]~~ "Program" means the Early Intervention Program.

~~[I-]~~ "Student learning gains" means the score a student obtains by comparing performance on a pre-test at the beginning of an intervention to the performance on a post-test at the end of an intervention (post-test score minus pre-test score equals learning-gains score).

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

**R277-489-3. ~~[Board/USOE Responsibilities]Early Intervention Program.~~**

~~[A-](1)~~ The [Board]Superintendent shall accept applications from LEAs for [E]early [H]intervention [P]programs delivered through enhanced kindergarten programs that satisfy the requirements of Section 53A-17a-167 and the provisions of this rule.

~~(1)2)~~ The [USOE]Superintendent shall establish timelines~~[accept]~~ for submission of applications ~~annually beginning on June 1 for the 2012-2013 school year and April 1 in subsequent years and closing as determined by the USOE].~~

~~(2)~~ The Board shall select charter schools with the greatest need for an enhanced kindergarten program in consultation with the State Charter School Board.

(3) An LEA application for early intervention program funds shall include:

(a) the names of schools for which program funds must be used;

(b) a description of the delivery methods that may be used to serve eligible students, such as:

(i) full-day kindergarten;

(ii) two half-days;

(iii) extra hours;

(iv) a summer program; or

(v) other means;

(c) a description of the evidence-based early intervention model used by the LEA;

(d) a description of how the program focuses on age-appropriate literacy and numeracy skills;

(e) a description of how the program targets at-risk students;

(f) a description of the assessment procedures and tools to be used by participating schools within the LEA; and

(g) other information as requested by the Superintendent and approved by the Board.

~~(3)4)~~ The [Board]Superintendent shall distribute funds to eligible charter schools based on a formula identifying the percentage of students in public schools and the percentage of students with the greatest need for an enhanced kindergarten program consistent with Subsection 53A-17a-167(4)(a).

~~(4)5)~~ The [Board]Superintendent shall distribute funds to eligible school districts by determining the number of students eligible to receive free lunch in the prior school year for each school district and prorating the remaining funds based on the number of students eligible to receive free lunch in each school district.

~~(5)6)~~ ~~[All funds shall be distributed consistent with USOE established timelines.]The Superintendent shall establish timelines for distribution of early intervention program funds.~~

~~(6)7)~~ The [USOE]Superintendent shall require all funded programs to:~~[pre and post-]~~

~~(a)~~ conduct entry and exit assessments; ~~[from all funded programs and]~~

~~(b)~~ submit data as required by Section R277-489-5 ~~[year-end data]; and~~

~~(c)~~ submit an annual report.

(8) An LEA may not require a student to participate in an early intervention program.

~~(7)~~ The USOE shall require year-end data and a report from funded programs.

~~B-~~ The Board shall select one or more technology providers through an RFP to provide adaptive learning technology and assessments for reading for students in kindergarten through grade 3.

~~(1)~~ The USOE shall accept applications from LEAs for grants to be used to purchase Board-selected adaptive learning technology and assessments for reading for students in kindergarten through grade 3.

~~(2)~~ A school district or charter school that received a license for an adaptive learning technology in a previous school year shall be given priority to receive an equivalent license in subsequent years.

~~(3)~~ The USOE shall require pre and post-assessments from all participating LEAs.

~~(4)~~ The USOE shall require an annual report from all participating LEAs that assesses the impact of the adaptive learning technology and assessments or adaptive computer program for

literacy instruction used by the LEA, including final testing data and student learning gain scores.

~~(5) The Board shall report final testing data and student learning scores regarding adaptive learning technology and assessments or adaptive computer program for literacy instruction on or before November 1, 2012 and every year thereafter to the Education Interim Committee and the Governor.]~~

**R277-489-4. [LEA Responsibilities] Adaptive Learning Technology Grants.**

~~[A. LEA applications for Early Intervention Programs shall include:~~

~~(1) names of schools for which Program funds shall be used;~~

~~(2) a description of the delivery method or methods that shall be used to serve eligible students (such as full-day kindergarten, two half-days, extra hours, summer program, or other means);~~

~~(3) a description of the evidence-based early intervention model used by the LEA;~~

~~(4) a description of how the program shall focus on age-appropriate literacy and numeracy skills;~~

~~(5) a description of how the program shall be targeted to at-risk students;~~

~~(6) a description of the assessment procedures and tools that shall be used by participating schools within the LEA; and~~

~~(7) other information as requested by the USOE.]~~

~~(1) The Superintendent shall select one or more technology providers through an RFP to provide adaptive learning technology and assessments for reading for students in kindergarten through grade 3.~~

~~[B:]~~(2)(a) An LEA[s] may apply for a grant[s] for [Board-selected] adaptive learning technology and assessments for reading for students in kindergarten through grade 3.~~~~

~~(b) An LEA that receive a license for adaptive learning technology in a previous school year shall be given a priority to receive an equivalent license in subsequent years.~~

~~(c) An LEA receiving funding for adaptive learning technology shall:~~

~~(i) conduct entry and exit assessments of participating students; and~~

~~(ii) submit an annual report that assesses the impact of the adaptive learning technology and assessments or adaptive computer programs for literacy instruction used by the LEA, including final testing data and student learning gain scores.~~

~~(3) The Superintendent shall report final testing data and student learning scores regarding adaptive learning technology and assessments or adaptive computer programs for literacy instruction by November 1 annually to the Education Interim Committee and the Governor.~~

~~(1) LEA adaptive learning technology and assessments grant recipients shall use a pre-test before using the technology tools and software with early intervention kindergarten students and shall administer a post-test at the end of the year.~~

~~(2) LEAs shall prepare and submit a report to the USOE detailing final testing data including student learning gains regarding the adaptive learning technology.~~

~~(3) LEA adaptive computer program for literacy instruction for early grade interventions grant recipients shall use a pre-test before using the technology tools and software with early intervention students in kindergarten through first grade and shall administer a post-test at the end of the year.~~

~~(4) LEAs shall prepare and submit a report to the USOE detailing final testing data including student learning gains regarding the adaptive computer program for literacy instruction for early grade interventions.~~

~~C. LEAs that fail to provide complete and accurate data and reports as requested shall not receive Program funding in subsequent years.~~

~~D. An LEA may not require a student to participate in an early intervention program.]~~

**R277-489-5. Assessment, Accountability and Reporting.**

~~[A:]~~(1) An LEA[s] shall use a [self-selected] state mandated uniform kindergarten entry [pre-]assessment, approved by the Superintendent, with all kindergarten students[.].~~~~

~~([1:]~~2) The days used for assessment shall be consistent with Subsection R277-419-11(3)(c)[7, Pupil Accounting].~~~~

~~(2) The USOE may provide a model kindergarten assessment from a list of appropriate assessments.]~~

~~(3) An LEA shall conduct an entry assessment within an administration window that is three weeks prior to the first day of school and within the first three weeks of kindergarten starting.~~

~~(4) An LEA shall submit entry assessment data to the Data Gateway by September 30 annually.~~

~~([3:]~~5) An LEA shall complete [Post] a state-mandated exit assessment[s shall be completed by LEAs], approved by the Superintendent, during the last four weeks prior to the ending of the school year and report[ed] the results to the [Board] Superintendent [as soon as reasonably possible] by June 15 annually.~~~~

~~(4) Post assessment results for all kindergarten students shall provide evidence of student learning matched to the program's pre-assessments used for program placement.~~

~~B. LEAs that fail to provide complete, accurate and timely reports may not receive funding in subsequent years.]~~

~~(5) The Superintendent may recommend action to the Board, including withholding of funds, in accordance with Rule R277-114 for an LEA that fails to provide complete, accurate, and timely reporting as required by this rule.~~

~~(6) A charter school, which does not receive early intervention program funds or k-3 reading software funds, is not subject to the assessment and reporting requirements of this Section R277-489-5.~~

**R277-489-6. Use of Entry and Exit Assessment Data.**

~~(1) The Superintendent or an LEA may use entry and exit assessment data obtained in accordance with Section R277-489-5 to:~~

~~(a) provide insights into current levels of academic and social emotional performance upon entry and exit of kindergarten;~~

~~(b) identify students in need of early intervention instruction and promote differentiated instruction for all students;~~

~~(c) understand the effectiveness of programs, such as extended-day kindergarten and pre-school;~~

(d) provide opportunities for data data-informed decision making and cost-benefit analysis of early learning initiatives;

(e) identify effective instructional practices or strategies for improving student achievement outcomes in a targeted manner; and

(f) understand the influence and impact of full-day kindergarten on at-risk students in both the short- and long-term.

(2) An LEA may not use entry and exit assessment data obtained in accordance with Section R277-489-5 to:

(a) justify early enrollment of a student who is not currently eligible to enroll in kindergarten, such as a student with a birthday falling after September 1;

(b) evaluate an educator's teaching performance; or

(c) determine whether a student should be retained or promoted between grades.

**KEY: early intervention**

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

**Notice of Continuation:** June 15, 2012

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-1-401; 53A-17a-167

**Education, Administration  
R277-493**

**Kindergarten Supplemental Enrichment  
Program**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 41783

FILED: 06/09/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new Rule R277-493 is created to provide standards and procedures for a grant program to support certain kindergarten supplemental enrichment programs as required by Title 53A, Chapter 15, Part 20, Kindergarten Supplemental Enrichment Program (H.B. 168 from the 2017 General Session).

SUMMARY OF THE RULE OR CHANGE: Rule R277-493 defines terms and provides provisions for program administration.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-15-2003

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Implementation of this new rule will likely not result in a cost or savings to the state budget.

Funding for the program was provided for in the 2017 General Session under H.B. 168 for administration of the program.

◆ LOCAL GOVERNMENTS: This new rule will likely not result in a cost or savings to local government. Funding for the program was provided for in the 2017 General Session under H.B. 168 for administration of the program.

◆ SMALL BUSINESSES: This new rule will likely not result in a cost or savings to small businesses. The Kindergarten Supplemental Enrichment Program applies to public education and does not affect businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This new rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. Funding for the program was provided for in the 2017 General Session under H.B. 168 for administration of the program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There could be compliance costs in the form of withholding of funds for local education agencies (LEAs) participating in the program that fail to provide complete, accurate, and timely reporting as required by this rule. Any costs would be very speculative, and it is anticipated that LEAs will comply with the requirements of this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.****R277-493. Kindergarten Supplemental Enrichment Program.****R277-493-1. Authority and Purpose.**

(1) This rule is authorized by:

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

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

(c) Subsection 53A-15-2003(6), which directs the Board to adopt rules to implement the kindergarten supplemental enrichment program.

(2) The purpose of this rule is to make rules to establish reporting procedures and administer Title 53A, Chapter 15, Part 20, Kindergarten Supplemental Enrichment Program.

**R277-493-2. Definitions.**

(1)(a) "Eligible school" has the same meaning as defined in Subsection 53A-15-2002(2).

(b) "Eligible school" does not include a school that receives funds under Section 53A-17a-167.

(2) "Kindergarten supplemental enrichment program" has the same meaning as defined in Subsection 53A-15-2002(4).

**R277-493-3. Program Administration.**

(1) An LEA with an eligible school may apply for kindergarten supplemental enrichment program by filing a grant application following a form approved by the Superintendent no later than May 15 annually.

(2) An application filed in accordance with Subsection (1) shall include:

(a) evidence of an eligible school's overall need for a kindergarten supplemental enrichment program based on the results of the eligible school's current kindergarten entry assessments and programming;

(b) a description of how the eligible school will use the Board approved uniform entry assessment to determine which students to target for the kindergarten supplemental enrichment program;

(c) a description of how the eligible school's program will coordinate with the Superintendent and LEA personnel to meet the annual reporting requirements of this rule;

(d) a description of how the eligible school will use funds to meet the requirements of Subsection 53A-15-2003(3);

(e) if an eligible school is applying based on their percentage of students experiencing intergenerational poverty, a description of the learning strategies the school will employ to design and implement a program that is developed with the unique needs of students experiencing intergenerational poverty in mind; and

(f) other information as requested by the Superintendent.

(3) If an eligible school has previously received funding through the kindergarten supplemental enrichment program, an application under Subsection (1) shall also include data from Board entry and exit exams to establish success in changing student outcomes in comparison to similarly situated peers who weren't able to receive the benefit of the kindergarten supplemental enrichment program.

(4) The Superintendent shall recommend distribution of funds by the Board in accordance with Subsection 53A-15-2003(1)(a).

(5) An eligible school that receives kindergarten supplement enrichment program funds shall comply with the assessment and reporting requirements of Section R277-489-5.

(6) The Superintendent shall require an eligible school that receives funds in accordance with this rule to demonstrate compliance with federal supplanting requirements.

**KEY: kindergarten, supplementals, enrichments**

**Date of Enactment or Last Substantive Amendment: 2017**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53A-15-2003(6)**

## Education, Administration R277-514 Deaf Education in Public Schools

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 41784

FILED: 06/09/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This new Rule R277-514 is created to provide provisions for the requirements for deaf education licensing.

**SUMMARY OF THE RULE OR CHANGE:** Rule R277-514 defines terms; provides provisions for a deaf education license area of concentration; and provides for Utah State Board of Education approval of an institution of higher education's deaf education preparation program.

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This new Rule R277-514 provides provisions for deaf education licensing which will likely not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** This new Rule R277-514 provides provisions for deaf education licensing which will likely not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** This new Rule R277-514 provides provisions for deaf education licensing which will likely not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This new Rule R277-514 provides provisions for deaf education licensing which will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This new Rule R277-514 provides provisions for deaf education licensing which will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.**

**R277-514. Deaf Education in Public Schools.**

**R277-514-1. Authority and Purpose.**

(1) This rule is authorized by:

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

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

(c) Subsection 53A-1-402(1)(a), which requires the Board to establish the qualification and certification of educators.

(2) The purpose of this rule is to specify the requirements for Deaf Education licensing.

**R277-514-2. Deaf Education (Birth to Age 22) License Area of Concentration.**

(1) A deaf education (birth to age 22) license area of concentration permits an educator to teach a class composed of deaf and hard of hearing students from birth to age 22 if the educator holds the appropriate endorsement as described in R277-520-4.

(2) The Board may approve an application for a Deaf Education license area of concentration if the applicant:

(a)(i) completes a deaf education teacher preparation program approved by the Board as described in Section R277-514-3; or

(ii) holds a valid deaf education license issued by a state other than Utah under the National Association of State Directors of Teacher Education and Certification Interstate Agreement;

(b) passes a deaf education competency exam approved by the Board;

(c) has met the requirements of at least one of the following endorsements:

(i) Listening and Spoken Language endorsement, which indicates that the endorsement holder's preparation focused on teaching deaf and hard of hearing students with listening and spoken language strategies; or

(ii) ASL/English-bilingual/bicultural endorsement, which indicates that the endorsement holder's preparation focused on strategies that promote the development of American Sign Language and English literacy across the curriculum; and

(d) if the applicant intends to teach in grades six through twelve, has met the requirements of at least one content specific area endorsement.

**R277-514-3. Deaf Education Program.**

The Board may approve an institution of higher education's deaf education teacher preparation program if the program includes course work specifically designed to train candidates to:

(1) understand the legal and ethical issues surrounding deaf education;

(2) comply with:

(a) the Individuals with Disabilities Education Act of 2004, Pub. L. No. 108-446; and

(b) Board rule;

(3) address specific linguistic and cultural needs of deaf and hard of hearing students throughout the curriculum;

(4) demonstrate techniques for incorporating language into all aspects of the curriculum;

(5) demonstrate pedagogical skills unique to teaching reading, writing, math and other content areas to deaf and hard of hearing students;

(6) demonstrate basic fluency in the use of American Sign Language;

(7) understand audiological and physiological components of audition;

(8) understand techniques for teaching speech to deaf and hard of hearing students;

(9) understand the socio-cultural and psychological implications of hearing loss; and

(10) assess and address the educational needs and educational progress of deaf and hard of hearing students.

**KEY: licensing, deaf education**

**Date of Enactment or Last Substantive Amendment: 2017**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401; 53A-1-402**

Education, Administration  
**R277-520**  
 Appropriate Licensing and Assignment  
 of Teachers

**NOTICE OF PROPOSED RULE**

(Amendment)  
 DAR FILE NO.: 41785  
 FILED: 06/09/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-520 is amended to incorporate provisions in a new rule that provides for new deaf education licensing and updates the rule in accordance with the Rulemaking Manual for Utah.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-520 incorporate provisions for new deaf education licensing and provide technical and conforming changes to the rule in accordance with the Rulemaking Manual for Utah.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Amendments to Rule R277-520 incorporate provisions for deaf education licensing and provide technical and conforming changes, which will likely not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: Amendments to Rule R277-520 incorporate provisions for deaf education licensing and provide technical and conforming changes, which will likely not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: Amendments to Rule R277-520 incorporate provisions for deaf education licensing and provide technical and conforming changes, which will likely not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Amendments to Rule R277-520 incorporate provisions for deaf education licensing and provide technical and conforming changes, which will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Amendments to Rule R277-520 incorporate provisions for deaf education licensing and provide technical and conforming changes, which likely will not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that

the amendments to this rule will not result in a fiscal impact to businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.**

**R277-520. Appropriate Licensing and Assignment of Teachers.**

**R277-520-[2]1. Authority and Purpose.**

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

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

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

(c) Subsection 53A-6-104(2)(a), which authorizes the Board to rank, endorse, or classify licenses.[—This rule is also necessary in response to ESEA NCLB.]

[B-](2) The purpose of this rule is to provide criteria for:

(a) local school boards to employ educators in appropriate assignments[;];

(b) [for]the Board to provide state funding to local school boards for appropriately qualified and assigned staff[;]; and

(c) [for]the Board and local school boards to satisfy the requirements of ESEA in order for local school boards to receive federal funds.

**R277-520-[1]2. Definitions.**

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

[B-](1) "Content specialist" means a licensed educator who provides instruction or specialized support for students and teachers in a school setting.

[C-](2) "Core academic subjects or areas" under the Elementary and Secondary Education Act (ESEA), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11) means:

(a) English[;];

(b) reading or language arts[;];

~~(c) mathematics[;];  
 (d) science[;];  
 (e) foreign languages[;];  
 (f) civics and government[;];  
 (g) economics[;];  
 (h) arts[;];  
 (i) history[;]; and  
 (j) geography[—under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11)].~~

~~[D.](3) "Demonstrated competency" means that a teacher shall demonstrate current expertise to teach a specific class or course through the use of lines of evidence which may include:~~

- ~~(a) completed [USOE]Board approved course work[;];~~
- ~~(b) content test[{}s][;]; or~~
- ~~(c) years of successful experience including evidence of student performance.~~

~~[E.](4) "Eminence" means distinguished ability in rank, in attainment of superior knowledge and skill in comparison with the generally accepted standards and achievements in the area in which the authorization is sought as provided in R277-520-5.~~

~~[F. "LEA" or "local education agency" means a school district, charter school or, for purposes of this rule, the Utah Schools for the Deaf and the Blind.]~~

~~[G.](5) "Letter of authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by an LEA.~~

~~[H.](6) "Level 1 license" means:~~

- ~~(a) a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program[;]; or~~
- ~~(b) pursuant to an agreement under the NASDTEC Interstate Agreement, to candidates who have also met all ancillary requirements established by law or rule.~~

~~[I. "Level 2 license" means a Utah professional educator license issued after:~~

- ~~(1) satisfaction of all requirements for a Level 1 license;~~
- ~~(2) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;~~
- ~~(3) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah; and~~
- ~~(4) satisfaction of additional requirements established by law or rule.]~~

~~(7) "Level 2 license" means a Utah professional educator license issued to an applicant after the Level 2 applicant:~~

- ~~(a) completes all requirements for a Level 1 license;~~
- ~~(b) completes the requirements under R277-522 for a teacher whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public or accredited private school;~~

~~(c) completes:~~

- ~~(i) at least three years of successful education experience in a Utah public LEA or accredited private school; or~~
- ~~(ii)(A) one year of successful education experience in a Utah public LEA or accredited private school; and~~
- ~~(B) at least three years of successful education experience in a public LEA or accredited private school outside of Utah; and~~
- ~~(d) completes additional requirements established by law or rule.~~

~~[J. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school from an accredited institution, or holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.]~~

~~(8) "Level 3 license" means a Utah professional educator license issued to an educator who:~~

- ~~(a) holds a current Utah Level 2 license; and~~
- ~~(b) receives:~~
  - ~~(i) National Board Certification;~~
  - ~~(ii) a doctorate in:~~
    - ~~(A) education; or~~
    - ~~(B) a field related to a content area in a unit of the public education system or an accredited private school; or~~
  - ~~(iii)(A) a Speech-Language Pathology area of concentration; and~~
  - ~~(B) currently holds American Speech-Language Hearing Association (ASHA) certification.~~

~~[K.](9)(a) "License areas of concentration" means a designation[s] to a license[s] obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies [such as]that may include:~~

- ~~(i) Early Childhood ([K]k-3)[;];~~
- ~~(ii) Elementary ([K]k-6)[;];~~
- ~~(iii) Elementary 1-8[;];~~
- ~~(iv) Middle (still valid, but not issued after 1988, 5-9)[;];~~
- ~~(v) Secondary (6-12)[;];~~
- ~~(vi) Administrative/Supervisory ([K]k-12)[;];~~
- ~~(vii) Career and Technical Education[;];~~
- ~~(viii) School Counselor[;];~~
- ~~(ix) School Psychologist[;];~~
- ~~(x) School Social Worker[;];~~
- ~~(xi) Special Education ([K]k-12)[;];~~
- ~~(xii) Preschool Special Education ([B]birth-[A]age 5)[;];~~
- ~~(xiii) Communication Disorders[;];~~
- ~~(xiv) Speech-Language Pathologist[;]; and~~
- ~~(xv) Speech-Language Technician.~~

~~(b) License areas of concentration may also bear endorsements relating to subjects or specific assignments.~~

~~[L.](10)(a) "License endorsement" or [{}]"endorsement[{}]" means a specialty field or area earned through completing required course work established by the [USOE]Board or through demonstrated competency approved by the [USOE]Board;~~

~~(b) [{}]The endorsement shall be listed on the Professional Educator License indicating the specific qualification[{}s] of the holder.~~

~~[M.]~~ "No Child Left Behind Act (NCLB)" means the federal Elementary and Secondary Education Act, P.L. 107-110, Title IX, Part A, Section 9101(11).]

~~[N.]~~(11) "Professional staff cost program funds" means funding provided to school districts based on the percentage of a district's professional staff that is appropriately licensed in the areas in which staff members teach.

~~[O.]~~(12) "SAEP" means State Approved Endorsement Program. This identifies an educator working on a professional development plan to obtain an endorsement.

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

### **R277-520-3. Required Licensing.**

~~[A.]~~(1) All teachers in public schools shall hold a Utah educator license along with appropriate areas of concentration and endorsements.

~~[B.]~~(2) An LEA[s] shall receive assistance from the ~~[USOE]~~ Superintendent to the extent of resources available to have all teachers fully licensed.

~~[C.]~~(3) An LEA[s-are] is expected to hire teachers who are licensed or in the process of becoming fully licensed and endorsed.

~~[D.]~~(4) Failure to ensure that an educator has appropriate licensure may result in the ~~[USOE]~~ Board withholding all LEA funds related to salary supplements under Section 53A-17a-153 and R277-110 and educator quality under Subsection 53A-17a-107(2) and R277-486 until teachers are appropriately licensed pursuant to the Board's authority under Section 53A-1-401[~~(3)~~].

### **R277-520-4. Appropriate Licenses with Areas of Concentration and Endorsements.**

~~[A.]~~(1) An educator assigned to teach a class in kindergarten through grade 3 shall hold[~~:-~~

~~(1)~~ a current Utah Educator License with:

- ~~(a)~~ an early childhood (k-3) license area of concentration;
- ~~(2)~~b) an elementary (k-6) license area of concentration;

~~[B.]~~

~~(3)~~c) for an educator assigned to teach a class in grade 1 through grade 3, an elementary (1-8) license area of concentration[~~:-~~; or

~~(d)~~ for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education (birth-age 22) license area of concentration.

~~[B.]~~(2) An educator assigned to teach a class in grade 4 through grade 8 in an elementary setting shall hold a current Utah Educator License with:

~~(a)~~ an elementary (k-6) or an elementary (1-8) license area of concentration[~~:-~~; or

~~(b)~~ for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education (birth-age 22) license area of concentration.

~~[C.]~~(3) An elementary content specialist in Fine Arts or Physical Education shall hold a current Utah Educator License with an elementary or secondary license area of concentration with the appropriate K-12 content endorsement.

~~[D.]~~(4) An elementary content specialist in reading or English as a Second Language shall hold a current Utah Educator License with an elementary or secondary license area of concentration with the appropriate subject/content endorsement.

~~[E.]~~(5) An educator assigned to teach a class in grade 6 through grade 8, including middle-level, intermediate, and junior high schools, shall hold a current Utah Educator License with:

~~(a)~~ an elementary (1-8) or a secondary (6-12) license area of concentration with the appropriate subject/content endorsement for all assigned courses[~~:-~~; or

~~(b)~~ for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education (birth-age 22) license area of concentration with the appropriate subject or content endorsement for all assigned courses.

~~[F.]~~(6) An educator assigned to teach a class in grade 9 through grade 12 shall hold a current Utah Educator License with:

~~(a)~~ a secondary (6-12) or a career and technical education license area of concentration with the appropriate subject/content endorsement for all assigned courses[~~:-~~; or

~~(b)~~ for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education (birth-age 22) license area of concentration with the appropriate subject or content endorsement for all assigned courses.

~~[G.]~~(7) An educator assigned to serve or teach a class of students with disabilities shall hold a current Utah Educator License with a special education (k-12) license area of concentration and, if the educator is the teacher of record of secondary mathematics for students with disabilities, shall also hold the appropriate subject/content endorsement.

~~[H.]~~(8) An educator assigned to serve preschool-aged students with disabilities shall hold a current Utah Educator License with a preschool special education (birth-age 5) license area of concentration.

~~(9)~~ An educator assigned to serve deaf and hard of hearing students shall hold:

~~(a)~~ a current Utah Educator License with a special education (k-12) license area of concentration and deaf and hard of hearing endorsement; or

~~(b)~~ a deaf education (birth-age 22) license area of concentration.

~~[I.]~~(10) An educator assigned to provide student support services as defined in Rule R277-506 shall hold a current Utah Educator License with the appropriate support service license area of concentration.

~~[J.]~~(11) An educator assigned as a school-based or LEA-based specialist shall hold a current Utah Educator License with the appropriate license area of concentration and endorsement as defined by the LEA.

~~[K.]~~(12) An educator assigned in an administrative position requiring an educator license, as defined by the district, shall hold a current Utah Educator License and an administrative/supervisory (k-12) license area of concentration.

~~(1)~~a) A superintendent of a school district may be licensed with a letter of authorization granted by the Board consistent with Section 53A-3-301.

~~(2)~~b) An educator assigned in an administrative position in a charter schools is exempt from this requirement consistent with Section 53A-1a-511.

### **R277-520-5. Eminence.**

~~[A.]~~(1) The purpose of an eminence authorization is to allow individuals with exceptional training or expertise, consistent



with Subsection R277-520-~~(F)~~2(4), to teach or work in the public schools on a limited basis.

~~(2)~~ Documentation of the exceptional training, skill~~(s)~~ or expertise may be required by the [USOE]Superintendent prior to the approval of the eminence authorization.

~~(3)~~ Teachers with an eminence authorization may teach no more than 37 ~~percent~~% of the regular instructional load except as provided in R277-520-5C]Subsection (4).

~~(4)~~ In identified circumstances, teachers with an eminence authorization may teach more than 37 ~~percent~~% of the regular instructional load.

~~(5)~~ The Board may approve ~~(A)~~an eminence authorization ~~may be approved by the Board~~ if:

~~(1)~~ the LEA can find no other qualified individual to fill the position, then:

(a) the LEA shall submit the following documented information to the [USOE]Superintendent annually:

- (i) description;
- (ii) recruitment efforts;
- (iii) the qualifications of all applicants; and
- (iv) the LEA's rationale for hiring the individual~~(-)~~;

(b) the [USOE]Superintendent shall review the information within 15 days of receipt~~(-)~~;

(c) the [USOE]Superintendent shall notify the individual and the LEA if the [USOE]Superintendent approves the documented information~~(-)~~;

(d) the LEA shall submit a request for a Letter of Authorization to the Board for the individual through normal administrative procedures; or

~~(2)~~6 An individual has exceptional skills, expertise, and experience that make ~~him~~the individual the primary candidate for the position, then:

(a) the LEA shall submit the following documented information to the [USOE]Superintendent annually:

- (i) information about the position;
- (ii) the individual's expertise, and experience; and
- (iii) the LEA's rationale for hiring the individual.

(b) the [USOE]Superintendent shall review the information within 15 days of receipt.

(c) the [USOE]Superintendent shall notify the individual and the LEA if the [USOE]Superintendent approves the documented information.

(d) the LEA shall submit a request for a Letter of Authorization to the Board for the individual through normal administrative procedures.

~~(7)~~ An LEA[s] shall require an individual teaching with an eminence authorization to have a criminal background check consistent with Section 53A-3-410~~(4)~~ prior to employment by the LEA.

~~(8)~~ An ~~(The)~~LEA that employs the teacher with an eminence authorization shall determine the amount and type of professional development required of the teacher.

~~(9)~~ An LEA that employs a teacher[s] with an eminence authorization[s] shall apply for renewal of the authorization~~(s)~~ annually.

~~(10)~~ An ~~(E)~~eminence authorization[s] may apply to:

- (a) an individual[s] without a teaching license[s]; or
- (b) ~~(t)~~an unusual and infrequent teacher situation[s] where a license-holder is needed to teach in a subject area for which

the license-holder is not endorsed, but in which the license-holder may be eminently qualified.

#### **R277-520-6. Routes to Appropriate Endorsements for Teachers.**

~~(1)~~ An educator may add an endorsement to an existing license area of concentration by completing the endorsement requirements established by the [USOE]Board.

~~(2)~~ An ~~(E)~~endorsement requirement[s] in a core academic subject area[s] shall include passage of ~~(the)~~a Board-approved content knowledge assessment.

~~(3)~~ A ~~(F)~~teacher[s] may demonstrate competency in ~~(the)~~subject area~~(s)~~ of the~~(ir)~~ teacher's teaching assignment~~(s)~~ as approved by the [USOE content area specialist]Superintendent to meet specific endorsement requirements except the Board~~(-)~~ approved content knowledge assessment.

~~(4)~~ An ~~(E)~~educator[s] shall be properly endorsed consistent with Section R277-520-3 or have a [USOE-]Board approved SAEP[s]. Otherwise, the Board may withhold professional staff cost program funds pursuant to the Board's authority under Section 53A-1-401(3).

#### **R277-520-7. Board-Approved Endorsement Program (SAEP).**

~~(1)~~ An educator assigned to teach in a subject for which the educator does not hold the appropriate endorsement and who has successfully completed at least ~~(nine)~~2 semester credit hours of the endorsement requirements shall be placed on an SAEP as determined by [USOE specialists]the Superintendent.

~~(2)~~ An ~~(H)~~individuals participating in an SAEP[s] shall demonstrate progress toward completion of the required endorsement~~(s)~~ annually, as determined jointly by the [school-district/charter school]LEA and the [USOE]Superintendent.

~~(3)~~ An SAEP may be granted for one two-year period and may be extended by the [USOE]Superintendent for up to ~~(two)~~2 additional years if the individual has made progress towards completing the SAEP.

~~(4)~~ An individual currently participating in an SAEP is considered to hold the endorsement for the purposes of meeting the requirements of Section R277-520-4.

#### **R277-520-8. Background Check Requirement and Withholding of State Funds for Non-Compliance.**

~~(1)~~ An ~~(E)~~educators qualified under any provision of this ~~(rule)~~R277-520 shall also satisfy the criminal background requirement of Section 53A-3-410 prior to unsupervised access to students.

~~(2)~~ If an LEA[s] does not appropriately employ and assign teachers consistent with this ~~(rule)~~R277-520, the~~(y)~~ LEA may have state appropriated professional staff cost program funds withheld pursuant to R277-486, Professional Staff Cost Formula, pursuant to the Board's authority under Section 53A-1-401~~(3)~~.

#### **KEY: educators, licenses, assignments**

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

**Notice of Continuation:** May 15, 2015

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-1-401~~(3)~~; 53A-6-104(2)(a)

Education, Administration  
**R277-531**  
 Public Educator Evaluation  
 Requirements (PEER)

**NOTICE OF PROPOSED RULE**

(Amendment)  
 DAR FILE NO.: 41786  
 FILED: 06/09/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-531 is amended to remove a required provision in the public educator evaluation framework and provide for Board monitoring for a specific percentage of school districts.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-531 remove a component of the public educator evaluation framework that provides for the evaluation of provisional educators; and provide for the Utah State Board of Education to annually monitor 25% of school districts' evaluation systems.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-8a-301 and Subsections 53A-1-402(1)(a)(i) and (ii)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Removing an evaluation requirement and specifying a percentage for school district monitoring purposes will likely not result in a cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: Removing an evaluation requirement and specifying a percentage for school district monitoring purposes will likely not result in a cost or savings to local government.
- ◆ SMALL BUSINESSES: This rule and the amendments to this rule apply to public education and will likely not result in a cost or savings to small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Removing an evaluation requirement and specifying a percentage for school district monitoring purposes will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Removing an evaluation requirement and specifying a percentage for school district monitoring purposes will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.**

**R277-531. Public Educator Evaluation Requirements (PEER).**

**R277-531-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;
  - (c) Subsections 53A-1-402(1)(a)(i) and (ii), which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services; and
  - (d) Section 53A-8a-301, which directs that the Board adopt rules to guide school district employee evaluations.
- (2) The purpose of this rule is to provide a statewide educator evaluation system framework that includes required Board directed expectations and components and additional school district determined components and procedures to ensure the availability of data about educator effectiveness.
- (3) The process shall:
  - (a) focus on the improvement of high quality instruction and improved student achievement;
  - (b) include common data that can be aggregated and disaggregated to inform Board and school district decisions about retention, preparation, recruitment, and improved professional learning practices; and

(c) ensure school districts engage in a consistent process statewide of educator evaluation.

**R277-531-2. Definitions.**

(1) "Educator" means an individual licensed under Section 53A-6-103 and who meets the requirements of Rule R277-502.

(2) "Educator Evaluation Program" means a school district's process, policies, and procedures for evaluating an educator's performance according to the educator's various assignments.

(3) "Formative evaluation" means an evaluation that provides an educator with information and assessments on how to improve the educator's performance.

(4) "Instructional quality data" means data acquired through observation of an educator's instructional practices.

(5) "Joint educator evaluation committee" means the local committee described under Section 53A-8a-403 that develops and assesses a school district evaluation program.

(6) "School administrator" means an educator:

(a) serving in a position that requires a Utah Educator License with an Administrative area of concentration; and

(b) who supervises Level 2 educators.

(7) "Summative evaluation" means an evaluation that is used to make annual decisions or ratings of an educator's performance and may inform decisions on salary, confirmed employment, personnel assignments, transfers, or dismissals.

(9) "Utah Effective Educator Standards" means:

(a) the Effective Teaching Standards established in Section R277-530-5;

(b) the Educational Leadership Standards established in Section R277-530-6; and

(c) the Educational School Counselor Standards established in Section R277-530-7.

(10) "Valid and reliable measurement tool" means an instrument that has proved consistent over time and uses non-subjective criteria that require minimal interpretation.

**R277-531-3. Public Educator Evaluation Framework.**

(1) The Board provides the public education evaluation framework described in this section, which includes general evaluation system areas and additional discretionary components required in a school district's educator evaluation system.

(2) A school district shall:

(a) have a joint educator evaluation committee;

(b) base the school district's educator evaluation system on the Utah Effective Educator Standards in Rule R277-530;

(c) establish and articulate performance expectations individually for all licensed school district educators;

(d) use valid and reliable measurement tools including, at a minimum:

(i) observations of instructional quality;

(ii) evidence of student growth;

(iii) parent and student input; and

(iv) other indicators as determined by the school district;

(e) provide an annual rating of educator performance using uniform statewide terminology and definitions, and include summative and formative components;

(f) direct the revision or alignment of all related school district policies, as necessary, to be consistent with the school district Educator Evaluation System;

(g) use valid, reliable, and research-based measurements that shall:

(i) employ a variety of measurement tools;

(ii) measure student growth for educators;

(iii) provide evaluation for non-instructional licensed educators and administrators; and

(h) provide both formative and summative evaluation data.

(3) A school district may consider data gathered from tools to inform decisions about employment and professional learning.

(4) A school district shall discuss and protect the confidentiality of educator data in the evaluation process.

(5)(a) A school district evaluation system shall provide for clear and timely notice to educators of the components, timelines, and consequences of the evaluation process; and

(b) A school district evaluation system shall provide for timely discussion with evaluated educators to include professional growth plans as required in Rule R277-500 and evaluation conferences.

(6) A school district evaluation system shall provide support for instructional improvement, including:

(a) assessing the professional learning needs of educators; and

(b) identifying educators who do not meet expectations for instructional quality and providing support as appropriate at the school district level, which may include providing educators with mentors, coaches, and specialists in effective instruction, and setting timelines and benchmarks to assist educators toward greater improved instructional effectiveness and student achievement.

(7) A school district evaluation system shall maintain records and documentation of required educator evaluation information.

(8) A school district evaluation system shall require the evaluation of all licensed educators at least once a year in accordance with Section R277-533.

(9) A school district evaluation system shall provide at least an annual rating for each licensed educator, including teachers, school administrators, and other non-teaching licensed positions, using Board-directed statewide evaluation terminology and definitions.

~~[(10) A school district evaluation system shall provide for the evaluation of all provisional educators, as defined by the school district under Section 53A-8a-405, at least twice yearly.]~~

~~[(11)10] A school district evaluation system shall include the following specific educator performance criteria:~~

~~(a) school district-determined instructional quality measures;~~

~~(b) complete integration of student academic growth score; and~~

(c) other measures as determined by the school district, including data required from student~~[r]~~ or parent input.

~~(11)~~ A school district evaluation system shall identify potential employment consequences, including discipline and termination, if an educator fails to meet performance expectations.

~~(12)~~ A school district evaluation system shall include a review or appeals procedure for an educator to challenge the process of a summative evaluation that provides for adequate and timely due process for the educator consistent with Section 53A-8a-406(2).

~~(13)~~ A school district may include additional components in its evaluation system.

~~(14)~~ A local board of education shall review and approve its school district's proposed evaluation systems in an open meeting prior to the local board's submission to the Board.

~~(15)~~ A school district shall report educator effectiveness data to the Superintendent annually, on or before June 30.

#### **R277-531-4. Board Support and Monitoring of LEA Evaluation Systems.**

The Superintendent, under supervision of the Board, shall:

(1) develop a model educator evaluation system that includes performance expectations consistent with this rule;

(2) evaluate and recommend tools and measures for use by school districts as they develop and initiate their local educator evaluation systems; and

(3) annually monitor ~~[a]~~25% of the school district~~['s]~~ evaluation systems.

#### **R277-531-5. Compensation.**

(1) A school district shall implement an employee compensation system, no later than the 2018-19 school year, that is aligned to the school district's educator evaluation system.

(2) An educator's annual advancement on an adopted salary schedule shall be based primarily upon an evaluation system that differentiates among four levels of performance as described in Section 53A-8a-405 and R277-533, unless the educator:

(a) is a provisional educator; or

(b) is in the first year of an assignment, including a new subject, grade level, or school.

#### **KEY: educators, evaluations, requirements**

**Date of Enactment or Last Substantive Amendment:** ~~January 10,~~ 2017

**Notice of Continuation:** August 15, 2016

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

## Education, Administration **R277-533** District Educator Evaluation Systems

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41787

FILED: 06/09/2017

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-533 is amended as a result of the passage of H.B. 231 from the 2017 General Session.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to Rule R277-533 eliminate certain prescriptive requirements from the rule to give school districts more flexibility over their educator evaluation systems.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art X, Sec 3 and Section 53A-1-401 and Title 53A, Chapter 8a, Part 4

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Removing prescriptive requirements from the rule to provide more flexibility to school districts will likely not result in a cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Removing prescriptive requirements from the rule to provide more flexibility to school districts will likely not result in a cost or savings to local government.

◆ **SMALL BUSINESSES:** This rule and the amendments to this rule apply to public education and will likely not result in a cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Removing prescriptive requirements from the rule to provide more flexibility to school districts will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Removing prescriptive requirements from the rule to provide more flexibility to school districts will likely not result in any compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.**  
**R277-533. District Educator Evaluation Systems.**  
**R277-533-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Title 53A, Chapter 8a, Part 4, Educator Evaluations, which requires the Board to make rules to establish a framework for the evaluation of educators and set policies and procedures related to educator evaluations; and
  - (c) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.
- (2) The purpose of this rule is to:
  - (a) specify the requirements for district Educator Evaluation Systems Policies;
  - (b) describe the required components of district Educator Evaluation Systems; and
  - (c) establish requirements for how the Annual Summative Educator Evaluation Rating is reported.

**R277-533-2. Definitions.**

- (1) "Administrator" has the same meaning as that term is defined in Section 53A-8a-102.
- (2) "Certified rater" means an educator who has been trained in evaluating educator performance and has demonstrated competency in using an educator evaluation tool to rate educator effectiveness according to established standards.
- (3) "Educator" has the same meaning as that term is defined in Section 53A-8a-402.
- (4) "Evaluator" means a person who is responsible for an educator's overall evaluation, including:
  - (a) professional performance;
  - (b) student growth;
  - (c) stakeholder input; and
  - (d) other indicators of professional improvement.
- (5) "Rater" means a person who conducts an observation of an educator related to an educator's evaluation.
- (6) "School district" includes the Utah Schools for the Deaf and the Blind.
- (7) "System" means a school district's educator evaluation system.

**R277-533-3. School District Educator Evaluation Systems.**

- (1) A local school board shall adopt a district educator evaluation system in consultation with a joint committee established by the local school board as described in Section 53A-8a-403.
  - (2) A district educator evaluation system shall:
    - (a) include the components required in Section 53A-8a-405;
    - (b) include the following four differentiated levels of performance:
      - (i) highly effective;
      - (ii) effective;
      - (iii) emerging/minimally effective; and
      - (iv) not effective;
    - (c) use multiple lines of evidence in evaluation, including:
      - (i) professional performance, as described in Section R277-533-4;
      - (ii) student academic growth, as described in Section R277-533-5;
      - (iii) stakeholder input, as described in Section R277-533-5; and
      - (iv) other indicators of professional improvement as required by the school district;
- ~~(d) require regular conferences between an educator and an evaluator;~~
- ~~(e) provide a process for an educator to contribute additional information to inform the educator's evaluation at several intervals throughout the process;~~
- ~~(f) measure an educator's professional performance when the educator is working in a professional capacity with students, parents, colleagues, or community members;~~
- ~~(g) provide a process for an educator to:~~
- ~~(i) analyze stakeholder input;~~
  - ~~(ii) analyze data related to performance; and~~
  - ~~(iii) develop appropriate responses to the information;~~
- ~~(h) provide a procedure to include an educator's response to stakeholder data in the rating calculation;~~
- ~~(i) include a process for an evaluator to give an educator specific, measurable, actionable, and written direction regarding an educator's needed improvement and recommended course of action;~~
- (j) provide a process for an educator to request a review of the implementation of the educator's evaluation, as described in:
    - (i) ~~S[ub]section 53A-8a-406[3];~~ and
    - (ii) Section R277-533-8;
  - (k) include multiple observations as described in Section R277-533-4; and
  - (l) provide a description of the methods for gathering, using, and protecting educator data.
- (3) To form the school district's system, a local school board may adopt:
  - (a) the Utah Model Educator Evaluator System established by the Board;
  - (b) an adapted system; or
  - (c) a school district-developed system, consistent with Rules R277-530, R277-531, and this rule.

(4) An educator is responsible for:

- (a) improving the educator's performance, using resources offered by the school district; and
- (b) demonstrating acceptable levels of improvement in any designated area of deficiency.

**R277-533-4. Evaluators and Standards for Education Observations.**

- (1) A school district's system shall include observations.
- (2) The school district shall use observation tools that:
  - (a) are aligned with the Utah Effective Educator Standards described in Rule R277-530 at the indicator level; and
  - (b) include multiple supervisor observations at appropriate intervals.
- (3) A school district's evaluation system shall:
  - ~~(a) include an orientation for all educators conducted by the principal or designee as required in Section 53A-8a-404;~~
  - ~~(b) include multiple observation items;~~
  - ~~(c) a final rating for each observation item described in Subsection (3)(b); and~~
  - ~~(d) include an opportunity for an educator to contribute additional information to inform their rating at several intervals throughout the process.~~
- (4) To ensure a valid evaluation system, a school district shall establish a school district rater reliability process that:
  - (a) creates standardized ratings established by a committee of expert raters to be used for rater professional development and certification;
  - (b) provides professional development opportunities to all raters and evaluators of licensed educators to:
    - (i) improve a rater or evaluator's abilities; and
    - (ii) give the rater or evaluator an opportunity to demonstrate the rater's abilities to rate an educator in accordance with the Utah Effective Educator Standards described in Rule R277-530[-];
  - ~~(5) A school district shall establish a school district rater reliability plan.~~
  - ~~(6) A school district rater reliability plan shall:~~
    - ~~(a) require school district to compare a rater's decisions to standardized ratings established by a committee of expert raters;~~
    - ~~(b) require a school district to measure a rater's skills and reassess the rater's skills at appropriate intervals to maintain system quality;~~
  - (c) designates qualified raters as certified;
  - (d) assures that an educator is rated by a certified rater;
  - (e) requires a school district to offer a rater opportunities to improve the rater's skills through instruction and practice; and
  - (f) maintains high standards of rater accuracy.

**R277-533-5. Student Academic Growth and Stakeholder Input.**

- (1) A school district shall ensure that a student academic growth measurement includes the following three required components:
  - (a) learning goals measuring long-term outcomes linked to the appropriate specific content knowledge and skills from the Utah Core Standards;
  - (b) assessments; and
  - (c) targets for incremental monitoring of student academic growth.

(2)(a) A school district's system shall include stakeholder input for educators, principals, and administrators, including annual input from students and parents.

(b) In addition to the stakeholder input described in Subsection ([4]2)(a), stakeholder input for principals and other administrators shall include input from teachers and support professionals.

~~(3) A school district's system shall:~~

- ~~(a) allow an educator to have an opportunity to respond to stakeholder input; and~~
- ~~(b) consider an educator's response described in Subsection (5)(a) as part of the educator's final rating.]~~

**R277-533-6. Computing the Annual Summative Rating.**

- (1) A school district shall base an educator's component ratings on:
  - (a) actual observations of the educator's performance; and
  - (b) educator, evaluator, student academic growth, or other stakeholder data gathered, calculated, or observed that is aligned with standards and rubrics.
- (2) A school district shall report summative scores annually for all educators using the following approved terminology for reporting:
  - (d) highly effective 3;
  - (c) effective 2;
  - (b) minimal/emerging effective 1; and
  - (a) not effective 0.

**R277-533-7. Minimal or Emerging Effective Category.**

If an evaluator rates an educator's performance within the minimal or emerging effective category, the rater shall:

- (1) designate an educator as emerging effective if:
  - (a) the educator:
    - (i) holds a Level 1 educator license; or
    - (ii) is being served by the school district's Entry Years Enhancement (E<sub>Y</sub>E<sub>2</sub>) program described in Rule R277-522; or
  - (b) the educator:
    - (i) received a new or different teaching or leadership assignment within the last school year; or
    - (ii) is developing in that area; or
- (2) designate an educator as minimally effective if the educator:
  - (a) holds a Level 2 educator license; and
  - (b) is teaching or leading in a familiar assignment.

**R277-533-8. Evaluation Reviews.**

- (1) An educator who is not satisfied with a summative evaluation may request a review in writing of the summative evaluation within 15 calendar days after receiving the written summative evaluation.
- (2) A school district shall conduct a review of an educator's summative evaluation:
  - (a) as described in this section; and
  - (b) the requirements of Section 53A-8a-406.
- (3) A review described in Subsection (2) shall be conducted:
  - (a) by a certified rater:
    - (i) with experience evaluating educators; and

- (ii) not employed by the school district; and
- (b) in accordance with the Utah Effective Educator Standards described in Rule R277-530.
- (4) A certified rater described in Subsection (3) shall:
  - (a) review:
    - (i) the school district's educator evaluation policies and procedures;
    - (ii) the evaluation process conducted for the educator;
    - (iii) the evaluation data from the professional performance, student growth, and stakeholder input components; and
    - (iv) an educator's written response, if submitted as described in Subsection 53A-8a-406(1)(b); and
  - (b) report the certified rater's findings, in writing, to the school district's superintendent for action.
- (5) The school district shall determine if the initial educator evaluation was issued in accordance with:
  - (a) the school district's educator evaluation policies;
  - (b) the requirements of the performance standards;
  - (c) Title 53A, Chapter 8a, Public Education Human Resource Management Act;
  - (d) Rule R277-531; and
  - (e) this rule.

**R277-533-9. Educator Evaluation Data.**

A school district shall report information described in Section 53A-8a-410 to the [Board]Superintendent annually on or before June 30 [the information necessary for the Board to make the report]to be included in the Superintendent's annual report as required by Section 53A-8a-410.

**KEY: educators, evaluations**

**Date of Enactment or Last Substantive Amendment:** [January 10,]2017

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

**Education, Administration  
R277-609-4**

**LEA Responsibilities to Develop Plans**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 41788  
FILED: 06/09/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Section R277-609-4 is amended in response to H.B. 92 from the 2017 General Session.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to Section R277-609-4 revise the provision that allows physical restraint to be used in schools.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art X, Sec 3 and Section 53A-1-401 and Section 53A-11-1603 and Section 53A-15-603 and Section 53A-15-901 and Subsection 53A-1-402(1)(b)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** Revising the provision that allows physical restraint to be used in schools consistent with state law will likely not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** Revising the provision that allows physical restraint to be used in schools consistent with state law will likely not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** Revising the provision that allows physical restraint to be used in schools consistent with state law will likely not result in a cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Revising the provision that allows physical restraint to be used in schools consistent with state law will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Revising the provision that allows physical restraint to be used in schools consistent with state law will likely not result in any compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017**

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

**R277. Education, Administration.****R277-609. Standards for LEA Discipline Plans and Emergency Safety Interventions.****R277-609-4. LEA Responsibility to Develop Plans.**

(1) An LEA or school shall develop and implement a board approved comprehensive LEA plan or policy for student and classroom management, and school discipline.

(2) An LEA shall include administration, instruction and support staff, students, parents, community council, and other community members in policy development, training, and prevention implementation so as to create a community sense of participation, ownership, support, and responsibility.

(3) A plan described in Subsection (1) shall include:

- (a) the definitions of Section 53A-11-910;
- (b) written standards for student behavior expectations, including school and classroom management;
- (c) effective instructional practices for teaching student expectations, including:
  - (i) self-discipline;
  - (ii) citizenship;
  - (iii) civic skills; and
  - (iv) social skills;
- (d) systematic methods for reinforcement of expected behaviors;
- (e) uniform methods for correction of student behavior;
- (f) uniform methods for at least annual school level data-based evaluations of efficiency and effectiveness;
- (g) an ongoing staff development program related to development of:
  - (i) student behavior expectations;
  - (ii) effective instructional practices for teaching and reinforcing behavior expectations;
  - (iii) effective intervention strategies; and
  - (iv) effective strategies for evaluation of the efficiency and effectiveness of interventions;
- (h) procedures for ongoing training of appropriate school personnel in:
  - (i) crisis intervention training;
  - (ii) emergency safety intervention professional development; and
  - (iii) LEA policies related to emergency safety interventions consistent with evidence-based practice;
- (i) policies and procedures relating to the use and abuse of alcohol and controlled substances by students;
- (j) policies and procedures, consistent with requirements of Rule R277-613, related to:
  - (i) bullying;
  - (ii) cyber-bullying;
  - (iii) harassment;
  - (iv) hazing; and
  - (v) retaliation;
- (k) policies and procedures for the use of emergency safety interventions for all students consistent with evidence-based practices including prohibition of:

(i) physical restraint, subject to the requirements of Section R277-609-5, except when ~~[a student]~~the physical restraint is allowed as described in Subsection 53A-11-802(2);;

~~(A) presents a danger of serious physical harm to self or others; or~~

~~(B) is destroying property;~~

- (ii) prone, or face-down, physical restraint;
- (iii) supine, or face-up, physical restraint;
- (iv) physical restraint that obstructs the airway of a student or adversely affects a student's primary mode of communication;
- (v) mechanical restraint, except:
  - (A) protective or stabilizing restraints;
  - (B) restraints required by law, including seatbelts or any other safety equipment when used to secure students during transportation; and
  - (C) any device used by a law enforcement officer in carrying out law enforcement duties;
- (vi) chemical restraint, except as:
  - (A) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law, for the standard treatment of a student's medical or psychiatric condition; and
  - (B) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under state law;
- (vii) seclusionary time out, subject to the requirements of Section R277-609-5, except when a student presents an immediate danger of serious physical harm to self or others; and
- (viii) for a student with a disability, emergency safety interventions written into a student's IEP, as a planned intervention, unless:
  - (A) school personnel, the family, and the IEP team agree less restrictive means which meet circumstances described in Section R277-608-5 have been attempted;
  - (B) a FBA has been conducted; and
  - (C) a positive behavior intervention plan based on data analysis has been written into the plan and implemented.
- (l) direction for dealing with bullying and disruptive students;
- (m) direction for schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address the behavior of habitually disruptive students;
- (n) identification, by position, of an individual designated to issue notices of disruptive and bullying student behavior;
- (o) identification of individuals who shall receive notices of disruptive and bullying student behavior;
- (p) a requirement to provide for documentation of disruptive student behavior prior to referral of disruptive students to juvenile court;
- (q) strategies to provide for necessary adult supervision;
- (r) a requirement that policies be clearly written and consistently enforced;
- (s) notice to employees that violation of this rule may result in employee discipline or action;
- (t) gang prevention and intervention policies in accordance with Subsection 53A-15-603(1); and
- (u) provisions that account for an individual LEA's or school's unique needs or circumstances, including:
  - (i) the role of law enforcement; and
  - (ii) emergency medical services; and
  - (iii) a provision for publication of notice to parents and school employees of policies by reasonable means.



- (4) A plan described in Subsection (1) may include:
  - (a) the provisions of Subsection 53A-15-603(2); and
  - (b) a plan for training administrators and school resource officers in accordance with Section 53A-11-1603.

**KEY: disciplinary actions, disruptive students, emergency safety interventions**

**Date of Enactment or Last Substantive Amendment:** ~~December 8, 2016~~ 2017

**Notice of Continuation:** October 14, 2016

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-1-401; 53A-1-402(1)(b); 53A-15-603; 53A-11-901; 53A-11-1603

Education, Administration

**R277-618**

Educator Peer Assistance and Review Pilot Program (PAR Program)

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 41789

FILED: 06/09/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-618 is repealed because the state law associated with this program has been repealed and the funding associated with this program has been discontinued.

**SUMMARY OF THE RULE OR CHANGE:** This rule provides criteria and procedures for participation in the PAR Program as required by Section 53A-8a-802. The state law associated with this program has been repealed, and the funding associated with this program has been discontinued. Consequently, Rule R277-618 is being repealed in its entirety.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art X, Sec 3 and Section 53A-1-401 and Section 53A-10-201

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** Repealing Rule R277-618 will likely not result in a cost or savings to the state budget. The state law and funding for this program are no longer in place.
- ◆ **LOCAL GOVERNMENTS:** Repealing Rule R277-618 will likely not result in a cost or savings to local government. The state law and funding for this program are no longer in place.
- ◆ **SMALL BUSINESSES:** Repealing Rule R277-618 will likely not result in a cost or savings to small businesses. The state law and funding for this program are no longer in place.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Repealing Rule R277-618 will likely not result in a cost or savings to persons other than small businesses, businesses,

or local government entities. The state law and funding for this program are no longer in place.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Repealing Rule R277-618 will likely not result in any compliance costs for affected persons. The state law and funding for this program are no longer in place.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that repealing this rule will not result in a fiscal impact to businesses.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.**

~~[R277-618. Educator Peer Assistance and Review Pilot Program (PAR Program):~~

~~**R277-618-1. Definitions:**~~

- ~~\_\_\_\_\_ A. "Board" means the Utah State Board of Education.~~
- ~~\_\_\_\_\_ B. "Consortium" means more than one school district or a regional service center, consistent with Section 53A-3-429, composed of school districts.~~
- ~~\_\_\_\_\_ C. "PAR joint panel" means the governing panel of a district's Peer Assistance and Review Pilot Program composed of an equal number of teacher representatives and district administrators or their designees.~~
- ~~\_\_\_\_\_ D. "School district" means a school district/ local board of education or a consortium of school districts, such as a Regional Service Center, authorized to participate in the PAR Program under Section 53A-8a-802.~~
- ~~\_\_\_\_\_ E. Other definitions provided in Section 53A-8a-801.~~

~~**R277-618-2. Authority and Purpose.**~~

~~\_\_\_\_\_ A. This rule is authorization by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-8a-802(3) which directs the~~

~~Board to solicit proposals and award grants, establish criteria under Section 53A-8a-802 and specify procedures, criteria and reporting requirements under Section 53A-8a-802(8), and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.~~

~~B. The purpose of this rule is to provide criteria and procedures for participation in the PAR Program as required by Section 53A-8a-802.~~

**~~R277-618-3. Board Responsibilities.~~**

~~A. Board Applications and Timelines~~

~~(1) The Board shall solicit proposals and provide an application consistent with the purpose and criteria of Section 53A-8a-802 by June 15 annually.~~

~~(2) The Board shall award grants to school districts or consortia on a competitive basis before July 1 annually.~~

~~(3) In addition to R277-617-3A(2), the Board may give preference to school district/consortium applications that:~~

~~(a) provide for matching local funds or resources;~~

~~(b) agree to develop a teacher mentoring and remediation program that meets the standards set by Section 53A-8a-803;~~

~~(c) has limited district personnel to operate a teacher assistance and mentoring program without grant assistance;~~

~~(d) demonstrate the intent and potential resources to sustain the program over time based on pilot findings.~~

~~B. The Board shall notify applicants that the funds come from a one-time appropriation, that, subject to funds available, the Legislature intends to appropriate funds for a five-year period to the Board for the PAR Program. The funds will not lapse annually.~~

**~~R277-618-4. School District Responsibilities.~~**

~~A. School districts shall submit applications as directed by the Board.~~

~~B. School district/consortium applications shall provide a budget for the use of funds consistent with Section 53A-8a-803.~~

~~C. School districts shall use program funds consistent with Section 53A-8a-802 and 813.~~

~~D. School districts shall implement programs with minimum components outlined under Section 53A-8a-803 and this rule.~~

~~E. School district plans shall include a PAR joint panel selected consistent with Section 53A-8a-804.~~

**~~R277-618-5. Reporting.~~**

~~A. School districts that receive program funds shall provide data and reports to the Utah State Office of Education as requested.~~

~~B. The Board shall report to the Education Interim Committee as required under Section 53A-8a-802(7).~~

**~~KEY: peer assistance, grants~~**

**~~Date of Enactment or Last Substantive Amendment: August 8, 2012~~**

**~~Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-10-202; 53A-10-202(4)(e); 53A-10-202(8); 53A-1-401(3)]~~**

## Education, Administration **R277-720** Child Nutrition Programs

### NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 41790

FILED: 06/09/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-720 is repealed because the standards, procedures, and programs for Child Nutrition Programs are provided for in federal and state law and unnecessary to repeat in a State Board of Education rule.

**SUMMARY OF THE RULE OR CHANGE:** This rule specifies the standards and procedures for child nutrition programs administered by the Board of Education. Standards, procedures, and programs for Child Nutrition Programs are provided for in federal and state law. Consequently, Rule R277-720 is being repealed in its entirety.

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Repealing Rule R277-720 will likely not result in a cost or savings to the state budget. Provisions are provided for in federal and state law, making this rule unnecessary.

◆ **LOCAL GOVERNMENTS:** Repealing Rule R277-720 will likely not result in a cost or savings to local government. Provisions are provided for in federal and state law, making this rule unnecessary.

◆ **SMALL BUSINESSES:** Repealing Rule R277-720 will likely not result in a cost or savings to small businesses. Provisions are provided for in federal and state law, making this rule unnecessary.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Repealing Rule R277-720 will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. Provisions are provided for in federal and state law, making this rule unnecessary.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Repealing Rule R277-720 will likely not result in any compliance costs for affected persons. Provisions are provided for in federal and state law, making this rule unnecessary.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that

repealing this rule will not result in a fiscal impact to businesses.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

- ~~\_\_\_\_\_ (3) Administrative Manual, Centers, 2012;~~
- ~~\_\_\_\_\_ (4) Code of Federal Regulations, Chapter 7;~~
- ~~\_\_\_\_\_ (5) state plans and agreements which are required and submitted under applicable federal law; and~~
- ~~\_\_\_\_\_ (6) guidance and instructions issued by USDA regarding laws and regulations identified in R277-720-3.~~

**R277-720-4. Programs.**

~~\_\_\_\_\_ The Board administers the following federal child nutrition programs:~~

- ~~\_\_\_\_\_ A. National School Lunch Program;~~
- ~~\_\_\_\_\_ B. School Breakfast Program;~~
- ~~\_\_\_\_\_ C. Special Milk Program;~~
- ~~\_\_\_\_\_ D. Child and Adult Care Food Program;~~
- ~~\_\_\_\_\_ E. Summer Food Service Program for Children;~~
- ~~\_\_\_\_\_ F. Food Distribution Program; and~~
- ~~\_\_\_\_\_ G. At Risk After School Snack Program.~~

**KEY: school lunch program, nutrition**

~~**Date of Enactment or Last Substantive Amendment: May 8, 2012**~~

~~**Notice of Continuation: August 14, 2012**~~

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

**R277. Education, Administration.**

~~[R277-720. Child Nutrition Programs.~~

~~**R277-720-1. Definitions.**~~

- ~~\_\_\_\_\_ A. "Board" means the Utah State Board of Education.~~
- ~~\_\_\_\_\_ B. "USOE" means the Utah State Office of Education.~~

~~**R277-720-2. Authority and Purpose.**~~

~~\_\_\_\_\_ A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, by Section 53A-1-402(1)(b) which directs the Board to make rules and minimum standards regarding access to programs, and by Section 53A-1-402(3) which authorizes the Board to administer funds made available through programs of the federal government.~~

~~\_\_\_\_\_ B. The purpose of this rule is to specify the standards and procedures for child nutrition programs administered by the Board.~~

~~**R277-720-3. Standards and Procedures for Child Nutrition.**~~

~~\_\_\_\_\_ A. The Board adopts the following laws and regulations found at the Utah State Office of Education Child Nutrition Section and law libraries and hereby incorporates them by reference:~~

- ~~\_\_\_\_\_ (1) the Richard B. Russell National School Lunch Act, 42 USC 1751, et seq.;~~
- ~~\_\_\_\_\_ (2) the Child Nutrition Act of 1966, 42 USC 1771, et seq.; and~~
- ~~\_\_\_\_\_ (3) the Emergency Food Assistance Act, 7 USC, 7501, et seq.~~

~~\_\_\_\_\_ B. The Board shall act in accordance with the following publications available from the USOE Child Nutrition Section:~~

- ~~\_\_\_\_\_ (1) Administrative Manual, NSLP/NSBP/SMP, 2010;~~
- ~~\_\_\_\_\_ (2) Administrative Manual, CACFP (FDCH), 2012;~~

Education, Administration  
**R277-733**  
Adult Education Programs

**NOTICE OF PROPOSED RULE**

(Amendment)  
DAR FILE NO.: 41791  
FILED: 06/09/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-733 is amended to update program standards and procedures following a five-year review.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-733 provide definition and procedural changes, incorporating by reference the "Utah Adult Education Policies and Procedures Guide," and updating program standards, and fiscal procedures. Technical and conforming changes to bring the rule into compliance with the Rulewriting Manual for Utah are also provided.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-15-401 and Subsection 53A-1-402(1)

**MATERIALS INCORPORATED BY REFERENCE:**

- ♦ Adds Utah Adult Education Policies and Procedures Guide, published by Utah State Board of Education, 06/01/2016

## ANTICIPATED COST OR SAVINGS TO:

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

COMPLIANCE COSTS FOR AFFECTED PERSONS: Procedural changes and technical and conforming changes will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

## DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.****R277-733. Adult Education Programs.****R277-733-2.1. Authority and Purpose.**

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

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

~~(b)~~ Section 53A-15-401 which ~~[places the]vests~~ general control and supervision ~~[of]over~~ adult education ~~[under]in~~ the Board~~[-];~~

~~(c)~~ Subsection 53A-1-402(1), which allows the Board to adopt minimum standards for programs~~[-]and~~

~~(d)~~ Section 53A-1-401~~(3)~~, which allows the Board to ~~[adopt rules in accordance with its responsibilities]make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law[-];~~ ~~[Additionally, the Board and Board of Regents are directed to provide adult education programs to inmates under]and~~

~~(e)~~ Section 53A-1-403.5~~[-];~~ which vests the Board with responsibility to provide education to persons in the custody of Utah Department of Corrections.

~~[B-](2)~~ The purpose of this rule is to describe curriculum, program standards, allocation formulas, and operation procedures for the adult education program for adult education students both in and out of state custody.

**R277-733-2. Incorporation of Utah Adult Education Policies and Procedures Guide by Reference.**

~~(1)~~ The rule incorporates by reference the Utah Adult Education Policies and Procedures Guide, June 2016 Revision, which provides day-to-day operating standards and technical assistance to eligible providers for operation of adult education programs.

~~(2)~~ A copy of the guide is located at:

~~(a)~~ <http://www.schools.utah.gov/adulted/Directors---Coordinators/Policies-and-Procedures-and-Reports.aspx>; and

~~(b)~~ the Utah State Board of Education.

**R277-733-1.3. Definitions.**

~~[A-](1)~~ "Adult" means an individual 18 years of age or over.

~~[B-](2)~~ "Adult education" means organized educational programs below the collegiate/postsecondary level, other than regular full-time K-12 secondary education programs~~[-];~~

~~(a)~~ provided by LEAs or ~~[nonprofit organizations]other~~ eligible providers;

~~(b)~~ affording opportunities for individuals having demonstrated both presence and intent to reside within the state of Utah~~[-];~~

~~(c)~~ provided for ~~[who are]out-of-school~~ youth (16 years of age and older) or adults who have or have not graduated from high school~~[-];~~ and

~~(d)~~ provided to improve ~~[their-]literacy~~ levels and to further ~~[their-]high school~~ level education.

~~[C-](3)(a)~~ "Adult Basic Education" or "[{ABE}]" means a program of instruction at or below the ~~[9-0]8.9~~ academic grade level, which prepares ~~[for-]adults~~ for advanced education and training, who lack competency in reading, writing, speaking, problem solving or computation at a level that substantially impairs their ability to find or retain adequate employment that will allow them to become employable, contributing members of society~~[-and preparing them for advanced education and training].~~

~~(b)~~ ~~[The instruction]ABE~~ is designed to help adults by:

~~(1)i~~ increasing their independence;

(2)ii) improving their ability to benefit from occupational training;

(3)iii) increasing opportunities for more productive and profitable employment; and

(4)iv) making them better able to meet adult responsibilities.

~~[(4)](4)~~ "Adult Education and Family Literacy Act" or "[~~(A)~~AEFLA]" means Title II of the Workforce [~~Investment Act (WIA) of 1998~~]Innovation Opportunity Act of 2014, which provides the principle source of federal support for [~~adult basic and literacy education programs for adults who lack basic skills, an Adult Education Secondary Diploma or its equivalency, or proficiency in English.~~];

(a) academic instruction and education services below the post-secondary level that increase an adult education student's ability to read, write and speak in English, and perform mathematics or other activities necessary for the attainment of a secondary diploma or its recognized equivalent; and

(b) transition to post-secondary education, training, and employment.

~~[(5)](5)~~ "Adult High School Completion" or "[~~(A)~~AHSC]" means a program of academic instruction at the 9.0 grade level or above in Board-approved subjects for eligible adult education students who are seeking an Adult Education Secondary Diploma from an adult education program.

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

~~G. "Community-Based Organization (CBO)" means a nonprofit organization:~~

~~(1) eligible for and accepting federal AEFLA funds; and~~

~~(2) for the sole purpose of providing adult education services to qualified adult education learners.~~

~~(3) All rules and laws that apply to LEAs shall also apply to CBOs that receive adult education funding.~~

~~(4) CBOs:~~

~~(a) apply to the USOE;~~

~~(b) receive adult education funding through a competitive process; and~~

~~(c) receive USOE funding on a reimbursement basis only.~~

~~H. "Consumable items" means student workbooks, student packets, computer disks, pencils, papers, notebooks, and other similar personal items for which a student retains ownership during the course of study.]~~

(6) "College and Career Readiness Plan" or "CCRP" means a plan developed by a student in consultation with adult education program counselors, teachers, and administrators that:

(a) is initiated at the time of entrance into an adult education program;

(b) identifies a student's skills and objectives;

(c) identifies a career pathway strategy to guide a student's course selection; and

(d) links a student to post-secondary education, training, or employment using a program-defined adult education transition process.

~~[(7)](7)~~ "Desk monitoring" means the monthly review of UTopia data to ensure program integrity.

~~[(8)](8)(a)~~ "Eligible adult education student" means an individual who provides documentation that his primary and permanent residency is in Utah, and:

(1)i) is 17 years of age or older, and whose high school class has graduated;~~[-or]~~

(2)ii) is under 18 years of age and is married;~~[-or]~~

(3)iii) has been emancipated or adjudicated as an adult; or

(4)iv) is an out-of-school youth 16 years of age or older who has not graduated from high school~~[-]~~ and who:

(A) is basic skills deficient;

(B) does not have a secondary school diploma, its recognized equivalent, or an equivalent level of education; or

(C) is an ELL.

(b) A non-resident may be treated as an eligible adult education student in accordance with an individual agreement between an eligible provider and another state.

(9) "Eligible Provider" may include:

(a) an LEA;

(b) a community-based or faith-based organization;

(c) a voluntary literacy organization;

(d) an institution of higher education;

(e) a public or private non-profit agency;

(f) a library;

(g) a public housing authority;

(h) a non-profit institution not described in Subsections (a) through (g) that has the ability to provide adult education and literacy activities to eligible adult education students.

(i) a consortium or coalition of providers identified in Subsections (a) through (h); or

(j) a partnership between an employer and a provider identified in Subsections (a) through (i).

~~[(10)](10)(a)~~ "Enrollee" means an adult student who has:

(i) 12 or more contact hours in an adult education program during a fiscal~~[f]~~ program year~~[-]~~;

(ii) an academic assessment establishing an Entering Functioning Level~~[-]~~; and

(iii) ~~[has—]~~an adult education ~~[Student—Education—Occupation Plan (SEOP)]~~CCRP with an established goal~~[-]~~ and a defined funding code.

(b) An~~[Enrollee]~~ enrollee's status is based on the last date that ~~[all of the above]~~the items set forth in Subsections R277-733-3(10)(a)(i) through (iii)~~[are]~~ were entered into UTopia.

~~[L. "English for Speakers of Other Languages (ESOL)" is an instructional program provided for non-native language speakers.]~~

(11) "English Language Learner" or "ELL" means an individual:

(a) who has limited ability in reading, writing, speaking, or comprehending the English language and whose native language is a language other than English; or

(b) who lives in a family or community where a language other than English is the dominant language.

~~[(12)](12)(a)~~ "Fee" means any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods.

(b) Admission fees, transportation charges, and similar payments to third parties are fees if the charges are made in connection with an activity or function sponsored by or through an adult education program.

~~\_\_\_\_\_ (c) All fees are subject to approval by [the local school board of education or local board of trustees]an eligible provider's governing board.~~

~~[\_\_\_\_\_ N. "General Educational Development (GED) preparation" means a program that provides instruction in five specific subject areas for eligible adult education students who seek a Utah High School Completion Diploma by successfully passing all five GED Tests.]~~

~~[\_\_\_\_\_ O. "General Educational Development (GED) Testing" means the test required under R277-702.]~~

~~\_\_\_\_\_ (13) "High School Equivalency Exam" or "HSE" means a Board approved examination whose modules are aligned with current high school core standards and adult education College and Career Readiness standards.~~

~~[\_\_\_\_\_ P. "LEA" means a local education agency, including local school boards and public school districts.]~~

~~[\_\_\_\_\_ Q. "Measurable outcomes" means indicators of student achievement in adult education programs used for state funding purposes. These outcomes are described in R277-733-10.~~

~~\_\_\_\_\_ R. "Northwest" means the Northwest Accreditation Commission, the regional accrediting association of which Utah is a member.]~~

~~[S.](14)(a) "Other eligible adult education student" means an individual 16 to 19 years of age whose high school class has not graduated and who is counted in the regular school program, [who receives]receiving instruction in both a traditional and adult education program.~~

~~\_\_\_\_\_ (b) The Superintendent shall pro-rate and provide a credit to an adult education program for funds generated for an other eligible adult education student, weighted pupil unit (WPU) and collected fees[, are pro-rated and credited to the adult education program for attendance in an adult education program].~~

~~[T.](15) "Out-of-school youth" means a student 16 years of age or older who has not graduated from high school and is no longer enrolled in a K-12 program of instruction.~~

~~[\_\_\_\_\_ U. "Participant" means an adult education student who does not meet the qualifications of an adult education enrollee.~~

~~\_\_\_\_\_ V. "Student education/occupation plan" or "SEOP," for purposes of adult education and this rule, means a plan developed by a student in consultation with adult education program counselors, teachers, and administrators that:~~

~~\_\_\_\_\_ (1) is initiated at the entrance into an adult education program;~~

~~\_\_\_\_\_ (2) identifies a student's skills and objectives;~~

~~\_\_\_\_\_ (3) maps out a strategy to guide a student's course selection; and~~

~~\_\_\_\_\_ (4) links a student to post-secondary options, including higher education and careers through a transition process defined by the adult education program.]~~

~~[W.](16) "Teachers of English to Speakers of Other Languages" or "[{TESOL}]" means a credential for teachers of [ESOL]ELL students.~~

~~[\_\_\_\_\_ X. "Tuition" means the base cost of an adult education program that provides services to adult education students.~~

~~\_\_\_\_\_ Y. "USOE" means the Utah State Office of Education.]~~

~~[Z.](17) "Utah High School Completion Diploma" [is]means a diploma issued by the Board and distributed by [the GED Testing Centers as agents of the]a Board approved contractor to an individual who [passes]has passed all [five-]subject~~

~~[areas]modules of [the GED Tests at a Utah GED Testing Center based on Utah passing standards; measuring the major and lasting outcomes and concepts associated with a traditional four-year high school experience;]an HSE exam at an HSE testing center.~~

~~[AA.](18) "UTopia" means the Utah Online Performance Indicators for Adult Education statewide database.~~

~~[BB.](19)(a) "Waiver release form" means a form signed by an adult education student allowing for release of the student's CCRP and personal data[and student education occupation plan], including social security number and [GED]HSE scores, for data matching purposes with partners[agencies such as] including:~~

~~\_\_\_\_\_ (i) the Department of Workforce Services[;];~~

~~\_\_\_\_\_ (ii) higher education institutions[;];~~

~~\_\_\_\_\_ (iii) the Utah State Office of Rehabilitation; and~~

~~\_\_\_\_\_ (iv) [GED Scoring Services]a Board approved HSE contractor.~~

~~\_\_\_\_\_ (b) A [S]signed waiver release allows a student's education records to be shared with other adult education programs or interested agencies for the purpose of skill development, job training, [or]career planning, or other purposes if specified in the waiver release form.~~

~~\_\_\_\_\_ (20) "Weighted pupil unit" or "WPU" means the basic per pupil unit used to calculate the amount of state funds for which a school district is eligible.~~

#### **R277-733-[3]4. Federal Adult Education Funds.**

~~[The Board adopts the Adult Education and Family Literacy Act (AEFLA), Title II of the Workforce Investment Act (WIA), Public Law 105-220, 20 U.S.C. 1201 et seq., hereby incorporated by reference, and the related current state plan required under that statute, as]The Superintendent shall follow the standards and procedures contained in AEFLA and the WIOA state plan adopted by the Board pursuant to AEFLA to administer[governing] both federal and state funding of adult education programs[, administered by the USOE].~~

#### **R277-733-[4]5. Program Standards.**

~~[A.](1) Adult education programs shall comply with state and federal [requirements and Board rules]law and administrative regulations and follow the procedures [as defined]contained in the Utah Adult Education [Policy]Policies and Procedures Guide[ published, updated, and available from the USOE].~~

~~[B.](2) Adult education programs shall make reasonable efforts to:~~

~~\_\_\_\_\_ (a) market and inform prospective students within their geographic areas of the availability of [the]adult education programs; and~~

~~\_\_\_\_\_ (b) provide enrollment information to prospective students.~~

~~[C.](3)(a) Adult education programs may offer[Utah] adult education services [may be offered-]to a qualifying individual[s] whose primary residence is located in communities closely bordering Utah if the student's circumstances are not conducive to commuting to the bordering state's closest adult education program.~~

~~\_\_\_\_\_ (b) An adult education program shall not charge tuition to a student receiving services in accordance with Subsection (3)(a) [These individuals shall not be charged out-of-state Adult Education tuition].~~

~~(D)~~(4) Adult education programs shall make reasonable efforts to schedule classes at sites and times that meet the needs of adult education students.

~~(E)~~(5)(a) Each eligible adult education student shall have a written ~~Student Education Occupation Plan (SEOP)~~CCRP defining the student's goal~~(s)~~ based upon:

- ~~(i)~~ a complete academic assessment~~(s)~~;
- ~~(ii)~~ prior academic achievement~~(s)~~;
- ~~(iii)~~ work experience; and
- ~~(iv)~~ an established ~~Entering Functioning Level~~entering functioning level.

~~(b)~~ ~~Annually, the plan shall be reviewed by the~~A designated program official shall review a student's plan and waiver release form annually with the student, and a designated program official and maintained in the student's file along with a signed data matching/agency sharing waiver release form.

~~(F)~~(6) ~~Only~~Adult education staff shall only teach courses identified in R277-733-8 ~~shall be taught by adult education staff~~.

~~G. Adult education programs shall establish and maintain a local adult education advisory committee consisting of representation from the Utah Department of Workforce Services, Vocational Office of Rehabilitation, higher education and other interested community members with the responsibility to advocate for exemplary adult education programs through collaboration and partnerships with businesses and other community agencies.~~

~~(H)~~(7) The ~~USOE~~Superintendent shall evaluate programs for compliance through:

- ~~(a)~~ tri-annual site monitoring visits~~(s)~~;
- ~~(b)~~ monthly desk monitoring~~(s)~~; and ~~as needed;~~
- ~~(c)~~ additional monitoring as needed ~~site visits or both, to assure compliance.~~

~~(I)~~(8) ~~Education staff, including~~Adult education program staff, program administrators, teachers, instructors, and counselors shall be qualified and have appropriate qualifications for their assignments.

~~(J)~~(9)(a) ~~The~~An eligible provider may consider a staff member's teaching certificate and endorsement held by a staff member of an LEA or community-based program shall be important in evaluating the appropriateness of the ~~teacher's~~staff member's assignment~~, but not controlling~~.

~~(b)~~ Notwithstanding Subsection (9)(a) an eligible provider may assign staff members to teach in circumstances not generally covered by their teaching certificate and endorsement under appropriate circumstances, such as placing an~~For instance,~~ elementary teacher~~(s)~~ mayto teach adult students who are performing academically at an elementary level in certain subjects.

~~(c)~~ An ~~(H)~~individual(s) teaching an adult education high school completion class shall hold a valid Utah elementary or secondary education license and may issue adult education high school completion credits in multiple subjects.

~~(d)~~ A ~~(N)~~non-licensed individual(s) providing instruction in ~~(ESOL)~~ELL, ABE, ~~(GED Test)~~HSE preparation, or AHSC classes shall instruct under the supervision of a licensed program employee.

~~(K)~~(10) A ~~non-licensed~~individual(s) individual with a post-secondary degree~~(s)~~ ~~not in possession of a Utah teaching license may be considered for employment solely in an adult education program teaching adult students by obtaining an~~

~~Alternative Route to License as defined in R277-518, Career and Technical Education Licenses.]may only be considered for a teaching position by an eligible provider after approval for participation in the Alternative Route to Licensure program under R277-518 and R277-503-4; or~~

~~(L)~~(11) An eligible provider may consider an individual for employment who has TESOL ~~or ESOL~~ credentials in lieu of a Utah teaching license ~~may be considered for employment~~ solely in an adult education ~~community-based~~ program funded to provide ~~(ESL)~~ELL services.

#### **R277-733-5]6. Fiscal Procedures.**

~~(A)~~(1) The Superintendent shall allocate ~~(S)~~state funds ~~appropriated~~ for adult education ~~are allocated~~ in accordance with Section 53A-17a-119.

~~(B)~~(2) No eligible LEA shall receive less than its portion of an eight percent base amount of the state appropriation if:

~~(1)~~a) the LEA provided instructional services approved by the ~~USOE have been provided~~ Board to eligible adult students during the preceding fiscal year; or

~~(2)~~b) the LEA is preparing to offer ~~such~~ services to eligible adult students, ~~such a~~ provided that the LEA's preparation period ~~may~~does not exceed two years.

~~C. Lapsing and nonlapsing funds~~

~~(1)~~3) Funds appropriated for adult education programs shall be subject to Board accounting, auditing, and budgeting rules and policies.

~~(2)~~4) An LEA may carry over to the next fiscal year ~~(F)~~ten percent or \$50,000, whichever is less, of state adult education funds allocated to the LEA's adult education programs not expended in the current fiscal year ~~may be carried over and spent in the next fiscal year~~ with written approval ~~by~~from the ~~USOE~~Superintendent.

~~(3)~~5)(a) An LEA shall submit a ~~(A)~~ request to carry over funds ~~shall be submitted~~ for approval by August 1 annually.

~~(b)~~ The Superintendent shall prepare a revised budget incorporating ~~(A)~~approved carryover amounts ~~shall be detailed in a revised budget submitted to the adult education coordinator~~ no later than ~~(October)~~September 1 in the year requested.

~~(4)~~6) The Superintendent may consider ~~(E)~~excess funds ~~may be considered~~ in determining ~~the~~an LEA's allocation for the next fiscal year.

~~(5)~~7) The Superintendent shall recapture~~Annually,~~ fund balances in excess of 10 percent or \$50,000 ~~shall be recaptured by the USOE~~ no later than February 1 annually.

~~(8)~~ The Superintendent shall~~and~~ reallocate~~(d)~~ funds recaptured in accordance with Subsection (7) to LEA adult education programs through the supplemental award process based on need and effort as determined by the Board consistent with Subsection 53A-17a-119(3).

~~(D)~~(9)(a) The ~~USOE~~Superintendent shall develop uniform forms, deadlines, program reporting and accounting procedures, and guidelines to govern ~~the~~state ~~(legislative)~~and federally ~~(AEFLA)~~funded adult education ~~funded~~ programs.

~~(b)~~ The Superintendent shall update ~~(F)~~the Utah Adult Education ~~(Policy)~~Policies and Procedures Guide ~~(updated)~~ annually ~~including forms, procedures and guidelines~~ and make the guide ~~is~~ available on the ~~USOE~~Board adult education website.

(10)(a) The Superintendent shall provide a competitive bidding process for an eligible provider to apply for federal adult education funds.

(b) The Superintendent shall only fund an eligible provider following an award under Subsection (10)(a) on a reimbursement basis.

(c) An eligible provider is subject to all laws and regulations regarding adult education funds, which are applicable to an LEA.

**R277-733-6. Adult Education Program Student Eligibility.**

A. An individual is eligible to be a Utah adult education student if

(1) the prospective adult education student is at least 16 years of age and the student's class has not graduated; or

(2) a prospective adult education student who is otherwise eligible provides proof of Utah residency as defined in adult education policy.

B. The following does not establish residency for purposes of adult education programs:

(1) mail addressed to occupant or resident;

(2) letters from friends or relatives;

(3) power of attorney documents;

(4) personal correspondence addressed to a post office box.

C. To be eligible for participation in an adult education program, a Utah resident shall be:

(1) an individual 17 years of age or older whose high school class/cohort has graduated; or

(2) an individual emancipated under Section 78-3a-1005; or

(3) an individual emancipated by marriage; or

(4) an individual who is at least 16 years of age who has not graduated from high school and who is no longer enrolled in a K-12 program of instruction; or

(5) a student 16 to 19 years of age whose class has not graduated and who is attending adult education classes as an alternative to a traditional public education program.

D. Non-Utah residents from states bordering Utah seeking enrollment into an adult education program in Utah shall be considered resident Utah students consistent with individual agreements between the Utah Adult Education Program and the individual states bordering Utah.

**R277-733-7. Adult Education Pupil Accounting.**

[A-](1) A[n-LEA] district administered adult education program shall receive WPU funding for a student at the rate of 990 clock hours of membership per one weighted pupil [(with part-time enrollment pro-rated by the LEA)-]for a student who is a resident of a Utah school district [who]and meets the following criteria:

(1)a) is at least 16 years of age but less than 19 years of age;

(2)b) [who-]has not received a high school diploma or a Utah High School Completion Diploma;

(3)c) [who-]intends to graduate from a K-12 high school; and

(4)d) [who-]attends a[n-SEOP] CCRP meeting with his school counselor, school administrator[']or designee, and parent[']

or legal guardian to discuss the appropriateness of the student's participation in adult education; or

(5)2) A district may additionally receive WPU funding for a student at the rate of 990 clock hours of membership per one weighted pupil uni for a resident student who meets the following criteria:

(a) [A student]is [17]19 years of age or older[;];[without]

(b) has not received a high school diploma but whose high school class has graduated[;];[who is a Utah resident, and]

(c) [who-]intends to graduate from a K-12 high school[;]; [may, with parental/guardian consultation and written approval from all parties (if applicable), enroll in the state administered adult education program upon proof of Utah residency.]; and

(d) has written approval from all parties following consultation with the student's parent or guardian.

(2) Student attendance up to 990 clock hours of membership is equivalent to 1 FTE per year.

[B-](3) The Superintendent shall prorate the clock hours of students enrolled part-time[ shall be prorated-]

[C-](4) As an alternative, a district may generate equivalent WPUs [may be generated-]for competencies mastered [on the basis of prior authorization of a school district plan by the USOE]with a district plan approved by the Superintendent.

[D-](5)(a) [For purposes of funding in an adult education program, a student can only be a pupil]A student may only be counted in average daily membership once on any day.

(b) If [the]a student's day is part-time in the regular school program and part-time in the adult education program, a district shall report the student's membership [shall be reported-]on a prorated basis for each program.

(c) A district may not receive funding for [A]a student [may not be funded-]for more than one regular WPU for any school year.

[E-](6) [An out-of-school youth (minimum age of 16) who has not graduated from high school, may, with parental/guardian written approval (if applicable), school district administrative written approval and proof of Utah residency.]]If an eligible adult education student as specified in R277-733-3(8)(a)(iv) enrolls in an adult education program:

(1)a) The district may not receive WPU funding for[shall not be generated by] the student's participation in an adult education program[;];

(2)b) [This]The student [shall]may be eligible for adult education state funding[;];

(3)c) [This]The student shall be presented with information prior to or at the time of enrollment in an adult education program that defines the consequences of the student's decision, including the following:

(a)i) The student may receive an Adult Education Secondary Diploma upon completion of the minimum required Carnegie units of credit as defined by the adult education program; [or]

(b)ii) The student may earn a Utah High School Completion Diploma upon successful passing of [all five GED Tests]an HSE exam; or

(c)iii) The student may, at the discretion of the [LEA]district, return to his regular high school prior to the time his class graduates with the understanding and expectation that all



necessary requirements for the traditional [K]k-12 diploma shall be completed, provided that the student:

(i)A is released from the adult education program; ~~and~~

(ii)B has not completed the requirements necessary for an Adult Education Secondary Diploma; ~~or~~ and

(iii)C has not successfully passed ~~all five GED Tests~~ an HSE exam and has not received a Utah High School Completion Diploma[-];

(4)d ~~The student may not~~ An out-of-school youth of school age who has received an Adult Education Secondary Diploma is not eligible to return to a [K]k-12 high school after receiving an Adult Education Secondary Diploma[-];

(5)e ~~An out-of-school youth of school age who has received~~ The student is not eligible to return to a k-12 high school after receiving a Utah High School Completion Diploma [is not eligible to return to a K-12 high school] unless it is required for the provision of a free appropriate public education (FAPE) under the ~~[Individuals with Disabilities Education Act (IDEA), 20 U.S.C., Chapter 33]~~ IDEA.

(6)f A[n] district shall report a student ~~out of school youth of school age~~ who has successfully completed an Adult Education Secondary Diploma or a Utah High School Completion Diploma ~~shall be reported~~ as a graduate for [K]k-12 graduation (AYP) outcomes.

(7)g ~~An out-of-school youth of school age may be considered eligible to~~ The student may take [the GED Test if all requirements as stated in R277-702, Procedures for Utah General Educational Development Certificate, are followed] an HSE exam in accordance with the provisions of R277-702.

#### **R277-733-8. Program, Curriculum, Outcomes and Student Mastery.**

~~A:]~~(1) The Utah Adult Education Program shall offer courses consistent with the ~~Utah Core curriculum]~~ Elementary and Secondary General Core under R277-700.

~~B:]~~(2) The ~~Utah Core curriculum and teaching strategies]~~ core standards may be modified or adjusted to meet the individual needs of ~~the]~~ an adult education student.

~~C:]~~(3) An LEA shall develop [W]written course descriptions for AHSC required and elective courses ~~shall be developed by LEA adult education programs]~~ for all adult education program classes taught, consistent with the ~~Utah Core curriculum]~~ core standards and Utah adult education ~~curriculum]~~ college and career readiness standards, as provided by the ~~[USOE]~~ Superintendent.

~~D:]~~(4) The Superintendent, in cooperation with eligible providers, shall develop [W]written course descriptions for ~~[GED Test]~~ HSE exam preparation, ~~[ESOL]ELL~~ and ABE courses ~~shall be developed cooperatively by LEAs, CBOs and the USOE]~~ based on Utah's ~~[C]core [curriculum]~~ standards, modified for adult learners.

~~E.]~~ Course descriptions shall contain adult education mastery criteria and shall stress mastery of adult life skill material consistent with Core objective standards and the Core curriculum.]

~~F:]~~(5) Course descriptions shall stress content mastery ~~shall be stressed]~~ rather than completion of predetermined seat time in a classroom.

~~G:]~~(6) Adult high school completion education ~~is determined by]~~ shall include the following prerequisite courses:

(1)a ~~[ESOL]ELL~~ competency AEFLA levels one through six; or

(2)b ABE competency AEFLA levels one through four.

~~H:]~~(7) AHSC courses for students seeking an Adult Education Secondary Diploma ~~should]~~ shall meet federal AEFLA AHSC Levels I and II competency requirements with a minimum completion of 24 credits consistent with cores standards and adult education college and career readiness standards under the direction of a Utah licensed teacher as provided ~~[below:]~~ in the Utah Adult Education Policies and Procedures Guide.

~~(1) Adult High School Core Courses, as offered consistent with Utah Core objectives:~~

~~(a) 24.0 units of credit required through satisfaction of a course of study by demonstrated course competency or LEA-approved competency examination in correlation with the student's SEOP career focus as defined in the following instructional areas:~~

~~(i) Language Arts: 4.0;~~

~~(ii) mathematics: 3.0 individualized mathematics courses to meet the life needs of adult learners;~~

~~(iii) science: 3.0 from the four science foundations of chemistry, biological science, earth science, or physics;~~

~~(iv) social studies: 3.0 including 1.0 in United States history, .50 in United States government and citizenship, .50 in geography, .50 in world civilizations, and .50 general financial literacy;~~

~~(v) arts: 1.50;~~

~~(vi) healthy lifestyles: 2.0 individualized courses meeting the life needs of adult learners that include: .25 to 1.50 health education, .25 to 1.50 individualized fitness for life courses;~~

~~(vii) career and technical education (CTE): 1.00;~~

~~(viii) information technology: .50 computer technology courses or successful completion of school district-approved competency examination; and~~

~~(ix) electives: 6.0 units of credit.~~

~~(b) approved adult education credit options including continuous professional employment training required for a professional license; or~~

~~(c) documented achievement of a trade or skill;~~

~~(d) basic or advanced military training;~~

~~(e) apprenticeship, union or registered work credentials;~~

~~(f) successful passing score on all five GED Tests; academic credit for successfully passing all five GED Tests may only be applied toward an Adult Education Secondary Diploma if the proposed awarded units of credit were transcribed by June 30, 2009;~~

~~(f) transcribed college or university courses as they align to the Core instructional areas.]~~

~~I:]~~(8) The ~~[USOE Adult Education Section and LEA programs]~~ Superintendent and eligible providers shall disseminate clear information regarding revised adult education graduation requirements.

~~J:]~~(9) An [A]adult education student[s] receiving education services in a state prison or jail education program may graduate with an Adult Education Secondary Diploma upon completion of the state required 24.0 units of credit required under R277-700 and;

~~(a) [satisfied through]~~ completed credits; ~~or]~~

~~(b) demonstrated course competency; or~~

~~\_\_\_\_\_~~ (c) a Utah High School Completion Diploma with a successful passing score on ~~[all five of the GED Tests]~~ an HSE exam consistent with ~~the[students']~~ student[s] SEOP career focus adult education CCRP.

~~[K-](10) An eligible provider may modify~~ Adult Education Secondary Diploma graduation requirements ~~[may be changed or modified, or both, for]~~ to meet unique educational needs of an adult student[s] with:

~~\_\_\_\_\_~~ (a) documented disabilities through ~~[Individual Education Plans (IEPs)]~~ an IEP from age 16 until ~~[their]~~ the student's 22nd birthday; or

~~\_\_\_\_\_~~ (b) an adult education ~~[SEOP]CCRP[-, or both to meet unique educational needs].~~

~~[L-](11) A student's IEP or adult education [SEOP]CCRP shall document the nature and extent of modifications, substitutions, or exemptions made to accommodate the student's [disability(ies)]disabilities.~~

~~[M-](12) Modified graduation requirements for an individual student shall:~~

~~[(1)a] be consistent with the student's IEP or [SEOP, or both]CCRP;~~

~~[(2)b] be maintained in the student's adult education files; and~~

~~[(3)c] maintain the integrity and rigor expected for AHSC graduation.~~

~~[N-](13) An LEA[s] shall establish policies allowing or disallowing adult education student[s] participation in graduation activities or ceremonies.~~

~~[O-](14) An adult education student may only receive an Adult Education Secondary Diploma earned through a [designated Northwest accredited-]Utah adult education program[-, as approved by the Board] accredited through a Board-approved organization.~~

~~[P-](15) An [A]adult education program[s] shall accept credits and grades awarded to a student[s] without alteration from other accredited state-recognized adult education programs[-, schools accredited by Northwest or schools or programs approved by the Board] or eligible providers approved by the Superintendent.~~

~~[Q-](16) An [A]adult education program[s] may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted from [schools or private]other eligible providers.~~

~~[R-](17) An LEA adult education program is the final decision-making authority for the awarding of credit and grades from non-accredited sources.~~

~~[S-](18) An [A]adult education program[s] shall provide instruction that allows a student[s] to transition between sites in a seamless manner.~~

~~[T-](19) An adult education program shall offer [A]an adult education student seeking a Utah High School Completion Diploma [shall be offered-]a course of academic instruction designed to prepare the student to take [the GED Tests]an HSE exam.~~

~~[U-](20) The Superintendent shall award [A]a Utah High School Completion Diploma [shall be issued by the Board and distributed by the GED testing centers as agents of the Board or directly by the USOE GED administrator]if a student passes an HSE exam.~~

~~\_\_\_\_\_~~ (21) Notwithstanding [R]receipt of the Utah High School Completion Diploma [does not end entitlement]a student may still be entitled to a free appropriate public education [for a student eligible for special education-]under IDEA requirements.

~~[V-](22) [Upon]Following~~ completion of requirements for a Utah Adult Education Secondary Diploma[-] or a Utah High School Completion Diploma, an adult education student[s] may only continue in an adult education program to improve their basic literacy skills if:

~~[(1)a] [their]the student's~~ academic skills are less than ~~[12.9]2.0~~ grade level in an academic area of reading, math or English;~~[and]~~

~~[(2)b] [they lack]the student lacks~~ sufficient mastery of basic educational skills to enable the~~[m] student~~ to function effectively in society[-]; and

~~\_\_\_\_\_~~ (c) ~~[F]the focus of the continued instruction is limited[shall be] solely to literacy [and is limited specifically to]in reading, math or English for a maximum of 120 instructional contact hours.~~

### **R277-733-9. Adult Education Programs--Tuition and Fees.**

~~[A-](1) Any adult may enroll in an adult education class consistent with Section 53A-15-404.~~

~~[B-](2) An eligible provider may charge [F]tuition and fees [may be charged-]for ABE, [GED preparation]HSE exam preparation, AHSC, or [ESOL]ELL courses in an amount not to exceed \$100 annually per student based on the student's ability to pay as determined by federal free and reduced lunch guidelines[-] under the Richard B. Russell National School Lunch Act, 42 USC Section 1751, et seq.~~

~~\_\_\_\_\_~~ (3) A school board or board of trustees of an eligible provider shall determine ~~[The appropriate]reasonable and necessary student fees and tuition on an annual basis[shall be determined by the local school board or CBO board of trustees].~~

~~[C-](4) [Adults who are or may attend adult education programs shall be given adequate notice of program]An eligible provider shall provide potential adult education program students adequate notice of tuition and fees through public posting.[-Any charged tuition or fees shall be set and reviewed annually by the local school board or CBO board of trustees.]~~

~~[D-] Adult education tuition and fees shall be waived or students shall be offered appropriate work in lieu of waivers for students who are younger than 18, qualify for fee waivers under R277-407, and their class has not graduated.~~

~~\_\_\_\_\_~~ E. Tuition may be charged for courses that satisfy requirements outlined in R277-733-8B, when adequate state or local funds are not available.

~~\_\_\_\_\_~~ F. Fees may be charged for consumable and nonconsumable items necessary for adult high school courses that satisfy requirements outlined in R277-733-8B.

~~\_\_\_\_\_~~ G. Fees and tuition charged and collected by adult education programs shall be reasonable and necessary as determined by the local boards of education or boards of trustees.]

~~[H-](5) An eligible provider shall specifically use [C]collected fees and tuition [shall be used specifically-]to provide additional adult education and literacy services that the [program]provider would otherwise be unable to provide.~~

~~I. The local program superintendent/chief executive officer and business administrator shall acknowledge by signature as part of the program's grant plan (state or federal, or both) submission and program assurances that all fees and tuition collected and submitted for accounting purposes are:~~

~~(6) An eligible provider receiving state or federal adult education funds shall provide annual written assurances on a form approved by the Superintendent that all fees and tuition collected and submitted for accounting purposes are:~~

~~(1)a returned<sup>[7]</sup> or delegated with the exception of indirect costs to the local adult education program;~~

~~(2)b used solely and specifically for adult education programming; and~~

~~(3)c not withheld and maintained in a general maintenance and operation fund.~~

~~(7)(a) An eligible provider shall spend [A]all collected fees and tuition generated from the previous fiscal year [shall be spent] in the adult education program in the ensuing program year.~~

~~(b) A district may [and shall]not [be used by an LEA]use funds identified in Subsection (7)(a) in calculating carryover fund balance amounts.~~

~~(8) An eligible provider may not count [C]collected fees and tuition [may not be counted]toward meeting federal matching, cost sharing, or maintenance of effort requirements related to the program's award.~~

~~(9) Annually, [local programs]eligible providers shall report to the [school district or community-based organization and the USOE]Superintendent all fees and tuition collected from students associated with each funding source.~~

~~(10) An eligible provider shall not commingle or report [F]fees and tuition collected from adult education students [shall not be commingled or reported]with community education funds or any other public education fund.~~

#### **R277-733-10. Allocation of Adult Education Funds.**

~~(1) The Superintendent shall distribute [A]adult education state funds [shall be distributed]to an LEA[s] offering adult education programs consistent with percentages defined in [adult education policy]the Utah Adult Education Policies and Procedures Guide. [in the following areas:~~

~~A. Base amount distributed equally to each participating school district with a Board-approved adult education plan and budget.~~

~~B. Enrollee status students (not participants).~~

~~C. Contact hours (instructional and non-instructional) for both enrollee status students and participants.~~

~~D. Adult Education Secondary Diplomas or Utah High School Completion Diplomas, whichever is awarded first.~~

~~E. Enrollee level gains.~~

~~F. Enrollee adult education earned secondary credits.~~

~~G. Supplemental support, to be distributed to:]~~

~~(2)(a) The Superintendent shall distribute supplemental support to [(1)]an LEA adult education program[s] with no carryover funds, which[receiving] receives less than one percent of the state allocation as indicated on the state allocation table [that do not have any carryover funds].~~

~~(b) The Superintendent shall accept and process [A]applications for supplemental funds [are accepted and processed]annually between October 15 and October 31.~~

~~(c) An LEA receiving supplemental support shall use the [A]awarded funds [shall be used]for special program needs or professional development, as determined by the Superintendent's evaluation of the LEA's written request and [USOE evaluation of] need[and approval].~~

~~(d) An LEA may apply for the[(2)Any] balance of supplemental funds [may be applied for by all remaining eligible LEAs who may or may not have carryover funds]for special program needs or professional development [as determined by written request and USOE evaluation of need and approval] between November 1 and March 1 annually.~~

~~(e) Following review of a written request submitted pursuant to Subsection (d), the Superintendent shall distribute funds based on need.~~

~~(f) The Superintendent shall add[LEA] recaptured LEA funds that are greater than allowable carryover amounts [shall be added]to the available supplemental funds [and]awarded to adult education programs based on the criteria defined in [R277-733-10G(1) and (2)]Subsection 2(a) through (e).~~

~~(3)(a) Adult education federal AEFLA funds shall be distributed based on a competitive application.~~

~~(b) The Superintendent shall base [S]second or subsequent year AEFLA funding [shall be based]on performance criteria established [by the USOE, defined]in [adult education policy]the Utah Adult Education Policies and Procedures Guide.~~

~~(4) The Superintendent may recommend that the Board withhold state or federal [F]funds[ state or federal or both, may be withheld or terminated] for noncompliance with:~~

~~(1)a Board rule;~~

~~(2)b adult education state policy and procedures[or both];~~

~~(3)c associated reporting timelines; and~~

~~(4)d program monitoring outcomes, as defined by the [USOE]Board, including:~~

~~(i) lack of program improvement; and~~

~~(ii) unsuccessful student outcomes.~~

#### **R277-733-11. Adult Education Records and Audits.**

~~(1) An LEA shall maintain [Ø]official records regarding an eligible adult education student[shall be maintained] in [perpetuity]accordance with state retention schedules SD17-25 and SD 17-32.~~

~~(1) To validate student outcomes, programs shall maintain records for each program site in perpetuity which clearly and accurately show for each student:~~

~~(a) documentation of Utah residency; the student's initial managing program shall maintain documentation of Utah residency in the student's file in perpetuity;~~

~~(b) documentation of such proof shall be entered in the student's UTopia data record;~~

~~(2) copies of:~~

~~(a) transcribed grade data including previous report cards, transcripts, work verification, military training, professional licenses, union or registered work credentials;~~

~~(b) completed Core followup surveys;~~

~~(c) releases of information requesting student record information and releases of student information to other requesting agencies;~~

~~(d) special education IEPs for students under the age of 22; and~~

~~(e) outside psychological, psychiatric or medical documentation used in determining education programming accommodations; and records of accommodations.]~~

~~[B:]~~(2) An eligible provider shall maintain records for each student [F]to validate student outcomes annually[;] in accordance with the Utah Adult Education Policies and Procedures Guide.[the student's managing program shall maintain records for each program site which clearly and accurately show for each student:

~~(1) signed or refusal to sign waiver or release forms;~~

~~(2) all assessment protocol sheets (pre- and post-tests) used to determine student's EFL and level gains; and~~

~~(3) contact hours (both noninstructional and instructional) documentation.~~

~~C. Audits:]~~

~~(1)~~(3) To ensure valid and accurate student data, all programs accepting [either]state or federal adult education funds, or both, shall enter and maintain required student data in the UTopia data system.

~~(2)~~(4) An eligible provider shall [A]annually[;] retain an independent auditor [shall be retained by each LEA and CBO]to:

~~(a) audit student accounting records[; to]~~

~~(b) verify UTopia data entries; and[ in addition to validating]~~

~~(c) validate the cash controls over collection[s] of student fees.~~

~~(3) Reports of accuracy shall be completed and submitted to the LEAs boards, the CBOs' boards of trustees, and as appropriate, the local adult education program director, and the USOE.]~~

~~(4)~~(5) An auditor retained pursuant to Subsection (4) shall submit a written report by September 15 annually to:

~~(a) the eligible provider's governing board or board of trustees;~~

~~(b) the Superintendent; and~~

~~(c) the local adult education program director, if appropriate.~~

~~(4) The USOE shall receive the final auditor report from each adult education program by September 15 annually.]~~

~~(5)~~(6) In the event of an audit finding of non-compliance with state or federal law, regulation, or policy, [A]a program shall prepare and submit to the [USOE]Superintendent a written corrective action plan for each audit finding by October 15 annually.

~~(6)~~(7) [USOE adult education staff members are responsible to]The Superintendent shall monitor and assist a program[s] in the resolution of a corrective action plan[s].

~~(7)~~(8) The Superintendent may recommend that the Board terminate [A]a program's state or federal funding for failure to resolve audit findings [may result in the termination of state and federal funding, or both]in accordance with R277-114.

~~(8)~~(9) Independent audit reporting dates, forms, and procedures are available in the state of Utah Legal Compliance Audit Guide provided to [the school districts and CBOs]an eligible provider by the [USOE]Superintendent in cooperation with the State Auditor's Office and published under the heading of APPC-5.

~~(9) USOE Adult Education program staff shall conduct tri-annual program reviews of each adult education program to ensure accuracy of program data and program compliance. Desk monitoring shall be completed with program directors throughout the program year. Additional informal monitoring or reviews or site visits may be conducted as necessary.~~

~~(10) Monitored programs shall prepare and submit to the USOE a written corrective action plan for each monitoring finding as requested by the USOE.~~

~~(11) A program's failure to resolve audit findings may result in the termination of state or federal funding or both as provided in R277-114, Corrective Action and Withdrawal or Reduction of Program Funds.]~~

~~(13)~~(10) The [USOE]Superintendent may [shall]review for cause an eligible provider's[school district or CBO] records and practices for compliance with the law and this rule.

#### **R277-733-12. [Advisory Council]State Workforce Development Board.**

~~[A:]~~(1) The [State-]Superintendent [of Public Instruction or designee]shall represent [A]adult [E]ducation programs on the [Department of Workforce Services State Council]State Workforce Development Board as a voting member, in accordance with WIOA.

~~[B. Adult education programs shall participate on or establish and maintain a local interagency advisory council consisting at a minimum of partner agencies including the Department of Workforce Services, the State Office of Rehabilitation, higher education, the Utah College of Applied Technology, industry and community representation, and other appropriate agencies with the purpose of supporting the mission of adult education in Utah.]~~

~~(2) The Superintendent may assign Board staff to State Workforce Development Board WIOA committees to the purpose of implementation of the State's WIOA Unified Plan.~~

#### **R277-733-13. Oversight, Monitoring, Evaluation, and Reports.**

The Board may designate no more than two percent of the total legislative appropriation for adult education services to be used specifically by the [USOE]Superintendent for oversight, monitoring, and evaluation of adult education programs and their compliance with law and [this rule]regulation.

#### **KEY: adult education**

**Date of Enactment or Last Substantive Amendment:** ~~[June 7, 2012]~~2017

**Notice of Continuation:** October 5, 2012

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-15-401; 53A-1-402(1); 53A-1-401~~(3)~~; 53A-1-403.5; 53A-17a-119; 53A-15-404

## Education, Administration **R277-735** Corrections Education Programs

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41792

FILED: 06/09/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R277-735 is amended to update program standards and procedures following a review of the rule.

SUMMARY OF THE RULE OR CHANGE: The amendments to Rule R277-735 update procedures for providing services, allocation of funds, fiscal procedures, and definitions. Technical and conforming changes are provided in accordance with the Rulewriting Manual for Utah.

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

ANTICIPATED COST OR SAVINGS TO:

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

COMPLIANCE COSTS FOR AFFECTED PERSONS: Procedural changes and technical and conforming changes will likely not result in any compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.**

**R277-735. Corrections Education Programs.**

**R277-735-[2]1. Authority and Purpose.**

[A:](1) This rule is authorized by:  
 \_\_\_\_\_ (a) Utah Constitution Article X, Section 3, which vests general control and [authority]supervision over public education in the Board[;];[by]

\_\_\_\_\_ (b) Section 53A-1-403.5, which makes the Board, along with the Utah Department of Corrections, [directly]responsible for the education of inmates in custody; and

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

[B:](2) The purpose of this rule is to specify operation standards and procedures for inmates in corrections education programs that are the responsibility of the public school system.

[C: Corrections education programs shall be consistent with R277-733, Adult Education Programs.]

**R277-735-2. Incorporation of Utah Adult Education Policies and Procedures Guide by Reference.**

\_\_\_\_\_ (1) The rule incorporates by reference the Utah Adult Education Policies and Procedures Guide, June 2016 Revision, which provides day-to-day operating standards and technical assistance to eligible providers for operation of adult education programs.

\_\_\_\_\_ (2) A copy of the guide is located at:

\_\_\_\_\_ (a) <http://www.schools.utah.gov/adulted/Directors--Coordinators/Policies-and-Procedures-and-Reports.aspx>; and

\_\_\_\_\_ (b) the Utah State Board of Education.

**R277-735-[1]3. Definitions.**

[A: A. "Adult Basic Education (ABE)" means a program of instruction below the 9-0 academic grade level for adults who lack competency in reading, writing, speaking, problem solving or computation at a level that substantially impairs their ability to find or retain adequate employment that will allow them to become employable, contributing members of society and preparing them for advanced education and training. The instruction is designed to help adults by:

- \_\_\_\_\_ (1) increasing their independence;
- \_\_\_\_\_ (2) improving their ability to benefit from occupational training;
- \_\_\_\_\_ (3) increasing opportunities for more productive and profitable employment; and
- \_\_\_\_\_ (4) making them better able to meet adult responsibilities.

~~B. "Adult Education and Family Literacy Act (AEFLA)" means Title II of the Workforce Investment Act (WIA) of 1998 which provides the principle source of federal support for adult basic and literacy education programs for adults who lack basic skills, an Adult Education Secondary Diploma or its equivalency, or proficiency in English.~~

~~C. "Adult High School Completion (AHSC)" means a program of academic instruction at the 9.0 grade level or above in Board-approved subjects for eligible adult education students who are seeking an Adult Education Secondary Diploma from an adult education program.~~

~~D. "Board" means the Utah State Board of Education.~~

~~E. "Community-based organization (CBO)" means a nonprofit organization:~~

~~(1) eligible for and accepting federal AEFLA funds; and~~

~~(2) for the sole purpose of providing adult education services to qualified adult education learners.~~

~~(3) All rules and laws that apply to school districts shall also apply to CBOs that receive adult education funding.~~

~~(4) CBOs:~~

~~(a) apply to the USOE;~~

~~(b) receive adult education funding through a competitive process; and~~

~~(c) receive USOE funding on a reimbursement basis only.]~~

~~[F.](1) "Custody" means the status of being legally in the control of another adult person or a public agency.~~

~~[G.](2) "Education Contracts funds" means funds appropriated annually by the Legislature to be used partly for corrections education.~~

~~(3) "FERPA" means the Family Educational Rights and Privacy Act, 20 USC 1232g, and its implementing regulations.~~

~~[H. "English for Speakers of Other Languages (ESOL)" is an instructional program provided for non-native language speakers.~~

~~I. "General Educational Development (GED) Testing" means the test required under R277-702.]~~

~~[J.](4) "Inmate" means an offender who is incarcerated in state or county correctional facilities located throughout the state.~~

~~[Inmates may be housed in various locations throughout the state of Utah.]~~

~~[K. "SEOP/plan for college and career readiness" means a plan for students in grades 7-12 that includes:~~

~~(1) all Board and LEA board graduation requirements;~~

~~(2) the individual student's specific course plan that will meet graduation requirements and provides a supportive sequence of courses consistent with identified post-secondary training goals;~~

~~(3) evidence of parent, student, and school representative involvement annually; and~~

~~(4) attainment of approved workplace skill competencies.~~

~~L. "Teaching of English to Speakers of Other Languages (TESOL)" means a credential for teachers of ESOL.~~

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

~~[N.](5) ["UTopia" means "]Utah Online Performance Indicators for Adult Education" or "UTopia" means a statewide database for tracking adult education student progress and outcomes.~~

#### **R277-735-[3]4. Procedures for Providing Services.**

~~[A.](1) The Board may contract to provide educational services for inmates with:~~

~~(a) local school boards[;];~~

~~(b) state post-secondary educational institutions[;];~~

~~(c) other state agencies[;]; or~~

~~(d) private providers [of the]recommended by a local school board[s] choosing to provide educational services for inmates].~~

~~(2) A contract made in accordance with Subsection (1) shall be in writing and shall provide for:~~

~~(a) services to students in an appropriate environment for student behavior and educational performance;~~

~~(b) compliance with relevant Board standards;~~

~~(c) program monitoring by the Superintendent in accordance with R277-733; and~~

~~(d) coordination of services with non-custodial programs to enable an inmate in custody to continue the inmate's public school education with minimal disruption following discharge.~~

~~[The respective responsibilities of the Board, local school boards, and other service providers for education shall be established by memoranda of agreement or contracts.]~~

~~(3) A school district may sub-contract with local educational service providers for the provision of educational services to students in custody.~~

~~(4) Educational services shall be provided in the appropriate environment for the student's behavior and educational performance.~~

~~(5) Educational programs to which inmates are assigned shall meet the standards adopted by the Board for that type of program.~~

~~(6) Educational programs shall be monitored by the USOE in periodic review visits.~~

~~(7) Educational services shall be sufficiently coordinated with non-custody programs to enable inmates in custody to continue their public school education with minimal disruption following discharge from custody.]~~

~~(8) Custodial status alone does not qualify an individual for services under the [Individuals with Disabilities Act (IDEA)], 20 U.S.C. Sec. 1400 et seq., amended in 2004.~~

~~(5) When a student inmate is transferred to a new program, the sending program shall update and finalize all school records in Utopia releasing the student's records as soon as possible after receiving notice of the transfer.~~

~~(6) An educational service provider shall only disclose educational records of [When]a student inmate[is released], before or after release from custody, [educational records shall only be available]consistent with [the Family Education Rights and Privacy Act (FERPA)], 20 U.S.C. Section 1232g, 34 CFR Part 99.~~

~~(7) Corrections education programs shall adhere to the same overarching program standards and practices defined for all adult education programs, consistent with R277-733, unless otherwise noted herein.~~

#### **R277-735-[4]5. Fiscal Procedures.**

~~(1) An [H]inmate[s] receiving educational services by or through a school district [become]shall be a student[s] of that school district for funding purposes.~~

~~[B-](2) The Superintendent shall allocate [S]state corrections education funds [appropriated to the USOE for corrections education shall be allocated-]to school districts on the basis of annual applications.~~

~~[C-](3) A program receiving [F]funds approved for a corrections education project[s] shall only expend funds[can be expended only] for the purposes described in the respective funding application.~~

~~[D- Lapsing and nonlapsing funds]~~

~~[(1)4] Education Contracts funds used for corrections education shall be subject to Board accounting, auditing and budgeting rules and policies.~~

~~[(2)5] Ten percent or \$50,000, whichever is less, of state funds designated for corrections education not expended in the current fiscal year may be carried over[deferred] and spent by a school district in the next fiscal year with written approval [by the USOE]from the Superintendent[-and spent in the next fiscal year].~~

~~[(3)6] The Superintendent shall establish a timeline for submission and approval of[Requested and approved] school district budgets and carry over requests[that show carry over funds shall be submitted for approval according to a time line and dates set by the USOE].~~

~~[(4)7(a)] The [USOE]Superintendent may consider excess funds in determining [the]a school district's allocation for the next fiscal year.~~

~~(b) The [USOE]Superintendent shall recapture fund balances in excess of 10 percent or \$50,000 annually no later than February 1 and reallocate funds to school district corrections education programs through the supplemental award process based on need and effort consistent with R277-733.~~

~~[E- The Board, or its designee, shall adopt uniform pupil and fiscal accounting procedures, forms, and deadlines for correctional education programs:]~~

**R277-735-[5]6. Allocation of Education Contracts Funds Designated for Corrections Education.**

~~[A- Oversight, monitoring, evaluation, and reports:]~~

~~(1) The [Board]Superintendent may [designate no]not allocate more than four percent of the total legislative [E]education [C]contracts funding appropriated for adult corrections education [for USOE-]administrative services.~~

~~(2) The [USOE]Superintendent shall use [designated-] funds allocated in accordance with Subsection (1) for oversight, monitoring, and evaluation of corrections adult education [programs and-]program compliance with law and this rule.~~

~~[B- Education Contracts funding designated for state prisons and county jails housing state offenders:]~~

~~[(1)3] [Of the]The Superintendent shall annually calculate:~~

~~(a) the total number of incarcerated offenders in the custody of the Utah Department of Corrections[;];~~

~~(b) the percentage of incarcerated offenders housed in county jails; and~~

~~(c) the percentage of incarcerated offenders housed at prison sites[- shall be calculated each year].~~

~~(2) Those percentages shall determine the percentages of Education Contracts funding designated for corrections education that is provided to school districts serving students in respective facilities.]~~

~~(4) The Superintendent shall use the calculations made under Subsection (3) to determine the allocation of education contracts funds to school districts.~~

~~[(3)5] An [E]eligible school district[s] shall receive a base amount of \$10,000 for each [prison or county jail]correctional facility in which they provide services.~~

~~[(4)6] The Superintendent shall prorate the balance of the education contracts funds allocation[percentages shall be prorated] to [respective-]school districts based upon [total student enrollee counts as per the State Funding Program Outcome Measures (POM) report, provided by the Adult Education Program, used to determine adult education funding-]adult education UTopia data reporting of the average number of state inmates receiving educational services from August 1 through March 1 of the prior school year.~~

**R277-735-[6]7. Program, Curriculum, Outcomes and Student Mastery.**

~~[A-](1) Corrections education programs shall provide programs that allow students to transition between correctional sites in a seamless manner.~~

~~[B-](2)(a) An [A]adult education student[s] receiving education services in a state [prison or jail]correctional facility education program may graduate with a school district adult education secondary diploma upon completion of the state required minimum units of credit under R277-700.~~

~~(b) [and satisfied through]A student in custody may meet graduation requirements through:~~

~~(i) completed credits; or~~

~~(ii) demonstrated course competency consistent with a[students' SEOP/plans] student's plan for college and career readiness [under]in accordance with R277-733.~~

~~[C- Graduation requirements may be changed or modified, or both, for adult students with documented disabilities through Individual Education Plans (IEPs) consistent with IDEA.~~

~~[D- Modified graduation requirements for individual students shall:~~

~~(1) be consistent with the student's IEP or SEOP/plan for college and career readiness, or both;~~

~~(2) be maintained in the student's files;~~

~~(3) maintain the integrity and rigor expected for AHSC graduation.~~

~~[E- Corrections education programs shall offer courses consistent with the Utah Core curriculum under R277-700.~~

~~[F- The Utah Core curriculum and teaching strategies may be modified or adjusted to meet the individual needs of adult education students.~~

~~[G- School district adult education staff shall develop and write (both elective and required) course descriptions for AHSC courses, consistent with the Utah Core curriculum and Utah adult education curriculum standards, as provided by the USOE.~~

~~[H- School districts, CBOs and the USOE shall cooperate to develop written course descriptions for GED Test preparation, ESOL and ABE courses; courses shall be based on the Utah Core curriculum standards, modified for adult learners.~~

~~[I- Course descriptions shall contain adult education mastery criteria and shall stress mastery of adult life skill material consistent with Core objective standards and Core curriculum.~~

~~[J- Course content mastery shall be stressed rather than completion of required seat time in a classroom.~~

~~\_\_\_\_\_ K. Adult high school completion education is determined by the following prerequisite courses:~~

~~\_\_\_\_\_ (1) ESOL competency AEFLA levels one through six; and~~

~~\_\_\_\_\_ (2) ABE competency AEFLA levels one through four.~~

~~\_\_\_\_\_ L. AHSC courses for students seeking an Adult Education Secondary Diploma should meet the federal AEFLA AHSC Levels I and II competency requirements.]~~

~~[M.](3) An [A]adult student[s] in custody seeking an adult high school diploma shall have the minimum credits defined in R277-705.~~

~~[\_\_\_\_\_ N. The courses shall be supervised by a Utah licensed educator.]~~

~~\_\_\_\_\_ (4) A district shall employ a qualified Utah licensed educator to teach corrections education courses.~~

**R277-735-[7]8. Confidentiality.**

~~[A-](1) A [F]transcript[s and] or diploma[s] prepared for an inmate[s] in custody shall;~~

~~\_\_\_\_\_ (a) [be issued in]include the name of the contracted educational agency which also provides service to non-custodial offenders; and[ shall]~~

~~\_\_\_\_\_ (b) not [bear]reference [to]the inmate's custodial status.~~

~~[B-](2)(a) A district or corrections education provider shall keep an inmate's education[School] records which refer to custodial status, inmate court records, and related matters [shall be kept]separate from permanent school records.~~

~~\_\_\_\_\_ (b) A district shall destroy or seal an inmate's education records[ and shall be destroyed or may be sealed] upon order of a court of competent jurisdiction.~~

~~[\_\_\_\_\_ C. Access to Student Records~~

~~\_\_\_\_\_ (1) Staff who design and oversee individual student education plans shall have access to all appropriate records relevant to a student's education.~~

~~\_\_\_\_\_ (2) Information obtained from student records remains the property of the supplying agency and shall be transferred or shared with other persons or agencies only consistent with 34 CFR 99.10.]~~

~~\_\_\_\_\_ (3) A district or corrections education provider may only provide access to education records in accordance with FERPA.~~

**R277-735-[8]9. [Corrections Education Records and Audits]Adult Education Standards.**

~~Corrections adult education programs shall meet program standards defined in R277-733[ -1A and -B] and the Utah Adult Education Policies and Procedures Guide.~~

**KEY: public education, custody[\*], inmates[\*]**

**Date of Enactment or Last Substantive Amendment: [May 8, 2014]2017**

**Notice of Continuation: March 14, 2014**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-403.5; 53A-1-401[(3)]**

Education, Administration  
**R277-753**  
LEA Reporting Requirements for  
Section 504 Students

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 41793

FILED: 06/09/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-753 is created in response to S.B. 61 from the 2017 General Session, which requires that the Utah State Board of Education (Board) make rules to establish reporting requirements for local education agencies (LEAs) providing Section 504 accommodations to students.

**SUMMARY OF THE RULE OR CHANGE:** This new rule defines terms and provides LEA Section 504 reporting requirements in accordance with Section 53A-17a-112.2.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Art X, Sec 3 and Section 53A-1-401 and Section 53A-17a-112.2

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** Implementation of this new Rule R277-753 will result in a cost to the state budget. Systems for the Board to receive information are in place, but will need to be reprogrammed. Costs are speculative.

◆ **LOCAL GOVERNMENTS:** Implementation of this new Rule R277-753 may result in a cost to school districts and charter schools that serve students who qualify for Section 504 accommodation services. LEAs will need to report the information required by this rule, but that is likely to be performed by existing staff and within existing budgets.

◆ **SMALL BUSINESSES:** Implementation of this new Rule R277-753 will likely not result in a cost or savings to small businesses. This new rule applies to public education and does not affect businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Implementation of this new Rule R277-753 will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. There is no change for students receiving Section 504 accommodations.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Implementation of this new Rule R277-753 will likely not result in any compliance costs for affected persons. It is anticipated that LEAs will report the information as provided for in this rule.



COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.**

**R277-753. LEA Reporting Requirements for Section 504 Students.**

**R277-753-1. Authority and Purpose.**

- (1) This rule is authorized by:
  - (a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;
  - (b) Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and
  - (c) Subsection 53A-17a-112.2(2)(a), which directs the Board to make rules for implementation of a reimbursement program for special education funds to address Section 504 accommodations.
- (2) The purpose of this rule is to establish reporting requirements for LEAs providing Section 504 accommodations to students.

**R277-753-2. Definitions.**

- (1) "Autism" means a disability of verbal, non-verbal or social interaction that substantially limits one or more major life activities and does not require specialized instruction under special education services.
- (2) "Brain injury impairment" or "Concussion impairment" means a short term disability of the brain caused by an external physical force that substantially limits one or more major life activities, and which adversely affects a student's access to the student's education.

(3) "Hearing impairment" means a hearing disability that substantially limits one or more major life activity, which may require assistive technology but does not require specialized instruction under special education services.

(4) "Learning impairment" means a learning disability, which includes, but is not limited to, dyslexia, dysgraphia, and dyscalculia, that substantially limits one or more major life activities, but does not require specialized instruction under special education services.

(5) "Major bodily function impairment" means an impairment to any of the following functions that adversely limit a student's access to the student's education:

- (a) immune system function;
- (b) normal cell growth;
- (c) genitourinary function;
- (d) bladder function;
- (e) brain function;
- (f) circulatory function;
- (g) endocrine function;
- (h) lymphatic function;
- (i) special sensory organ and skin function;
- (j) digestive function;
- (k) bowel function;
- (l) neurological function;
- (m) respiratory function;
- (n) cardiovascular function;
- (o) hemic function;
- (p) musculoskeletal function; and
- (q) reproductive function.

(6) "Medical impairment" means a disability that is chronic or acute in nature, which may be active or in remission, and which substantially limits one or more major life activities, including, but not limited to:

- (a) allergies;
- (b) asthma;
- (c) attention deficit disorder or attention deficit hyperactivity disorder;
- (d) chemical sensitivities;
- (e) diabetes;
- (f) epilepsy;
- (g) a heart condition;
- (h) hemophilia;
- (i) lead poisoning;
- (j) leukemia;
- (k) cancer;
- (l) arthritis;
- (m) nephritis;
- (n) rheumatic fever;
- (o) sickle cell anemia;
- (p) Tourette syndrome;
- (q) HIV/AIDS; or
- (r) an acquired brain injury adversely affecting a student's access to the student's education, which may result from health problems such as:
  - (i) an hypoxic event;
  - (ii) encephalitis;
  - (iii) meningitis;

- \_\_\_\_\_ (iv) brain tumor; or  
 \_\_\_\_\_ (v) stroke.  
 \_\_\_\_\_ (7) "Mental health impairment" means a mental disability that is chronic or acute in nature, and which substantially limits one or more major life activities, including, but not limited to:  
 \_\_\_\_\_ (a) anxiety;  
 \_\_\_\_\_ (b) attention deficit disorder or attention deficit hyperactivity disorder;  
 \_\_\_\_\_ (c) depression;  
 \_\_\_\_\_ (d) post-traumatic stress disorder; or  
 \_\_\_\_\_ (e) emotional or mental illnesses.  
 \_\_\_\_\_ (8) "Orthopedic impairment" means a physical disability, which may be on-going or short term in nature, that substantially limits one or more major life activities, and which adversely affects a student's access to the student's education.  
 \_\_\_\_\_ (9) "Other impairment" means any other disability not specifically defined in this rule, which substantially limits one or more major life activities.  
 \_\_\_\_\_ (10) "Section 504" means section 504 of the Vocational Rehabilitation Act of 1973, 29 U.S.C. 701, et seq., which guarantees certain rights to disabled students.  
 \_\_\_\_\_ (11) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically between public education LEAs and the Board.  
 \_\_\_\_\_ (12) "Utah Program Improvement Planning System" or "UPIPS" is a secure website utilized by the Board Special Education Services section to collect compliance and fiscal LEA data regarding students with disabilities, required under state and federal law.

**R277-753-3. LEA Section 504 Reporting Requirements.**

- \_\_\_\_\_ (1) An LEA shall include a count of students with Section 504 accommodations in its daily UTREx submission.  
 \_\_\_\_\_ (2) An LEA shall report financial costs incurred as a result of Section 504 accommodations to the Superintendent through UPIPS by June 30 annually.  
 \_\_\_\_\_ (3) An LEA's data submissions under this rule shall be broken down in the following categories:  
 \_\_\_\_\_ (a) Autism;  
 \_\_\_\_\_ (b) Brain Injury or Concussion Impairment;  
 \_\_\_\_\_ (c) Hearing Impairment;  
 \_\_\_\_\_ (d) Learning Impairment;  
 \_\_\_\_\_ (e) Major Bodily Function Impairment;  
 \_\_\_\_\_ (f) Medical Impairment;  
 \_\_\_\_\_ (g) Mental Health Impairment;  
 \_\_\_\_\_ (h) Orthopedic Impairment; and  
 \_\_\_\_\_ (i) Other Impairment.

**KEY: reporting, requirements, Section 504**

**Date of Enactment or Last Substantive Amendment: 2017**

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

Education, Administration  
**R277-911**  
 Secondary Career and Technical  
 Education

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41794

FILED: 06/09/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-911 is amended to provide a new requirement in disbursement of funds, update definitions, and provide minor terminology changes.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to Rule R277-911 provide for school districts and charter schools that receive additional funding for career and technical education (CTE) programs to annually submit a memorandum of understanding (MOU) to the State Superintendent of Public Instruction; revised and new terms; and minor terminology changes.

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

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** Changes to procedures, definitions, and terminology in this rule will likely not result in a cost or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** Changes to procedures, definitions, and terminology in this rule will likely not result in a cost or savings to local government.
- ◆ **SMALL BUSINESSES:** Changes to procedures, definitions, and terminology in this rule will likely not result in a cost or savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Changes to procedures, definitions, and terminology in this rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** A provision in Rule R277-911 provides for withholding of funds from a school district or charter school for not submitting an MOU as required in this rule. If that were to happen, costs are too speculative to determine at this time. It is anticipated, however, that a school district or charter schools will comply with the requirements of this rule, so there will likely be no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.**

**R277-911. Secondary Career and Technical Education.**

**R277-911-1. Authority and Purpose.**

(1) This rule is authorized by:

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

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

(c) Section 53A-15-202, which allows the Board to establish minimum standards for CTE programs in the public education system; and

(d) Sections 53A-17a-113 and 53A-17a-114, which direct the Board to distribute specific amounts and percentages for specific CTE programs and facilitate administration of various programs.

(2) This rule establishes standards and procedures for LEAs seeking to qualify for funds administered by the Board for CTE programs in the public education system.

**R277-911-2. Definitions.**

(1) "Aggregate membership" means the sum of all days in membership during a school year for:

- (a) the student;
- (b) the program;
- (c) the school;
- (d) the LEA; or
- (e) the state.

(2) "Approved program" means a program annually approved by the Board through the consent calendar process that meets or exceeds the state program standards or outcomes for career and technical education programs.

(3) "Bureau of Apprenticeship and Training" means a branch office for apprenticeship administered by the United States Department of Labor and located in Salt Lake City.

(4)(a) "Career and technical education" or "CTE" means organized educational programs that:

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

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

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

(b) CTE areas of study include:

- (i) agriculture;
- (ii) business;
- (iii) family and consumer sciences;
- (iv) health science;
- (v) information technology;
- (vi) marketing;
- (vii) skilled and technical sciences; and
- (viii) technology and engineering education.

(5)(a) "CTE pathway" means a planned sequence of courses within a program of study to assure strong academic and technical preparation connecting high school course work to work beyond high school.

(b) A CTE pathway ensures that a student will be prepared to take advantage of the full range of post-secondary options, including:

- (i) on-the-job training;
- (ii) certification programs; and
- (iii) two- and four-year college degrees.

~~[(6) "CIP code" means the Classification of Instructional Programs, a federal curriculum listing.]~~

(7)(a) "Course" means an individual CTE class structured by state-approved standards ~~and CIP code~~.

(b) An approved course may require one or two periods for up to one year.

(c) Courses may be completed by demonstrated competencies or by course completion.

(8)(a) "Entry-level" means a set of tasks identified and validated by workers and employers in an occupation as those of a beginner in the field.

(b) Entry-level skills are a limited subset of the total set of tasks performed by an experienced worker in the occupation.

(c) Competent performance of entry-level tasks enhances employability and initial productivity.

(9) "Extended year program" means CTE programs no longer than 12 weeks in duration, offered during the summer recess, and supported by extended-year or other CTE funds.

(10) "CTE Maintenance of Effort" or "MOE" means the expenditure plan outlined in Subsection R277-911-4(1).

(1[4]0) "Program" means a combination of CTE courses that:

(a) provides the competencies for specific job placement or continued related training; and

(b) is outlined in the Plan for College and Career Readiness using all available and appropriate high school courses.

(1[2]1) "Program completion" means the student completion of a sequence of approved courses, work-based learning experiences, or other prescribed learning experiences as determined by the Plan for College and Career Readiness.

(1[3]2) "Regional consortium" means the LEAs, applied technology colleges, colleges and universities within the regions that approve CTE programs.

(1[4]3) "Registered apprenticeship" means a training program that:

(a) includes on-the-job training in a specific occupation combined with related classroom training; and

(b) has approval of the Bureau of Apprenticeship and Training.

(1[5]4) "Related training" means a course or program that is:

- (a) directly related to an occupation;
- (b) compatible with apprenticeship training;
- (c) taught in a classroom; and
- (d) approved by the Bureau of Apprenticeship and Training.

(1[6]5) "Scope and sequence" means the organization of all CTE courses and related academic courses into programs within the high school curriculum that lead to:

- (a) specific skill certification;
- (b) job placement;
- (c) continued education; or
- (d) training.

(1[7]6)(a) "Skill certification" means a verification of competent task performance.

(b) Skills certification is provided by an approved state or national program certification process.

(1[8]7) "Weighted pupil unit" or "WPU" means the basic unit used to calculate the amount of state funds for which an LEA is eligible.

~~(19)(a) "Work-based learning" means a student instructional program that:~~

~~(a) provides a student training by employment or other activity at a work site;~~

~~(b) may take place at a place of business, a home, or a farm; and~~

~~(c) is supplemented by needed classroom instruction or teacher assistance.;~~

(18) "Work-based learning" or "WBL" means a continuum of awareness, exploration, preparation, and training activities that combine structured learning and authentic work experiences implemented through industry and education partnerships.

### **R277-911-3. CTE Program Approval.**

(1)(a) The Superintendent shall approve CTE programs based on verified training needs of the area and the competencies necessary to provide occupational opportunities for students.

(b) Programs are supported by a data base, including:

(i) local, regional, state, and federal manpower projections;

(ii) student occupational/interest surveys;

(iii) regional job profile;

(iv) advisory committee information; and

(v) follow-up evaluation and reports.

(2) LEA CTE directors shall meet the requirements specified in R277-911.

(3) Within available resources, instructional materials, including textbooks, reference materials, and media, shall reflect current technology, processes, and information for the CTE programs.

(4)(a) An LEA shall provide CTE guidance, counseling, and Board approved testing for students enrolled in CTE programs.

(b) An LEA shall develop a written plan for placement services with the assistance of local advisory committees, business and industry, and the Department of Workforce Services.

(c) An LEA shall develop a Plan for College and Career Readiness for all students, which shall include:

(i) a student's education occupation plans (grades 7-12), including job placement when appropriate;

(ii) all Board, local board and local charter board graduation requirements;

(iii) evidence of annual parent, student, and school representative involvement;

(iv) attainment of approved workplace skill competencies; and

(v) identification of a CTE post-secondary goal and an approved sequence of academic and CTE courses.

(5)(a) An LEA shall use curricula and instruction that is directly related to business and industry validated competencies.

(b) An LEA shall use a valid skill certification process to verify successful completion of competencies.

(c) An LEA shall provide instruction in proper and safe use of any equipment required for skill certification within the approved program.

(6) An LEA shall provide and safely maintain equipment and facilities, consistent with the validated competencies identified in the instruction standard and applicable state and federal laws.

(7)(a) Counselors and instructional staff shall hold valid Utah teaching licenses with endorsements appropriate for the programs they teach.

(b) Licenses and endorsements required under Subsection (7)(a) may be obtained through an institutional recommendation or through occupational and educational experience verified by the Board's licensure process.

(c) CTE program instructors shall keep technical and professional skills current through business and industry involvements in order to ensure that students are provided accurate state-of-the-art information.

(8) An LEA shall conduct CTE programs consistent with Board policies and state and federal laws and regulations on access that prohibit discrimination on the basis of:

(a) race;

(b) creed;

(c) color;

(d) national origin;

(e) religion;

(f) age;

- (g) sex; and
- (h) disability.
- (9)(a) An LEA shall establish an active advisory council to review all CTE programs annually.
- (b) An advisory council may serve several LEAs or a region.
- (c) An advisory council reviews:
  - (i) program offerings;
  - (ii) quality of programs; and
  - (iii) equipment needs.
- (10) A program advisory committee made up of individuals who are working in the occupational area shall support each state-funded approved CTE program at the LEA or regional level.
- (11) LEAs are encouraged to make training available through nationally-chartered CTE student leadership organizations in each area of study.
- (12) An LEA, with oversight by local program advisory committee members, shall make an annual evaluation of its CTE programs.

**R277-911-4. Disbursement and Expenditure of CTE Funds -- General Standards.**

- (1) To be eligible for state CTE program funds, an LEA shall first expend for CTE programs an amount equivalent to the regular WPU for students in approved CTE programs, grades nine through twelve, based on prior year aggregate membership in funded CTE programs, times the current year WPU value, less the amount for:
  - (a) college and career awareness;
  - (b) work-based learning; and
  - (c) comprehensive counseling and guidance.
- (2) An LEA may thereafter expend State CTE program funds only for approved CTE programs, grades nine through twelve.
- (3) An LEA that does not meet MOE may be subject to a corrective action plan and potential reduction of funds or penalty in accordance with R277-114.

**R277-911-5. Disbursement of Funds -- Added Cost Funds.**

- (1)(a) WPUs shall be allocated for the added instructional costs of approved CTE programs operated or contracted by an LEA.
- (b) Programs and courses provided through ~~applied technology~~ technical colleges[,] and higher education institutions do not qualify for added cost funds except for specific contractual arrangements approved by the Board.
- (2)(a) Computerized or manually produced records for CTE programs shall be kept by:
  - (i) teacher;
  - (ii) class; and
  - (iii) ~~CHP~~ core code.
- (b) Records described in Subsection (2)(a) shall show clearly and accurately the entry and exit date of each student and whether a student has been absent from a CTE class ten consecutive days.
- (3) Added cost funds shall not be generated:
  - (a) during bus travel;
  - (b) until a student starts attending an approved CTE course;

- (c) when a student has been absent, without excuse, for the previous 10 days.
- (4) Approved CTE programs shall receive funds determined by prior year hours of membership for approved programs.
- (5) Allocations under this R277-911-5 are computed using grades nine through twelve aggregate membership in approved programs for the previous year with a growth factor applied to LEAs experiencing growth of one percent or greater in grades nine through twelve except as provided by R277-462 and R277-916.
- (6) Added cost funds shall be used to cover the added CTE program instructional costs of LEA programs.
- (7) An LEA that does not comply with the requirements of this Subsection may be subject to a corrective action plan and potential reduction of funds or penalty in accordance with R277-114.

**R277-911-6. Disbursement of Funds -- Skill Certification.**

- (1) An LEA that demonstrates approved student skill certification may receive additional compensation.
- (2)(a) To be eligible for skill certification compensation, an LEA shall show its student completer has demonstrated mastery of standards, as established by the Board.
- (b) An authorized test administrator shall verify student mastery of the skill standards.
- (3) The Superintendent may only disburse skill certification compensation if an approved skill certification assessment is developed for the program.

**R277-911-7. Disbursement of Funds -- CTE Leadership Organization Funds.**

- (1) Participating LEAs sponsoring CTE leadership organizations shall be eligible for a portion of funds set aside for these organizations.
- (2) Qualifying CTE leadership organizations shall be nationally chartered and include:
  - (a) SkillsUSA (an association of Skilled and Technical Sciences Education students);
  - (b) DECA (Distributive Education Clubs of America);
  - (c) FFA (Future Farmers of America);
  - (d) HOSA (Health Occupations Students of America);
  - (e) FBLA (Future Business Leaders of America);
  - (f) FCCLA (Family, Career and Community Leaders of America); and
  - (g) TSA (Technology Students Association).
- (3) Up to 1% of the state CTE appropriation for LEAs shall be allocated to eligible LEAs based on documented prior year student membership in approved CTE leadership organizations.
- (4)(a) A portion of funds allocated to an LEA for CTE leadership organizations shall be used to pay the LEA's portion of statewide administrative and national competition costs.
- (b) An LEA shall use the remaining amount available for the LEA's CTE leadership organization expenses.

**R277-911-8. Disbursement of Funds -- School District and Charter School WPUs.**

- (1) The Superintendent shall allocate WPUs for costs of administration of CTE programs as described in this section.

(2)(a) The Superintendent shall distribute Twenty (20) WPU's to a school district for costs associated with the administration of CTE.

(b) To qualify, a school district shall employ a minimum one-half time CTE director.

(3)(a) To encourage multidistrict CTE administrative services, the Superintendent shall distribute 25 WPU's to a school district that consolidates CTE administrative services with one or more other school districts;

(b) To qualify, a participating school district shall employ a full-time CTE director.

(4)(a) The Superintendent shall distribute Twenty-five (25) WPU's to a single charter school acting as fiscal agent, to provide CTE administrative services to a ~~group of at least 10~~ charter schools offering CTE pathways, grades 9-12.

(b) If more than 10 charter schools offer CTE pathways, the Superintendent shall distribute an additional 5 WPU's for each additional charter school over 10.

(c) To qualify, the charter school acting as fiscal agent must employ a full-time CTE director.

(5)(a) A district or charter school receiving additional WPU's under Subsection (3)(a) or (4)(a) shall annually submit to the Superintendent a Memorandum of Understanding with each partnering district or school, which shall include:

(i) a scope of work to be performed by the full-time CTE director for each LEA or school involved;

(ii) provisions for sharing data under the agreement, including provisions for protecting the privacy of student education records under FERPA;

(iii) maintenance of effort requirements; and

(iv) other information as directed by the Superintendent.

(b) The Superintendent may withhold funds from a district or charter school under Rule R277-114 for failure to submit a memorandum of understanding as required by this rule.

(~~5~~6)(a) The Superintendent shall distribute 10 WPU's to a small school district consisting of only necessarily existent small high school(s), where multi-district CTE administration is not feasible.

(b) To qualify, a small school district shall assign a CTE director to a minimum of part-time CTE administration.

(~~6~~7) To qualify for 10, 20 or 25 CTE administrative WPU's as provided in this Subsections (1) through (~~5~~6), a CTE director shall:

(a) hold or be in the process of completing requirements for a Education Leadership License Area of Concentration described in R277-505;

(b) have an endorsement in at least one career and technical area listed in Rule R277-518; and

(c)(i) have four years of experience as a full-time career and technical educator; or

(ii) complete a prescribed professional development program provided by the Superintendent within a period of two years following board appointment as an LEA CTE director.

(~~7~~8) In addition to WPU's appropriated under Subsections (1) through (~~5~~6), the Superintendent shall allocate funds to each approved high school as described in Subsections (~~8~~9) through (1~~5~~6):

(~~8~~9) The Superintendent shall distribute 10 WPU's to a high school that:

(a) conducts approved programs in a minimum of two CTE areas specified in Subsection R277-911-1(4)(b);

(b) conducts a minimum of six different state-approved ~~[CIP-coded]~~ CTE courses including at least one CTE pathway; and

(c) has at least one approved career and technical student leadership organization.

(~~9~~10) Consolidated courses in small schools may count as more than one course as approved by the Superintendent.

(1~~0~~1) The Superintendent shall distribute 15 WPU's to a high school that:

(a) conducts approved programs in a minimum of three CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of nine different state-approved ~~[CIP-coded]~~ CTE courses including at least one CTE pathway; and

(c) has at least one approved CTE student leadership organization.

(1~~1~~2) Consolidated courses in small schools may count as more than one course as approved by the Superintendent.

(1~~2~~3) The Superintendent shall distribute 20 WPU's to a high school that:

(a) conducts approved programs in a minimum of four CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of twelve different state-approved ~~[CIP-coded]~~ CTE courses including at least two CTE pathways; and

(c) has at least two approved CTE student leadership organization.

(1~~3~~4) Consolidated courses in small schools may count more than one course as approved by the Superintendent.

(1~~4~~5) The Superintendent shall distribute 25 WPU's to a high school that:

(a) conducts approved programs in a minimum of five CTE areas specified in Subsection R277-911-2(4)(b);

(b) conducts a minimum of fifteen different state-approved ~~[CIP-coded]~~ CTE courses including at least two CTE pathways; and

(c) has at least three approved CTE student leadership organizations.

(1~~5~~6) Consolidated courses in small schools may count more than one course as approved by the Superintendent.

(1~~6~~7)(a) A maximum of one approved alternative high school, as outlined in Rule R277-730, per school district may qualify for funds under Subsection (12).

(b) LEAs sharing an alternative school shall receive a prorated share.

(1~~7~~8) Programs and courses provided through school district technical centers may not receive funding under this section.

#### **R277-911-9. Disbursement of Funds -- School District Technical Centers.**

(1)(a) The Superintendent may award a maximum of forty WPU's for each school district operating an approved school district center.

(b) To qualify under the approved school district technical center provision, the school district shall:

(i) provide at least one facility other than an existing high school as a designated school district technical center;

(ii) employ a full-time CTE administrator for the center;

(iii) enroll a minimum of 400 students in the school district technical center;

(iv) prevent unwarranted duplication by the school district technical center of courses offered in existing high schools, applied technology colleges, and higher education institutions;

(v) centralize high-cost programs in the school district technical center;

(vi) conduct approved programs in a minimum of five CTE areas specified in Subsection R277-911-1(4)(b); and

(vii) conduct a minimum of fifteen different state-approved ~~[CIP-coded]~~ CTE courses.

**R277-911-10. Disbursement of Funds -- Summer CTE Agriculture Programs.**

(1)(a) To receive state summer CTE agriculture program funds, an LEA shall submit to the Superintendent, an application for approval of the LEA's program.

(b) An LEA shall submit its application prior to the annual due date specified by the Superintendent each year.

(c) The Superintendent shall send notification of approval of an LEA's program within ten calendar days of receiving the application.

(2) A teacher of a summer CTE agriculture program shall:

(a) hold a valid Utah teaching license, with an endorsement in agriculture, as outlined in Subsection R277-911-3(7);

(b) develop a calendar of activities which shall be approved by LEA administration and reviewed by the Superintendent;

(c)(i) work a minimum of eight hours a day in the summer CTE agriculture program;

(ii) An LEA may approve exceptions which shall be reflected in the calendar of activities;

(d) not engage in other employment, including self-employment, which conflicts with the teacher's performance in the summer CTE agriculture program;

(e) develop and file a weekly schedule and a monthly report outlining accomplishments related to the calendar of activities with:

(i) the school principal;

(ii) the LEA CTE director; and

(iii) the Superintendent; and

(f) visit the participating students a minimum of two times during the summer program with a minimum average of four on-site visits to students.

(3) College interns may be approved to conduct summer CTE agriculture programs upon approval by the Superintendent.

(4) Students enrolled in the summer CTE agriculture program shall:

(a) have on file in the LEA office the student's Plan for College and Career Readiness goal related to agriculture;

(b) in conjunction with the student's parent or employer and the teacher, develop an individual plan of activities, including a supervised occupational experience program;

(c) have completed the eighth grade; and

(d) have not have graduated from high school.

(5)(a) The Superintendent shall collect data from the program and staff of each LEA to ensure compliance with approved standards.

(b) An LEA shall submit to the Superintendent a final program report, on forms provided by the Superintendent on the annual due date specified by the Superintendent.

(6)(a) The Superintendent shall allocate Summer CTE agricultural funding to each LEA conducting an approved program for a minimum of 35 students lasting nine weeks.

(b) An LEA may receive funding for no more than nine weeks or 35 students.

(7) An LEA operating a program with fewer than 35 students per teacher or for fewer than nine weeks may only receive a prorated share of the summer CTE agricultural allocation.

**R277-911-11. Disbursement of Funds - Comprehensive Counseling and Guidance; College and Career Awareness, and Work-Based Learning Programs.**

~~[A-]~~~~(1)~~ The Superintendent shall distribute funds to LEAs consistent with Section 53A-17a-113.

(2) An LEA shall spend funds distributed for comprehensive guidance consistent with Subsection 53A-1a-106(2) (b) and R277-462, which explain the purpose and criteria for student ~~[education plans (SEPs) and]~~ Plans for College and Career Readiness.

(3) An LEA may spend funds allocated under this section to fund work-based learning programs consistent with Rules R277-915 and R277-916.

(4) An LEA may spend funds allocated under this section to fund College and Career Awareness programs consistent with Rule R277-916.

**KEY: career and technical education**

**Date of Enactment or Last Substantive Amendment:** ~~[August 11, 2016]~~**2017**

**Notice of Continuation:** August 14, 2012

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-15-202; 53A-17a-113; 53A-17a-114

**Education, Administration**  
**R277-923**  
**American Indian and Alaskan Native**  
**Education State Plan Pilot Program**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41795

FILED: 06/09/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Rule R277-923 is amended to include a pilot program created in H.B. 43 from the 2017 General Session.

**SUMMARY OF THE RULE OR CHANGE:** The amendments to Rule R277-923 provide for four- and five-year American Indian and Alaskan Native Education State Plan Pilot Program grants.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art X, Sec 3 and Section 53A-1-401 and Section 53A-31-404

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments to this rule will likely not result in a cost or savings to the state budget. The grant programs under this rule are currently administered by Utah State Board of Education staff.

◆ **LOCAL GOVERNMENTS:** The amendments to this rule will likely not result in a cost or savings to local government. Funding is provided for grant recipients.

◆ **SMALL BUSINESSES:** The amendments to this rule will likely not result in a cost or savings to small businesses. Funding is provided for grant recipients.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to this rule will likely not result in a cost or savings to persons other than small businesses, businesses, or local government entities. Funding is provided to grant recipients.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to this rule will likely not result in any compliance costs for affected persons. Funding is provided to grant recipients.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that the amendments to this rule will not result in a fiscal impact to businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

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

**R277. Education, Administration.**

**R277-923. American Indian and Alaskan Native Education State Plan Pilot Programs.**

**R277-923-1. Authority and Purpose.**

(1) This rule is authorized by:

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

(b) Section 53A-31-404, which provides that the Board may make rules related to the pilot programs; and

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

(2) The purpose of this rule is to provide:

(a) criteria for evaluating grant applications; and

(b) procedures for:

(i) a school district to apply to the Board to receive grant money; and

(ii) the review of the use of grant money.

**R277-923-2. Definitions.**

(1) "American Indian and Alaskan Native concentrated school" has the same meaning as that term is defined in Section 53A-31-402.

(2) "Program site" means the school where an LEA plans to use grant money and implement the LEA's program.

**R277-923-3. Grant Application.**

(1) An LEA may apply for a grant described in Section 53A-31-404 by submitting an application to the Superintendent on or before the last Friday in May.

(2) The Superintendent shall develop a grant application and make the grant application available to LEAs that meet the eligibility as an American Indian and Alaskan Native concentrated school.

**R277-923-4. Procedure and Criteria for Awarding a Grant.**

(1) The Superintendent shall award:

(a) one American Indian and Alaskan Native Education State Plan Pilot Program grant to an LEA to serve one or more program sites for the five-year pilot program created in Subsection 53A-31-403(1); and

(b) one grant to an LEA to serve one or more program sites for the four-year pilot program created in Subsection 53A-31-403(2).

(2) The Superintendent shall award ~~the~~<sup>a</sup> grant described in Subsection (1) to ~~the~~<sup>an</sup> LEA based on the following criteria:

(a) up to 20 points will be awarded based on the percentage of American Indian and Alaskan Native students enrolled in the program sites;

(b) up to 15 points will be awarded based on the educator recruiting and retention needs of the program sites;

(c) up to 15 points will be awarded based on the strength of the LEA's program design plan;



(d) up to 10 points will be awarded based on the LEA's plan to objectively evaluate the success of the LEA's program design plan; and

(e) up to 10 points will be awarded based on the strength of the LEA's proposed budget and how many educators the LEA plans to serve.

**KEY: Native Americans, Alaskan Natives, grant programs, teacher retentions**

**Date of Enactment or Last Substantive Amendment: [August 11, 2016] 2017**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-31-404; 53A-1-401**

## Environmental Quality, Air Quality R307-101-2 Definitions

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 41814

FILED: 06/14/2017

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to provide a definition for "coating" that will apply generally to the Utah Air Quality rules. "Composite vapor pressure" and "VOC content" are defined to help the regulated community determine whether they are complying with the VOC content and vapor pressure limits in the rules.

**SUMMARY OF THE RULE OR CHANGE:** The rule defines "coating" with a definition that has been used by EPA and is similar to prior definitions used by the Division of Air Quality (DAQ). The definition for "coating" is currently included in each rule, but with this rule amendment it is being moved to the general definitions section. The rule defines "composite vapor pressure" as the sum of the partial pressures of the compounds defined as VOCs. The rule defines "VOC content" with an equation that can be used by regulated sources.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This rule amendment does not add any costs or savings to the state budget because it is merely defining terms that are used throughout the Utah Air Quality rules. It does not add any substantive requirements for third parties.

◆ **LOCAL GOVERNMENTS:** This rule amendment does not add any costs or savings to the local government because it is merely defining terms that are used throughout the Utah Air Quality rules. It does not add any substantive requirements for third parties.

◆ **SMALL BUSINESSES:** This rule amendment does not add any costs or savings to small businesses because it is merely defining terms that are used throughout the Utah Air Quality rules. It does not add any substantive requirements for third parties.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule amendment does not add any costs or savings to persons other than small businesses, businesses, or local government entities because it is merely defining terms that are used throughout the Utah Air Quality rules. It does not add any substantive requirements for third parties.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons because this rule amendment does not add any substantive requirements for third parties.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses. This rule amendment does not add any costs or savings to businesses because it is merely defining terms that are used throughout the Utah Air Quality rules. It does not add any substantive requirements for third parties.

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

ENVIRONMENTAL QUALITY  
AIR QUALITY  
FOURTH FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at [rstephens@utah.gov](mailto:rstephens@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017**

**INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:**

◆ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

**THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017**

**AUTHORIZED BY:** Bryce Bird, Director

**R307. Environmental Quality, Air Quality.****R307-101. General Requirements.****R307-101-2. Definitions.**

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

"Actual Emissions" means the actual rate of emissions of a pollutant from an emissions unit determined as follows:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emission unit, other than an electric utility steam generating unit specified in (4), which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the director, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the director if the director determines such a period to be more representative of normal source post-change operations.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Air pollutant" means a substance that qualifies as an air pollutant as defined in 42 U.S.C. Sec. 7602.

"Air Pollutant Source" means private and public sources of emissions of air pollutants.

"Air Pollution" means the presence of an air pollutant in the ambient air in such quantities and duration and under conditions and circumstances, that are injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and regulations adopted by the Air Quality Board (Section 19-2-104).

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-401-8.

"Ambient Air" means that portion of the atmosphere, external to buildings, to which the general public has access. (Section 19-2-102(4)).

"Appropriate Authority" means the governing body of any city, town or county.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the state Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Board" means Air Quality Board. See Section 19-2-102(8)(a).

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Chargeable Pollutant" means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Clean Air Act" means federal Clean Air Act as found in 42 U.S.C. Chapter 85.

"Clean Coal Technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is provided by the National Weather Service.

"Coating" means a material that can be applied to a substrate and which cures to form a continuous solid film for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, caulks, maskants, inks, and temporary protective coatings.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Composite vapor pressure" means the sum of the partial pressures of the compounds defined as VOCs.

"Condensable PM<sub>2.5</sub>" means material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid particulate matter immediately after discharge from the stack.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air pollutant directly or indirectly into the outdoor atmosphere.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Director" means the Director of the Division of Air Quality. See Section 19-1-103(1).

"Division" means the Division of Air Quality.

"Electric Utility Steam Generating Unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility

power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emission" means the act of discharge into the atmosphere of an air pollutant or an effluent which contains or may contain an air pollutant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

(1) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air pollutant which has been emitted by the source operation, equipment, or control apparatus;

(2) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air pollutant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

(3) A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board, the director or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k)).

"Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan and R307, any permit requirements established pursuant to 40 CFR 52.21 or R307-401.

"EPA" means Environmental Protection Agency.

"EPA Method 9" means 40 CFR Part 60, Appendix A, Method 9, "Visual Determination of Opacity of Emissions from Stationary Sources," and Alternate 1, "Determination of the opacity of emissions from stationary sources remotely by LIDAR."

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-103(2).

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Filterable PM2.5" means particles with an aerodynamic diameter equal to or less than 2.5 micrometers that are directly emitted by a source as a solid or liquid at stack or release conditions and can be captured on the filter of a stack test train.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"LPG" means liquified petroleum gas such as propane or butane.

"Maintenance Area" means an area that is subject to the provisions of a maintenance plan that is included in the Utah state implementation plan, and that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard.

(a) The following areas are considered maintenance areas for ozone:

- (i) Salt Lake County, effective August 18, 1997; and
- (ii) Davis County, effective August 18, 1997.

(b) The following areas are considered maintenance areas for carbon monoxide:

- (i) Salt Lake City, effective March 22, 1999;
- (ii) Ogden City, effective May 8, 2001; and
- (iii) Provo City, effective January 3, 2006.

(c) The following areas are considered maintenance areas for PM10:

(i) Salt Lake County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015; and

(ii) Utah County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015; and

(iii) Ogden City, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015.

(d) The following area is considered a maintenance area for sulfur dioxide: all of Salt Lake County and the eastern portion of Tooele County above 5600 feet, effective on the date that EPA approves the maintenance plan that was adopted by the Board on January 5, 2005.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

- (1) routine maintenance, repair and replacement;
- (2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
- (3) use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;
- (4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
- (5) use of an alternative fuel or raw material by a source:
  - (a) which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or
  - (b) which the source is otherwise approved to use;
- (6) an increase in the hours of operation or in the production rate unless such change would be prohibited under any enforceable permit condition;
- (7) any change in ownership at a source
- (8) the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the director determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:
  - (a) when the director has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any, and

(b) the director determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(9) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) the Utah State Implementation Plan; and

(b) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to R307:

(1) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(a) any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

(b) any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 182 of the federal Clean Air Act; or

(c) any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

(2) any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

(3) the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of these R307 rules whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

- (a) Coal cleaning plants (with thermal dryers);
- (b) Kraft pulp mills;
- (c) Portland cement plants;
- (d) Primary zinc smelters;
- (e) Iron and steel mills;
- (f) Primary aluminum or reduction plants;
- (g) Primary copper smelters;
- (h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) Hydrofluoric, sulfuric, or nitric acid plants;
- (j) Petroleum refineries;
- (k) Lime plants;
- (l) Phosphate rock processing plants;
- (m) Coke oven batteries;
- (n) Sulfur recovery plants;
- (o) Carbon black plants (furnace process);
- (p) Primary lead smelters;
- (q) Fuel conversion plants;
- (r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Modification" means any planned change in a source which results in a potential increase of emission.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in method of operation at a source; and

(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":

(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.

(b) An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.

(c) An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used to evaluate this increase or decrease.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means an area designated by the Environmental Protection Agency as nonattainment under Section 107, Clean Air Act for any National Ambient Air Quality Standard. The designations for Utah are listed in 40 CFR 81.345.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA reference or equivalent method.

"PM2.5 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM2.5, and has been identified in the applicable implementation plan for PM2.5 as significant for the purpose of developing control measures. Specifically, PM2.5 precursors include SO<sub>2</sub>, NO<sub>x</sub>, and VOC.

"PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10.

"Part 70 Source" means any source subject to the permitting requirements of R307-415.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Pollution Control Project" means any activity or project at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(1) The installation of conventional or innovative pollution control technology, including but not limited to advanced

flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(2) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions;

(3) A permanent clean coal technology demonstration project conducted under Title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Primary PM2.5" means the sum of filterable PM2.5 and condensable PM2.5.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the emission inventory at the time of enactment;

(2) Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NO<sub>x</sub> burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Regulated air pollutant" means any of the following:

(a) Nitrogen oxides or any volatile organic compound;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, Stratospheric Ozone Protection;

(e) Any pollutant subject to a standard promulgated under Section 112, Hazardous Air Pollutants, or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including any of the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act, Equivalent Emission Limitation by Permit. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act;

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act (Construction, Reconstruction and Modification) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

"Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(1) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(2) The director shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Clean Air Act.

"Representative Actual Annual Emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of unit, (or a different consecutive two-year period within 10 years after that change, where the director determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the director shall:

(1) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State of Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method

of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 6.10 cubic meters or 20 cubic feet, a minimum burn rate less than 5 kilograms per hour or 11 pounds per hour as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kilograms or 362.9 pounds. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Road" means any public or private road.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Secondary PM2.5" means particles that form or grow in mass through chemical reactions in the ambient air well after dilution and condensation have occurred. Secondary PM2.5 is usually formed at some distance downwind from the source.

"Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy);

Nitrogen oxides: 40 tpy;

Sulfur dioxide: 40 tpy;

PM10: 15 tpy;

PM2.5: 10 tpy;

Particulate matter: 25 tpy;

Ozone: 40 tpy of volatile organic compounds;

Lead: 0.6 tpy.

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as dissolvers, viscosity reducers, or cleaning agents.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Temporary" means not more than 180 calendar days.

"Temporary Clean Coal Technology Demonstration Project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Utah State Implementation Plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air pollutant equal to a threshold limit value - ceiling (TLV-C) or threshold limit value -time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"VOC content" means the weight of VOC per volume of material and is calculated by the following equation in gram/liter (or alternately in pound/gallon):

Grams of VOC per Liter of Material =  $\frac{Ws - Ww - Wes}{Vm}$

$Vm$

Where:

$Ws$  = weight of volatile organic compounds

$Ww$  = weight of water

$Wes$  = weight of exempt compounds

$Vm$  = volume of material

"Volatile Organic Compound (VOC)" means VOC as defined in 40 CFR 51.100(s), effective as of the date referenced in R307-101-3, is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

**KEY: air pollution, definitions**

**Date of Enactment or Last Substantive Amendment:** ~~August 4, 2016~~ 2017

**Notice of Continuation:** May 8, 2014

**Authorizing, and Implemented or Interpreted Law:** 19-2-104(1) (a)

## Environmental Quality, Air Quality R307-304 Solvent Cleaning

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 41809

FILED: 06/14/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to create a new rule that regulates industrial solvent cleaning operations and general solvent use. These activities were previously regulated under Rule R307-335. This new rule is being proposed to achieve further volatile organic compound (VOC) emissions reductions that are required by the Clean Air Act and the Serious Area PM2.5 requirements. (Editor's Note: The proposed amendment to Rule R307-335 is under Filing No. 41810 in this issue, July 1, 2017, of the Bulletin.)

**SUMMARY OF THE RULE OR CHANGE:** The proposed rule will contain the industrial solvent cleaning requirements that were previously found in Rule R307-335. The applicability threshold of this rule will also be lower than the previous version found in Rule R307-335. The rule will also provide a vapor pressure limit that can be used by regulated entities as an alternative to the VOC content limits in the rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104



**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are no anticipated costs or saving to the state budget because the rule is regulating solvent cleaning operations that use 55 gallons or more of VOC containing solvent products a year. This does not describe the state.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or saving to local governments because the rule is regulating solvent cleaning operations that use 55 gallons or more of VOC containing solvent products a year. This does not describe local governments.

◆ **SMALL BUSINESSES:** There are no anticipated costs or saving to small businesses. Small businesses that use VOC containing solvent products for solvent cleaning operations and general solvent usage are likely already regulated under Rule R307-335. The content limits have not changed. Due to the lower threshold for applicability, more people may be regulated by this rule than are currently regulated under Rule R307-335. The cost per ton of emissions reduced for these additional sources will be about \$4.36 per ton of VOCs removed.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will likely be no costs or savings to "other persons" because the applicability threshold is set at a level that is meant to exclude all hobbyists that are not part of a business or governmental entity.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance costs will be the same as they were when these requirements were originally included in Rule R307-335. The cost per ton of VOC emissions reduced as a result of this rule will be about \$4.36. A greater amount of product used will result in a greater total cost.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses. This is because the source of any cost would be the difference in the price between compliant and non-compliant solvents. The difference in this cost is nominal. In addition to the nominal price difference, the rule provides more flexibility for sources to choose what type of solvent they would like to use. This is done in the form of a vapor pressure limit alternative that can be used in place of the mass based content limit currently in the rule. The nominal price difference, combined with the opportunity to use a wider variety of products, means that the rule amendment will not have a fiscal impact on businesses.

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

ENVIRONMENTAL QUALITY  
AIR QUALITY  
FOURTH FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.****R307-304. Solvent Cleaning.****R307-304-1. Purpose.**

The purpose of R307-304 is to limit volatile organic compound (VOC) emissions from solvent cleaning operations.

**R307-304-2. Applicability.**

(1) R307-304 applies to solvent cleaning operations within Box Elder, Cache, Davis, Salt Lake, Tooele, Utah or Weber counties.

(2) Before September 1, 2018, R307-304 applies to an owner or operator using 720 gallons or more a year of VOC containing solvent products.

(3) Effective September 1, 2018, R307-304 shall apply to an owner or operator using 55 gallons or more a year of VOC containing solvent products.

**R307-304-3. Exemptions.**

(1) The requirements of R307-304 do not apply to the operations that are regulated under R307-342 through R307-347 and R307-349 through R307-355.

(2) Shipbuilding and repair and fiberglass boat manufacturing materials.

(3) Operations that are exclusively covered by Department of Defense military technical data and performed by a Department of Defense contractor and/or on site at installations owned and/or operated by the United States Armed Forces are exempt from the requirements of R307-304.

(4) Janitorial cleaning.

(5) Graffiti removal.

(6) Waste solvent from analytical laboratories.

(7) Cleaning with aerosol products not greater than 16 fluid ounces.

**R307-304-4. Definitions.**

The following additional definitions apply to R307-304:

"Solvent cleaning" means operations performed using a liquid that contains any VOC, or combination of VOCs, which is used to clean parts, tools, machinery, equipment and work areas. Cleaning operations include, but are not limited to, spraying, wiping, flushing, and purging.

"Janitorial cleaning" means the cleaning of building floors, ceilings, walls, windows, doors, stairs, bathrooms, office surfaces and equipment.

**R307-304-5. VOC Content Limits.**

(1) No person shall use solvent products with a VOC content greater than the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-304-7 or the alternative method in R307-304-5(2).

TABLE 1

Solvent Cleaning VOC Limits  
(excluding water and exempt solvents from the definition of volatile organic compounds found in R307-101-2)

Solvent Cleaning Category	VOC Limit (lb/gal)	(g/L)
Coatings, adhesives and ink manufacturing	4.2	500
Electronic parts and components	4.2	500
Medical devices and pharmaceutical tools, equipment and machinery	6.7	800
General surface cleaning	5.0	600
Screening printing operations	4.2	500
Semiconductor tools, maintenance and equipment cleaning	6.7	800

(2) As an alternative to the limits in Table 1 and for all general miscellaneous cleaning operations, a person may use a cleaning material with a VOC composite vapor pressure no greater than 8 mm Hg at 20 degrees Celsius.

**R307-304-6. Work Practices.**

An owner or operator shall store used applicators and shop towels in closed fireproof containers.

**R307-304-7. Add-on Emission Control Systems Operations.**

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on control system in accordance with the manufacturer recommendations and maintain an overall capture and control efficiency of at least 85%. The overall capture and control efficiency shall be determined using EPA approved methods, as follows:

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

**R307-304-8. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) The VOC content or composite vapor pressure of the solvent product applied and

(b) If an add-on control device is used, key system parameters necessary to ensure compliance with R307-304-7.

(i) Key system parameters must include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters must be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for 2 years.

(3) Records shall be made available to the director upon request.

**KEY: air pollution, solvent cleaning, solvent use**

**Date of Enactment or Last Substantive Amendment: 2017**

**Authorizing, and Implemented or Interpreted Law: 19-2-104(1)**

**(a)**

## Environmental Quality, Air Quality **R307-335** Degreasing and Solvent Cleaning Operations

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41810

FILED: 06/14/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the rule change is to remove the sections related to industrial solvent cleaning. These sections are being removed because a new rule is being proposed to regulate solvent cleaning (Rule R307-304). (Editor's Note: The proposed new Rule R307-304 is under Filing No. 41809 in this issue, July 1, 2017, of the Bulletin.)

**SUMMARY OF THE RULE OR CHANGE:** The changes include the removal of everything in the rule related to industrial solvent cleaning.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget because the rule is removing requirements related to solvent cleaning operations. It is not adding any new, affirmative requirements.

♦ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local governments because the rule is removing requirements related to solvent cleaning operations. It is not adding any new, affirmative requirements.

♦ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses because the rule is removing requirements related to solvent cleaning operations. It is not adding any new, affirmative requirements.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to "other persons" because the rule is removing requirements related to solvent cleaning operations. It is not adding any new, affirmative requirements.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs because the rule is removing requirements related to solvent cleaning operations. It is not adding any affirmative requirements.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses. There will be no fiscal impact on businesses as a result of this rule change because the rule is removing requirements related to solvent cleaning operations. It is not adding any new, affirmative requirements.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

### **R307. Environmental Quality, Air Quality.**

#### **R307-335. Degreasing ~~and Solvent Cleaning Operations~~.**

##### **R307-335-1. Purpose.**

The purpose of this rule is to limit volatile organic compound (VOC) emission from degreasing ~~and solvent cleaning~~ operations.

##### **R307-335-2. Applicability.**

R307-335 applies to ~~all~~ degreasing ~~or solvent cleaning~~ operations that use VOCs and that are located in ~~PM10 and PM2.5 nonattainment and maintenance plan areas as defined in 40 CFR 81.345 (July 1, 2011)~~ Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, or Weber counties.

##### **R307-335-3. Definitions.**

The following additional definitions apply to R307-335:

"Batch open top vapor degreasing" means the batch process of cleaning and removing grease and soils from metal surfaces by condensing hot solvent vapor on the colder metal parts.

"Cold cleaning" means the batch process of cleaning and removing soils from metal surfaces by spraying, brushing, flushing or immersing while maintaining the solvent below its boiling point.

"Conveyorized degreasing" means the continuous process of cleaning and removing greases and soils from metal surfaces by using either cold or vaporized solvents.

~~Department of Defense military technical data" means a specification that specifies design requirements, such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.~~

"Freeboard ratio" means the freeboard height (distance between solvent line and top of container) divided by the width of the degreaser.

~~Industrial solvent cleaning" means operations performed using a liquid that contains any VOC, or combination of VOCs, which is used to clean parts, tools, machinery, equipment and work areas. Cleaning operations include, but are not limited to, spraying, wiping, flushing, and purging.~~

"Open top vapor degreaser" means the batch process of cleaning and removing soils from metal surfaces by condensing low solvent vapor on the colder metal parts.

~~Separation operation" means any process that separates a mixture of compounds and solvents into two or more components. Specific mechanisms include extraction, centrifugation, filtration, and crystallization.~~

~~Solvent metal cleaning" means the process of cleaning soils from metal surfaces by cold cleaning, open top vapor degreasers, or conveyorized degreasing.~~

##### **R307-335-4. Cold Cleaning Facilities.**

No owner or operator shall operate a degreasing or solvent cleaning operation unless conditions in R307-335-4(1) through (7) are met.

(1) A cover shall be installed which shall remain closed except during actual loading, unloading or handling of parts in cleaner. The cover shall be designed so that it can be easily operated with one hand if:

(a) The volatility of the solvent is greater than 2 kPa (15 mm Hg or 0.3 psi) measured at 38 degrees C (100 degrees F),

(b) The solvent is agitated, or

(c) The solvent is heated.

(2) An internal draining rack for cleaned parts shall be installed on which parts shall be drained until all dripping ceases. If the volatility of the solvent is greater than 4.3 kPa (32 mm Hg at 38 degrees C (100 degrees F)), the drainage facility must be internal, so that parts are enclosed under the cover while draining. The

drainage facility may be external for applications where an internal type cannot fit into the cleaning system.

(3) Waste or used solvent shall be stored in covered containers.

(4) Tanks, containers and all associated equipment shall be maintained in good operating condition, and leaks shall be repaired immediately or the degreaser shall be shutdown.

(5) Written procedures for the operation and maintenance of the degreasing or solvent cleaning equipment shall be permanently posted in an accessible and conspicuous location near the equipment.

(6) If the solvent volatility is greater than 4.3 kPa (33 mm Hg or 0.6 psi) measured at 38 degrees C (100 degrees F), or if solvent is heated above 50 degrees C (120 degrees F), then one of the following control devices shall be used:

(a) Freeboard that gives a freeboard ratio greater than 0.7;

(b) Water cover if the solvent is insoluble in and heavier than water); or

(c) Other systems of equivalent control, such as a refrigerated chiller or carbon adsorption.

(7) If used, the solvent spray shall be a solid fluid stream at a pressure that does not cause excessive splashing and may not be a fine, atomized or shower type spray.

#### **R307-335-5. Open Top Vapor Degreasers.**

Owners or operators of open top vapor degreasers shall, in addition to meeting the requirements of R307-335-4(3), (4) and (5),

(1) Equip the vapor degreaser with a cover that can be opened and closed without disturbing the vapor zone. The cover shall be closed except when processing work loads through the degreaser;

(2) Install one of the following control devices:

(a) Equipment necessary to sustain:

(i) A freeboard ratio greater than or equal to 0.75, and

(ii) A powered cover if the degreaser opening is greater than 1 square meter (10.8 square feet),

(b) Refrigerated chiller,

(c) Enclosed design (cover or door opens only when the dry part is actually entering or exiting the degreaser),

(d) Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per minute per square meter (50 cubic feet per minute per square foot) of air/vapor area when cover is open and exhausting less than 25 parts per million of solvent averaged over one complete adsorption cycle;

(3) Minimize solvent carryout by:

(a) Racking parts to allow complete drainage,

(b) Moving parts in and out of the degreaser at less than 3.3 meters per minute (11 feet per minute),

(c) Holding the parts in the vapor zone at least 30 seconds or until condensation ceases,

(d) Tipping out any pool of solvent on the cleaned parts before removal, and

(e) Allowing the parts to dry within the degreaser for at least 15 seconds or until visibly dry.

(4) Spray parts only in or below the vapor level;

(5) Not use ventilation fans near the degreaser opening, nor provide exhaust ventilation exceeding 20 cubic meters per

minute per square meter (65 cubic feet per minute per square foot) in degreaser open area, unless necessary to meet state and federal occupational, health, and safety requirements.

(6) Not degrease porous or absorbent materials, such as cloth, leather, wood or rope;

(7) Not allow work loads to occupy more than half of the degreaser's open top area;

(8) Ensure that solvent is not visually detectable in water exiting the water separator;

(9) Install safety switches on the following:

(a) Condenser flow switch and thermostat (shuts off sump heat if condenser coolant is either not circulating or too warm); and

(b) Spray switch (shuts off spray pump if the vapor level drops excessively, i.e., greater than 10 cm (4 inches).

(10) Open top vapor degreasers with an open area smaller than one square meter (10.8 square feet) are exempt from R307-335-5(2)(b) and (d).

#### **R307-335-6. Conveyorized Degreasers.**

Owners and operators of conveyorized degreasers shall, in addition to meeting the requirements of R307-335-4(3), (4) and (5) and R307-335-5(5):

(1) Install one of the following control devices for conveyorized degreasers with an air/vapor interface equal to or greater than two square meters (21.5 square feet):

(a) Refrigerated chiller; or

(b) Carbon adsorption system, with ventilation greater than or equal to 15 cubic meters per minute per square meter (50 cubic feet per minute per square foot) of air/vapor area when downtime covers are open, and exhausting less than 25 parts per million of solvent, by volume, averaged over a complete adsorption cycle.

(2) Equip the cleaner with equipment, such as a drying tunnel or rotating (tumbling) basket, sufficient to prevent cleaned parts from carrying out solvent liquid or vapor.

(3) Provide downtime covers for closing off the entrance and exit during shutdown hours. Ensure that down-time cover is placed over entrances and exits of conveyorized degreasers immediately after the conveyor and exhaust are shut down and is removed just before they are started up.

(4) Minimize carryout emissions by racking parts for best drainage and maintaining the vertical conveyor speed at less than 3.3 meters per minute (11 feet per minute).

(5) Minimize openings: Entrances and exits should silhouette work loads so that the average clearance (between parts and the edge of the degreaser opening) is either less than 10 cm (4 inches) or less than 10% of the width of the opening.

(6) Install safety switches on the following:

(a) Condenser flow switch and thermostat - shuts off sump heat if coolant is either not circulating or too warm;

(b) Spray switch - shuts off spray pump or conveyor if the vapor level drops excessively, i.e., greater than 10 cm or (4 inches); and

(c) Vapor level control thermostat - shuts off sump level if vapor level rises too high.

(7) Ensure that solvent is not visibly detectable in the water exiting the water separator.

**R307-335-7. Industrial Solvent Cleaning.**

(1) Exemptions. The requirements of R307-335-7 do not apply to aerospace, wood furniture, shipbuilding and repair, flat wood paneling, large appliance, metal furniture, paper film and foil, plastic parts, miscellaneous metal parts coatings and light autobody and truck assembly coatings, flexible packaging, lithographic and letterpress printing materials, fiberglass boat manufacturing materials, and operations that are exclusively covered by Department of Defense military technical data and performed by a Department of Defense contractor and/or on site at installations owned and/or operated by the United States Armed Forces.

(2) Operators of industrial solvent cleaning that emit 15 pounds of VOCs or more per day from industrial solvent cleaning operations, shall reduce VOC emissions from the use, handling, storage, and disposal of cleaning solvents and shop towels by implementing the following work practices:

- (a) Covering open containers; and
- (b) Storing used applicators and shop towels in closed fire proof containers, and
- (c) Limiting VOC emissions by either:
  - (i) Using solvents (excluding water and solvents exempt from the definition of volatile organic compounds found in R307-101-2) with a VOC limit in Table 1; or
  - (ii) Installing an emission control system designed to have an overall capture and control efficiency of at least 85%.

TABLE 1  
Solvent Cleaning VOC Limits

Solvent Cleaning Category	VOC Limit (lb/gal)
Coatings, adhesives and ink manufacturing	4.2
Electronic parts and components	4.2
General miscellaneous cleaning	2.5
Medical devices and pharmaceutical	
Tools, equipment and machinery	6.7
General surface cleaning	5.0
Screening printing operations	4.2
Semiconductor tools, maintenance and equipment Cleaning	6.7

**R307-335-8. Add-on Emission Control Systems Operations.**

(1) Determination of overall capture and control efficiency shall be determined using EPA approved methods, as follows:

- (a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.
- (b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.
- (c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.
- (2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-335-7(2)(c)(ii).

(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-335-7. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.]

**R307-335-[9]7. Recordkeeping.**

The owner or operator shall maintain, for a minimum of two years, appropriate records [of the solvent VOC content applied and the physical characteristics that]to demonstrate compliance with R307-335[-7(2)].

**KEY: air pollution, degreasing[, solvent cleaning]**

**Date of Enactment or Last Substantive Amendment:**

**[December 1, 2014]2017**

**Notice of Continuation: January 27, 2017**

**Authorizing, and Implemented or Interpreted Law: 19-2-104(1)**

**(a)**

**Environmental Quality, Air Quality**  
**R307-343**  
**Emissions Standards for Wood**  
**Furniture Manufacturing Operations**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41824

FILED: 06/14/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

**SUMMARY OF THE RULE OR CHANGE:** The applicability threshold is reduced from 2.7 tons per year (tpy) potential to emit to the use of a combined 20 gallons or more of coating products and solvents combined. The definition of a coating is removed from the rule and added to the definitions in Rule R307-101, General Requirements. The coating categories are updated to current types of coatings used in the industry. The agency is also separating out the types of polyurethanes

that currently fall under the topcoat or sealer category. The VOC limits for the two component polyurethanes are being slightly elevated from 0.9 to 1.0 lb VOC/lb solids. Canned aerosol coating products that are less than 22 fl. oz. and used exclusively for touch-up or repair are now exempt. (Editor's Note: The proposed amendment to Section R307-101-2 is under Filing No. 41814 in this issue, July 1, 2017, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The state would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

◆ LOCAL GOVERNMENTS: There will be no impact on local governments because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The local governments would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

◆ SMALL BUSINESSES: There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated \$2,616 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM<sub>2.5</sub> Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for people who are affected by the rule will be about \$2,616 per ton of VOC removed from the air.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that businesses that use coatings for wood furniture are regulated by Rule R307-343. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 337122, Nonupholstered Wood Household Furniture Manufacturing; 337215, Showcase, Partition, Shelving, and Locker Manufacturing; 337121, Upholstered Household Furniture Manufacturing; 321999, All Other Miscellaneous Wood Product Manufacturing; 337211, Wood Office Furniture Manufacturing; 337110, Wood Kitchen Cabinet and Countertop Manufacturing; and 337127, Institutional Furniture Manufacturing. The Division used data from Utah's FirmFind database to determine that there are at least 330 total businesses and 317 small businesses that have these codes. Of those businesses, DAQ has determined that 191 sources may be impacted by the rule amendment. III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 191 small businesses that have been identified by DAQ as businesses that may be fiscally impacted by this rule amendment. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT

OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The rule amendment potentially impacts businesses that apply between 20 and approximately 1,200 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average \$5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between \$100 and \$6,000 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the \$100 amount on the spectrum. This is because most of the businesses that are impacted by the amendment are small businesses with between 1 and 10 employees. They do not use large quantities of product. It is important to note that many large businesses that are closer to the 1,200 gallon threshold will likely not be impacted by the rule. This is because they may already be required to comply with the rule based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the 191 businesses identified by, the aggregate annual fiscal impact of the rule on all businesses in Utah will range between \$19,100 and \$1,146,000. Once again, the total cost will fall toward the lower end of the spectrum (\$19,100) because of the size of the businesses and the likelihood that large businesses are already complying with the rule. These figures represent the continuing annual costs to businesses. There are no one-time costs associated with the rule amendment.

V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. EPA has estimated the total cost of this type of regulation to be \$2,616 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.**

**R307-343. [~~Emissions Standards for~~] Wood Furniture Manufacturing Operations.**

**R307-343-1. Purpose.**

The purpose of R307-343 is to limit volatile organic compound (VOC) emissions from wood furniture manufacturing operations.

**R307-343-2. Applicability.**

R307-343 applies to wood furniture manufacturing operations, including related cleaning activities, that [~~have the potential to emit 2.7 tons or more per year of VOCs and that are~~] use a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Utah, Tooele, [~~and~~]or Weber counties.

**R307-343-3. Definitions.**

The following additional definitions apply to R307-343:

[~~—"Affected source" means a wood furniture manufacturing source that meets the criteria in R307-343-2.~~]

"As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

[~~—"Coating" means a protective, decorative, or functional material applied in a thin layer to a surface. Such materials may include paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, inks, and temporary protective coatings.~~]

[~~—"Compliant coating" means a finishing material or strippable booth coating that meets the emission limits specified in R307-343-4(1).~~]

"Control system" means the combination of capture and control devices used to reduce emissions to the atmosphere.

"Conventional Air Spray" means a spray coating method in which the coating is atomized by mixing it with compressed air at an air pressure greater than ten pounds per square inch (gauge) at the point of atomization. Airless, air assisted airless spray technologies, and electrostatic spray technology are not considered conventional air spray.

"Finishing material" means a coating used in the wood furniture industry, including basecoats, stains, washcoats, sealers, and topcoats.

"Finishing Operation" means those activities in which a finishing material is applied to a substrate and is subsequently air-dried, cured in an oven, or cured by radiation.

"Sealer" means a finishing material used to seal the pores of a wood substrate before additional coats of finishing material are applied. A washcoat used to optimize aesthetics is not a sealer.

"Solids" means the part of the coating that remains after the coating is dried or cured; solids content is determined using data from EPA Method 24.

"Stain" means any color coat having a solids content by weight of no more than 8.0% that is applied in single or multiple coats directly to the substrate, including nongrain raising stains, equalizer stains, sap stains, body stains, no-wipe stains, penetrating stains, and toners.

"Topcoat" means the last film-building finishing material applied in a finishing system. Non-permanent final finishes are not topcoats.

"Touch-up and Repair" means the application of finishing materials to cover minor finishing imperfections.

"Washcoat" means a transparent special purpose coating having a solids content by weight of 12.0% or less that is applied over initial stains to protect and control color and to stiffen the wood fibers in order to aid sanding.

"Washoff operations" means those operations in which organic solvent is used to remove coating from a substrate.

"Wood furniture" means any product made of wood[;] that is manufactured under any of the following standard industrial classification codes: 2434, 2511, 2512, 2517, 2519, 2521, 2531, 2541, 2599, or 5712. This includes [a-]wood products such as rattan or wicker[; or -an] and engineered wood products such as particleboard[ that is manufactured under any of the following standard industrial classification codes: 2434, 2511, 2512, 2517, 2519, 2521, 2531, 2541, 2599, or 5712].

"Wood furniture manufacturing operations" means the finishing, cleaning, and washoff operations associated with the production of wood furniture or wood furniture components.

**R307-343-4. VOC Content Limits.**

~~(1) Each affected source subject to R307-343 shall limit VOC emissions by:~~

~~(a) Using the compliant coating method as described in R307-343-4(1)(a)(i) or using the control system method as described in R307-343-4(1)(a)(ii).~~

~~(i) Compliant coating method is the use of the topeoats or topecoat/sealer combinations in Table 1.](1) No owner or operator shall apply coatings with a VOC content in excess of the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-343-6.~~

[TABLE 1

Compliant Coating VOC Limitations

(values in pounds VOC per pound of solids, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

COATING CATEGORY	VOC Content Limitations	
	Effective Through December 31, 2014	Effective Beginning January 1, 2015
Topcoats	0.8	0.4
Topcoat/Sealer combination		
Topcoat	1.8	0.9
Sealer	1.9	0.9

~~Acid-cured, alkyd amino topecoat/sealer combinations~~

~~Acid-cured, alkyd amino topecoat 2.0 1.0~~

~~Acid-cured, alkyd amino vinyl Sealer] 2.3 1.2~~

Table 1

WOOD MANUFACTURING COATING LIMITS  
(values in pounds VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category	VOC Content Limit (lb/gal)
Topcoat	0.4
Single component, non-catalyzed sealer	0.9
Single component, non-catalyzed topcoat	0.9
Acid -- cured single and 2 component sealer	1.2
Acid -- cured single and 2 component topcoat	1.0
2 component polyurethane topcoat	1.0
2 component polyurethane sealer	1.0
Cobalt peroxide cured polyester sealer/topcoat	1.0
Formaldehyde free acid catalyzed sealer/topcoat	1.0
Strippable spray booth coatings	0.8

~~[(ii) Control system method is the use of a VOC control system achieving a 85% or greater emissions reduction.~~

~~(b) Using strippable spray booth coatings that contain no greater than 0.8 pounds VOC per pound solids as applied.~~

~~(c) Using closed containers for the storing of finishing, gluing, cleaning and washoff materials.]~~

~~(2) The limits in Table 1 do not apply to canned aerosol coating products less than 22 fl. oz. (0.66 liter) capacity and used exclusively for touch-up or repair.~~

**R307-343-5. Application Equipment Requirements.**

(1) All coatings shall be applied using equipment having a minimum 65% transfer efficiency, except as allowed under R307-343-5(3) and operated according to the equipment manufacturer specifications. Equipment meeting the transfer efficiency requirement includes:

- (a) Brush, dip, or roll coating;
- (b) Electrostatic application; and
- (c) High volume, low pressure (HVLP) spray equipment.

(2) Other coating application methods that achieve transfer efficiency equivalent to HVLP or electrostatic spray application methods may be used.

(3) Conventional air spray methods may be used under the following circumstances:

(a) To apply finishing materials that have no greater than 1.0 pound of VOC per pound of solids, as applied;

(b) For touch-up and repair under the following circumstances:

(i) The touch-up and repair occurs after completion of the finishing operation; or



(ii) The touch-up and repair occurs after the application of stain and before the application of any other type of finishing material, and the materials used for touch-up and repair are applied from a container that has a volume of no more than 2.0 gallons;

(c) When the spray gun is aimed and ~~triggered~~ operated automatically, not manually;

(d) When the emissions from the finishing application station are directed to a control device as specified in R307-343-6;

(e) When the conventional air gun is used to apply ~~finishing materials and the cumulative total usage of that finishing material is~~ no more than 10% of the total gallons of finishing material used during the calendar year; or

(f) When the conventional air gun is used to apply stain on a part for which it is technically or economically infeasible to use any other spray application technology. The following criteria shall be used, either independently or in combination, to support the affected source's claim of technical or economic infeasibility:

(i) The production speed is too high or the part shape is too complex for one operator to coat the part and the application station is not large enough to accommodate an additional operator; or

(ii) The excessively large vertical spray area of the part makes it difficult to avoid sagging or runs in the stain.

#### **R307-343-6. Add-on Controls Systems Operations.**

(1) ~~If an add-on control system is used, [F]the owner or operator shall install and maintain [an incinerator, carbon adsorption, or any other]the add-on emission control system[; provided that the emission control system is operated and maintained] in accordance with the manufacturer recommendations [in order to]and maintain [at least]85% or greater capture and control efficiency. [Determination of]The overall capture and control efficiency shall be determined using EPA approved methods, as follows.~~

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

~~(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-343-6(1).~~

~~(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-343-6. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.~~

~~(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.]~~

#### **R307-343-7. Work Practices[and Recordkeeping].**

(1) Control techniques and work practices for coatings shall be implemented at all times to reduce VOC emissions~~[from fugitive type sources]~~. Control techniques and work practices shall include:

(a) Storing all VOC-containing coatings, thinners, and coating-related waste materials in closed containers;

(b) Ensuring that mixing and storage containers used for VOC-containing coatings, thinners, and coating-related waste material are kept closed at all times except when depositing or removing these materials;

(c) Minimizing spills of VOC-containing coatings, thinners, and coating-related waste materials; and

(d) Conveying VOC-containing coatings, thinners, and coating-related waste materials from one location to another in closed containers or pipes.

(2) The work practices for cleaning materials shall be implemented at all times to reduce VOC emissions~~[from fugitive type sources]~~. The work practices shall include:

(a) Storing all VOC-containing cleaning materials and used shop towels in closed containers;

(b) Ensuring that storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials;

(c) Minimizing spills of VOC-containing cleaning materials;

(d) Conveying VOC-containing cleaning materials from one location to another in closed containers or pipes; and

(e) Minimizing VOC emissions from cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

~~(3) All persons shall perform solvent cleaning operations with cleaning material having VOC content (excluding compounds not classified as VOC) of 0.21 pounds per gallon or less.~~

~~(4) For each calendar year, all sources subject to R307-343-4, R307-343-5 and R307-343-7.~~

~~(a) Records shall include, but shall not be limited to, inventory and product data sheets for all coatings and solvents subject to R307-343.~~

~~(b) These records shall be made available to the director upon request.]~~

~~(3) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg or less at 20 degrees Celsius, unless an add-on control device is used as specified in R307-343-6.~~

#### **R307-343-8. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-343. Records must include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-343.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-343-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: air pollution, wood furniture, coatings**

**Date of Enactment or Last Substantive Amendment:**  
[~~December 1, 2014~~]2017

**Notice of Continuation: January 27, 2017**

**Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(a); 19-2-104(3)(e)**

## Environmental Quality, Air Quality **R307-344** Paper, Film, and Foil Coatings

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41816

FILED: 06/14/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

**SUMMARY OF THE RULE OR CHANGE:** The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to an application-based threshold of "a combined 20 gallons or more of coating products and associated solvents per year." Other changes included added definitions and a new record keeping section.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will be no impact on the state budget because the only substantive change to the rule that

could result in costs for the regulated party is the change in the applicability threshold. The state would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

◆ **LOCAL GOVERNMENTS:** There will be no impact on local governments because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The local governments would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

◆ **SMALL BUSINESSES:** There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated \$1,878 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule helps to prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact this rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. It also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses the flexibility to comply with the rule in the way that makes the most sense for them.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance cost for people who are affected by the rule will be about \$1,878 per ton of VOC removed from the air.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**  
I. **WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY:** The proposed rule may

result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use paper, film, and foil coating products are regulated by Rule R307-344. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule.

II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 322110, Pulp Mills; 322121, Paper (except newsprint) Mills; 322211, Corrugated and Solid Fiber Box Manufacturing; 322212, Folding Paperboard Manufacturing; 322219, Other Paperboard Container Manufacturing; 322220, Paper Bag and Coated and Treated Paper Manufacturing; 322230, Stationery Product Manufacturing; 322299, All other Converted Paper Product Manufacturing; 326111, Plastics Bag and Pouch Manufacturing; and 322291, Sanitary Paper Product Manufacturing. The Division used data from Utah's FirmFind database to determine that there are 35 total businesses and 19 small businesses in the relevant counties that have these codes. Of those businesses, 19 may be impacted by the rule.

III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 19 small businesses that have been identified by DAQ as businesses that are likely to be fiscally impacted by this rule amendment.

IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The rule amendment potentially impacts businesses that apply between 20 and 2,700 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average \$5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between \$100 and \$13,500 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the \$100 amount. This is because most of the businesses that are impacted by the amendment are small businesses with between one and ten employees. They do not use large quantities of product. Some of these businesses may also already be using compliant coatings and will not have any additional costs associated with the rule amendment. Large businesses that are closer to the 2,700 gallon threshold are

likely not impacted by the rule because they already are required to comply with it based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Based on the 19 businesses identified by DAQ from the FirmFind database, the aggregate fiscal impact of the rule on all businesses will range between \$1,900 and \$256,500. Once again, the total cost will fall toward the lower end of the spectrum because of the size of the businesses and the likelihood that large businesses are already complying with the rule. These figures represent the continuing annual cost to businesses. There are no one-time costs associated with the rule amendment.

V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. The EPA has estimated the total cost of this type of regulation to be \$1,878 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

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

ENVIRONMENTAL QUALITY  
AIR QUALITY  
FOURTH FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.  
R307-344. Paper, Film, and Foil Coatings.  
R307-344-1. Purpose.**

The purpose of this rule is to limit volatile organic compound (VOC) emissions from [~~roll, knife, and rotogravure coaters and drying ovens of~~]paper, film, and foil coating operations.

**R307-344-2. Applicability.**

R307-344 applies to ~~sources~~ paper, film, and foil coating operations and related cleaning activities that use a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties ~~[that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities].~~

**R307-344-3. Definitions.**

The following additional definitions apply to R307-344:

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

~~["Coating" means a protective, functional, or decorative film applied in a thin layer to a surface. This term often applies to paints such as lacquers or enamels. It is also used to refer to films applied to paper, plastics, or foil.]~~

"Film coating" means any coating applied in a web coating process on any film substrate other than paper or fabric, including, but not limited to, typewriter ribbons, photographic film, magnetic tape, and metal foil gift wrap.

"Foil coating" means a coating applied in a web coating process on any foil substrate other than paper or fabric, including, but not limited to, typewriter ribbons, photographic film, magnetic tape, and metal foil gift wrap, but excluding coatings applied to packaging used exclusively for food and health care products for human and animal consumption.

~~["Knife coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a blade that spreads the coating evenly over the width of the substrate.]~~

"Paper coating" means uniform distribution of coatings put on paper, film, foils and pressure sensitive tapes regardless of substrate. Related web coating processes on plastic film and decorative coatings on metal foil are included in this definition. Paper coating covers saturation operations as well as coating operations.

~~["Roll coating" means the application of a coating material to a substrate by means of hard rubber or steel rolls.~~

~~"Roll printing" means the application of words, designs and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.~~

~~"Rotogravure coating" means the application of a uniform layer of material across the entire width of the web to substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.]~~

"Saturation" means dipping the web into a bath.

"Web" means a continuous sheet of substrate.

**R307-344-4. VOC Content Limits.**

~~[Each owner or operator shall not]~~ No owner or operator shall apply coatings with a VOC content [in excess of] greater than the amounts specified in Table 1 [or shall use], unless the owner or operator uses an add-on control device as specified in R307-344-6.

TABLE 1

Paper, Film, and Foil Coating Limitations  
(values in pounds VOC per pound of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

<del>C[OATING]</del> <u>Coating</u> C[ATEGORY] <u>Category</u> VOC [EMISSION RATES] <u>Content Limits</u> (lb/lb)	
Paper, film and foil	0.08
Pressure sensitive tape and label	0.067

**R307-344-5. Work Practices~~and Recordkeeping~~.**

(1) Control techniques and work practices are to be implemented at all times to reduce VOC emissions. Control techniques and work practices include:

~~["Using tight fitting covers for open tanks;]~~

([b]a) Using covered containers for solvent wiping cloths;

([e]b) Using collection hoods for areas where solvent is used for cleanup;

([d]c) Minimizing spills of VOC-containing cleaning materials;

([e]d) Conveying VOC-containing materials from one location to another in closed containers or pipes; and

([f]e) Cleaning spray guns in enclosed systems; ~~and~~

~~["Using recycled solvents for cleaning].~~

~~["(2) All sources subject to R307-344 shall maintain records demonstrating compliance with R307-344-4 and R307-344-5.~~

~~(a) Records shall include, but not limited to, inventory and product data sheets of all coatings and solvents subject to R307-344.~~

~~(b) These records shall be available to the director upon request.]~~

([3]2) No person shall apply coatings unless these materials are applied with equipment operated according to the manufacturer's specifications, and by the use of one of the following methods:

(a) Flow coater;

(b) Roll coater;

(c) Dip coater;

(d) Foam coater;

(e) Die coater;

(f) Hand application methods;

(g) High-volume, low pressure (HVLP) spray; or

(h) Other application method capable of achieving ~~[at least]~~ 65% or greater transfer efficiency, as certified by the manufacturer.

([4]3) ~~[All persons shall perform s]~~ Solvent cleaning operations [with] shall be performed using cleaning materials having a VOC [content (excluding water and solvents exempt from the definition of volatile organic compounds found in R307-101-2) of 0.21 pounds per gallon or less] composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-344-6.

**R307-344-6. Add-On Controls Systems Operations.**

(1) ~~If an add-on control system is used, [F]the owner or operator shall install and maintain [an incinerator, carbon adsorption, or any other]the add-on emission control system[ ~~provided that the emission control system is operated and maintained~~] in accordance with the manufacturer recommendations [in order to]and maintain [at least]90% or greater capture and control efficiency. [Determination of]The overall capture and control efficiency shall be determined using EPA approved methods, as follows.~~

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

~~(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-344-6(1).~~

~~(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-344-6. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.~~

~~(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.]~~

**R307-344-7. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-344. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-344.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-344-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: VOC emission, paper coating, film coating, foil coating**  
**Date of Enactment or Last Substantive Amendment:**  
**[December 1, 2014]2017**  
**Authorizing, and Implemented or Interpreted Law: 19-2-104(1)**  
**(a)**

**Environmental Quality, Air Quality**  
**R307-345**  
**Fabric and Vinyl Coatings**

**NOTICE OF PROPOSED RULE**  
**(Amendment)**

**DAR FILE NO.: 41817**  
**FILED: 06/14/2017**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

**SUMMARY OF THE RULE OR CHANGE:** The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to an application-based threshold of "a combined 20 gallons or more of coating products and associated solvents per year." Other changes included added definitions and a new record keeping section.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The state would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

♦ **LOCAL GOVERNMENTS:** There will be no impact on local governments because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The local governments would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

♦ **SMALL BUSINESSES:** There will be an impact on small businesses because the new rule applicability threshold will

cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated \$3,658 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule helps to prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact this rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses the flexibility to comply with the rule in the way that makes the most sense for them.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for people who are affected by the rule will be about \$3,658 per ton of VOC removed from the air.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY: The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use fabric and vinyl coating products are regulated by Rule R307-345. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the

rule. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 339991, Gasket Packing, and Sealing Device Manufacturing; 313210, Broadwoven Fabric Mills; and 313320, Fabric Coating Mills. The Division used data from Utah's FirmFind database to determine that there are 12 total businesses and 11 small businesses in the relevant counties that have these codes. Of those businesses, 11 could possibly be impacted by the rule. III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 11 small businesses that have been identified by DAQ as businesses that are likely to be fiscally impacted by this rule amendment. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The rule amendment potentially impacts businesses that apply between 20 and approximately 2,455 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average \$5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between \$100 and \$12,275 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the \$100 amount on the spectrum. This is because most of the businesses that are impacted by the amendment are small businesses with between one and ten employees. They do not use large quantities of product. Some of these businesses may also already be using compliant coatings and will not have any additional costs associated with the rule amendment. Large businesses that are closer to the 2,455 gallon threshold are likely not impacted by the rule amendment because they already are required to comply with it based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Based on the eleven businesses identified by DAQ from the FirmFind database, the aggregate fiscal impact of the rule amendment on all businesses will range between \$1,100 and \$135,025. Once again, the total cost will fall toward the lower end of the spectrum because of the size of the businesses and the likelihood that large businesses are already complying with the rule. These figures represent the continuing annual cost to businesses. There are no one-time costs associated with the rule amendment. V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more

significant fiscal impact. The EPA has estimated the total cost of this type of regulation to be \$3,658 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:  
 ♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.**

**R307-345. Fabric and Vinyl Coatings.**

**R307-345-1. Purpose.**

The purpose of this rule is to limit volatile organic compound (VOC) emissions from fabric and vinyl coating operations~~[, which use roll, knife, or rotogravure coaters and drying ovens].~~

**R307-345-2. Applicability.**

R307-345 applies to ~~[sources]~~vinyl coating operations and related cleaning activities that use a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties~~[ that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities].~~

**R307-345-3. Definitions.**

The following additional definitions apply to R307-345:  
"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.  
~~[ "Coating" means a protective, functional, or decorative film applied in a thin layer to a surface.]~~

"Fabric coating" means the coating or saturation of a textile substrate with a knife, roll or rotogravure coater to impart characteristics that are not initially present, such as strength, stability, water or acid repellency, or appearance. Fabric coatings can include, but are not limited to, industrial and electrical tapes, tie cord, utility meter seals, imitation leathers, tarpaulins, shoe material, and upholstery fabrics.

"Knife coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a blade that spreads the coating evenly over the width of the substrate.

"Roller coating" the coating material is applied to the moving fabric, in a direction opposite to the movement of the substrate, by hard rubber or steel rolls.

"Rotogravure coating" means the application of a uniform layer of material across the entire width of the web to substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.

~~[ "Vinyl coating" means applying a decorative or protective top coat, or printing on vinyl coated fabric or vinyl sheets.]~~

**R307-345-4. VOC Content Limits.**

(1) ~~[Each]~~No owner or operator shall ~~[not]~~ apply fabric or vinyl coatings with a VOC content [in excess of the amounts specified in Table 1 or shall use an add-on control device as specified in R307-345-6.] greater than 2.2 pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied, unless the owner or operator uses an add-on device as specified in R307-345-6.

[TABLE 1

COATING CATEGORY	Fabric and Vinyl Coating Limitations (values in pounds VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC), as applied)	
	VOC	VOC
	CONTENT LIMITS	CONTENT LIMITS
	Effective Through	Effective Beginning
	December 31, 2014	January 1, 2015
Fabric	2.9	2.2
Vinyl	3.8	2.2

(2) Organosol and plastisol coatings shall not be used to bubble emissions from vinyl printing and top coating.

**R307-345-5. Work Practices~~and Recordkeeping~~.**

(1) Control techniques and work practices are to be implemented at all times to reduce VOC emissions. Control techniques and work practices include:

- ~~[(a) Tight fitting covers for open tanks or drums;]~~
- ~~[(b)a] Covered containers for solvent wiping cloths;~~
- ~~[(e)b] Collection hoods for areas where solvent is used for cleanup;~~
- ~~[(d)c] Covered mixing tanks; and~~
- ~~[(e)d] Covered hoods and oven routed to add-on control devices, which may include, but are not limited to, after burners, thermal incinerators, catalytic oxidation, or carbon adsorption.~~

(2) No person shall apply any coating unless the coating application method achieves a demonstrated 65% transfer efficiency.

The following applications achieve a minimum of 65% transfer efficiency and must be operated in accordance with the manufacturers specifications:

- (a) Foam coat;
- (b) Flow coat;
- (c) Roll coat;
- (d) Dip coat;
- (e) Die coat;
- (e) High-volume, low-pressure (HVLP) spray;
- (f) Hand application methods; or
- (g) Other application method capable of achieving [at least]65% or greater transfer efficiency, as certified by the manufacturer.

(3) ~~[All persons shall perform s]Solvent cleaning operations [with]shall be performed using cleaning materials having a VOC [content (excluding compounds not classified as VOC) of 0.21 pounds per gallon or less]composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-345-6.~~

~~[(4) All sources subject to R307-345 shall maintain records demonstrating compliance with R307-345-4 and R307-345-5.~~

~~(a) Records shall include, but not be limited to, inventory and product data sheets of all coatings and solvents subject to R307-345.~~

~~(b) These records shall be available to the director upon request.]~~

#### **R307-345-6. Add-On Controls Systems Operations.**

(1) ~~If an add-on control system is used, [F]the owner or operator shall install and maintain [an incinerator, carbon adsorption, or any other]the add-on emission control system[; provided that the emission control system is operated and maintained] in accordance with the manufacturer recommendations [in order to]and maintain [at least]90% or greater capture and control efficiency. [Determination of]The overall capture and control efficiency shall be determined using EPA approved methods, as follows.~~

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

~~[(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-345-6(1).~~

~~(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-345-6. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule,~~

~~monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.~~

~~[(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.]~~

#### **R307-345-7. Recordkeeping.**

~~(1) The owner or operator shall maintain records of the following:~~

~~(a) Records that demonstrate compliance with R307-345. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-345.~~

~~(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-345-6.~~

~~(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.~~

~~(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.~~

~~(2) All records shall be maintained for a minimum of 2 years.~~

~~(3) Records shall be made available to the director upon request.~~

**KEY:** air pollution, emission controls, fabric coating, vinyl coating

**Date of Enactment or Last Substantive Amendment:** ~~[December 1, 2014]2017~~

**Authorizing, and Implemented or Interpreted Law:** 19-2-104(1) (a)

## Environmental Quality, Air Quality **R307-346** Metal Furniture Surface Coatings

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41818

FILED: 06/14/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).



**SUMMARY OF THE RULE OR CHANGE:** The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to an application based threshold of "a combined 20 gallons or more of coating products and associated solvents per year." Other changes included added definitions and a new record keeping section.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The state would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

◆ **LOCAL GOVERNMENTS:** There will be no impact on local governments because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The local governments would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

◆ **SMALL BUSINESSES:** There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated \$2,482 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local

government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance cost for people who are affected by the rule will be about \$2,482 per ton of VOC removed from the air.

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

I. **WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY:** The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use metal furniture surface coatings are regulated by Rule R307-346. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule. II. **AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 337121, Upholstered Household Furniture Manufacturing; 337124, Metal Household Furniture Manufacturing; and 337215 Showcase, Partition, Shelving, and Locker Manufacturing. The Division used data from Utah's FirmFind database to determine that there are 29 total businesses and 28 small businesses in the relevant counties that have these codes. Of those businesses, all 29 could possibly be impacted by the rule amendment. III. **AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 28 small businesses that have been identified by DAQ as businesses that are likely to be fiscally impacted by this rule amendment. IV. **A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS:** The rule amendment potentially impacts businesses that apply between 20 and 1,543 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average \$5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between \$100

and \$7,715 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the \$100 amount on the spectrum. This is because most of the businesses that are impacted by the amendment are small businesses with between one and ten employees. They do not use large quantities of product. Large businesses that are closer to the 1,543 gallon threshold are likely not impacted by the rule because they may already be required to comply with it based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the 29 businesses identified by DAQ from the FirmFind database, the aggregate fiscal impact of the rule on all businesses in Utah will range between \$2,900 and \$223,735. Once again, the total cost will fall toward the lower end of the spectrum (\$2,900) because of the size of the businesses and the likelihood that larger businesses are already complying with the rule. These figures represent the continuing annual cost to businesses. There are no one-time costs associated with the rule amendment.

V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. EPA has estimated the total cost of this type of regulation to be \$2,482 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:  
 ♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.**  
**R307-346. Metal Furniture Surface Coatings.**  
**R307-346-1. Purpose.**

The purpose of this rule is to limit volatile organic compound (VOC) emissions from metal furniture surface coating operations in application areas, flash-off areas, and ovens of metal furniture coating lines involved in prime and top-coat or single coat operations.

**R307-346-2. Applicability.**

R307-346 applies to ~~[sources]~~ metal furniture surface coating operations and related cleaning activities that use a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties ~~[that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities].~~

**R307-346-3. Exemptions.**

- (1) The requirements of R307-346 do not apply to the following:
- Stencil coatings;
  - Safety-indicating coatings;
  - Solid-film lubricants;
  - Electrical-insulating and thermal-conducting coatings;
  - Touch-up and repair coatings; or
  - Coating applications utilizing hand-held aerosol cans.

**R307-346-4. Definitions.**

The following additional definitions apply to R307-346:  
 "Air dried coating" means coatings that are dried by the use of air or a forced warm air at temperatures up to 194 degrees Fahrenheit.

"Application area" means the area where the coating is applied by spraying, dipping, or flow coating techniques.

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Baked coating" means a coating that is cured at a temperature at or above 194 degrees Fahrenheit.

~~["Coating" means a protective, functional, or decorative film applied in a thin layer to a surface. This term applies to paints, sealants, caulks, inks, adhesives, and maskants.]~~

"Extreme performance coatings" means coatings designed for harsh exposure or extreme environmental conditions.

~~["Maskants" means a material that protects a metal surface during the etching process.]~~

"Metal furniture surface coating" means the surface coating of any furniture made of metal or any metal part that will be assembled with other metal, wood fabric, plastic, or glass parts to form a furniture piece.

**R307-346-5. VOC Content Limits.**

~~[Each]~~ No owner or operator shall ~~[not]~~ apply coatings with a VOC content ~~[in excess of]~~ greater than the amounts specified in Table 1 ~~[or shall]~~, unless the owner or operator uses an add-on control device as specified in R307-346-7.

TABLE 1

METAL FURNITURE SURFACE COATING VOC LIMITS  
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

COATING category	VOC Content	Limits (lb/gal)
	Baked	Air Dried
General, One Component	2.3	2.3
General, Multi-Component	2.3	2.8
Extreme High Gloss	3.0	2.8
Extreme Performance	3.0	3.5
Heat Resistant	3.0	3.5
Metallic	3.5	3.5
Pretreatment Coatings	3.5	3.5
Solar Absorbent	3.0	3.5

**R307-346-6. Work Practices.**

- (1) The owner or operator shall:
  - (a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;
  - (b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;
  - (c) Clean up spills immediately;
  - (d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
  - (e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
  - (f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.
- (2) No person shall apply any coating unless the coating application method achieves a demonstrated 65% transfer efficiency.

The following applications achieve a minimum of 65% transfer efficiency and shall be operated in accordance with the manufacturers specifications:

- (a) Electrostatic application;
- (b) Electrodeposition;
- (c) Brush coat;
- (d) Flow coat;
- (e) Roll coat;
- (f) Dip coat;
- (g) Continuous coating;
- (h) High-volume, low-pressure (HVLP) spray; or
- (i) Other application method capable of achieving at least 65% or greater transfer efficiency, as certified by the manufacturer.

(3) ~~[All persons shall perform s]~~Solvent cleaning operations ~~[with] shall be performed using~~ cleaning materials having a VOC ~~[content (excluding water and solvents exempt from the definition of volatile organic compounds found in R307-101-2) of~~

~~0.21 pounds per gallon or less] composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless [such cleaning operations are performed within the control of the emission control system of] an add-on control device is used as specified in R307-346-7.~~

~~\_\_\_\_\_ (4) All sources subject to R307-346 shall maintain records demonstrating compliance with R307-346-5 and R307-346-6:~~

~~\_\_\_\_\_ (a) Records shall include, but not be limited to, inventory and product data sheets of all coatings and solvents subject to R307-346.~~

~~\_\_\_\_\_ (b) These records shall be available to the director upon request.]~~

**R307-346-7. Add-On Controls Systems Operations.**

(1) ~~If an add-on control system is used, [F]the owner or operator shall install and maintain [an incinerator, carbon adsorption, or any other] the add-on emission control system[; provided that the emission control system is operated and maintained]~~ in accordance with the manufacturer recommendations ~~[in order to] and maintain [at least] 90% or greater capture and control efficiency.~~ Determination of overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

~~\_\_\_\_\_ (2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-346-7(1):~~

~~\_\_\_\_\_ (3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-346-7. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.~~

~~\_\_\_\_\_ (4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.]~~

**R307-346-8. Recordkeeping.**

~~\_\_\_\_\_ (1) The owner or operator shall maintain records of the following:~~

(a) Records that demonstrate compliance with R307-346. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-346.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-346-7.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY:** air pollution, emission controls, surface coating, metal furniture

**Date of Enactment or Last Substantive Amendment:** ~~December 1, 2014~~ 2017

**Authorizing, and Implemented or Interpreted Law:** 19-2-104(1)  
(a)

## Environmental Quality, Air Quality **R307-347** Large Appliance Surface Coatings

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41819

FILED: 06/14/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule change is to reduce VOC emissions and comply with the EPA's requirements for the PM2.5 Serious State Implementation Plan.

**SUMMARY OF THE RULE OR CHANGE:** The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to an application based threshold of "a combined 20 gallons or more of coating products and associated solvents per year." Other changes include added definitions and a new record keeping section.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The state would likely have

already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

◆ **LOCAL GOVERNMENTS:** There will be no impact on local governments because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The local governments would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

◆ **SMALL BUSINESSES:** There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated \$2,482 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance cost for people who are affected by the rule will be about \$2,482 per ton of VOC removed from the air.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**  
I. **WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY:** The proposed rule may result in a fiscal impact to some businesses because the rule

amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use coatings for large appliance surfaces are regulated by Rule R307-347. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule.

II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 333414, Heating Equipment (except Warm Air Furnaces) Manufacturing and 335210, Small Electrical Appliance Manufacturing. The Division used data from Utah's FirmFind database to determine that there are six total businesses and five small businesses in the relevant counties that have these codes. Of those businesses, five could possibly be impacted by the rule amendment.

III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are five small businesses that have been identified by DAQ as businesses that are likely to be fiscally impacted by this rule amendment.

IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The rule amendment potentially impacts businesses that apply between 20 and approximately 1,763 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average \$5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between \$100 and \$8,815 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the \$100 amount on the spectrum. This is because most of the businesses that are impacted by the amendment are small businesses with between 1 to 10 employees. They do not use large quantities of product. Large businesses that are closer to the 1,763 gallon threshold are likely not impacted by the rule because they may already be required to comply with it based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the five businesses identified by DAQ from the FirmFind database, the aggregate fiscal impact of the rule on all businesses in Utah will range between \$500 and \$44,075. Once again, the total cost will fall toward the

lower end of the spectrum (\$500) because of the size of the businesses and the likelihood that large businesses are already complying with the rule. These figures represent the continuing annual costs to businesses. There are no one-time costs associated with the rule amendment.

V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. EPA has estimated the total cost of this type of regulation to be \$2,482 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at [rstephens@utah.gov](mailto:rstephens@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:  
 ♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.**  
**R307-347. Large Appliance Surface Coatings.**  
**R307-347-1. Purpose.**

The purpose of this rule is to reduce volatile organic compound (VOC) emissions from large appliance surface coating operations.

**R307-347-2. Applicability.**

(1) R307-347 applies to ~~sources~~ large appliance surface coating operations and related cleaning activities that use a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties ~~that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities~~.

**R307-347-3. Exemptions.**

(1) The requirements of R307-347 do not apply to the following:

- (a) Stencil coatings;
- (b) Safety-indicating coatings;
- (c) Solid-film lubricants;
- (d) Electric-insulating and thermal-conducting coatings;
- (e) Touch-up and repair coatings; or
- (f) Coating applications utilizing hand-held aerosol cans.

**R307-347-4. Definitions.**

The following additional definitions apply to R307-347:

"Air dried coating" means coatings that are dried by the use of air or a forced warm air at temperatures up to 194 degrees Fahrenheit.

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Baked coating" means a coating that is cured at a temperature at or above 198 degrees Fahrenheit.

~~"Coating" means a protective, functional, or decorative film applied in a thin layer to a surface. This term often applies to paints such as lacquers or enamels. It is also used to refer to films applied to paper, plastics, or foil.~~

"Extreme performance coatings" means coatings designed for harsh exposure or extreme environmental conditions.

"Large appliances" means doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other similar products.

**R307-347-5. VOC Content Limits.**

~~Each~~No owner or operator shall ~~not~~ apply coatings with a VOC content ~~in excess of~~ greater than the amounts specified in Table 1 ~~or shall use~~, unless the owner or operator uses an add-on control device as specified in R307-347-7.

TABLE 1

Large Appliance Surface Coating Limitations  
(values in pounds VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

<del>C[OATING]</del> Coating Category	VOC Content	<del>LIMITS]</del> Limits (lb/gal)
	Baked	Air Dried
General, one component	2.3	2.3
General, multi-component	2.3	2.8
Extreme high gloss	3.0	2.8
Extreme performance	3.0	3.5
Heat resistance	3.0	3.5
Solar absorbent	3.0	3.5
Metallic	3.5	3.5
Pretreatment coatings	3.5	3.5

**R307-347-6. Work Practices ~~and Recordkeeping~~.**

- (1) The owner or operator shall:
- (a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;
  - (b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;
  - (c) Clean up spills immediately;
  - (d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
  - (e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
  - (f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.

~~(2) All sources subject to R307-347 shall maintain records demonstrating compliance with R307-347-5 and R307-347-6.~~

~~(a) Records shall include, but not be limited to, inventory and product data sheets of all coatings and solvents subject to R307-347.~~

~~(b) These records shall be made available to the director upon request.~~

([3]2) No person shall apply any coating unless the coating application method achieves a ~~demonstrated~~ 65% or greater transfer efficiency. The following applications achieve a minimum of 65% transfer efficiency and shall be operated in accordance with the manufacturers specifications:

- (a) Electrostatic application;
- (b) Electrodeposition;
- (c) Brush coat;
- (d) Flow coat;
- (e) Roll coat;
- (f) Dip coat;
- (g) High-volume, low-pressure (HVLP) spray; or
- (h) Other application method capable of achieving ~~at least~~ 65% or greater transfer efficiency, as certified by the manufacturer.

~~([4]3) [All persons shall perform solvents] Solvent cleaning operations [with] shall be performed using cleaning materials having a VOC [content (excluding water and solvents exempt from the definition of volatile organic compounds found in R307-101-2) of 0.21 pounds per gallon or less] composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-347-7.~~

**R307-347-7. Add-On Controls Systems Operations.**

(1) ~~If an add-on control system is used, [F] the owner or operator shall install and maintain [an incinerator, carbon adsorption, or any other] the add-on emission control system, provided that the emission control system is operated and maintained~~ in accordance with the manufacturer recommendations ~~in order to] and maintain [at least] 90% or greater capture and control efficiency. [Determination of] The overall capture and control efficiency shall be determined using EPA approved methods, as follows.~~

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

~~[(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-347-7(1).~~

~~(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-347-7. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.~~

~~(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.]~~

**R307-347-8. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-347. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-347.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-347-7.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: air pollution, emission controls, large appliances, surface coatings**

**Date of Enactment or Last Substantive Amendment: [December 1, 2014]2017**

**Authorizing, and Implemented or Interpreted Law: 19-2-104(1)**

**(a)**

# Environmental Quality, Air Quality **R307-348** Magnet Wire Coatings

## NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 41826  
FILED: 06/14/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to help reduce VOC emissions from sources that use magnet wire coatings. The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

**SUMMARY OF THE RULE OR CHANGE:** The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to "sources that emit 2 tons per year or more of VOC emissions". The "add-on control system" and "recordkeeping" sections are also being amended to clarify the requirements of the rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There will be no impact on the state budget because the state is not a source of magnet wire coating emissions.
- ◆ **LOCAL GOVERNMENTS:** There will be no impact on the local government because the local governments are not a source of magnet wire coating emissions.
- ◆ **SMALL BUSINESSES:** There will likely be no additional costs to small businesses because there are no new small businesses that are impacted by this rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance cost for people who are affected by the rule will be about \$6,857 per ton of VOC removed from the air.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to

businesses. This is because the amendments to the rule did not bring in any new sources that were not already regulated by Rule R307-348, and the VOC content limits did not change.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:  
 ♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

### **R307. Environmental Quality, Air Quality.**

#### **R307-348. Magnet Wire Coatings.**

##### **R307-348-1. Purpose.**

The purpose of this rule is to limit volatile organic compound (VOC) emissions from ~~[ovens of]~~ magnet wire coating operations.

##### **R307-348-2. Applicability.**

R307-348 applies to sources that emit 2 tons per year or more of VOC emissions, including related cleaning activities, that are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah [and] or Weber counties that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities].

##### **R307-348-3. Definitions.**

The following additional definition applies to R307-348:

"Magnet wire coating" means the process of applying coating of electrical insulating varnish or enamel to aluminum or copper wire for use in electrical machinery.

##### **R307-348-4. VOC Content Limit.**

~~[(+)]~~No owner or operator ~~[of a magnet wire coating oven may cause, allow or permit discharge into the atmosphere of any VOC in excess of 0.20 kilograms]~~shall apply coatings with a VOC content greater than 200 grams VOC per liter ~~[of coating]~~.(1.7

pounds per gallon), excluding water, and exempt solvents (compounds not classified as VOCs as defined in R307-101-2) ~~[delivered to the coating applicator from magnet wire coating operations], unless the owner or operator uses an add-on control device as specified in R307-348-6.~~

~~[(a) Equivalency calculations for coatings shall be performed in units of pounds VOCs per gallon of solid rather than pounds VOCs per gallon of coating when determining compliance.~~

~~[(b) The equivalent emission limit is 2.2 pounds VOCs per gallon solids.~~

~~[(2) The emission limitations specified above shall be achieved by:~~

~~[(a) The application of low solvent content coating technology; or~~

~~[(b) The use of an add-on control device on magnet wire coating ovens as specified in R307-348-6.]~~

##### **R307-348-5. Work Practices[and Recordkeeping].**

(1) The owner or operator shall:

(a) Store all VOC-containing coatings and cleaning materials in closed containers;

(b) Minimize spills of VOC-containing coatings and cleaning materials;

(c) Clean up spills immediately;

(d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;

(e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and

(f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.

~~[(2) All sources subject to R307-348 shall maintain records demonstrating compliance with R307-348-4, and these records shall be available to the director upon request.]~~

##### **R307-348-6. Add-On Control Systems Operations.**

~~[(1) The owner or operator shall install and maintain an incinerator, carbon adsorption, or any other add-on emission control system, provided that the emission control system is operated and maintained in accordance with the manufacturer recommendations in order to maintain at least 90% capture and control efficiency. Determination of overall capture and control efficiency shall be determined using EPA approved methods, as follows:~~

~~[(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.~~

~~[(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.]~~

(1) If an add-on control system is used it must be installed, operated, and maintained in accordance with manufacturer recommendations.

(a) An add-on control device must have a 90% or greater capture and control efficiency rating. Efficiency must be determined using EPA approved methods as follows:



**Environmental Quality, Air Quality  
R307-349  
Flat Wood Panel Coatings**

**NOTICE OF PROPOSED RULE  
(Amendment)  
DAR FILE NO.: 41820  
FILED: 06/14/2017**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

**SUMMARY OF THE RULE OR CHANGE:** The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to an application-based threshold of "a combined 20 gallons or more of coating products and associated solvents per year." Other changes included added definitions and a new recordkeeping section.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The state would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.
- ◆ **LOCAL GOVERNMENTS:** There will be no impact on local governments because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The local governments would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.
- ◆ **SMALL BUSINESSES:** There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated \$2,680 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule

~~(i) Capture efficiency must be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 C.F.R. Parts 51, Appendix M, Methods 204-204F, as applicable.~~

~~(ii) Control efficiency must be determined using test methods in Appendices A-1, A-6, and A-7 to 40 C.F.R. Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.~~

~~[(e)iii] An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.~~

~~[(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-348-6(1).~~

~~(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-348-6. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.~~

~~(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.]~~

**R307-348-7. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-348. Records must include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-348.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-348-6.

(i) Key system parameters include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters must be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records must be maintained for a minimum of 2 years.

(3) Records must be made available to the director upon request.

**KEY: air pollution, emission controls, surface coatings, magnet wires**

**Date of Enactment or Last Substantive Amendment: [October 7, 2014]2017**

**Authorizing, and Implemented or Interpreted Law: 19-2-104(1) (a)**

is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM<sub>2.5</sub> Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance cost for people who are affected by the rule will be about \$2,680 per ton of VOC emissions removed from the air.

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

**I. WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY:** The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use coatings for flat wood paneling are regulated by Rule R307-349. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule.

**II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 321113, Sawmills; 321912, Cut Stock, Resawing Lumber, and Planing; 321918, Other Millwork (including Flooring); and

337215, Showcase, Partition, Shelving, and Locker Manufacturing. The Division used data from Utah's FirmFind database to determine that there are 42 total businesses and 40 small businesses in the relevant counties that have these codes. Of those businesses, 40 could possibly be impacted by the rule amendment.

**III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 40 small businesses that have been identified by DAQ as businesses that are likely to be fiscally impacted by this rule amendment.

**IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS:** The rule amendment potentially impacts businesses that apply between 20 and approximately 2,571 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average \$5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between \$100 and \$12,855 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the \$100 amount on the spectrum. This is because most of the businesses that are impacted by the amendment are small businesses with between 1 and 10 employees. They do not use large quantities of product. It is important to note that many large businesses that are closer to the 2,571 gallon threshold will likely not be impacted by the rule because they may already be required to comply with it based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the 40 businesses identified by DAQ from the FirmFind database, the aggregate annual fiscal impact of the rule on all businesses in Utah will range between 4,000 and 514,200 dollars. Once again, the total cost will fall toward the lower end of the spectrum (\$4000) because of the size of the businesses and the likelihood that large businesses are already complying with the rule. These figures represent the continuing annual costs to businesses. There are no one-time costs associated with the rule amendment.

**V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS:** The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. EPA has estimated the total cost of this type of regulation to be \$2,680 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:  
 ♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

### R307. Environmental Quality, Air Quality.

#### R307-349. Flat Wood Paneling Coatings.

##### R307-349-1. Purpose.

The purpose of R307-349 is to limit volatile organic compound (VOC) emissions from flat wood paneling coating sources.

##### R307-349-2. Applicability.

R307-349 applies to ~~sources~~ flat wood panel coating operations and related cleaning activities that use a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties ~~that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities~~.

##### R307-349-3. Definitions.

The following additional definitions apply to R307-349:

~~"Coating" means a protective, decorative, or functional material applied in a thin layer to a surface. Such materials may include paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, inks, and temporary protective coatings.~~

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Finishing material" means a coating used in the flat wood panel industry, including basecoats, stains, washcoats, sealers, and topcoats.

"Flat wood paneling" means wood paneling products that are any decorative interior, exterior or tileboard (class I hardboard)

panel to which a protective, decorative, or functional material or layer has been applied.

~~"Sealer" means a finishing material used to seal the pores of a wood substrate before additional coats of finishing material are applied. A washcoat used to optimize aesthetics is not a sealer.~~

"Strippable booth coating" means a coating that is applied to a booth wall to provide a protective film to receive overspray during finishing and that is subsequently peeled and disposed. Strippable booth coatings are intended to reduce or eliminate the need to use organic solvents to clean booth walls.

~~"Tileboard" means a premium interior wall paneling product made of hardboard that meets the specifications for Class I given by the standard ANSI/AHA A135.4-1995.~~

##### R307-349-4. VOC Content Limit.

(1) ~~Each~~ No owner or operator shall ~~not~~ apply coatings with a VOC content ~~in excess of~~ greater than 2.1 pounds of VOC per gallon, excluding water and exempt solvents (compounds not classified as VOC as defined in R307-101-2) ~~. The equivalent emission limit shall be 2.9 pounds VOCs per gallon solids coating, or~~, unless an add-on control device is used as specified in R307-349-6.

(2) ~~Each owner or operator shall use an add-on control device as specified in R307-349-6.~~ No owner or operator shall use a strippable booth coating with a VOC content greater than 3.8 pounds VOC per gallon, excluding water and exempt solvents (compounds that are not defined as VOC), unless an add-on control device is used as specified in R307-349-6.

##### R307-349-5. Work Practice ~~and Recordkeeping~~.

- (1) The owner or operator shall:
- Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;
  - Minimize spills of VOC-containing coatings, thinners, and cleaning materials;
  - Clean up spills immediately;
  - Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
  - Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
  - Minimize usage of solvents during cleaning of storage, mixing, and conveying of equipment.
- (2) No person shall apply any coating unless the coating application method achieves a demonstrated 65% transfer efficiency.

The following applications achieve a minimum of 65% transfer efficiency and shall be operated in accordance with the manufacturers specifications:

- Paint brush;
- Flow coat;
- Roll coat;
- Dip coat;
- Detailing or touch-up guns;
- High-volume, low-pressure (HVLP) spray;
- Hand application methods; or
- Other application method capable of achieving ~~at least~~ 65% or greater transfer efficiency, as certified by the manufacturer.

~~(3) [No person shall use organic solvents for cleaning operations that exceed a VOC content (excluding water and solvents exempt from the definition of volatile organic compounds found in R307-101-2) of 0.21 pounds per gallon and a strippable booth-coating with a VOC content in excess of 3.8 pounds per gallon, excluding water and exempt solvents (compounds that are not defined as VOC).]No owner or operator shall perform solvent cleaning operations using materials with a VOC composite vapor pressure greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-349-6.~~

~~[(4) All sources subject to R307-349 shall maintain records demonstrating compliance with R307-349-4 and R307-349-5.~~

~~(a) Records should include, but not be limited to, inventory and products data sheets of all coatings and solvents subject to R307-349.~~

~~(b) These records shall be available to the Director upon request.]~~

#### **R307-349-6. Add-On Controls Systems Operations.**

~~(1) If an add-on control system is used, [F]the owner or operator shall install and maintain [an incinerator, carbon adsorption, or any other]the add-on emission control system[, provided that the emission control system is operated and maintained] in accordance with the manufacturer recommendations [in order to]and maintain [at least ]90% or greater capture and control efficiency. [Determination of]The overall capture and control efficiency shall be determined using EPA approved methods, as follows.~~

~~(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.~~

~~(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.~~

~~(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.~~

~~[(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-349-6(1).]~~

~~(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-349-6. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.~~

~~(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.]~~

#### **R307-349-7. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-349. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-349.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-349-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: air pollution, emission controls, flat wood paneling, coatings**

**Date of Enactment or Last Substantive Amendment: [December 1, 2014]2017**

**Authorizing, and Implemented or Interpreted Law: 19-2-104(1) (a)**

## Environmental Quality, Air Quality **R307-350** Miscellaneous Metal Parts and Products Coatings

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 41821  
FILED: 06/14/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

**SUMMARY OF THE RULE OR CHANGE:** The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to an application-based threshold of "a combined 20 gallons or more of coating products and associated solvents per year." Other changes included added definitions and a new recordkeeping section.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The state would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

◆ **LOCAL GOVERNMENTS:** There will be no impact on local governments because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The local governments would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

◆ **SMALL BUSINESSES:** There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated \$2,111 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM<sub>2.5</sub> Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance cost for people who are affected by the rule will be about \$2,111 per ton of VOC removed from the air.

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

I. **WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY:** The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use coatings for miscellaneous metal parts and products are regulated by Rule R307-350. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule. II. **AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 333618, Other Engine Equipment Manufacturing; 336390, Other Motor Vehicle Parts Manufacturing; 332216, Saw Blade and Handtool Manufacturing; 332323, Ornamental and Architectural Metal Work Manufacturing, 333111, Farm Machinery and Equipment Manufacturing; 333922, Conveyor and Conveying Equipment Manufacturing; 333112, Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing; 333120, Construction Machinery Manufacturing; 333923, Overhead Traveling Crane, Hoist, and Monorail System; 336510, Railroad Rolling Stock Manufacturing; 333131, Mining Machinery and Equipment Manufacturing; 333132, Oil and Gas Field Machinery and Equipment; 333921, Elevator and Moving Stairway Manufacturing; 332439, Other Metal Container Manufacturing; 332999, All Other Miscellaneous Fabricated Metal Product; 333517, Machine Tool Manufacturing; 333511, Industrial Mold Manufacturing; 333514, Special Die and Tool, Die Set, Jig, and Fixture; 333515, Cutting Tool and Machine Tool Accessory; 333991, Power-Driven Handtool Manufacturing; 333519, Rolling Mill and Other Metalworking Machinery Manufacturing; 333992, Welding and Soldering Equipment Manufacturing; and 335311, Power, Distribution, and Specialty Transformer. The Division used data from Utah's FirmFind database to determine that there are 288 total businesses and 232 small businesses that have these codes. Of those businesses, 232 businesses may be impacted by the rule amendment. III. **AN ESTIMATE OF**

THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 232 small businesses that have been identified by DAQ as businesses that may be fiscally impacted by this rule amendment. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The rule amendment potentially impacts businesses that apply between 20 and approximately 1,543 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average \$5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between \$100 and \$7,715 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the \$100 amount on the spectrum. This is because most of the businesses that are impacted by the amendment are small businesses with between 1 and 10 employees. They do not use large quantities of product. It is important to note that many large businesses that are closer to the 1,543 gallon threshold will likely not be impacted by the rule. This is because they may already be required to comply with the rule based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the 232 businesses identified by DAQ from the FirmFind database, the aggregate annual fiscal impact of the rule on all businesses in Utah will range between \$23,200 and \$1,789,880. Once again, the total cost will fall toward the lower end of the spectrum (\$23,200) because of the size of the businesses and the likelihood that large businesses are already complying with the rule. These figures represent the continuing annual costs to businesses. There are no one-time costs associated with the rule amendment. V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. The EPA has estimated the total cost of this type of regulation to be \$2,111 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W

SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:  
 ♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.**

**R307-350. Miscellaneous Metal Parts and Products Coatings.**

**R307-350-1. Purpose.**

The purpose of R307-350 is to limit volatile organic compound (VOC) emissions from miscellaneous metal parts and products coating operations.

**R307-350-2. Applicability.**

(1) R307-350 applies to [sources] miscellaneous metal parts and products coating operations and related cleaning activities that use a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties~~[-where the potential to emit VOC emissions from all miscellaneous metal product parts surface coating operations, including related cleaning activities, is 2.7 tons per year or more].~~

(2) R307-350 applies to, but is not limited to, the following~~[-industries]~~:

(a) Large farm machinery (harvesting, fertilizing, planting, tractors, combines, etc.);

(b) Small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.)

(c) Small appliance (fans, mixers, blenders, crock pots, vacuum cleaners, etc.);

(d) Commercial machinery (computers, typewriters, calculators, vending machines, etc.);

(e) Industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(f) Fabricated metal products (metal covered doors, frames, trailer frames, etc.); and

(g) Any other industrial category that coats metal parts or products under the standard Industrial Classification Code of major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectric machinery), major group 36 (electrical machinery), major group 37 (transportation equipment) major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries).

**R307-350-3. Exemptions.**

(1) The requirements of R307-350 do not apply to the following:

(a) The surface coating of automobiles regulated under R307-354 and light-duty trucks;

(b) Flat metal sheets and strips in the form of rolls or coils;

(c) Surface coating of aerospace vehicles and components regulated under R307-355;

~~[(d) Automobile refinishing];~~

([e]d) The exterior of marine vessels;

([f]e) Customized top coating of automobiles and trucks if production is less than 35 vehicles per day;

([g]f) Military munitions manufactured by or for the Armed Forces of the United States;

([h]g) Operations that are exclusively covered by Department of Defense military technical data and performed by a Department of Defense contractor and/or on site at installations owned and/or operated by the United States Armed Forces; or

([i]h) Stripping of cured coatings and adhesives[-];

(i) Canned aerosol coating products up to 22 fl. oz. used exclusively for touch-up and repairs.

(2) The requirements of R307-350-5 do not apply to the following:

(a) Stencil and hand lettering coatings;

(b) Safety-indicating coatings;

(c) Solid-film lubricants;

(d) Electric-insulating and thermal-conducting coatings;

(e) Magnetic data storage disk coatings; or

(f) Plastic extruded onto metal parts to form a coating.

(3) The requirements of R307-350-6 do not apply to the following:

(a) Touch-up coatings;

(b) Repair coatings; or

(c) Textured finishes.

**R307-350-4. Definitions.**

The following additional definitions apply to R307-350:

"Aerospace vehicles and components" means any fabricated part, processed part, assembly of parts, or completed unit, with the exception of electronic components, of any aircraft including but not limited to airplanes, helicopters, missiles, rockets and space vehicles.

"Air dried coating" means coatings that are dried by the use of air or [a]-forced warm air at temperatures up to 194 degrees Fahrenheit.

"As applied" means the VOC and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Baked coating" means coatings that are cured at a temperature at or above 194 degrees Fahrenheit.

"Camouflage coating" means coatings that are used, principally by the military, to conceal equipment from detection.

~~["Coating" means a material applied to a substrate for decorative, protective, or functional purposes.~~

~~(1) Such materials include, but are not limited to, paints, sealants, liquid plastic coatings, caulks, inks, adhesives, and maskants.~~

~~(2) Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances, or paper film or plastic film which may be pre-coated with an adhesive by the film manufacturer, are not considered coatings.~~

~~"Coating application System" means all operations and equipment that applies, conveys, and dries a surface coating, including, but not limited to, spray booths, flow coaters, flash off areas, air dryers and ovens.]~~

"Cured coating or adhesive" means a coating or adhesive, which is dry to the touch.

"Department of Defense military technical data" means a specification that specifies design requirements, such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.

"Dip coating" means a method of applying coatings to a substrate by submersion into and removal from a coating bath.

"Electric-insulating varnish" means a non-convertible-type coating applied to electric motors, components of electric motors, or power transformers, to provide electrical, mechanical, and environmental protection or resistance.

"Electric-insulating and thermal-conducting" means a coating that ~~[displays]~~is characterized as having an electrical insulation of at least 1000 volts DC per mil on a flat test plate and an average thermal conductivity of at least 0.27 BTU per hour-foot-degree-Fahrenheit.

"Electrostatic application" means a method of applying coating particles or coating droplets to a grounded substrate by electrically charging them.

"Etching filler" mean a coating that contains less than 23% solids by weight and at least 0.5% acid by weight, and is used instead of applying a pretreatment coating followed by a primer.

"Extreme high-gloss coating" means a coating which, when tested by the American Society for Testing Material (ASTM) Test Method D-523 adopted in 1980, shows a reflectance of 75 or more on a 60 degree meter.

"Extreme performance coatings" means coatings designed for harsh exposure or extreme environmental conditions.

"Flow coat" means a non-atomized technique of applying coatings to a substrate with a fluid nozzle in a fan pattern with no air supplied to the nozzle.

"Heat-resistant coating" means a coating that must withstand a temperature of at least 400 degrees Fahrenheit during normal use.

"High-performance architectural coating" means a coating used to protect architectural subsections and which meets the requirements of the Architectural Aluminum Manufacturer Association's publication number AAMA 605.2-1980.

"High-temperature coating" means a coating that is certified to with[-]stand a temperature of 1,000 degrees Fahrenheit for 24 hours.

"High-volume, low-pressure (HVLP) spray" means a coating application system which is designed to be operated and which is operated between 0.1 and 10 pounds per square inch gauge (psig) air pressure, measured dynamically at the center of the air cap and the air horns.

"Magnetic data storage disk coating" means a coating used on a metal disk which stores data magnetically.

"Metallic coating" means a coating which contains more than 5 grams of metal particles per liter of coating, as applied.

"Military specification coating" means a coating applied to metal parts and products and which has a formulation approved by a United States military agency for use on military equipment.

"Mold-seal coating" means the initial coating applied to a new mold or repaired mold to provide a smooth surface which, when coated with a mold release coating, prevents products from sticking to the mold.

"Multi-component coating" means a coating requiring the addition of a separate reactive resin, commonly known as a catalyst or hardener, before application to form an acceptable dry film.

"One-component coating" means a coating that is ready for application as it comes out of its container to form an acceptable dry film. A thinner, necessary to reduce the viscosity of the coating, is not considered a component.

"Pan backing coating" means a coating applied to the surface of pots, pans, or other cooking implements that are exposed directly to a flame or other heating elements.

"Prefabricated architectural component coatings" means coatings applied to metal parts and products that are to be used as an architectural structure or their appurtenances including, but not limited to, hand railings, cabinets, bathroom and kitchen fixtures, fences, rain-gutters and down-spouts, window screens, lamp-posts, heating and air conditioning equipment, other mechanical equipment, and large fixed stationary tools.

"Pretreatment coating" means a coating which contains no more than 12% solids by weight, and at least 0.5% acid, by weight, is used to provide surface etching, and is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

"Primer" means a coating applied to a surface to provide a firm bond between the substrate and subsequent coats.

"Repair coating" means a coating used to recoat portions of a part or product which has sustained mechanical damage to the coating.

"Safety-indicating coating" means a coating which changes physical characteristics, such as color, to indicate unsafe condition.

"Silicone release coating" means any coating which contains silicone resin and is intended to prevent food from sticking to metal surfaces.

"Solar-absorbent coating" means a coating which has as its prime purpose the absorption of solar radiation.

"Solid-film lubricant" means a very thin coating consisting of a binder system containing as its chief pigment material one or more of molybdenum disulfide, graphite, polytetrafluoroethylene (PTFE) or other solids that act as a dry lubricant between faying surfaces.

"Stencil and hand lettering coating" means an ink or a coating which is rolled or brushed onto a template or stamp in order to add identifying letters or numbers to metal parts and products.

"Textured finish" means a rough surface produced by spraying and splattering large drops of coating onto a previously applied coating. The coatings used to form the appearance of the textured finish are referred to as textured coatings.

"Repair and touch-up coating" means a coating used to cover minor coating imperfections appearing after the main coating operation.

"Vacuum-metalizing coating" means the undercoat applied to the substrate on which the metal is deposited or the overcoat applied directly to ~~the~~ a metal film.

**R307-350-5. VOC Content Limits.**

(1) ~~Each~~ No owner or operator shall ~~not~~ apply coatings with a VOC content ~~in excess of~~ greater than the amounts specified in Table 1 ~~or shall~~, unless the owner or operator uses an add-on control device as specified in R307-350-8.

TABLE 1

METAL PARTS AND PRODUCTS VOC CONTENT LIMITS  
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

C[OATING]oating C[ATEGORY]ategory	VOC C[ONTENT]ontent		L[IMITS]imits (lb/gal)
	Air Dried	Baked	
General One Component	2.8	2.3	
General Multi Component	2.8	2.3	
Camouflage	3.5	3.5	
Electric-Insulating varnish	3.5	3.5	
Etching Filler	3.5	3.5	
Extreme High-Gloss	3.5	3.0	
Extreme Performance	3.5	3.0	
Heat-Resistant	3.5	3.0	
High Performance architectural	6.2	6.2	
High Temperature	3.5	3.5	
Metallic	3.5	3.5	
Military Specification	2.8	2.3	
Mold-Seal	3.5	3.5	
Pan Backing	3.5	3.5	
Prefabricated Architectural Multi-Component	3.5	2.3	
Prefabricated Architectural One-Component	3.5	2.3	
Pretreatment Coatings	3.5	3.5	
Repair and Touch Up	3.5	3.0	
Silicone Release	3.5	3.5	
Solar-Absorbent	3.5	3.0	
Vacuum-Metalizing	3.5	3.5	
Drum Coating, New, Exterior	2.8	2.8	
Drum Coating, New, Interior	3.5	3.5	



Drum Coating, Reconditioned, Exterior	3.5	3.5
Drum Coating, Reconditioned, Interior	4.2	4.2

(2) If more than one content limit indicated in this section applies to a specific coating, then the most stringent content limit shall apply.

**R307-350-6. Application Methods.**

No owner or operator ~~[of a facility]~~ shall apply VOC containing coatings to metal parts and products unless the coating is applied with equipment operated according to the equipment manufacturer specifications, and by the use of one of the following methods:

- (1) Electrostatic application;
- (2) Flow coat;
- (3) Dip/electrodeposition coat;
- (4) Roll coat;

~~(5) Hand Application Methods:~~

- ~~(5) High-volume, low-pressure (HVLP) spray; or~~
- ~~(6) Hand Application Methods;~~
- ~~(7) Airless or air-assisted airless spray may also be used for metal coatings with a viscosity of 15,000 centipoise or greater, as supplied; or]~~

~~(8) Another application method capable of achieving 65% or greater transfer efficiency equivalent or better to HVLP spray, as certified by the manufacturer.~~

**R307-350-7. Work Practices ~~and Recordkeeping~~.**

(1) Control techniques and work practices shall be implemented at all times to reduce VOC emissions. Control techniques and work practices shall include ~~but are not limited to~~:

- (a) Storing all VOC-containing coatings, thinners, and coating-related waste materials in closed containers;
- (b) Ensuring that mixing and storage containers used for VOC-containing coatings, thinners, and coating-related waste material are kept closed at all times except when depositing or removing these materials;
- (c) Minimizing spills of VOC-containing coatings, thinners, and coating-related waste materials; and
- (d) Conveying VOC-containing coatings, thinners, and coating-related waste materials from one location to another in closed container or pipes; and
- (e) Minimizing VOC emission from cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

(2) ~~[All persons shall perform solvent cleaning operations with cleaning material having VOC content (excluding water and solvents exempt from the definition of volatile organic compounds found in R307-101-2) of 0.21 pounds per gallon or less.] Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-350-8.~~

~~[(3) All sources subject to R307-350 shall maintain records demonstrating compliance with R307-350-5, R307-350-6, and R307-350-7(2).]~~

~~(a) Records shall include, but not be limited to, inventory and product data sheets of all coatings and solvents subject to R307-350.~~

~~(b) These records shall be available to the director upon request.]~~

**R307-350-8. Add-On Controls Systems Operations.**

(1) ~~If an add-on control system is used,~~ ~~[F]the owner or operator shall install and maintain [an incinerator, carbon adsorption, or any other]the add-on emission control system~~ ~~provided that the emission control system is operated and maintained] in accordance with the manufacturer recommendations [in order to]and maintain [at least]90% or greater capture and control efficiency. [Determination of]The overall capture and control efficiency shall be determined using EPA approved methods, as follows.~~

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

~~(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-350-8(1).~~

~~(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-350-8. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.~~

~~(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.]~~

**R307-350-9. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-350. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-350.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-350-8.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: air pollution, emission controls, coatings, miscellaneous metal parts**

**Date of Enactment or Last Substantive Amendment: [December 1, 2014]2017**

**Authorizing, and Implemented or Interpreted Law: 19-2-104(1) (a)**

## Environmental Quality, Air Quality R307-351 Graphic Arts

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41825

FILED: 06/14/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

**SUMMARY OF THE RULE OR CHANGE:** The applicability threshold is being changed from a "potential to emit" to an application based threshold. This amendment reduces the exemption for solvent cleaners that do not meet the VOC vapor pressure or density requirements from 110 gallons to 55 gallons/yr. The definition section has also been amended to clarify the meaning of several terms used in the rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will be no impact on the state budget because the state is not a source of graphic art-related VOC emissions.

◆ **LOCAL GOVERNMENTS:** There will be no impact on local government because local governments are not a source of graphic art-related VOC emissions.

◆ **SMALL BUSINESSES:** There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated \$4,000 to \$5,000 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance cost for people who are affected by the rule will be about \$4,000 to \$5,000 per ton of VOC removed from the air.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**  
I. **WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY:** The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the 25 tons of VOC emissions on a per press basis to the "use of a combined 450 gallons or more" of product. Some larger businesses that use presses that use enough product to emit 25 tons of VOC annually are not impacted by this rule amendment.

Therefore, the businesses most likely impacted by this amendment are smaller businesses that did not previously meet the applicability threshold of the rule. II. AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Code: 541430, Graphic Design Services. The Division used data from Utah's FirmFind database to determine that there are 258 total businesses and 258 small businesses that have this code. DAQ estimates that 100 of the 258 businesses may be impacted by the rule amendment. III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 100 small businesses that have been identified by DAQ as businesses that may be fiscally impacted by this rule amendment. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: After speaking with industry experts, DAQ has determined that the source of the cost is an average \$5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend at least \$2,250 annually to comply with the rule. The cost will increase at a rate of \$5 for each additional gallon used. Most of the businesses that are impacted by the amendment are small businesses with between 1 and 10 employees. They do not use large quantities of product and their costs will be close to the \$2,250 estimate. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the 100 businesses identified by DAQ, the aggregate annual fiscal impact of the rule on all businesses in Utah will be at least \$225,000. This figure represents the continuing annual costs to businesses. There are no one-time costs associated with the rule amendment. V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. The total cost of this type of regulation has been estimated to be \$4,000 - \$5,000 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

### **R307. Environmental Quality, Air Quality.**

#### **R307-351. Graphic Arts.**

##### **[R307-351-1. Purpose:**

~~\_\_\_\_\_The purpose of this rule is to limit volatile organic compound (VOC) emissions from graphic arts printing operations.~~

##### **R307-351-2. Applicability.**

~~\_\_\_\_\_R307-351 applies to graphic arts printing operations in Box Elder, Cache, Davis, Salt Lake, Utah and Weber counties as specified below. For purposes of determining whether the emissions applicability threshold or an equivalent threshold is met, the owner or operator shall consider source-wide emissions from all printing operations including related cleaning activities prior to controls.~~

~~\_\_\_\_\_ (1) R307-351-4 applies to all packaging and publication rotogravure, packaging and publication flexographic, and specialty printing operations employing VOC-containing inks, including dilution and cleaning materials, that have potential to emit on a per press basis equal to or greater than 25 tons per year of VOC. Flexible packaging printing is exempt from R307-351-4.~~

~~\_\_\_\_\_ (2) R307-351-5 applies to all flexible packaging printing operations with potential to emit on a per press basis, from the dryer, prior to controls, equal to or greater than 25 tons per year of VOC from inks, coatings and adhesives combined.~~

~~\_\_\_\_\_ (3) R307-351-6(1) applies to individual heatset web offset lithographic printing presses and individual heatset web letterpress printing presses with potential to emit from the dryer, on a per press basis, prior to controls, equal to or greater than 25 tons per year of VOC. Heatset presses used for book printing and heatset presses with maximum web width of 22 inches or less are exempt from R307-351-6(1).~~

(4) R307-351-6(4) applies to offset lithographic printing operations that emit at least 2.7 tons per year actual emissions of VOC, or an equivalent level, before consideration of controls. Any press with total fountain solution reservoir of less than one gallon and sheet-fed presses with maximum sheet size of 11 inches by 17 inches or smaller are exempt from R307-351-6(4).

(5) R307-351-6(5) applies to offset lithographic printing and letterpress printing operations that emit at least 2.7 tons per year actual emissions of VOC, or an equivalent level, before consideration of controls. Cleaners used on electronic components of a press, pre-press cleaning operations (e.g., platemaking), post-press cleaning operations (e.g., binding), cleaning supplies (e.g., detergents) used to clean the floor (other than dried ink) in the area around a press, or cleaning performed in parts washers or cold cleaners are exempt from R307-351-6(5).

(6) R307-351-7 applies to all graphic arts printing operations that emit at least 2.7 tons per year actual emissions of VOC, or an equivalent level, before consideration of controls.

### **R307-351-3. Definitions.**

The following additional definitions apply to R307-351:

"Alcohol" means any of the following compounds, when used as a fountain solution additive for offset lithographic printing: ethanol, n-propanol, and isopropanol.

"Alcohol Substitute" means a nonalcohol additive that contains VOCs and is used in the fountain solution.

"Automatic Blanket Wash System" means equipment used to clean lithographic blankets which can include, but is not limited to those utilizing a cloth and expandable bladder, brush, spray, or impregnated cloth system.

"Cleaning Solution" means a liquid solvent or solution used to clean the operating surfaces of a printing press and its parts. Cleaning solutions include, but are not limited to blanket wash, roller wash, metering roller cleaner, plate cleaner, impression cylinder washes, rubber rejuvenators, and other cleaners used for cleaning a press, press parts, or to remove dried ink or coating from areas around the press.

"Blanket" means a synthetic rubber material that is wrapped around a cylinder used in offset lithography to transfer or "offset" an image from an image carrier.

"Capture efficiency" means the fraction of all VOC emissions generated by a process that are delivered to a control device, expressed as a percentage.

"Capture system" means the equipment (including hoods, ducts, fans, etc.) used to collect, capture, or transport a pollutant to a control device.

"Coating" means material applied onto or impregnated into a substrate. Such materials include, but are not limited to, solvent-borne and waterborne coatings.

"Composite partial vapor pressure" means the sum of the partial pressure of the compounds defined as VOCs.

"Control device" means a device such as a carbon adsorber or oxidizer which reduces the VOC in an exhaust gas by recovery or by destruction.

"Control device efficiency" means the ratio of VOC emissions recovered or destroyed by a control device to the total VOC emissions that are introduced into the control device, expressed as a percentage.

"Flexible packaging" means any package or part of a package the shape of which can be readily changed. Flexible packaging includes, but is not limited to, bags, pouches, liners and wraps utilizing paper, plastic, film, aluminum foil, metalized or coated paper or film, or any combination of these materials.

"Flexographic press" means an unwind or feed section, which may include more than one unwind or feed station (such as on a laminator), a series of individual work stations, one or more of which is a flexographic print station, any dryers (including interstage dryers and overhead tunnel dryers) associated with the work stations, and a rewind, stack, or collection section. The work stations may be oriented vertically, horizontally, or around the circumference of a single large impression cylinder. Inboard and outboard work stations, including those employing any other technology, such as rotogravure, are included if they are capable of printing or coating on the same substrate. A publication rotogravure press with one or more flexographic imprinters is not a flexographic press.

"Flexographic printing" means the application of words, designs, and pictures to substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

"Fountain solution" means a mixture of water and other volatile and non-volatile chemicals and additives that wets the nonimage area of a lithographic printing plate so that the ink is maintained within the image areas.

"Heatset" means an offset lithographic printing or letterpress printing operation in which the ink solvents are vaporized by passing the printed surface through a dryer.

"Letterpress printing" means a method where the image area is raised relative to the non-image area and the ink is transferred to the substrate directly from the image surface.

"Narrow-web flexographic press" means a flexographic press that is not capable of printing substrates greater than 18 inches in width and that does not also meet the definition of rotogravure press (i.e., it has no rotogravure print stations).

"Non-heatset", also called coldset, means an offset lithographic printing or letterpress printing operation in which the ink dries by oxidation and/or absorption into the substrate without use of heat from dryers.

"Offset lithographic printing" means a planographic method in which the image and non-image areas are on the same plane and the ink is offset from a plate to a rubber blanket, and then from the blanket to the substrate.

"Overall control efficiency" means the total efficiency of a control system, determined either by:

(1) The product of the capture efficiency and the control device efficiency; or

(2) A liquid-liquid material balance.

"Packaging printing" means rotogravure or flexographic printing, not otherwise defined as publication printing, upon paper, paper board, metal foil, plastic film, and other substrates, which are, in subsequent operations, formed into packaging products and labels. This includes, but is not limited to, folding cartons, flexible packaging, labels and wrappers.

"Printing operation" means the application of words, designs, or pictures on a substrate. All units in a machine which

have both coating and printing units shall be considered as performing a printing operation.

"Printing Press" means a printing production assembly composed of one or more units used to produce a printed substrate, including but not limited to, any associated coating, spray powder application, heatset web dryer, ultraviolet or electron beam curing units, or infrared heating units.

"Publication rotogravure printing" means rotogravure printing upon paper that is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements, and other types of printed materials.

"Publication rotogravure press" means a rotogravure press used for publication rotogravure printing. A publication rotogravure press may include one or more flexographic imprinters. A publication rotogravure press with one or more flexographic imprinters is not a flexographic press.

"Roll coating" means the application of a coating material to a substrate by means of hard rubber or steel rolls.

"Roll printing" means the application of words, designs and pictures to a substrate usually by means of a series of hard rubber or steel rolls each with only partial coverage.

"Rotogravure coating" means the application of a uniform layer of material across the entire width of the web to substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.

"Rotogravure press" means an unwind or feed section, which may include more than one unwind or feed station (such as on a laminator), a series of individual work stations, one or more of which is a rotogravure print station, any dryers associated with the work stations, and a rewind, stack, or collection section. Inboard and outboard work stations, including those employing any other technology, such as flexography, are included if they are capable of printing or coating on the same substrate.

"Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique that involves a recessed image area in the form of cells.

"Specialty printing operations" means all gravure and flexographic operations that print a design or image, excluding publication and packaging printing. Specialty printing operations include, among other things, printing on paper cups and plates, patterned gift wrap, wallpaper, and floor coverings.

"Web" means a continuous roll of substrate.

"Wide-web flexographic press" means a flexographic press capable of printing substrates greater than 18 inches in width.

#### **R307-351-4. Standards for Rotogravure, Flexographic, and Specialty Printing Operations.**

(1) No owner or operator of a packaging and publication rotogravure; packaging and publication flexographic, and specialty printing operations employing VOC-containing ink may operate, cause, or allow or permit the operation of a facility unless:

(a) The volatile fraction of ink, as it is applied to the substrate, contains 25.0% by volume or less of VOC and 75.0% by volume or more of water; or

(b) The ink as it is applied to the substrate, less water, contains 60.0% by volume or more nonvolatile material; or

(c) The owner or operator installs and operates either a carbon adsorption system as described in R307-351-4(1)(c)(i) or an incineration system as described in R307-351-4(1)(c)(ii).

(i) A carbon adsorption system shall reduce the volatile organic emissions from the capture system by a minimum of 90.0% by weight.

(ii) An incineration system shall oxidize, from the capture system, a minimum of 90.0% of the non-methane VOCs measured as total combustible carbon to carbon dioxide and water.

(iii) A capture system as described in R307-351-4(1)(c)(iv) shall be used in conjunction with a carbon adsorption system and an incineration system.

(iv) The design and operation of a capture system must be consistent with good engineering practices and shall be required to provide for an overall reduction in VOC emissions of at least:

(A) 75.0% where a publication rotogravure process is employed;

(B) 65.0% where a packaging rotogravure process is employed; or

(C) 60.0% where a flexographic printing process is employed.

(2) The owner or operator of an emission control device shall provide documentation that the system will attain the requirements of R307-351-4.

(3) The Emission control system shall be operated and maintained in accordance with the manufacturer recommendations.

(4) The owner or operator of an emission control device shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

#### **R307-351-5. Standards for Flexible Packaging Printing Operations.**

(1) Presses used for flexible packaging printing shall comply with an 80% overall emission control efficiency.

(a) The owner or operator of an emission control device shall provide documentation that the emissions control system will attain the requirements of R307-351-5.

(b) The Emission control system shall be operated and maintained in accordance with the manufacturer recommendations.

(2) The owner or operator of an emission control device shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

(3) As an alternative to the overall control efficiency, the following two equivalent VOC content limits may be met by use of low VOC content materials or combinations of materials and controls as follows:

(a) 0.8 kg VOC/kg solids applied; or

(b) 0.16 kg VOC/kg materials applied.

(c) The VOC content limits can be met by averaging the VOC content of materials used on a single press, i.e., within a line. The use of averaging to meet the VOC content limits is not allowed for cross-line, i.e., across multiple lines.

**R307-351-6. Standards for Offset Lithographic Printing and Letterpress Printing Operations:**

(1) Requirements for heatset web offset lithographic and heatset letterpress inks and dryers:

(a) Individual heatset web offset lithographic printing presses and individual heatset web letterpress printing presses shall comply with 90% control efficiency for the control device on heatset dryers.

(b) The owner or operator of an emission control device shall provide documentation that the emissions control system will attain the requirements of R307-351-6.

(c) The Emission control system shall be operated and maintained in accordance with the manufacturer recommendations.

(2) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.

(3) As an alternative to the control efficiency, the control device outlet concentration may be reduced to 20 ppmv as hexane on a dry basis to accommodate situations where the inlet VOC concentration is low or there is no identifiable measurable inlet.

(4) Requirements for fountain solution:

(a) For heatset web offset lithographic printing, the level of control for VOC emissions from on-press (as-applied) fountain solution shall meet one of the following:

(i) 1.6% alcohol or less (by weight) in the fountain;

(ii) 3.0% alcohol or less (by weight) in the fountain solution if the fountain solution is refrigerated to below 60 degrees Fahrenheit; or

(iii) 5.0% alcohol substitute or less (by weight) and no alcohol in the fountain solution.

(b) For sheet-fed offset lithographic printing, the level of control for VOC emissions from on-press (as-applied) fountain solution shall meet one of the following:

(i) 5.0% alcohol or less (by weight) in the fountain;

(ii) 8.5% alcohol or less (by weight) in the fountain solution provided the fountain solution is refrigerated to below 60 degrees Fahrenheit; or

(iii) 5.0% alcohol substitute or less (by weight) and no alcohol in the fountain solution.

(c) For non-heatset web offset lithographic printing, the level of control for VOC emissions shall be 5.0% alcohol substitute or less (by weight) on-press (as-applied) and no alcohol in the fountain solution.

(5) Requirements for cleaning materials:

(a) For blanket washing, roller washing, plate cleaners, metering roller cleaners, impression cylinder cleaners, rubber rejuvenators, and other cleaners used for cleaning a press, press parts, or to remove dried ink from areas around a press, only cleaning materials with a VOC composite vapor pressure of less than ten mm Hg at 68 degrees Fahrenheit or cleaning materials containing less than 70 weight percent VOC shall be used.

(b) Up to 110 gallons per year of cleaning materials which meet neither the VOC composite vapor pressure requirement nor the VOC content requirement may be used.

**R307-351-7. Work Practices and Recordkeeping:**

(1) Control techniques and work practices are to be implemented at all times to reduce VOC emissions from fugitive type sources. Control techniques and work practices include:

(a) Tight fitting covers for open tanks; and

(b) Keeping cleaning materials, used shop towels, and solvent wiping cloths in closed containers.

(2) Record-keeping and reporting:

(a) The owner or operator of any source subject to R307-351 shall maintain:

(i) Records of the annual usage of all materials that may be a source of VOC emissions including, but not limited to, inks, coatings, adhesives, fountain solution, and cleaning materials.

(ii) All sources subject to R307-351 shall maintain records demonstrating compliance with all provisions of R307-351. These records shall be available to the director upon request.

**R307-351-8. Compliance Schedule:**

(1) All sources within Salt Lake and Davis counties shall be in compliance with this rule by the effective date of this rule.

(2) All sources within Box Elder, Cache, Utah and Weber counties shall be in compliance with this rule by January 1, 2014.]

**R307-351-1. Purpose.**

The purpose of R307-351 is to limit volatile organic compound (VOC) emissions from graphic arts printing operations.

**R307-351-2. Applicability.**

R307-351 applies to graphic arts printing operations that use a combined 450 gallons or more of all VOC-containing materials per year and are located in Box Elder, Cache, Davis, Salt Lake, Utah, Tooele, or Weber counties.

**R307-351-3. Exemptions.**

(1) The provisions of R307-351 shall not apply to graphic arts materials that have a VOC content of less than 25 g/L, minus water and exempt VOCs, as applied.

(2) A graphic arts printing operation may use up to 55 gallons of cleaning materials per year that do not comply with the VOC composite vapor pressure requirement or the VOC content requirement in R307-351-5(4).

**R307-351-4. Definitions.**

The following additional definitions apply to R307-351:

"Alcohol" means any of the following compounds, when used as a fountain solution additive for offset lithographic printing: ethanol, n-propanol, and isopropanol.

"Alcohol Substitute" means a non-alcohol additive that contains VOCs and is used in the fountain solution.

"Cleaning materials and solutions" means a liquid solvent or solution used to clean the operating surfaces of a printing press and its parts. Cleaning materials and solutions include, but are not limited to blanket wash, roller wash, metering roller cleaner, plate cleaner, impression cylinder washes, rubber rejuvenators, and other cleaners used for cleaning a press, press parts, or to remove dried ink or coating from areas around the press.

"Blanket" means a synthetic rubber material that is wrapped around a cylinder used in offset lithography to transfer or "offset" an image from an image carrier.

"Control system" means the combination of capture and control devices used to reduce emissions to the atmosphere.

"Flexographic printing" means the application of words, designs, and pictures to substrate by means of a roll printing technique in which the pattern to be applied is raised above the printing roll and the image carrier is made of rubber or other elastomeric materials.

"Fountain solution" means a mixture of water and other volatile and non-volatile chemicals and additives that wets the non-image area of a lithographic printing plate so that the ink is maintained within the image areas.

"Graphic arts materials" means any inks, coatings, or adhesives, including added thinners or retarders, used in printing or related coating or laminating processes.

"Graphic arts printing" means the application of words and images using the offset lithographic, letterpress, rotogravure, or flexographic printing process.

"Heatset" means an offset lithographic printing or letterpress printing operation in which the ink solvents are vaporized by passing the printed surface through a dryer.

"Letterpress printing" means a method where the image area is raised relative to the non-image area and the ink is transferred to the substrate directly from the image surface.

"Non-heatset", also called coldset, means an offset lithographic printing or letterpress printing operation in which the ink dries by oxidation and/or absorption into the substrate without use of heat from dryers. For the purposes of this rule, use of an infrared heater or printing conducted using ultraviolet-cured or electron beam-cured inks is considered non-heatset.

"Offset lithographic printing" means a plane-o-graphic method in which the image and non-image areas are on the same plane and the ink is offset from a plate to a rubber blanket, and then from the blanket to the substrate.

"Printing operation" means the application of words, designs, or pictures on a substrate. All units in a machine which have both coating and printing units shall be considered as performing a printing operation.

"Rotogravure printing" means the application of words, designs, and pictures to a substrate by means of a roll printing technique that involves a recessed image area in the form of cells.

"Web" means a continuous roll of substrate.

**R307-351-5. VOC Content Limits.**

(1) No owner or operator shall apply graphic arts materials with a VOC content greater than the amounts specified in Table 1 or Table 2, unless the owner or operator uses an add-on control device as specified in R307-351-6.

TABLE 1

VOC Limits  
(values in gram of VOC per liter, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2))

Graphic Art Material	VOC Limit (g/L)
Adhesive	150
Coating	300
Flexographic Fluorescent Ink	300
Flexographic Ink-Non-Porous Substrate	300
Flexographic Ink-Porous Substrate	225
Gravure Ink	300
Letterpress Ink	300
Offset Lithographic Ink	300
Heatset Web Offset Lithographic ink	300
Heatset Web Offset Lithographic Ink:	
Used on Book Presses and Presses	
Less Than 22 Inches in Diameter	400
Used on Presses With Potential to Emit Less Than 10 Tons/Year	400

(2) No owner or operator shall apply fountain solution, including additives with a VOC content greater than the amounts specified in Table 2, unless the owner or operator uses an add-on control device as specified in R307-351-6.

TABLE 2

VOC Limits  
(values in gram of VOC per liter, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2))

Graphic Art Material	VOC Limit (g/L)
Heatset Web-Fed	
Alcohol without Refrigerated Chiller	16
Alcohol with Refrigerated Chiller	30
Alcohol Substitute	50
Sheet-Fed	
Alcohol without Refrigerated Chiller	50
Alcohol with Refrigerated Chiller	85
Alcohol Substitute	50
Non-Heatset Web-Fed	
All Alcohol Substitutes	50

(3) Alcohol containing fountain solutions shall not be used in non-heatset web-fed operations.

(4) Cleaning materials with a VOC composite vapor pressure of less than 10 mm Hg at 68 degrees Fahrenheit or cleaning materials containing less than 50 percent VOC by weight shall be used.

**R307-351-6. Add-on Controls Systems Operations.**

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations.

(a) Control devices for individual heatset web offset lithographic printing presses and individual heatset web letterpress printing press dryers that were installed prior to January 1, 2017, must maintain a 90% or greater control efficiency. Similar control devices installed after January 1, 2017, must maintain a 95% or greater control efficiency.

(b) Control devices for individual flexographic printing presses and individual rotogravure printing presses shall comply with a 90% or greater overall control efficiency.

(c) As an alternative to the control efficiency, the control device outlet concentration may be reduced to 20 ppmv as hexane on a dry basis to accommodate situations where the inlet VOC concentration is low or there is no identifiable measurable inlet. The control outlet concentration shall be determined using EPA Method 25A.

(d) The capture efficiency of a VOC emission control system's VOC collection device for flexographic and rotogravure presses shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(e) The capture efficiency of a VOC emission control system's VOC collection device for a heatset web offset press shall be determined by demonstrating that the airflow in the dryer is negative to the surrounding pressroom during the initial test using an air flow direction indicator, such as a smoke stick or aluminum ribbons, or differential pressure gauge.

(f) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(g) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

#### **R307-351-7. Work Practices.**

(1) Control techniques and work practices shall be implemented at all times to reduce VOC emissions. Control techniques and work practices include:

(a) Keeping cleaning materials, used shop towels, and solvent wiping cloths in closed containers; and

(b) Minimizing spills of VOC-containing cleaning materials.

#### **R307-351-8. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-351. Records must include, but are not limited to, inventory and product data sheets of all graphic arts materials and cleaning solutions subject to R307-351.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-351-6. Key system parameters include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule. Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate that operations provide continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: air pollution, graphic arts, VOC, printing operations**

**Date of Enactment or Last Substantive Amendment: [February 1, 2013]2017**

**Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(a)**

## Environmental Quality, Air Quality **R307-352** Metal Container, Closure, and Coil Coatings

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41822

FILED: 06/14/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

**SUMMARY OF THE RULE OR CHANGE:** The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to an application-based threshold of "a combined 20 gallons or more of coating products and associated solvents per year." Other changes include added definitions and a new recordkeeping section.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The state would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

◆ **LOCAL GOVERNMENTS:** There will be no impact on local governments because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The local governments would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

◆ **SMALL BUSINESSES:** There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated \$3,369 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less



stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM<sub>2.5</sub> Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance cost for people who are affected by the rule will be about \$3,369 per ton of VOC removed from the air.

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

I. **WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY:** The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use coatings for metal containers, closures, and coils are regulated by Rule R307-352. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule.

II. **AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 332996,

Fabricated Pipe and Pipe Fitting Manufacturing and 332439, Other Metal Container Manufacturing. The Division used data from Utah's FirmFind database to determine that there are 18 total businesses and 16 small businesses that have these codes. Of those businesses, 15 may be impacted by the rule amendment.

III. **AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 15 small businesses that have been identified by DAQ as businesses that may be fiscally impacted by this rule amendment.

IV. **A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS:** The rule amendment potentially impacts businesses that apply between 20 and approximately 1,543 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average \$5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between \$100 and \$7,715 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the 100 dollar amount on the spectrum. This is because most of the businesses that are impacted by the amendment are small businesses with between 1 and 10 employees. They do not use large quantities of product. It is important to note that many large businesses that are closer to the 1,543 gallon threshold will likely not be impacted by the rule. This is because they may already be required to comply with the rule based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the 15 businesses identified by DAQ from the FirmFind database, the aggregate annual fiscal impact of the rule on all businesses in Utah will range between \$1,500 and \$115,725. Once again, the total cost will fall toward the lower end of the spectrum (\$1,500) because of the size of the businesses and the likelihood that large businesses are already complying with the rule. These figures represent the continuing annual costs to businesses. There are no one-time costs associated with the rule amendment.

V. **DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS:** The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. EPA has estimated the total cost of this type of regulation to be \$3,369 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:  
 ♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.**  
**R307-352. Metal Container, Closure, and Coil Coatings.**  
**R307-352-1. Purpose.**

The purpose of this rule is to reduce volatile organic compound (VOC) emissions from the coating of metal containers, closures and coils~~[cans, pails, and lids]~~ in the manufacturing or reconditioning process.

**R307-352-2. Applicability.**

R307-352 applies to ~~sources~~metal container, closure and coil coating operations and related cleaning activities that use a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties~~[that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities].~~

**R307-352-3. Definitions.**

The following additional definitions apply to R307-352:

~~["Coating" means a protective, functional or decorative film applied in a thin layer to a surface.]~~"As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"End sealing compound" means a compound which is coated onto can ends and which functions as a gasket when the end is assembled onto the can.

"Exterior body spray" means a coating sprayed on the exterior of the container body to provide a decorative or protective finish.

"Interior body spray" means a coating sprayed on the interior of the ~~can~~container body to provide a protective film between the product and the can.

"Metal container or closure coating" means any coating applied to either the interior or exterior of formed metal cans, pails, lids or crowns or flat metal sheets which are intended to be formed into cans, pails, lids or crowns.

"Overvarnish" means a coating applied directly over a design coating to reduce the coefficient of friction, to provide gloss, and to protect the finish against abrasion and corrosion.

"Reconditioned~~[pails or lids]~~" means any metal container which is reused, recycled or remanufactured.

"Three-piece can ~~[side seam]~~coating" means a coating sprayed on the exterior and/or interior of a welded, cemented or soldered seam to protect the exposed metal.

"Two-piece can exterior~~[end]~~ coating" means a coating applied to the exterior bottom end of a can to reduce the coefficient of friction and to provide protection to the metal.

**R307-352-4. VOC Content Limits.**

~~Each~~No owner or operator shall ~~[not]~~ apply coatings with a VOC content ~~[in excess of]~~greater than the amounts specified in Table 1 ~~[or shall]~~, unless the owner or operator uses an add-on control device as specified in R307-352-6.

TABLE 1

METAL CONTAINER AND CLOSURE COIL COATING LIMITATIONS  
 (values in pounds VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

<del>C[OATING]oating</del> <del>C[ATEGORY]ateqory</del>	VOC <del>C[ONTENT]ontent</del>	<del>L[IMITS]imits</del> (lb/gal)
CANS		
Sheet basecoat (interior and exterior) and overvarnish		1.9
Two-piece can exterior basecoat, overvarnish, and end coating		2.1
Interior body spray		
Two-piece cans		3.5
Three-piece cans		3.0
Three-piece can side seam spray		5.5
End sealing compound: Food cans, non-food cans, and beverage cans		0.1
Exterior body spray		3.5
PAILS AND LIDS		
Body spray		
Reconditioned interior		4.2
Reconditioned exterior		3.5
New interior		3.5
New exterior		2.8

End sealing compound	0.5
Inks, all applications	2.5
Coil	
Coil coating	1.7

**R307-352-5. Work Practices~~[-and Recordkeeping].~~**

- (1) The owner or operator shall:
  - (a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;
  - (b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;
  - (c) Clean up spills immediately;
  - (d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
  - (e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
  - (f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.
- (2) No person shall apply any coating unless the coating application method ~~[achieves a demonstrated]~~has a transfer efficiency of at least 65%~~[transfer efficiency].~~

The following applications achieve a minimum of 65% transfer efficiency and shall be operated in accordance with the manufacturers specifications:

- (a) Electrostatic application;
- (b) Flow coat;
- (c) Roll coat;
- (d) Dip coat;
- (e) High-volume, low-pressure (HVLP) spray;
- (f) Hand application methods;
- (g) Printing techniques; or
- (h) Other application method capable of achieving at least 65% transfer efficiency, as certified by the manufacturer.

(3) ~~[All persons shall perform solvent cleaning operations with cleaning material having VOC content (excluding water and solvents exempt from the definition of volatile organic compounds found in R307-101-2) of 0.21 lb/gallon or less]Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-352-6.~~

~~[(4) All sources subject to R307-352 shall maintain records demonstrating compliance with R307-352-4 and R307-352-5.~~

~~(a) Records shall include, but not be limited to, inventory and product data sheets of all coatings and solvents subject to R307-352.~~

~~(b) These records shall be made available to the director upon request.]~~

**R307-352-6. Add-On Controls Systems Operations.**

(1) ~~If an add-on control system is used, [F]the owner or operator shall install and maintain [an incinerator, carbon adsorption, or any other]the add-on emission control system[,- provided that the emission control system is operated and~~

~~maintained]~~ in accordance with the manufacturer recommendations ~~[in order to]and maintain [at least-]90% or greater capture and control efficiency. [Determination of]The overall capture and control efficiency shall be determined using EPA approved methods, as follows.~~

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

~~[(2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-352-6(1).~~

~~(3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-352-6. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.~~

~~(4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.]~~

**R307-352-7. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-352. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-352.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-352-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY:** air pollution, emission controls, metal containers, coil coatings

**Date of Enactment or Last Substantive Amendment:**  
[~~December 1, 2014~~2017]

**Authorizing, and Implemented or Interpreted Law:** 19-2-104(1)  
(a)

**Environmental Quality, Air Quality**  
**R307-353**  
**Plastic Parts Coatings**

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 41823  
FILED: 06/14/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

**SUMMARY OF THE RULE OR CHANGE:** The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to an application-based threshold of "a combined 20 gallons or more of coating products and associated solvents per year." Other changes included added definitions and a new record keeping section.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The state would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

◆ **LOCAL GOVERNMENTS:** There will be no impact on local governments because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. The local governments would likely have already fallen under the prior rule applicability threshold. Therefore, there are no added costs.

◆ **SMALL BUSINESSES:** There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated \$2,111 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance

with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance cost for people who are affected by the rule will be about \$2,111 per ton of VOC removed from the air.

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

I. **WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY:** The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use coatings for plastic parts are regulated by Rule R307-353. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule. II. **AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Codes: 326160,

Plastics Bottle Manufacturing; 326191, Plastics Plumbing Fixture Manufacturing; 325211, Plastics Material and Resin Manufacturing; 326111, Plastics Bag and Pouch Manufacturing; 326112, Plastics Packaging Film and Sheet (including Laminated) Manufacturing; 326113, Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing; 326121, Unlaminated Plastics Profile Shape Manufacturing; 326122, Plastics Pipe and Pipe Fitting Manufacturing; and 326130 Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing. DAQ used data from Utah's FirmFind database to determine that there are 57 total businesses and 45 small businesses that have these codes. Of those businesses, 32 may be impacted by the rule amendment. III. AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED: The amendments to this rule will likely only have a fiscal impact on small businesses. Big businesses use more product and are already regulated under the current version of the rule. There are 32 small businesses that have been identified by DAQ as businesses that may be fiscally impacted by this rule amendment. IV. A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS: The rule amendment potentially impacts businesses that apply between 20 and approximately 1,080 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average \$5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between \$100 and \$5,400 annually to comply with the rule. Most of the businesses impacted by the rule will be closer to the \$100 amount on the spectrum. This is because most of the businesses that are impacted by the amendment are small businesses with between 1 and 10 employees. They do not use large quantities of product. It is important to note that many large businesses that are closer to the 1,080 gallon threshold will likely not be impacted by the rule. This is because they may already be required to comply with the rule based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the 32 businesses identified by DAQ from the FirmFind database, the aggregate annual fiscal impact of the rule on all businesses in Utah will range between \$3,200 and \$172,800. Once again, the total cost will fall toward the lower end of the spectrum (\$3,200) because of the size of the businesses and the likelihood that large businesses are already complying with the rule. These figures represent the continuing annual costs to businesses. There are no one-time costs associated with the rule amendment. V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule

amendment will cause a more significant fiscal impact. EPA has estimated the total cost of this type of regulation to be \$2,111 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

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

ENVIRONMENTAL QUALITY  
AIR QUALITY  
FOURTH FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

### **R307. Environmental Quality, Air Quality.**

#### **R307-353. Plastic Parts Coatings.**

##### **R307-353-1. Purpose.**

The purpose of this rule is to limit volatile organic compound (VOC) emissions from the application of coatings to any plastic product.

##### **R307-353-2. Applicability.**

R307-353 applies to plastic parts coating operations and related cleaning activities that use a combined 20 gallons or more of coating products and associated solvents per year and are located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties [that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities].

##### **R307-353-3. Exemptions.**

(1) The provisions of this rule shall not apply to any of the following:

- (a) Stencil coatings;
- (b) Safety-indicating coatings;
- (c) Electric-insulating and thermal-conducting coatings;
- (d) Magnetic data storage disk coatings;
- (e) Plastic extruded onto metal parts to form a coating;

and

(f) Textured finishes.

(2) If a coating line is subject to the requirements for existing automobile, light-duty truck, and other product and material coatings or for existing metallic surface coating lines, the coating line shall be exempt from this rule.

(3) Canned aerosol coating products up to 22 fl. oz. that are used exclusively for touch-up and repairs.

**R307-353-4. Definitions.**

The following additional definitions apply to R307-353:

"Air dried coating" means coatings that are dried by the use of air or a forced warm air at temperatures up to 194 degrees Fahrenheit.

"As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Baked coating" means coatings that are cured at a temperature at or above 194 degrees Fahrenheit.

~~"Coating" means a protective, functional, or decorative film applied in a thin layer to a surface. This term often applies to paints such as lacquers or enamels. It is also used to refer to films applied to paper, plastics, or foil.~~

"Electric-insulating and thermal-conducting" means a coating that displays an electrical insulation of at least 1000 volts DC per mil on a flat test plate and an average thermal conductivity of at least 0.27 BTU per hour-foot-degree-Fahrenheit.

"Magnetic data storage disk coating" means a coating used on a metal disk which stores data magnetically.

"Metallic coating" means a coating which contains more than 5 grams of metal particles per liter of coating as applied.

"Military specification coating" means a coating which has a formulation approved by a United States military agency for use on military equipment.

"Mirror backing" means the coating applied over the silvered surface of a mirror.

"Mold-seal coating" means the initial coating applied to a new mold or a repaired mold to provide a smooth surface which, when coated with a mold release coating, prevents products from sticking to the mold.

"Multi-colored coating" means a coating which exhibits more than one color when applied, and which is packaged in a single container and applied in a single coat.

"Multi-component coating" means a coating requiring the addition of a separate reactive resin, commonly known as a catalyst, before application to form an acceptable dry film.

"One-component coating" means a coating that is ready for application as it comes out of its container to form an acceptable dry film. A thinner necessary to reduce the viscosity is not considered a component.

"Optical coating" means a coating applied to an optical lens.

"Plastic" means a substrate containing one or more resins that may be solid, porous, flexible, or rigid, and includes fiber reinforced plastic composites.

"Primer" means a coating applied to a surface to provide a firm bond between the substrate and subsequent coats.

"Repair coating" means a coating used to recoat portions of a part or product which has sustained mechanical damage to the coating.

"Roller Coated" means a type of coating application equipment that utilizes a series of mechanical rollers to form a thin coating film on the surface of a roller, which is then applied to a substrate by moving the substrate underneath the roller.

"Safety-indicating coating" means a coating which changes physical characteristics, such as color, to indicate unsafe condition.

"Stencil coating" means an ink or a coating which is rolled or brushed onto a template or stamp in order to add identifying letters or numbers to metal parts and products.

"Textured finish" means a rough surface produced by spraying and splattering large drops of coating onto a previously applied coating. The coatings used to form the appearance of the textured finish are referred to as textured coatings.

"Touch-up coating" means a coating used to cover minor coating imperfections appearing after the main coating operation.

"Topcoat" means the last film-building finishing material applied in a finishing system. Non-permanent final finishes are not topcoats.

**R307-353-5. VOC Content Limits.**

(1) For automobile and truck plastic parts coating lines:

(a) ~~Each~~ No owner or operator shall ~~not~~ apply coatings with a VOC content ~~in excess of~~ greater than the amounts specified in Table 1 ~~or shall~~, unless the owner or operator uses an add-on control device as specified in R307-353-8.

(b) For red and black coatings, the ~~emission~~ content limitation shall be determined by multiplying the appropriate limit in Table 1 by 1.15.

(c) When EPA Method 24 is used to determine the VOC content of a high bake coating, the applicable ~~emission~~ content limitation shall be determined by adding 0.5 to the appropriate limit in Table 1.

(d) When EPA Method 24 is used to determine the VOC content of an air-dried coating, the applicable ~~emission~~ content limitation shall be determined by adding 0.1 to the appropriate limit in Table 1.

TABLE 1

AUTOMOBILE AND TRUCK PLASTIC PARTS COATING LINES  
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

<del>C[OATING]</del> <u>oating</u>	VOC <del>C[ONTENT]</del> <u>ontent</u>
<del>C[ATEGORY]</del> <u>ategory</u>	<del>L[IMITS]</del> <u>imits (lb/gal)</u>

High bake coating - exterior and interior parts

Prime	
Flexible coating	4.5
Nonflexible coating	3.5
Topcoat	
Basecoat	4.3

Clearcoat	4.0
Non-basecoat/clearcoat	4.3
Air-dried coating - exterior parts	
Prime	4.8
Topcoat	
Basecoat	5.0
Clearcoat	4.5
Non-basecoat/clearcoat	5.0
Air-dried coating - interior parts	5.0
Touch-up and repair	5.2

Metallic	3.5
Military Specification	2.8 (1 pack) 3.5 (2 pack)
Mold-Seal	6.3
Multi-colored Coatings	5.7
Optical Coatings	6.7
Vacuum-Metalizing	6.7
Mirror Backing	
Curtain Coated	4.2
Roll Coated	3.6

(2) ~~Each~~ No owner or operator of a business machine plastic parts coating line shall ~~not~~ apply coatings with a VOC content ~~in excess of~~ greater than the amounts specified in Table 2 ~~or shall~~, unless the owner or operator uses an add-on control device as specified in R307-353-8.

TABLE 2

BUSINESS MACHINE PLASTIC PARTS COATING LINES  
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

<del>C[OATING]oating</del> C[ATEGORY]ategory	VOC C[ONTENT]ontent Limi[tation]ts (lb/gal)
Prime	2.9
Topcoat	2.9
Texture coat	2.9
Fog coat	2.2
Touch-up and repair	2.9

(3) ~~Each~~ No owner or operator engaged in the other plastic product coating operations listed in Table 3 shall ~~not~~ apply coatings with a VOC content ~~in excess of~~ greater than the amounts specified in Table 3 ~~or shall~~, unless the owner or operator uses an add-on control device as specified in R307-353-8.

TABLE 3

OTHER PLASTIC PRODUCT COATING CATEGORIES  
(values in pounds of VOC per gallon of coating, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

<del>C[OATING]oating</del> C[ATEGORY]ategory	VOC Content Limi[tation]ts (lb/gal)
General One-Component	2.3
General Multi-Component	3.5
Electric Dissipating Coatings And Shock-Free Coatings	3.0
Extreme Performance	3.5 (2-pack coatings)

(4) If a part consists of both plastic and metal surfaces ~~[and is exempted from the requirements for existing metallic surface coating lines]~~, then the ~~[part shall be subject to]~~ coatings applied to the part must comply with the content limits of this rule.

**R307-353-6. Application Methods.**

No person shall apply VOC containing coatings unless the coating is applied with equipment operated according to the manufacturer specifications, and by use of one of the following methods:

- (1) Electrostatic application;
- (2) Flow coat;
- (3) Roller coat;
- (4) Dip/electrodeposition coat;
- (5) Airless Spray;
- (6) High-volume, low-pressure (HVLP) spray; or
- (7) Other application method equal to or better than HVLP, as certified by the manufacturer.

**R307-353-7. Work Practices~~and Recordkeeping~~.**

- (1) The owner or operator shall:
  - (a) Store all VOC-containing coatings, thinners, and cleaning materials in closed containers;
  - (b) Minimize spills of VOC-containing coatings, thinners, and cleaning materials;
  - (c) Clean up spills immediately;
  - (d) Convey any coatings, thinners, and cleaning materials in closed containers or pipes;
  - (e) Close mixing vessels that contain VOC coatings and other materials except when specifically in use; and
  - (f) Minimize usage of solvents during cleaning of storage, mixing, and conveying equipment.

(2) ~~[All persons shall perform s]~~ Solvent cleaning operations ~~[with]~~ shall be performed using cleaning material having a VOC ~~[content (excluding water and solvents exempt from the definition of volatile organic compounds found in R307-101-2) of 0.21 pounds per gallon or less]~~ composite vapor pressure no greater than 1 mm Hg at 20 degrees Celsius, unless an add-on control device is used as specified in R307-353-8.

~~\_\_\_\_\_ (3) All sources subject to R307-353 shall maintain records demonstrating compliance with R307-353-5, R307-353-6 and R307-353-7(2).~~

~~\_\_\_\_\_ (a) Records shall include, but not be limited to, inventory and product data sheets of all coatings and solvents subject to R307-350.~~

~~\_\_\_\_\_ (b) These records shall be made available to the director upon request.]~~

### **R307-353-8. Add-On Controls Systems Operations.**

~~(1) If an add-on control system is used, [F]the owner or operator shall install and maintain [an incinerator, carbon adsorption, or any other add-on emission control system, provided that the emission control system is operated and maintained] in accordance with the manufacturer recommendations [in order to] and maintain [at least] 90% or greater capture and control efficiency. [Determination of] The overall capture and control efficiency shall be determined using EPA approved methods, as follows.~~

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

~~\_\_\_\_\_ (2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-353-8(1).~~

~~\_\_\_\_\_ (3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-353-8. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.~~

~~\_\_\_\_\_ (4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.]~~

### **R307-353-9. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-353. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-353.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-353-8.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction

from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: air pollution, emission controls, coatings, plastic parts**  
**Date of Enactment or Last Substantive Amendment:**  
**[December 1, 2014]2017**

**Authorizing, and Implemented or Interpreted Law: 19-2-104(1)**  
**(a)**

## Environmental Quality, Air Quality **R307-354** Automotive Refinishing Coatings

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41827

FILED: 06/14/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

**SUMMARY OF THE RULE OR CHANGE:** The applicability section is being amended from "potential to emit 2.7 tons per year or more of VOC" emissions to an application-based threshold of "a combined 20 gallons or more of coating products and associated solvents per year." Other changes included added definitions and a new recordkeeping section.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104

### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will be no impact on the state budget because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. This change does not impact the state. Therefore, there is no cost or savings for the state.

◆ **LOCAL GOVERNMENTS:** There will be no impact on local government because the only substantive change to the rule that could result in costs for the regulated party is the change in the applicability threshold. This change does not impact local government. Therefore, there is no cost or savings for local governments.

◆ **SMALL BUSINESSES:** There will be an impact on small businesses because the new rule applicability threshold will cause several small businesses to be regulated by the rule



that were not regulated previously. The cost to these businesses will depend on how much material is used. These businesses will pay an estimated \$2,864 per ton of VOC emissions removed from the air. The Division of Air Quality (DAQ) has considered methods of reducing the negative fiscal impact of the rule on small businesses in accordance with Subsection 63G-3-301(6) but cannot establish less stringent requirements, schedules, or deadlines; simplify compliance or reporting requirements; replace design standards with performance standards; or exempt small businesses from the proposed rule. This is because the rule is required by federal law to satisfy the Clean Air Act requirement to implement Best Available Control Measures in the manner prescribed by the PM2.5 Implementation Rule, See 42 U.S.C. 7513a (b)(1) and 40 CFR 51.1010(a)(1) through (5). The rule also helps prevent future violations of federal air quality standards. Although the rule is required to help prevent future air quality violations and comply with federal law, DAQ has taken steps to reduce the negative fiscal impact the rule may have on small businesses. The rule provides regulated sources with flexibility and potential cost saving alternatives in regard to compliance. This includes a vapor pressure limit, instead of a density-based limit, for solvents. The vapor pressure limit gives businesses greater flexibility as to the types of solvents they may use. The rule also includes the option to use an add-on control device that can be used as an alternative to meeting the content limits in the rule. These provisions give businesses flexibility to comply with the rule in the way that makes the most sense for them.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance cost for people who are affected by the rule will be about \$2,864 per ton of VOC removed from the air.

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

I. **WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY:** The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 2.7 tons or more of VOC" to the "use of a combined 20 gallons or more" of product. This new threshold is meant to ensure that all businesses that use automotive refinishing coatings are regulated by Rule R307-354. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are small businesses that did not previously meet the applicability threshold of the rule.

II. **AN ESTIMATE OF THE TOTAL NUMBER OF**

**BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** The number of businesses that are impacted by this rule amendment is difficult to predict because there is no data on the quantity of regulated product used by each business in the relevant areas. The rule generally covers businesses that have the following NAICS Code: 811121, Automotive Body, Paint, and Interior Repair and Maintenance. The Division used data from Utah's FirmFind database to determine that there are 324 total businesses and 324 small businesses that have these codes. Of those businesses, 268 may be impacted by the rule amendment.

III. **AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** The amendments to this rule will likely only have a fiscal impact on small businesses. There are 268 small businesses that have been identified by DAQ as businesses that may be fiscally impacted by this rule amendment.

IV. **A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS:** The rule amendment potentially impacts businesses that apply between 20 and approximately 1,688 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average \$5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between \$100 and \$8,440 dollars to comply with the rule. Most of the businesses impacted by the rule will be closer to the \$100 amount on the spectrum. This is because most of the businesses that are impacted by the amendment are small businesses with between 1 and 10 employees. They do not use large quantities of product. It is important to note that many of the larger businesses that are closer to the 1,688 gallon threshold will likely not be impacted by the rule. This is because they may already be required to comply with the rule based on the fact that they have the potential to emit over 2.7 tons of VOC emissions. Some of the small businesses may also already be using compliant coatings and will not have any additional costs as a result of the rule amendment. Based on the 268 potentially impacted businesses identified by DAQ from the FirmFind database, the aggregate annual fiscal impact of the rule on all businesses in Utah will range between \$26,800 and \$2,261,920. Once again, the total cost will fall toward the lower end of the spectrum (\$26,800) because of the size of the businesses and the likelihood that larger businesses are already complying with the rule. These figures represent the continuing annual costs to businesses. There are no one-time costs associated with the rule amendment.

V. **DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS:** The above analysis represents DAQ's best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. EPA has estimated the total cost of this type of regulation to be \$2,864 per ton of VOC emissions removed from the

atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 AIR QUALITY  
 FOURTH FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:  
 ♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

**R307. Environmental Quality, Air Quality.**  
**R307-354. Automotive Refinishing Coatings.**  
**R307-354-1. Purpose.**

The purpose of R307-354 is to limit volatile organic compound emissions (VOC) from automotive refinishing sources.

**R307-354-2. Applicability.**

~~[(+)]~~R307-354 applies to ~~[sources]automotive refinishing operations and related cleaning activities that use a combined 20 gallons or more of coating products and associated solvents per year and are~~ located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah ~~[and]or~~ Weber counties ~~that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities].~~

**R307-354-3. Exemptions.**

~~[(2)]~~The requirements of R307-354 shall not apply to any canned aerosol coating products.

**R307-354-~~3~~4. Definitions.**

The following additional definitions apply to R307-354:

"Adhesion promoter" means a coating which is labeled and formulated to be applied to uncoated plastic surfaces to facilitate bonding of subsequent coatings, and on which, a subsequent coating is applied.

"As applied" means the volatile organic compound and solids content of the finishing material that is actually used for

coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Automotive" means passenger cars, vans, motorcycles, trucks, buses, golf carts and all other mobile equipment.

"Automotive refinishing" means the process of coating automobiles, after-market automobiles, motorcycles, light and medium-duty trucks and vans that are performed in auto body shops, auto repair shops, production paint shops, new car dealer repair and paint shops, fleet operation repair and paint shops, and any other facility which coats vehicles under the Standard Industrial Classification Code 7532 (Top, Body and Upholstery Repair Shops and Paint Shops). This includes dealer repair of vehicles damaged in transit. It does not include refinishing operations for other types of mobile equipment, such as farm machinery and construction equipment or their parts, including partial body collision repairs, that is subsequent to the original coating applied at an automobile original equipment manufacturing plant.

"Clear coating" means any coating that contains no pigments and is labeled and formulated for application over a color coating or clear coating.

~~["Coating" means a protective, decorative, or functional material applied in a thin layer to a surface. Such materials may include paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, inks, and temporary protective coatings.]~~

"Color coating" means any pigmented coating, excluding adhesion promoters, primers, and multi-color coatings, that requires a subsequent clear coating and which is applied over a primer, adhesion promoter, or color coating. Color coatings include metallic and iridescent color coatings.

"Enclosed paint gun cleaner" means a cleaner consisting of a closed container with a door or top that can be opened and closed and fitted with cleaning connections. The spray gun is attached to a connection, and solvent is pumped through the gun and onto the exterior of the gun. Cleaning solvent falls back into the cleaner's solvent reservoir for recirculation.

"Metallic/Iridescent color coating" means a coating which contains iridescent particles, composed of either metal as metallic particles or silicon as mica particles, in excess of 0.042 pounds per gallon as applied, where such particles are visible in the dried film.

"Multi-color coating" means a coating which exhibits more than one color when applied, and which is packaged in a single container and applied in a single coat.

"Non-enclosed paint gun cleaner" means cleaner consisting of a basin similar to a sink in which the operator washes the outside of the gun under a solvent stream. The gun cup is filled with recirculated solvent, the gun tip is placed into a canister attached to the basin, and suction draws the solvent from the cup through the gun. The solvent gravitates to the bottom of the basin and drains through a small hole to a reservoir that supplies solvent to the recirculation pump.

"Pretreatment coating" means a coating which contains no more than 16% solids, by weight, and at least 0.5% acid, by weight, is used to provide surface etching, and is applied directly to bare metal surfaces to provide corrosion resistance and promote adhesion for subsequent coatings.

"Primer" means any coating which is labeled and formulated for application to a substrate to provide a bond between the substrate and subsequent coats; corrosion resistance; a smooth

substrate surface; or resistance to penetration of subsequent coats, and on which a subsequent coating is applied. Primers may be pigmented.

"Primer sealer" means any coating which is labeled and formulated for application prior to the application of a color coating for the purpose of color uniformity, or to promote the ability of the underlying coating to resist penetration by the color coating.

"Single-stage coating" means any pigmented coating, excluding primers and multi-color coatings, labeled and formulated for application without a subsequent clear coat. Single-stage coatings include single-stage metallic/iridescent coatings.

"Solids" means the part of the coating that remains after the coating is dried or cured; solids content is determined using data from EPA Method 24.

"Temporary protective coating" means any coating which is labeled and formulated for the purpose of temporarily protecting areas from overspray or mechanical damage.

"Topcoat" means any coating or series of coatings applied over a primer or an existing finish for the purpose of protection or beautification.

"Truck bed liner coating" means any coating, excluding clear, color, multi-color, and single-stage coatings, labeled and formulated for application to a truck bed to protect it from surface abrasion.

"Underbody coating" means any coating labeled and formulated for application to wheel wells, the inside of door panels or fenders, the underside of a trunk or hood, or the underside of ~~the~~ a motor vehicle.

"Uniform finish coating" means any coating labeled and formulated for application to the area around a spot repair for the purpose of blending a repaired area's color or clear coat to match the appearance of an adjacent area's existing coating. ~~[Prior to May 1, 2013, this coating category may be referred to as uniform finish blenders.]~~

~~"Uniform finish blender" means a coating designed to blend a repaired topcoat into an existing topcoat.~~

**R307-354-[4]5. VOC Content Limits.**

~~[Each]No~~ owner or operator shall ~~[not]~~ apply coatings with a VOC content ~~[in excess of]greater than~~ the amounts specified in Table 1 ~~[or shall]~~, unless the owner or operator uses an add-on control device as specified in R307-354-[6]7.

TABLE 1

AUTOMOTIVE REFINISHING VOC LIMITS  
(values in pounds of VOC per gallon of coating, minus water and exempt solvent (compounds not defined as VOC in R307-101-2), as applied)

<del>C[OATING]oating</del> <del>C[ATEGORY]category</del>	VOC <del>C[ONTENT]ontent</del> <del>L[IMITS]imits</del> (lb/gal)
Adhesion Promoter	4.5
Clear Coating	2.1
Color Coating	3.5
Multi-color Coating	5.7
Pretreatment Coating	5.5

Primer	2.1
Primer Sealer	2.1
Single-stage Coating	2.8
Temporary Protective Coating	0.5
Truck Bed Liner Coating	2.6
Underbody Coating	3.6
Uniform Finish Coating	4.5
Any Other Coating Type	2.1

**R307-354-[5]6. Work Practice~~[-and Recordkeeping].~~**

(1) Control techniques and work practices are to be implemented at all times to reduce VOC emissions. Control techniques and work practices include:

~~[(a) Tight fitting covers for open tanks;]~~

~~[(b)a] [Covered]Closed containers shall be used for the disposal of solvent wiping cloths;~~

~~[(c) Collection hoods for areas where solvent is used for cleanup;]~~

~~[(d)b] Minimizing spills of VOC-containing cleaning materials;~~

~~[(e)c] Conveying VOC-containing materials from one location to another in closed containers or pipes; and~~

~~[(f)d] Cleaning spray guns in enclosed systems or in a non-enclosed paint gun cleaning process may be used if the vapor pressure of the cleaning solvent (excluding water and solvents exempt from the definition of ~~[volatile organic compounds found in R307-101-2]VOCs~~) is less than 100 mm Hg at 68 degrees Fahrenheit and the solvent is directed towards a drain that leads directly to an enclosed remote reservoir. Automotive spray gun solvent cleaners~~ing materials~~ that are defined as a "consumer product" under R307-357 are exempt from the vapor pressure requirement and are regulated under the requirements in R307-357.~~

(2) Application equipment requirements:

(a) A person shall not apply any coating to an automotive part or component unless the coating application method achieves a ~~[demonstrated]minimum~~ 65% transfer efficiency.

~~[(b)]The following coating application methods have been demonstrated to achieve a minimum of 65% transfer efficiency:~~

(i) Brush, dip or roll coating operated in accordance with the manufacturers specifications;

(ii) Electrostatic application equipment operated in accordance with the manufacturers specifications; and

(iii) High Volume, Low Pressure spray equipment operated in accordance with the manufacturers specifications.

~~[(e)3] Other coating application methods may be used that have been demonstrated to be capable of achieving at least 65% transfer efficiency, as certified by the manufacturer.~~

~~[(3) All sources subject to R307-354 shall maintain records demonstrating compliance with R307-354-4 and R307-354-5.]~~

~~[(a) Records shall include, but not be limited to, inventory and product data sheets of all coatings and solvents subject to R307-354.]~~

~~\_\_\_\_\_ (b) These records shall be available to the director upon request.]~~

### **R307-354-6]7. Add-On Controls Systems Operations.**

~~(1) If an add-on control system is used, [F]the owner or operator shall install and maintain [an incinerator, carbon adsorption, or any other]the add-on emission control system[~~], provided that the emission control system is operated and maintained~~] in accordance with the manufacturer recommendations [in order to]and maintain [at least]90% or greater capture and control efficiency. [~~Determination of]The overall capture and control efficiency shall be determined using EPA approved methods, as follows.~~~~

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

~~\_\_\_\_\_ (2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-354-6(1).~~

~~\_\_\_\_\_ (3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-354-6. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.~~

~~\_\_\_\_\_ (4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.]~~

### **R307-354-8. Recordkeeping.**

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-354. Records shall include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-354.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-354-7.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction

from the source during all periods that the operations cause emissions from the source.

(2) All records must be maintained for a minimum of 2 years.

(3) Records must be made available to the director upon request.

**KEY: air pollution, automotive refinishing, VOC, coatings**

**Date of Enactment or Last Substantive Amendment: [December 1, 2014]2017**

**Authorizing, and Implemented or Interpreted Law: 19-2-104(1) (a)**

## Environmental Quality, Air Quality **R307-355** Control of Emissions from Aerospace Manufacture and Rework Facilities

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41830

FILED: 06/14/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The amendments to this rule strengthen the area source coating rules. These amendments will help further reduce Volatile Organic Compound (VOC) emissions and will be part of the upcoming Serious PM2.5 State Implementation Plan (SIP).

**SUMMARY OF THE RULE OR CHANGE:** The rule applicability is being changed to 55 gallons or greater of VOC containing materials per year. The rule exemption for the maximum amount of small quantity coating formulations has been reduced from 200 gallons per year to 20 gallons per year. A new exemption has been added for small quantity use for adhesives with an annual limit of 10 gallons or less. The add-on control capture and control efficiency minimum has been increased from 81% to 90%. All of the specialty coatings have been defined in the text instead of incorporated by reference.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-2-104

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There will be no impact on the state budget because the state is not a source of the relevant aerospace-related emissions.

♦ **LOCAL GOVERNMENTS:** There will be no fiscal impact on local governments because local governments are not a source of the relevant aerospace-related emissions.

♦ **SMALL BUSINESSES:** There will not be a fiscal impact on small businesses because the Division of Air Quality (DAQ)

could not identify a single small business that meets the applicability threshold of the rule.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities will not be impacted by this rule because the rule applicability threshold is set at a level that excludes hobbyists and other people that are not businesses or governments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance cost for people who are affected by the rule will be about \$3,672 per ton of VOC removed from the air.

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

I. **WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY:** The proposed rule may result in a fiscal impact to some businesses because the rule amendment changes the applicability threshold. The threshold is being changed from the "potential to emit 10 tons or more of VOC" emissions to the use of "a combined 55 gallons or more" of product. This new threshold is meant to ensure that all businesses that use aerospace coatings are regulated by Rule R307-355. Businesses that already have the potential to emit 2.7 tons or more of VOC are not impacted by the rule amendment. Therefore, the businesses most likely impacted by this amendment are businesses that did not previously meet the applicability threshold of the rule.

II. **AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** The Division estimates that there are four total businesses and zero small businesses that will be impacted by this rule amendment.

III. **AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** There are zero small businesses that will be impacted by this rule amendment.

IV. **A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS:** The rule amendment potentially impacts businesses that apply between 55 and approximately 6,250 gallons of regulated product annually. After speaking with industry experts, DAQ has determined that the source of the cost is an average \$5 per gallon difference between compliant and non-compliant products. This means that businesses impacted by the rule will spend between \$275 and \$31,250 annually to comply with the rule. Based on the four businesses identified by DAQ, the aggregate annual fiscal impact of the rule amendment on all businesses in Utah will range between and \$1,100 and \$125,000, depending on the quantity of regulated product used. These figures represent the continuing annual costs to businesses. There are no one-time costs associated with the rule amendment.

V. **DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS:** The above analysis represents DAQ's

best estimate as to the fiscal impact this rule amendment will have on businesses. If a company uses a greater quantity of product, then the rule amendment will cause a more significant fiscal impact. The EPA has estimated the total cost of this type of regulation to be \$3,672 per ton of VOC emissions removed from the atmosphere. The EPA considers this cost to be reasonable in the context of implementing Best Available Control Measures (BACM), as required by the Clean Air Act for Serious nonattainment areas.

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

ENVIRONMENTAL QUALITY  
AIR QUALITY  
FOURTH FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Ryan Stephens by phone at 801-536-4419, by FAX at 801-536-0085, or by Internet E-mail at rstephens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/15/2017

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 07/27/2017 01:00 PM, DEQ Bldg, 195 N 1950 W, DEQ Board Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 08/22/2017

AUTHORIZED BY: Bryce Bird, Director

---

**R307. Environmental Quality, Air Quality.**

**R307-355. [~~Control of Emissions from~~] Aerospace Manufacture and Rework Facilities.**

**R307-355-1. Purpose.**

The purpose of R307-355 is to limit the emissions of volatile organic compounds (VOCs) from aerospace coatings and adhesives, from organic solvent cleaning, and from the storage and disposal of solvents and waste solvent materials associated with the use of aerospace coatings and adhesives.

**R307-355-2. Applicability.**

R307-355 applies to all aerospace manufacture and rework facilities that ~~[have the potential to emit 10 tons or more per year of VOCs and that]~~ are located in Box Elder, Cache, Davis, Salt Lake, Utah, Tooele ~~[and/or Weber counties[-]]~~ and use a combined 55 gallons or more of coating products and associated solvents and adhesives per year.

**R307-355-3. Exemptions.**

(1) R307-355 does not apply to the following:  
(a) ~~[Where e]~~ cleaning and coating ~~[takes place]~~ activities in research and development, quality control~~[-]~~ and laboratory

testing ~~and electronic parts and assemblies, except for cleaning and coating of completed assemblies~~];

(b) ~~To m~~Manufacturing or rework operations involving space vehicles; ~~and~~

(c) ~~To r~~Rework operations performed on antique aerospace vehicles or components ~~[-];~~

~~(d) Touchup and repair operations;~~

~~(e) Hand-held spray can application;~~

~~(f) Department of Defense classified coatings;~~

~~(g) Coatings or aerosols with separate formulations that are used in volumes of less than one 1 gallon on any day or 20 gallons in any calendar year;~~

~~(h) Adhesives with separate formulations that are used in volumes of less than 0.5 gallons on any day or 10 gallons in any calendar year;~~

~~(i) Airbrush application methods for stenciling, lettering, and other identification markings; and~~

~~(j) Any situation that normally requires the use of an airbrush or an extension on the spray gun to properly reach limited access spaces.~~

#### **R307-355-4. Definitions.**

The following additional definitions apply to R307-355:

"Ablative coating" means a coating, applied to both new and rework aerospace components, which chars and becomes intumescent when exposed to open flame, such as would occur during the failure of an engine casing. The purpose of the coating is to act as an isolative barrier and protect adjacent metal parts from an open flame.

"Adhesion promoter" means a very thin coating applied to a substrate to promote wetting and form a chemical bond with the subsequently applied material.

"Adhesive bonding primer" means a primer applied in a thin film to aerospace components for the purpose of corrosion inhibition and increased adhesive bond strength by attachment. There are two categories of adhesive bonding primers: primers with a design cure at 250 degrees Fahrenheit or below and primers with a design cure above 250 degrees Fahrenheit.

"Aerospace manufacture<sup>[2]</sup> and <sup>[2]</sup>rework facility" means any installation that produces, reworks, or repairs in any amount any commercial, civil, or military aerospace vehicle or component.

"Antique aerospace vehicle or component" means an aircraft or component thereof that was built ~~at least 30 years ago~~ prior to 1970 and would not routinely be in commercial or military service in the capacity for which it was designed.

"Bearing coating" means a coating applied to an antifriction bearing, a bearing housing, or the area adjacent to such a bearing in order to facilitate bearing function or to protect base material from excessive wear. A material shall not be classified as a bearing coating if it can also be classified as a dry lubricative material or a solid film lubricant.

"Caulking and smoothing compounds" means semi-solid materials which are applied by hand application methods and are used to aerodynamically smooth exterior vehicle surfaces or fill cavities such as bolt hole accesses. A material shall not be classified as a caulking and smoothing compound if it can also be classified as a sealant.

"Chemical agent-resistant coating" means an exterior topcoat designed to withstand exposure to chemical warfare agents or the decontaminants used on these agents.

"Chemical milling maskants" means a coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type I or Type II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant.

~~["Exempt solvents" means organic chemicals that are not defined as VOC.~~

~~"General aviation rework facility" means any aerospace installation with the majority of its revenues resulting from the reconstruction, repair, maintenance, repainting, conversion, or alteration of general aviation aerospace vehicles or components.~~

~~"Low vapor pressure hydrocarbon-based cleaning solvent" means a cleaning solvent that is composed of a mixture of photochemically reactive hydrocarbons and oxygenated hydrocarbons and has a maximum vapor pressure of 7 mm Hg at 68 degrees Fahrenheit. These cleaners must not contain hazardous air pollutants.~~

~~"Space vehicle" means a man-made device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, mold, jigs, tooling, hardware jackets and test coupons. Also included, auxiliary equipment associated with test, transport and storage that through contamination can compromise the space vehicle performance.]~~

"Clear coating" means a transparent coating usually applied over a colored opaque coating, metallic substrate, or placard to give improved gloss and protection to the color coat. In some cases, a clear coat refers to any transparent coating without regard to substrate.

"Commercial exterior aerodynamic structure primer" means a primer used on aerodynamic components and structures that protrude from the fuselage, such as wings and attached components, control surfaces, horizontal stabilizers, vertical fins, wing-to-body fairings, antennae, and landing gear and doors, for the purpose of extended corrosion protection and enhanced adhesion.

"Compatible substrate primer" means either compatible epoxy primer or adhesive primer. Compatible epoxy primer is primer that is compatible with the filled elastomeric coating and is epoxy based. The compatible substrate primer is an epoxy polyamide primer used to promote adhesion of elastomeric coatings such as impact-resistant coatings. Adhesive primer is a coating that:

(1) inhibits corrosion and serves as a primer applied to bare metal surfaces or prior to adhesive application, or

(2) is applied to surfaces that can be expected to contain fuel. Fuel tank coatings are excluded from this category.

"Corrosion prevention" means a coating that provides corrosion protection by displacing water and penetrating mating surfaces, forming a protective barrier between the metal surface and moisture. Coatings containing oils or waxes are excluded from this category.

"Cryoprotective coating" means a coating that insulates cryogenic or subcooled surfaces to limit propellant boil-off.

maintain structural integrity of metallic structures during ascent or re-entry, and prevent ice formation.

"Electric or radiation-effect coating" means a coating or coating system engineered to interact, through absorption or reflection, with specific regions of the electromagnetic energy spectrum, such as the ultraviolet, visible, infrared, or microwave regions. Uses include, but are not limited to, lightning strike protection, electromagnetic pulse (EMP) protection, and radar avoidance. Coatings that have been designated as "classified" by the Department of Defense are exempt.

"Electrostatic discharge and electromagnetic interference (EMI) coating" means a coating applied to space vehicles, missiles, aircraft radomes, and helicopter blades to disperse static energy or reduce electromagnetic interference.

"Elevated-temperature Skydrol-resistant commercial primer" means a primer applied primarily to commercial aircraft (or commercial aircraft adapted for military use) that must withstand immersion in phosphate-ester (PE) hydraulic fluid (Skydrol 500b A-9 or equivalent) at the elevated temperature of 150 degrees Fahrenheit for 1,000 hours.

"Epoxy polyamide topcoat" means a coating used where harder films are required or in some areas where engraving is accomplished in camouflage colors.

"Fire-resistant (interior) coating" means for civilian aircraft, fire-resistant interior coatings are used on passenger cabin interior parts that are subject to the FAA fireworthiness requirements. For military aircraft, fire-resistant interior coatings are used on parts that are subject to the flammability requirements of MIL-STD-1630A and MIL-A-87721. For space applications, these coatings are used on parts that are subject to the flammability requirements of SE-R-0006 and SSP 30233.

"Flexible primer" means a primer that meets flexibility requirements such as those needed for adhesive bond primed fastener heads or on surfaces expected to contain fuel. The flexible coating is required because it provides a compatible, flexible substrate over bonded sheet rubber and rubber-type coatings as well as a flexible bridge between the fasteners, skin, and skin-to-skin joints on outer aircraft skins. This flexible bridge allows more topcoat flexibility around fasteners and decreases the chance of the topcoat cracking around the fasteners. The result is better corrosion resistance.

"Flight test coating" means a coating applied to aircraft other than missiles or single-use aircraft prior to flight testing to protect the aircraft from corrosion and to provide required marking during flight test evaluation.

"Fuel tank coating" means a coating applied to fuel tank components for the purpose of corrosion and/or bacterial growth inhibition and to assure sealant adhesion in extreme environmental conditions.

"High-temperature coating" means a coating designed to withstand temperatures of more than 350 degrees Fahrenheit.

"Insulation covering" means material that is applied to foam insulation to protect the insulation from mechanical or environmental damage.

"Intermediate release coating" means a thin coating applied beneath topcoats to assist in removing the topcoat in depainting operations and generally to allow the use of less hazardous depainting methods.

"Lacquer" means a clear or pigmented coating formulated with nitrocellulose or synthetic resin to dry by evaporation without a chemical reaction. Lacquers are resoluble in their original solvent.

"Low vapor pressure hydrocarbon-based cleaning solvent" means a cleaning solvent that is composed of a mixture of photochemically reactive hydrocarbons and oxygenated hydrocarbons and has a maximum vapor pressure of 7 mm Hg at 68 degrees Fahrenheit. These cleaners must not contain hazardous air pollutants.

"Maskants" means a coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type I or Type II etchant. Type I chemical milling maskants are used with a Type I etchant and

Type II chemical milling maskants are used with a Type II etchant.

"Metalized epoxy coating" means a coating that contains relatively large quantities of metallic pigmentation for appearance and/or added protection.

"Mold release" means a coating applied to a mold surface to prevent the molded piece from sticking to the mold as it is removed.

"Optical anti-reflection coating" means a coating with a low reflectance in the infrared and visible wavelength ranges that is used for antireflection on or near optical and laser hardware.

"Part marking coating" means coatings or inks used to make identifying markings on materials, components, and/or assemblies.

These markings may be either permanent or temporary.

"Pretreatment coating" means an organic coating that contains at least 0.5 percent acids by weight and is applied directly to A-12 metal or composite surfaces to provide surface etching, corrosion resistance, adhesion, and ease of stripping.

"Rain erosion resistant coating" means a coating applied primarily to radomes, canopies, and leading edges of aircraft to provide protection from erosion due to rain, dust, and other airborne particles.

"Rocket motor nozzle coating" means a catalyzed epoxy coating system used in elevated temperature applications on rocket motor nozzles.

"Scale inhibitor" means a coating that is applied to the surface of a part prior to thermal processing to inhibit the formation of scale.

"Screen print ink" means an ink used in screen printing processes during fabrication of decorative laminates and decals.

"Sealant" means a material used to prevent the intrusion of water, fuel, air, or other liquids or solids from certain areas of aerospace vehicles or components. There are two categories of sealants: extrudable/rollable/brushable sealants and sprayable sealants.

"Silicone insulation material" means an insulating material applied to exterior metal surfaces for protection from high temperatures caused by atmospheric friction or engine exhaust.

These materials differ from ablative coatings in that they are not "sacrificial."

"Solid film lubricant" means a dry lubricant coating used to reduce friction between faying metal surfaces. The coating consists of an organic binder system containing one or more of the following substances: molybdenum disulfide, graphite,

polytetrafluoroethylene (Teflon PTFE), other types of Teflon, lauric acid, cetyl alcohol, or waxes.

"Space vehicle" means a man-made device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, mold, jigs, tooling, hardware jackets and test coupons. Also included, auxiliary equipment associated with test, transport and storage that through contamination can compromise the space vehicle performance.

"Specialized function coating" means a coating that fulfills extremely specific engineering requirements that are limited in application and are characterized by low volume usage. This category excludes coatings covered in other Specialty Coating categories.

"Specialty coating" means a coating that, even though it meets the definition of a primer, topcoat, or self-priming topcoat, has additional performance criteria beyond those of primers, topcoats, and self-priming topcoats for specific applications.

(1) These performance criteria may include, but are not limited to, temperature or fire resistance, substrate compatibility, antireflection, temporary protection or marking, sealing, adhesively joining substrates, or enhanced corrosion protection.

[~~(2) Individual specialty coatings are defined in Appendix A of 40 CFR 63 subpart GG, which is incorporated by reference.~~]

"Temporary protective coating" means a coating applied to provide scratch or corrosion protection during manufacturing, storage, or transportation. Two types include peelable protective coatings and alkaline removable coatings. These materials are not intended to protect against strong acid or alkaline solutions. Coatings that provide this type of protection from chemical processing are not included in this category.

"Thermal control coating" means a coating formulated with specific thermal conductive or radiative properties to permit temperature control of the substrate.

"Topcoat" means a coating that is applied over a primer or component for appearance, identification, camouflage, or protection. Topcoats that are defined as specialty coatings are not included under this definition.

"Wet fastener installation coating" means a primer or sealer applied by dipping, brushing, or daubing to fasteners that are installed before the coating is cured.

"Wing coating" means a corrosion-resistant topcoat that is resilient enough to withstand the flexing of the wings.

**R307-355-5. VOC Content Limits.**

[~~(1)~~]The owner or operator shall not apply coatings to aerospace vehicles or components with a VOC content [~~in excess as follows:~~]greater than the amounts specified in Table 1 unless the owner or operator uses an add-on control device as specified in R307-355-9.

[~~(a) 2.9 pounds per gallon of coating, excluding water and exempt solvents, delivered to a coating applicator that applies primers. For general aviation rework facilities, the VOC limitation shall be 4.5 pounds per gallon of coating, excluding water and exempt solvents, delivered to a coating applicator that applies primers;~~

[~~(b) 3.5 pounds per gallon of coating, excluding water and exempt solvents, delivered to a coating applicator that applies topcoats (including self-priming topcoats). For general aviation~~

~~rework facilities, the VOC limit shall be 4.5 pounds per gallon of coating, excluding water and exempt solvents, delivered to a coating applicator that applies topcoats (including self-priming topcoats);~~

[~~(c) 5.2 pounds per gallon of coating, excluding water and exempt solvents, delivered to a coating applicator that applies Type I chemical-milling maskant;~~

[~~(d) 1.3 pounds per gallon of coating, excluding water and exempt solvents, delivered to a coating applicator that applies Type H chemical-milling maskants; and~~

[~~(e) Emissions of VOCs from specialty coatings in excess of the amounts specified in EPA 453/R-97-004, December 1997, page B-2, hereby incorporated by reference.~~

[~~(2) The owner or operator may alternatively comply with R307-355-5(1)(a) through (d) by using an add-on control device as specified in R307-355-9.~~

[~~(3) The following coating applications are exempt from the VOC content limits in R307-355-5(1);~~

[~~(a) Touchup and repair operations.~~

[~~(b) Use of hand-held spray can application method.~~

[~~(c) Department of Defense classified coatings.~~

[~~(d) Coatings of space vehicles.~~

[~~(e) Facilities that use separate formulations in volumes of less than 50 gallons per year subject to a maximum exemption of 200 gallons total for such formulations applied annually.]~~

Table 1  
(Values in grams of VOC per liter of material, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating type	VOC Content Limit (g/l)
Ablative Coating . . . . .	600
Adhesion Promoter . . . . .	890
Adhesive Bonding Primers:	
Cured at 250 deg°F or below . . . . .	850
Cured above 250 deg°F . . . . .	1030
Adhesives:	
Commercial Interior Adhesive . . . . .	760
Cyanoacrylate Adhesive . . . . .	1,020
Fuel Tank Adhesive . . . . .	620
Nonstructural Adhesive . . . . .	360
Rocket Motor Bonding Adhesive . . . . .	890
Rubber-based Adhesive . . . . .	850
Structural Autoclavable Adhesive . . . . .	60
Structural Nonautoclavable Adhesive . . . . .	850
Antichafe Coating . . . . .	660
Bearing Coating . . . . .	620
Caulking and Smoothing Compounds . . . . .	850
Chemical Agent-Resistant Coating . . . . .	550
Clear Coating . . . . .	720
Commercial Exterior Aerodynamic Structure Primer . . . . .	650
Compatible Substrate Primer . . . . .	780
Corrosion Prevention Compound . . . . .	710
Cryogenic Flexible Primer . . . . .	645
Dry Lubricative Material . . . . .	880
Cryoprotective Coating . . . . .	600
Electric or Radiation-Effect Coating . . . . .	800
Electrostatic Discharge and Electromagnetic Interference (EMI) Coating . . . . .	800
Elevated-Temperature Skydrol-Resistant Commercial Primer . . . . .	740
Epoxy Polyamide Topcoat . . . . .	660
Fire-Resistant (interior) Coating . . . . .	800
Flexible Primer . . . . .	640



Flight-Test Coatings:  
Missile or Single Use Aircraft . . . . . 420  
All Other . . . . . 840  
Fuel-Tank Coating . . . . . 720  
High-Temperature Coating . . . . . 850  
Insulation Covering . . . . . 740  
Intermediate Release Coating . . . . . 750  
Lacquer . . . . . 830  
Maskants:  
Bonding Maskant . . . . . 1,230  
Critical Use and Line Sealer Maskant . . . . . 1,020  
Seal Coat Maskant . . . . . 1,230  
Metalized Epoxy Coating . . . . . 740  
Mold Release . . . . . 780  
Optical Anti-Reflective Coating . . . . . 750  
Part Marking Coating . . . . . 850  
Pretreatment Coating . . . . . 780  
Primer . . . . . 350  
Rain Erosion Resistant Coating . . . . . 850  
Rocket Motor Nozzle Coating . . . . . 660  
Scale Inhibitor . . . . . 880  
Screen Print Ink . . . . . 840  
Sealants:  
Extrudable/Rollable/Brushable Sealant . . . . . 280  
Sprayable Sealant . . . . . 600  
Silicone Insulation Material . . . . . 850  
Solid Film Lubricant . . . . . 880  
Specialized Function Coating . . . . . 890  
Temporary Protective Coating . . . . . 320  
Thermal Control Coating . . . . . 800  
Topcoat . . . . . 420  
Type I chemical milling maskant . . . . . 622  
Type II chemical milling maskants . . . . . 160  
Wet Fastener Installation Coating . . . . . 675  
Wing Coating . . . . . 850

**R307-355-6. Application Method.**

(1) No owner or operator shall apply any [~~primer or topcoat~~]coating to aerospace vehicles or components unless [~~the primer and topcoat is applied with equipment operated according to the equipment manufacturer specifications or by the use of one of the following methods:~~]one of the following application methods is used:

- (a) Electrostatic application;
- (b) Flow/curtain coat;
- (c) Dip/electrodeposition coat;
- (d) Roll coat;
- (e) Brush coating;
- (f) cotton-tipped swab application;
- (g) High-Volume, Low-Pressure (HVLP) Spray;
- (h) Hand Application Methods; or
- (i) Other coating application methods that achieve emission reductions equivalent to HVLP or electrostatic spray application methods, as determined according to the requirements in 40 CFR 63.750(i).

[~~(2) The following conditions are exempt from R307-355-6(1):~~

- [~~(a) Any situation that normally requires the use of an airbrush or an extension on the spray gun to properly reach limited access spaces.~~
- [~~(b) The application of coatings that contain fillers that adversely affect atomization with HVLP spray guns and that cannot be applied by any of the application methods specified in R307-355-6.~~
- [~~(c) The application of coatings that normally have dried film thickness of less than 0.0013 centimeters (0.0005 inches) and~~

~~that cannot be applied by any of the application methods specified in R307-355-6.~~

[~~(d) The use of airbrush application methods for stenciling, lettering, and other identification markings.~~

[~~(e) The use of hand-held spray can application methods.~~

[~~(f) Touch-up and repair operations.~~

[~~(g) Application of specialty coatings.~~]

**R307-355-7. Work Practices[and Recordkeeping].**

(1) Control techniques and work practices shall be implemented at all times to reduce VOC emissions from coating and solvent cleaning operations on aerospace vehicles or components. Control techniques and work practices shall include, but are not limited to:

(a) Storing all VOC-containing coatings, adhesives, thinners, and coating-related waste materials in closed containers;

(b) Ensuring that mixing and storage containers used for VOC-containing coatings, adhesives, thinners, and coating-related waste material are kept closed at all times except when depositing or removing these materials;

(c) Minimizing spills of VOC-containing coatings, adhesives, thinners, and coating-related waste materials; and

(d) Conveying VOC-containing coatings, adhesives, thinners, and coating-related waste materials from one location to another in closed container or pipes.

[~~(2) All sources subject to R307-355 shall maintain records demonstrating compliance with R307-355-5, R307-355-6 and R307-355-8.~~

[~~(a) Records shall include, but not be limited to, inventory and product data sheets of all coatings and solvents subject to R307-355.~~

[~~(b) These records shall be available to the Director upon request.~~]

**R307-355-8. Solvent Cleaning.**

(1) Hand-wipe cleaning. Cleaning solvents (excluding water and exempt solvents[~~exempt from the definition of volatile organic compounds found in R307-101-2~~]) used in hand-wipe cleaning operations on aerospace vehicles or components shall meet one of the following requirements:

(a) Have a VOC composite vapor pressure less than or equal to 45 mm Hg at 68 degrees Fahrenheit;

(b) Have an aqueous cleaning solvent in which water is at least 80% of the solvent as applied; or

(c) Have a low vapor pressure hydrocarbon-based cleaning solvent.

(2) The following exemptions apply:

(a) Cleaning during the manufacture, assembly, installation, maintenance, or testing of components of breathing oxygen systems that are exposed to the breathing oxygen.

(b) Cleaning during the manufacture, assembly, installation, maintenance, or testing of parts, subassemblies, or assemblies that are exposed to strong oxidizers or reducers (e.g., nitrogen tetroxide, liquid oxygen, hydrazine).

(c) Cleaning and surface activation prior to adhesive bonding.

(d) Cleaning of electronics parts and assemblies containing electronics parts.

(e) Cleaning of aircraft and ground support equipment fluid systems that are exposed to the fluid, including air-to-air heat exchangers and hydraulic fluid systems.

(f) Cleaning of fuel cells, fuel tanks, and confined spaces.

(g) Surface cleaning of solar cells, coated optics, and thermal control surfaces.

(h) Cleaning during fabrication, assembly, installation, and maintenance of upholstery, curtains, carpet, and other textile materials used on the interior of the aircraft.

(i) Cleaning of metallic and nonmetallic materials used in honeycomb cores during the manufacture or maintenance of these cores, and cleaning of the completed cores used in the manufacture of aerospace vehicles or components.

(j) Cleaning of aircraft transparencies, polycarbonate, or glass substrates.

(k) Cleaning and solvent usage associated with research and development, quality control, or laboratory testing.

(l) Cleaning operations, using nonflammable liquids, conducted within five feet of energized electrical systems.

(3) Flush cleaning. Cleaning solvents used in flush cleaning of aerospace vehicle or component parts, assemblies and coating unit components must be emptied into an enclosed container or collection system that is kept closed when not in use.

(4) Spray gun cleaning. All spray guns used to apply coatings to aerospace vehicle or component shall be cleaned by one or more of the following methods:

(a) Enclosed system that is closed at all times except when inserting or removing the spray gun. If leaks in the system are found, repairs shall be made as soon as practicable, but no later than 15 days after the leak was found. If the leak is not repaired by the 15th day, the cleaning solvent shall be removed and the enclosed cleaner shall be shut down until the leak is repaired or its use is permanently discontinued.

(b) Nonatomized cleaning.

(i) Spray guns shall be cleaned by placing cleaning solvent in the pressure pot and forcing it through the gun with the atomizing cap in place.

~~[(ii) No atomizing air is to be used.]~~

(ii) The cleaning solvent from the spray gun shall be directed into a vat, drum, or other waste container that is closed when not in use.

(c) Disassembled spray gun cleaning.

(i) Spray guns shall be cleaned by disassembling and cleaning the components by hand in a vat, which shall remain closed at all times except when in use.

(ii) Spray gun components shall be soaked in a vat, which shall remain closed during the soaking period and when not inserting or removing components.

(d) Atomizing spray into a waste container that is fitted with a device designed to capture atomized solvent emissions.

(e) Cleaning of the nozzle tips of automated spray equipment systems, except for robotic systems that can be programmed to spray into a closed container, shall be exempt from these requirements.

#### **R307-355-9. Add-On Controls Systems Operations.**

~~[(1) The owner or operator shall install and maintain an incinerator, carbon adsorption, or any other add-on emission control system, provided that the emission control system is operated and~~

~~maintained in accordance with the manufacturer recommendations in order to maintain at least 81% capture and control efficiency. Determination of overall capture and control efficiency shall be determined using EPA approved methods, as follows:~~

~~\_\_\_\_\_ (a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.~~

~~\_\_\_\_\_ (b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.~~

~~\_\_\_\_\_ (c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.~~

~~\_\_\_\_\_ (2) The owner or operator of a control system shall provide documentation that the emission control system will attain the requirements of R307-355-9(1).~~

~~\_\_\_\_\_ (3) The owner or operator shall maintain records of key system parameters necessary to ensure compliance with R307-355-9. Key system parameters may include, but are not limited to, temperature, pressure and flow rates. Operator inspection schedule, monitoring, recordkeeping, and key parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.~~

~~\_\_\_\_\_ (4) The owner or operator shall maintain for a minimum of two years records of operating and maintenance sufficient to demonstrate that the equipment is being operated and maintained in accordance with the manufacturer recommendations.]~~

If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 90% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

\_\_\_\_\_ (a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

\_\_\_\_\_ (b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

\_\_\_\_\_ (c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

#### **R307-355-10. Recordkeeping**

\_\_\_\_\_ (1) The owner or operator shall maintain records of the following:

\_\_\_\_\_ (a) Records that demonstrate compliance with R307-355. Records must include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-355.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-355-9.

(i) Key system parameters must include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters must be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

**KEY: air pollution, coatings, aerospace**

**Date of Enactment or Last Substantive Amendment:**  
[~~December 1, 2014~~]**2017**

**Authorizing, and Implemented or Interpreted Law: 19-2-104(1)**  
**(a)**

## Health, Disease Control and Prevention, Epidemiology **R386-703** Injury Reporting Rule

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 41831  
FILED: 06/15/2017

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The rule has been amended by adding the definition for laboratory and lowering the case definition of an elevated blood lead level from greater than or equal to 10 micrograms per deciliter to greater than or equal to 5 micrograms per deciliter. In 2012, the Centers for Disease Control and Prevention (CDC) lowered their level of concern for blood lead levels in children to greater than or equal to 5 micrograms per deciliter. This amendment will align Utah with CDC's guidelines to provide assistance and educate parents of children having a blood lead level lower than Utah's current guidelines. The amendment will help to alleviate any disparities between Utah's state and local health departments and the health care providers when assessing a child's exposure to lead in relation to Utah's Injury Reporting Rule and CDC's guidelines.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment defines the types of laboratories for reporting injuries and the lowering of the case definition from greater than or equal to 10 micrograms per deciliter to greater than or

equal to 5 micrograms per deciliter at which intervention is determined for a child exposed to lead.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-30 and Section 26-6-3

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There are no anticipated costs or savings at the state level. Any costs will come out of existing budgets.

◆ **LOCAL GOVERNMENTS:** There will be anticipated costs to local government by adding this language to the rule. The lowering of the case definition will increase the number of cases being identified by the local health districts to provide case management. The anticipated cost throughout Utah's health districts is estimated to be \$25,841 per year.

◆ **SMALL BUSINESSES:** There will be no anticipated costs or savings to small businesses by adding this language to the rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** As stated above, local government will have anticipated costs by adding this language to the rule. The lowering of the case definition will increase the number of cases being identified for the local health districts to provide case management. The anticipated cost throughout Utah's health districts is estimated to be \$25,841 per year.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be anticipated costs to the local health districts adding this language to this rule. The anticipated cost throughout Utah's health districts is estimated to be \$25,841 per year. In addition, the Utah Department of Health will need to change their reporting criteria in their reporting system to the local health districts.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses. No negative fiscal impacts are expected to result in this amendment.

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

HEALTH  
DISEASE CONTROL AND PREVENTION,  
EPIDEMIOLOGY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Sam LeFevre by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at slefevre@utah.gov or mail at PO Box 142104, Salt Lake City, UT 84114-2104

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

**R386. Health, Disease Control and Prevention, Epidemiology.**

**R386-703. Injury Reporting Rule.**

**R386-703-1. Purpose Statement.**

(1) The Injury Reporting Rule is adopted under authority of Sections 26-1-30 and 26-6-3.

(2) The Injury Reporting Rule establishes an injury surveillance and reporting system for major injuries occurring in Utah. Injuries constitute a leading cause of death and disability in Utah and, therefore, pose an important risk to public health.

(3) Rule R386-703 is adopted with the intent of identifying causes of major injury which can be reduced or eliminated, thereby reducing morbidity and mortality.

**R386-703-2. ~~[Injury]~~Definitions.**

(1) "Injury" is defined as bodily damage resulting from exposure to physical agents such as mechanical energy, thermal energy, ionizing radiation, or chemicals, or resulting from the deprivation of basic environmental requirements such as oxygen or heat. Mechanical energy injuries include acceleration and deceleration injuries, blunt trauma, and penetrating wound injuries.

(2) "Laboratory" is defined as any clinical laboratory, physician office, hospital, health clinic, reference laboratory or any facility that performs blood lead analysis.

**R386-703-3. Reportable Injuries.**

(~~1~~)<sup>3</sup> The Utah Department of Health declares the following injuries to be of concern to the public's health. Each case shall be reported to the Utah Department of Health as described in R386-703-4.

(a) Acute traumatic brain injury. Reportable acute traumatic brain injuries include head injuries of sufficient severity to cause death or to require admission to a hospital. Acute traumatic brain injuries may be associated with transient or persistent neurological dysfunction, and may be diagnosed as brain concussions, brain contusions, or traumatic intracranial hemorrhages.

(b) Acute spinal cord injury. Reportable acute spinal cord injuries include traumatic injuries to the contents of the spinal canal, spinal cord or cauda equina, which result in death or which result in transient or persistent neurological dysfunction of sufficient severity to require hospital admission.

(c) Blunt force injury. Reportable injuries include all blunt force injuries which result in death or which are of sufficient severity to require hospital admission.

(d) Drowning and near drowning. Reportable drownings and near drownings include all water immersion injuries resulting in death and other water immersion injuries of sufficient severity to require hospital admission.

(e) Asphyxiation. Reportable asphyxiations include injuries which arise from atmospheric oxygen deprivation or from

traumatic respiratory obstruction which result in death or which are of sufficient severity to require hospital admission.

(f) Burns. Reportable burn injuries include injuries resulting from acute thermal exposure or exposure to fire which result in death or which are of sufficient severity to require hospital admission.

(g) Electrocution. Reportable electrocution injuries include injuries arising from exposure to electricity which result in death or which are of sufficient severity to require hospital admission.

(h) Blood Lead. All blood lead test results are reportable. Cases of elevated blood lead levels include all persons with ~~whole~~ blood lead concentrations equal to or greater than ~~40~~<sup>5</sup> micrograms per deciliter. All cases shall be confirmed by either a venous or capillary blood sample, if the first sample was a capillary blood sample.

(i) Chemical Poisoning. Reportable cases of chemical poisoning include all persons with acute exposure to toxic chemical substances which result in death or which require hospital admission or hospital emergency department evaluation. Unintentional adverse health effects resulting from the use of pharmacological agents as prescribed by physicians do not require reporting under this rule.

(j) Intentional Injuries. Reportable intentional injuries include all cases of suicide or attempted suicide resulting in hospital admission and all cases of homicide, attempted homicide, or battery resulting in hospitalization.

(k) Injuries Related to Substance Abuse. Reportable injuries include all cases of injury resulting in death or hospitalization and associated with alcohol or drug intoxication of any person involved in the injury occurrence.

(l) Traumatic Amputations. Reportable amputations include traumatic amputations of a limb or part of a limb which result in death or which require hospital admission or hospital emergency department treatment. Only amputations resulting in bone loss shall be reported.

**R386-703-4. Report Requirements.**

(1) Reporting blood lead testing results.

(~~1~~)<sup>a</sup> Non-Case Report Contents. Unless otherwise specified, each blood lead result shall provide at minimum the following: name, date of birth or age if date of birth is unknown, sex, zip code, and the individual or agency submitting the report.

(~~2~~)<sup>b</sup> Case Report Contents. Unless otherwise specified, each injury report shall provide the following information pertaining to the injured person: name, date of birth or age if date of birth is unknown, sex, address of residence, date of injury, type of injury, external cause of injury, locale of injury, intentionality, relation of injury to occupation, disposition of the injured person, and the individual or agency submitting the report. A standard report format has been adopted and shall be supplied to reporting sources by the Department of Health upon request.

(~~3~~)<sup>2</sup> Agencies or Individuals Required to Report Injuries. A reportable injury evaluated or treated at a hospital shall be reported by that hospital. Reportable injuries not evaluated at a hospital shall be reported by the involved physician, nurse, other health care practitioner, medical examiner, head start health coordinator or laboratory administrator.

([4]3) Time Requirements. Persons required to report shall submit their reports to the local health department or the Utah Department of Health within 60 days of the time of diagnosis or recognition of injury. In the event of an unusual or excessive occurrence of injuries which may arise from a continuing or immediate threat to the public's health, persons required to report shall immediately report by telephone to the local health officer or to the Utah Department of Health.

([5]4) Case Report Destinations. Each case of injury shall be reported to the Utah Department of Health or to the local health department responsible for the geographic area where the injury occurred.

(a) The local health officer shall forward all original reports to the Utah Department of Health. Local health departments may maintain copies of these reports.

(b) Except as noted in R386-703-4(4)(c), (d) and (e), case reports shall be sent to the Bureau of Epidemiology of the Utah Department of Health.

(c) In fatal cases, submission of completed death certificates to the Bureau of Vital Records fulfills reporting requirements.

(d) In cases evaluated in hospital emergency departments, submission of properly completed hospital emergency department logs to the Bureau of Emergency Medical Services will fulfill reporting requirements, provided that the records are submitted through an electronic medium in a computer database format acceptable to the Bureau of Emergency Medical Services.

(e) In cases where reportable injuries listed in R386-703-3 are reported under the requirements of the Utah Health Data Authority Act, 26-33a, the data supplier may notify the Utah Department of Health in writing that information relating to individuals with a reportable injury will be supplied to the Bureau of Epidemiology before the identifying information is removed from the data file. Any data provided in this manner fulfills reporting requirements. If permission is not granted by the data supplier, duplicate reporting is required.

#### **R386-703-5. Special Investigations of Injury.**

(1) The Utah Department of Health and local health departments may conduct epidemiologic investigations of injury occurrence. The Utah Department of Health and local health departments may collect additional information pertaining to risk factors, medical condition, and circumstances of injury. Hospitals and other health care providers shall, upon request, provide authorized health personnel the occasion to inspect medical records of reportable injuries. The Utah Department of Transportation, Utah Industrial Commission, Utah Department of Public Safety, and local public safety agencies shall make available to authorized health personnel information on reportable injuries.

#### **R386-703-6. Confidentiality of Reports.**

(1) All reports herein required are confidential and are not open to public inspection. The confidentiality of personal information obtained under this rule shall be maintained according to the provisions of Sections 26-6-27 through 26-6-30. Nothing in this rule, however, precludes the discussion of case information with the attending physician or public health workers.

#### **R386-703-7. Penalties.**

(1) Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Injury Reporting Rule, are prescribed under Sections 26-23-3 through 26-23-6.

**KEY: rules and procedures, injur[y]ies**

**Date of Enactment or Last Substantive Amendment: [~~May 15, 2015~~]2017**

**Notice of Continuation: September 23, 2015**

**Authorizing, and Implemented or Interpreted Law: 26-1-30**

## Human Resource Management, Administration **R477-1** Definitions

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41805

FILED: 06/14/2017

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to add definitions needed for amendments proposed in other rules regarding direct supervisor and employee's family member.

**SUMMARY OF THE RULE OR CHANGE:** This change adds a definition for direct supervisor in Subsection R477-1-1(36), rennumbers definitions under Subsections R477-1-1(36) through (45), adds a definition for employee's family member in Subsection R477-1-1(46) and rennumbers all subsequent subsections.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 67-19-15 and Section 67-19-18 and Section 67-19-6

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to business. Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN RESOURCE MANAGEMENT  
 ADMINISTRATION  
 ROOM 2120 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

---

**R477. Human Resource Management, Administration.**

**R477-1. Definitions.**

**R477-1-1. Definitions.**

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) **Abandonment of Position:** An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.

(2) **Actual FTE:** The total number of full time equivalents based on actual hours paid in the state payroll system.

(3) **Actual Hours Worked:** Time spent performing duties and responsibilities associated with the employee's job assignments.

(4) **Actual Wage:** The employee's assigned wage rate in the central personnel record maintained by the Department of Human Resource Management.

(5) **Administrative Leave:** Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(6) **Administrative Adjustment:** An adjustment to a salary range approved by DHRM that is not a Market Comparability Adjustment, a Structure Adjustment, or a Reclassification. It is for administrative purposes only. An Administrative Adjustment will result in an increase to incumbent pay only when necessary to bring salaries to the minimum of the salary range.

(7) **Administrative Salary Decrease:** A decrease in the current actual wage based on non-disciplinary administrative reasons determined by an agency head.

(8) **Administrative Salary Increase:** An increase in the current actual wage based on special circumstances determined by an agency head.

(9) **Agency:** An entity of state government that is:

(a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code;

(b) authorized to employ personnel; and

(c) subject to Title 67, Chapter 19, Utah State Personnel Management Act.

(10) **Agency Head:** The executive director or commissioner of each agency or a designated appointee.

(11) **Agency Human Resource Field Office:** An office of the Department of Human Resource Management located at another agency's facility.

(12) **Agency Management:** The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(13) **Alternative State Application Program (ASAP):** A program designed to appoint a qualified person with a disability through an on the job examination period.

(14) **Appeal:** A formal request to a higher level for reconsideration of a grievance decision.

(15) **Appointing Authority:** The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(16) **Break in Service:** A point at which an individual has an official separation date and is no longer employed by the State of Utah.

(17) **Budgeted FTE:** The total number of full time equivalents budgeted by the Legislature and approved by the Governor.

(18) **Bumping:** A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(19) **Career Mobility:** A temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs.

(20) **Career Service Employee:** An employee who has successfully completed a probationary period in a career service position.

(21) **Career Service Exempt Employee:** An employee appointed to work for a period of time, serving at the pleasure of the appointing authority, who may be separated from state employment at any time without just cause.

(22) Career Service Exempt Position: A position in state service exempted by law from provisions of career service under Section 67-19-15.

(23) Career Service Status: Status granted to employees who successfully complete a probationary period for career service positions.

(24) Category of Work: A job series within an agency designated by the agency head as having positions to be eliminated agency wide through a reduction in force. Category of work may be further reduced as follows:

(a) a unit smaller than the agency upon providing justification and rationale for approval, including:

- (i) unit number;
- (ii) cost centers;
- (iii) geographic locations;
- (iv) agency programs.

(b) positions identified by a set of essential functions, including:

- (i) position analysis data;
- (ii) certificates;
- (iii) licenses;
- (iv) special qualifications;
- (v) degrees that are required or directly related to the position.

(25) Change of Workload: A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(26) Classification Grievance: The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

(27) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.

(28) Classification Study: A Classification review conducted by DHRM under Section R477-3-4. A study may include single or multiple job or position reviews.

(29) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

(30) Contractor: An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and may not accrue benefits.

(31) Critical Incident Drug or Alcohol Test: A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

(32) Demotion: A disciplinary action resulting in a reduction of an employee's current actual wage.

(33) Detailed Position Record Management Report: A document that lists an agency's authorized positions, incumbent's name and hourly rate, job identification number, salary range, and schedule.

(34) DHRM: The Department of Human Resource Management.

(35) DHRM Approved Recruitment and Selection System: The state's recruitment and selection system, which is a

centralized and automated computer system administered by the Department of Human Resource Management.

(36) Direct Supervisor: An employee's primary supervisor who normally directs day to day job activity such as assigning work, approving time records, and considering leave requests.

\_\_\_\_\_([36]37) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (2008); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (2008); including exclusions and modifications.

([37]38) Disciplinary Action: Action taken by management under Rule R477-11.

([38]39) Dismissal: A separation from state employment for cause under Section R477-11-2.

([39]40) Dual State Employment: Employees who work for more than one agency and meet the employee criteria which is located in the Division of Finance accounting policy 11-18.00.

([40]41) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 84 (2008), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

([41]42) Employee Personnel Files: For purposes of Title 67, Chapters 18 and 19, the files or records maintained by DHRM and agencies as required by Section R477-2-5. This does not include employee information maintained by supervisors.

([42]43) Employment Eligibility Verification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 (1988) that employers verify the identity and eligibility of individuals for employment in the United States.

([43]44) "Escalator" Principle: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

([44]45) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.

(46) Employee's Family Member: An employee's Spouse, siblings, step-siblings, siblings-in-law, parents, step-parents, parents-in-law, children, step-children, children-in-law, and any person living in the same household as the employee.

\_\_\_\_\_([45]47) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

([46]48) FLSA Exempt: Employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

([47]49) FLSA Nonexempt: Employees who are not exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

([48]50) Follow Up Drug or Alcohol Test: Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.

([49]51) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

([50]52) GOMB: Governor's Office of Management and Budget.

([51]53) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment, or a complaint by a reporting employee as defined in Section 67-19a-101(4)(c).

([52]54) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-406 and the rules promulgated by the Career Service Review Office.

([53]55) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

([54]56) Highly Sensitive Position: A position approved by DHRM that includes the performance of:

(a) safety sensitive functions:

(i) requiring an employee to operate a commercial motor vehicle under 49 CFR 383 (January 18, 2006);

(ii) directly related to law enforcement;

(iii) involving direct access or having control over direct access to controlled substances;

(iv) directly impacting the safety or welfare of the general public;

(v) requiring an employee to carry or have access to firearms; or

(b) data sensitive functions permitting or requiring an employee to access an individual's highly sensitive, personally identifiable, private information, including:

(i) financial assets, liabilities, and account information;

(ii) social security numbers;

(iii) wage information;

(iv) medical history;

(v) public assistance benefits; or

(vi) driver license

([55]57) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position created in the DHRM approved recruitment and selection system.

([56]58) HRE: Human Resource Enterprise; the state human resource management information system.

([57]59) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

([58]60) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

([59]61) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government executive branch employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

([60]62) Intern: An individual in a college degree or certification program assigned to work in an activity where on-the-job training or community service experience is accepted.

([61]63) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range is applied to each position in the group.

([62]64) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

([63]65) Job Family: A group of jobs that have related or common work content, that require common skills, qualifications, licenses, etc., and that normally represents a general occupation area.

([64]66) Job Requirements: Skill requirements defined at the job level.

([65]67) Job Series: Two or more jobs in the same functional area having the same job title, but distinguished and defined by increasingly difficult levels of skills, responsibilities, knowledge and requirements; or two or more jobs with different titles working in the same functional area that have licensure, certification or other requirements with increasingly difficult levels of skills, responsibilities, knowledge and requirements.

([66]68) Leave Benefit: A benefit provided to an employee that includes: Annual leave, sick leave, converted sick leave, and holiday leave. These benefits are not provided to non-benefited employees.

([67]69) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

([68]70) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

([69]71) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

([70]72) Market Comparability Adjustment: An adjustment to a salary range approved by the legislature that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources. The Market Comparability Adjustment may also change incumbent pay resulting in a budgetary impact for an agency.

([71]73) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

([72]74) Misconduct: Wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.

([73]75) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

([74]76) Nonfeasance: Failure to perform either an official duty or legal requirement.

([75]77) Pay for Performance Award: A type of cash incentive award where an employee or group of employees may receive a cash award for meeting or exceeding well-defined annual production or performance standards, targets and measurements.

([76]78) Pay for Performance: A plan for incentivizing employees for meeting or exceeding production or performance goals, in which the plan is well-defined before work begins, eligible work groups are defined, specific goals and targets are determined,



measurement procedures are in place, and specific incentives are provided when goals and targets are met.

([77]79) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

([78]80) Performance Improvement Plan: A documented administrative action to address substandard performance of an employee under Section R477-10-2.

([79]81) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

([80]82) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

([81]83) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

([82]84) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Section 63G-4-101 et seq. for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Office, or the classification appeals procedure.

([83]85) Phased Retirement: Employment on a half-time basis of a retiree with the same participating employer immediately following the retiree's retirement date. During phased retirement retiree will receive a reduced retirement allowance.

([84]86) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

([85]87) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

([86]88) Position Identification Number: A unique number assigned to a position for FTE management.

([87]89) Post Accident Drug or Alcohol Test: A Drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty or driving a state vehicle:

(a) where a fatality occurs;

(b) where there is sufficient information to conclude that the employee was a contributing cause to an accident that results in bodily injury or property damage; or

(c) where there is reasonable suspicion that the employee had been driving while under the influence of alcohol or a controlled substance.

([88]90) Preemployment Drug Test: A drug test conducted on:

(a) final applicants who are not current employees;

(b) final candidates for a highly sensitive position;

(c) employees who are final candidates for transfer or promotion from a non-highly sensitive position to a highly sensitive position; or

(d) employees who transfer or are promoted from one highly sensitive position to another highly sensitive position.

([89]91) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

([90]92) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

([91]93) Proficiency: An employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

([92]94) Promotion: An action moving an employee from a position in one job to a position in another job having a higher salary range maximum.

([93]95) Protected Activity: Opposition to discrimination or participation in proceedings covered by the antidiscrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.

([94]96) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of highly sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each highly sensitive employee has an equal chance of being selected for testing.

([95]97) Reappointment: Return to work of an individual from the reappointment register after separation from employment.

([96]98) Reappointment Register: A register of individuals who have prior to March 2, 2009:

(a) held career service status and been separated in a reduction in force;

(b) held career service status and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause; or

(c) by Career Service Review Board decision been placed on the reappointment register.

([97]99) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the employee.

([98]100) Reassignment: An action mandated by management moving an employee from one job or position to a different job or position with an equal or lesser salary range maximum for administrative reasons. A reassignment may not include a decrease in actual wage except as provided in federal or state law.

([99]101) Reclassification: A DHRM reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities.

([100]102) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

([101]103) Reemployment: Return to work of an employee who resigned or took military leave of absence from state employment to serve in the uniformed services covered under USERRA.

([102]104) Requisition: An electronic document used for HRE Online recruitment, selection and tracking purposes that includes specific information for a particular position, job seekers' applications, and a hiring list.

([103]105) Salary Range: Established minimum and maximum rates assigned to a job.

([104]106) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (schedule B) or career service exempt (schedule A).

([105]107) Separation: An employee's voluntary or involuntary departure from state employment.

([106]108) Settling Period: A sufficient amount of time, determined by agency management, for an employee to fully assume new or higher level duties required of a position.

([107]109) Structure Adjustment: An adjustment to a salary range approved by DHRM that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources. The salary range adjustment cannot have a budgetary impact on an agency unless additional approval is received from the Governor's Office.

([108]110) Tangible Employment Action: A significant change in employment status, such as firing, demotion, failure to promote, work reassignment, or a decision which changes benefits.

([109]111) Transfer: An action not mandated by management moving an employee from one job or position to another job or position with an equal or lesser salary range maximum for which the employee qualifies. A transfer may include a decrease in actual wage.

([110]112) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, National Oceanic and Atmospheric Administration (NOAA), National Disaster Medical Systems (NDMS) and any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; or absence from work for an examination to determine fitness for any of the above types of duty.

([111]113) Unlawful Discrimination: An action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other factor, as prohibited by law.

([112]114) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge.

([113]115) Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

([114]116) Veteran Employment Opportunity Program (VEOP): A program designed to appoint a qualified veteran through an on the job examination period.

([115]117) Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

([116]118) Wage: The fixed hourly rate paid to an employee.

([117]119) Work Period: The maximum number of hours an employee may work prior to accruing overtime or compensatory hours based on variable payroll cycles outlined in 67-19-6.7 and 29 CFR 553.230.

**KEY: personnel management, rules and procedures, definitions**  
**Date of Enactment or Last Substantive Amendment: 2017**

**Notice of Continuation: February 2, 2012**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-15; 67-19-18**

## Human Resource Management, Administration **R477-2** Administration

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 41806

FILED: 06/14/2017

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to update and clarify expectations regarding supervisory relationships with family members.

**SUMMARY OF THE RULE OR CHANGE:** The changes modify Section R477-2-8 to clarify what public officials are prohibited from doing if the decision regards a family member.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63G-5-201 and Section 67-19-15 and Section 67-19-18 and Section 67-19-6 and Title 63G, Chapter 2 and Title 63G, Chapter 7

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state

government and will have no impact on other persons. This rule has no financial impact on state employees.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no direct compliance cost for these amendments. This rule only effects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to business. Rules published by the Department of Human Resource Management (DHRM) have no direct affect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 HUMAN RESOURCE MANAGEMENT  
 ADMINISTRATION  
 ROOM 2120 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

AUTHORIZED BY: Debbie Cragun, Executive Director

**R477. Human Resource Management, Administration.**

**R477-2. Administration.**

**R477-2-1. Rules Applicability.**

These rules apply to the executive branch of Utah State Government and its career service and career service exempt employees. Other entities may be covered in specific sections as determined by statute. Any inclusions or exceptions to these rules are specifically noted in applicable sections. Entities which are not bound by mandatory compliance with these rules include:

- (1) members of the Legislature and legislative employees;
- (2) members of the judiciary and judicial employees;
- (3) officers, faculty, and other employees of state institutions of higher education;

- (4) officers, faculty, and other employees of the public education system, other than those directly employed by the State Board of Education;

- (5) employees of the Office of the Attorney General;

- (6) elected members of the executive branch and their Schedule A employees;

- (7) employees of independent entities, quasi-governmental agencies and special service districts;

- (8) employees in any position that is determined by statute to be exempt from these rules.

**R477-2-2. Compliance Responsibility.**

Agencies shall comply with these rules.

- (1) The Executive Director, DHRM, may authorize exceptions to these rules where allowed when:

- (a) applying the rule prevents the achievement of legitimate government objectives; or

- (b) applying the rule infringes on the legal rights of an employee.

- (2) Agency personnel records, practices, policies and procedures, employment and actions, shall comply with these rules and are subject to compliance audits by DHRM.

**R477-2-3. Fair Employment Practice and Discrimination.**

All state personnel actions shall provide equal employment opportunity for all individuals.

- (1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.

- (2) Employment actions may not be based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, or protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor, except as provided under Subsection 67-19-15(2)(b)(ii).

- (3) An employee who alleges unlawful discrimination may:

- (a) submit a complaint to the agency head; and

- (b) file a charge with the Utah Labor Commission Antidiscrimination and Labor Division within 180 days of the alleged harm, or directly with the EEOC within 300 days of the alleged harm.

- (4) A state official may not impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

**R477-2-4. Control of Personal Service Expenditures.**

- (1) Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of Management and Budget, the Department of Human Resource Management and the Division of Finance.

- (2) Changes in job identification numbers, salary ranges, or number of positions listed in the Detailed Position Record Management Report shall be approved by the Executive Director, DHRM or designee.

(3) No person shall be placed or retained on an agency payroll unless that person occupies a position listed in an agency's approved Detailed Position Record Management Report.

**R477-2-5. Records.**

Access to and privacy of personnel records maintained by DHRM are governed by Title 63G, Chapter 2, the Government Records Access and Management Act (GRAMA) and applicable federal laws. DHRM shall designate and classify the records and record series it maintains under the GRAMA statute and respond to GRAMA requests for employee records.

(1) DHRM shall maintain an electronic record for each employee that contains the following, as appropriate:

(a) Social Security number, date of birth, home address, and private phone number.

(i) This information is classified as private under GRAMA.

(ii) DHRM may grant agency access to this information for state business purposes. Agencies shall maintain the privacy of this information.

(b) performance ratings;

(c) records of actions affecting employee salary history, classification history, title and salary range, employment status and other personal data.

(2) DHRM shall maintain, on behalf of agencies, personnel files.

(3) DHRM shall maintain, on behalf of agencies, a confidential medical file. Confidentiality shall be maintained in accordance with applicable regulations. Information in the medical file is private, controlled, or exempt in accordance with Title 63G-2.

(4) An employee has the right to review the employee's personnel file, upon request, in the presence of a DHRM representative.

(a) An employee may request corrections, amendments to, or challenge any information in the DHRM electronic or hard copy personnel file, through the following process:

(i) The employee shall request in writing to the appropriate agency human resource field office that changes occur.

(ii) The employing agency shall be given an opportunity to respond.

(iii) Disputes over information that are not resolved between the employing agency and the employee shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter, the agency's response, and the DHRM Executive Director's decision.

(5) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel file.

(a) When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed Title and the authority for the action.

(6) Upon employee separation, DHRM shall retain electronic records for thirty years. Agency hard copy records shall be retained at the agency for a minimum of two years, and then transferred to the State Record Center to be retained according to the record retention schedule.

(7) When an employee transfers from one agency to another, the former agency shall transfer the employee's personnel file, medical and I-9 records to the new agency.

(8) An employee who violates confidentiality is subject to disciplinary action and may be personally liable.

(9) Records related to conduct for which an employee may be disciplined under R477-11-1(1) are classified as private records under Subsection 62G-2-302(2)(a).

(i) If disciplinary action under R477-11-1(4) has been sustained and completed and all time for appeal has been exhausted, the documents issued in the disciplinary process are classified as public records under Subsection 63G-2-301(3)(o).

**R477-2-6. Release of Information in a Reference Inquiry.**

Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information is classified as public, or if the subject of the record has signed and provided a current reference release form for information authorized under Title 63G, Chapter 2, of the Government Records Access and Management Act.

(1) The employment record is the property of Utah State Government with all rights reserved to utilize, disseminate or dispose of in accordance with the Government Records Access and Management Act.

(2) Additional information may be provided if authorized by law.

**R477-2-7. Employment Eligibility Verification (Immigration Reform and Control Act -- 1986).**

Employees newly hired, rehired, or placed through reciprocity with or assimilation from another career service jurisdiction shall provide verifiable documentation of their identity and eligibility for employment in the United States by completing all sections of the Employment Eligibility Verification Form I-9 as required under the Immigration Reform and Control Act of 1986.

**R477-2-8. ~~Disclosure by~~ Public Officers Supervising a Relative.**

~~[It is unlawful for a] A public officer [to] may not appoint, directly supervise, or [to] make salary [or], performance [recommendations for relatives except as prescribed under Section 52-3-1], disciplinary, or other employment matter decisions regarding a family member.~~

(1) A public officer supervising a [relative] family member shall make a complete written disclosure of [the] any such relationship to the agency head [in accordance with Section 52-3-1] and be recused from any and all employment matter discussions or decisions relating to the family member.

**R477-2-9. Employee Liability.**

An employee who becomes aware of any occurrence which may give rise to a lawsuit, who receives notice of claim, or is sued because of an incident related to state employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Division of Risk Management.

(1) In most cases, under Title 63G, Chapter 7, the Governmental Immunity Act, an employee shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.

(2) Before an agency may defend its employee against a claim, the employee shall make a written request for a defense to the agency head within ten calendar days, under Subsection 63G-7-902(2).

**R477-2-10. Alternative Dispute Resolution.**

Agency management may establish a voluntary alternative dispute resolution program under Chapter 63G, Chapter 5.

**KEY: administrative responsibility, confidentiality of information, fair employment practices, public information**  
**Date of Enactment or Last Substantive Amendment: 2017**  
**Notice of Continuation: February 2, 2012**  
**Authorizing, and Implemented or Interpreted Law: 52-3-1; 63G-2; 63G-5-201; 63G-7; 67-19-6; 67-19-15; 67-19-18**

**Human Resource Management,  
 Administration  
 R477-6  
 Compensation**

**NOTICE OF PROPOSED RULE  
 (Amendment)  
 DAR FILE NO.: 41807  
 FILED: 06/14/2017**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to update a single provision relating to severance benefits.

**SUMMARY OF THE RULE OR CHANGE:** This change alters Section R477-6-11 to double severance salary for employees leaving schedules AB and AC while leaving it the same for other eligible schedule codes.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63F-1-106 and Section 67-19-12 and Section 67-19-12.5 and Section 67-19-6 and Subsection 67-19-15.1(4)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to business. Rules published by the Department of Human Resource Management (DHRM) have no direct impact on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 HUMAN RESOURCE MANAGEMENT  
 ADMINISTRATION  
 ROOM 2120 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017**

**AUTHORIZED BY: Debbie Cragun, Executive Director**

**R477. Human Resource Management, Administration.  
 R477-6. Compensation.  
 R477-6-1. Pay Plans.**

- (1) With approval of the Governor, the Executive Director, DHRM, shall develop salary ranges for pay plans for each job.
  - (a) Each job description shall include a salary range.
  - (b) Agency approved wage increases within salary ranges shall be:
    - (i) at least 1/2%, or

(ii) to the maximum wage within the salary range, if the difference between the current wage and the salary range maximum is less than 1/2%.

(c) Agency approved wage decreases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the minimum wage within the salary range, if the difference between the current wage and the salary range minimum is less than 1/2%.

(d) Salary increases and decreases shall not place an employee below the salary range minimum or above the salary range maximum unless the criteria for longevity increases has been met.

**R477-6-2. Allocation to the Pay Plans for Classified Employees.**

(1) Each job in classified service shall be:

(a) assigned to a salary range and job family.

(b) surveyed in the market in accordance with the benchmark job(s).

(c) included in a market comparability adjustment recommendation if warranted.

(2) Salary ranges can be adjusted through:

(a) an administrative adjustment determined appropriate by DHRM for administrative purposes that is not based on a change of duties and responsibilities, nor based on a comparison to salary data in the market;

(b) a structure adjustment that has no budgetary impact on all affected agencies; or

(c) a market comparability adjustment to a job's salary range based upon salary data and other relevant information for similar jobs in the market through an annual compensation benchmark survey or other sources.

(i) Market comparability adjustment recommendations shall be included in the annual compensation plan and are submitted to the Governor no later than October 31 of each year.

(ii) Funding for market comparability adjustments shall be legislatively approved if the adjustment would cause a budgetary impact.

(iii) If market comparability adjustments are funded and approved for benchmark jobs, salary ranges for other jobs in the same job family shall be adjusted by relative ranking with the benchmark job.

(3) Salary ranges cannot be adjusted more frequently than on an annual basis without an exception by the Executive Director, DHRM.

**R477-6-3. Pay Plans for Unclassified Employees Designated as Schedule AD and AR.**

(1) Each job in an AD/AR pay plan shall be assigned to a salary range that is no more than 40% above and below the salary range midpoint.

(2) Salary ranges may be adjusted through:

(a) An administrative adjustment determined appropriate by DHRM for administrative purposes.

(b) A structure adjustment.

(i) DHRM will consult with the Governor's Office of Management and Budget (GOMB) prior to making structure adjustments. GOMB approval is required for adjustments to the salary range of the Deputy Director or equivalent.

(ii) Funding for structure adjustments shall be legislatively approved unless the adjustment has no budgetary impact.

(iii) Structure adjustment recommendations that require funding may be included in the annual compensation plan.

(iv) Structure adjustments may take place on an annual basis. Limited exceptions addressing a critical need may be granted upon request and approval of the Executive Director, DHRM.

(v) Structure adjustments shall not be approved for cross agency jobs unless the adjustment has no budgetary impact on all affected agencies.

**R477-6-4. Pay Plans for Unclassified Employees Designated as Schedule AC, AG, AH, AS, AN, AO, AP, IN, TL, AU, AQ and all employees of the State Board of Education.**

(1) Each job exempted from classified service that are identified in positions under R477-3-1(1) shall have a salary range with a beginning and ending salary of any amount determined appropriate by the affected agency.

**R477-6-5. Appointments.**

(1) All appointments shall be placed on the DHRM approved salary range for the job.

(2) Qualifying military service members returning to work under USERRA shall be placed in their previous position or a similar position. Reemployment shall include the same seniority status, wage, including any cost of living adjustments, general increase, reclassification of the service member preservice position, or market comparability adjustments that would have affected the service member's preservice position during the time spent by the affected service member in the uniformed services. Performance related salary increases are not included.

**R477-6-6. Salary.**

(1) Promotions.

(a) An employee who is not in designated schedule IN or TL and is promoted to a job with a salary range maximum exceeding the employee's current salary range maximum shall receive a wage increase of at least 5%.

(b) An employee who is promoted may not be placed higher than the maximum or lower than the minimum in the new salary range except as provided in subsection R477-6-6(3), governing longevity salary increases.

(c) To be eligible for a promotion, an employee shall meet the requirements and skills specified in the job description and position specific criteria as determined by the agency for the position.

(2) Reclassifications.

(a) At agency management's discretion, an employee reclassified to a job with a salary range maximum exceeding the employee's current salary range maximum may receive a wage increase of at least 1/2% or up to the salary range maximum. An employee shall be placed within the new salary range. An employee's eligibility for a longevity salary increase shall be consistent with Subsection R477-6-6(3).

(b) An employee whose job is reclassified to a job with a lower salary range shall retain the current wage.

(3) Longevity Salary Increase.

(a) An employee shall receive an initial longevity salary increase of 2.75% when:

(i) the employee has been in state service for eight years or more. The employee may accrue years of service in more than one agency and such service is not required to be continuous.

(ii) the employee has been at or above the maximum of the current salary range for at least one year; and

(iii) received a passing performance appraisal rating within the 12-month period preceding the longevity increase.

(b) An employee who has received the initial longevity increase is then eligible for an additional 2.75% increase every three years. To be eligible for these additional increases, an employee shall receive a passing performance appraisal rating within the 12-month period preceding the longevity increase.

(c) An employee with a wage that is above the maximum salary range because of a longevity salary increase:

(i) shall retain the current actual wage if receiving an administrative adjustment or is reassigned or reclassified to a job with a lower salary range maximum.

(ii) who is reclassified to a job with a higher salary range maximum shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. At the discretion of agency management the salary increase shall be at least 1/2% or up to the salary range maximum of the new job.

(iii) who is promoted shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. The wage increase shall be at least 5% or up to the salary range maximum of the new job.

(iv) who is promoted, reclassified, transferred, reassigned or receives an administrative adjustment and remains at or above the salary range maximum, shall receive their next longevity salary increase three years from the date they received the most recent increase subject to (3)(a).

(d) An employee with a wage that is not at or above the salary range maximum who is reclassified, transferred, reassigned, or receives an administrative adjustment and has a current actual wage that is above the salary range maximum of the new job is considered to be above maximum and may be eligible for a longevity salary increase after meeting the requirements of (3)(a).

(h) An employee in Schedules AB, IN, or TL is not eligible for the longevity salary increase program.

#### (4) Administrative Adjustment.

(a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes may not receive an adjustment in the current actual wage unless the employee is below the minimum of the new salary range.

(b) An employee whose position is changed by administrative adjustment to a job with a lower salary range shall retain the current wage even if the current wage exceeds the new salary range maximum.

#### (5) Reassignment.

An employee's current actual wage may not be decreased except as provided in federal or state law.

#### (6) Transfer.

(a) Management may decrease the current actual wage of an employee who transfers to another job with the same or lower salary range maximum.

(b) An employee who applies for a job with a lower salary range maximum shall be placed within the salary range of the new job.

#### (7) Demotion.

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage of at least 1/2%, or down to the salary range minimum as determined by the agency head or designee. The agency head or designee may move an employee to a job with a lower salary range concurrent with the reduction in the current actual wage.

#### (8) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

(a) An employee shall receive an increase of at least 1/2% or up to the salary range maximum.

(b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for administrative salary increases shall be:

(i) in writing;

(ii) approved by the agency head or designee;

(iii) supported by unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.

(e) Administrative salary increases may be given during the probationary period. Wage increases shall be at least 1/2% or up to the salary range maximum. These increases alone do not constitute successful completion of the probationary period or the granting of career service status.

(f) An employee at or above the salary range maximum may not be granted administrative salary increases.

(g) Increasing an employee's wage as part of a transfer or reassignment action must be justified as an administrative salary increase in a separate action.

#### (9) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

(a) The final wage may not be less than the salary range minimum.

(b) Wage decreases shall be at least 1/2% or down to the salary range minimum.

(c) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the agency head; and

(iii) supported by issues such as previous written agreements between the agency and the employee to include career mobility, reasonable accommodation, or other unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

#### (10) Career Mobility.

(a) Agencies may offer an employee on a career mobility assignment a wage increase or decrease of at least 1/2% within the new salary range.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same wage and the same or higher salary range that the employee would have received without the career mobility assignment.

(11) Exceptions.

The Executive Director, DHRM, may authorize exceptions for wage increases or decreases.

**R477-6-7. Incentive Awards.**

(1) Only agencies with written and published incentive award and bonus policies may reward employees with incentive awards or bonuses. Incentive awards and bonuses are discretionary, not an entitlement, and are subject to the availability of funds in the agency.

(a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.

(b) Individual awards may not exceed \$4,000 per pay period and \$8,000 in a fiscal year, except when approved by DHRM and the governor.

(i) A request for a retirement incentive award shall be accompanied by documentation of the work units affected and any cost savings.

(ii) A single payment of up to \$8,000 may be granted as a retirement incentive.

(c) All cash and cash equivalent incentive awards and bonuses shall be subject to payroll taxes.

(2) Performance Based Incentive Awards.

(a) Cash Incentive Awards

(i) An agency may grant a cash incentive award to an employee or group of employees that demonstrates exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.

(ii) Pay for Performance cash incentive award programs offered by an agency shall be included in the agency's incentive awards policy and reviewed annually by DHRM, in consultation with GOMB.

(A) The policy shall include information supporting the following:

(1) Sustainability of the funding for the cash incentive program;

(2) The positions eligible to participate in the Pay for Performance program;

(3) Goals of the program;

(4) Type of work to be incentivized; and

(5) Ability to track the effectiveness of the program.

(iii) All cash awards shall be approved by the agency head or designee. They shall be documented and a copy shall be maintained by the agency.

(b) Noncash Incentive Awards

(i) An agency may recognize an employee or group of employees with noncash incentive awards.

(ii) Individual noncash incentive awards may not exceed a value of \$50 per occurrence and \$200 for each fiscal year.

(iii) Noncash incentive awards may include cash equivalents such as gift certificates or tickets for admission. Cash equivalent incentive awards shall be subject to payroll taxes and shall follow standards and procedures established by the Department of Administrative Services, Division of Finance.

(3) Cost Savings Bonus

(a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.

(i) The agency shall document the cost savings involved.

(4) Market Based Bonuses

An agency may award a cash bonus as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market.

(a) All market based bonuses shall be approved by DHRM.

(i) When requesting market based awards an agency shall submit documentation specifying how the agency will benefit by granting the bonus based on:

(A) budget;

(B) recruitment difficulties;

(C) a mission critical need to attract or retain unique or hard to find skills in the market; or

(D) other market based reasons.

(b) Retention Bonus

An agency may award a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.

(c) Recruitment or Signing Bonus

An agency may award a bonus to a qualified job candidate to incentivize the candidate to work for the state.

(d) Scarce Skills Bonus

An agency may award a bonus to a qualified job candidate that has the scarce skills required for the job.

(e) Relocation Bonus

An agency may award a bonus to a current employee who must relocate to accept a position in a different commuting area.

(f) Referral Bonus

An agency may award a bonus to a current employee who refers a job applicant who is subsequently selected.

(g) Geographic Job Market Bonus

An agency may award a bonus to incentivize an employee to accept and/or continue an assignment in a specific geographic area.

**R477-6-8. Employee Benefits.**

(1) An employee shall be eligible for benefits when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working a minimum of 40 hours per pay period.

(2) An eligible employee has 30 days from the hire date to enroll in or decline one of the traditional medical insurance plans and 60 days from the hire date to enroll in or decline one of the HSA-qualified medical insurance plans or other tax-advantaged arrangement offered by PEHP and authorized under the Internal Revenue Code for the benefit of the employee.



(a) An employee shall only be permitted to change medical plans during the annual open enrollment period for all state employees.

(3) An eligible employee has 60 days from the hire date to enroll in dental, vision, and a flexible spending account.

(4) An employee shall enroll in guaranteed issue life insurance within 60 days of the hire date to avoid having to provide proof of insurability.

(a) An employee may enroll in additional life insurance and accidental death and dismemberment insurance at any time and may be required to provide proof of insurability.

(5) An employee eligible for retirement benefits shall be electronically enrolled using the URS online certification process as follows:

(a) An employee with any service time with Utah Retirement Systems prior to July 1, 2011, from any URS eligible employer, shall be automatically enrolled in the Tier I defined benefit plan and the Tier I defined contribution plan.

(i) Eligibility for Tier I shall be determined by Utah Retirement Systems.

(ii) An employee eligible for Tier I shall remain in the Tier I system, even after a break in service.

(b) An employee with no previous service time with Utah Retirement Systems in Tier I shall be enrolled in the Tier II retirement system.

(i) An employee has one year from the date of eligibility to elect whether to participate in the Tier II hybrid retirement system or the Tier II defined contribution plan.

(A) If no election is made the employee shall be automatically enrolled in the Tier II hybrid retirement system.

(ii) An employee eligible for the Tier II system has one year from the date of eligibility to change the election or it is irrevocable.

(c) Changes in employee contributions, beneficiaries, and investment strategies shall be submitted electronically to URS through the URS website.

(6) A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

(7) All insurance coverage, excluding COBRA, shall end:

(a) at midnight on the last day of the pay period in which the employee receives a paycheck for employees hired prior to February 15, 2003; or

(b) at midnight on the last day of the pay period in which the employment termination date became effective for employees hired on February 15, 2003, or later.

(8) An employee who is not eligible for benefits under R477-6-8(1) but does meet the minimum qualifications under the Affordable Care Act shall be eligible for medical insurance only.

**R477-6-9. Employee Converting from Career Service to Schedule AC, AD, AR, or AS.**

(1) A career service employee in a position meeting the criteria for career service exempt schedule AC, AD, AR, or AS shall have 60 days from the date of offer to elect to convert from career service to career service exempt. As an incentive to convert, an employee shall be provided the following:

(a) an administrative salary increase of at least 1/2% or up to the current salary range maximum. An employee at or above the current salary range maximum shall receive, in lieu of the salary adjustment, a one time bonus, as determined by the agency head or designee, not to exceed limits in Subsection R477-6-7(1)(b);

(b) state paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan, as provided in Section R477-6-10.

(2) An employee electing to convert to career service exempt after the 60 day election period may not be eligible for the wage increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) An employee electing not to convert to career service exemption shall retain career service status even though the position shall be designated as schedule AC, AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if the employee had previously earned career service. However, the employee may not be eligible for a severance package, increased annual leave accrual, or exempt life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the exempt life insurance coverage.

(5) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

**R477-6-10. State Paid Life Insurance.**

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, AR and AT shall be provided the following benefits if the employee is approved through underwriting:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Hourly wage \$24.03 or less shall receive \$125,000 of term life insurance;

(ii) Hourly wage between \$24.04 and \$28.84 shall receive \$150,000 of term life insurance;

(iii) Hourly wage \$28.85 or higher shall receive \$200,000 of term life insurance.

(2) An employee on schedule AC, AE, or AS may be provided these benefits at the discretion of the appointing authority.

**R477-6-11. Severance Benefit.**

(1) At the discretion of the appointing authority a benefits eligible career service exempt employee on schedule AB, AC, AD, AE, AR, AS or AT who is separated from state service through an action initiated by management, to include resignation in lieu of termination, may receive at the time of separation a severance benefit equal to:

(a) salary at the rate of:

(i) one week of salary, up to a maximum of 12 weeks, for each year of consecutive exempt service in the executive branch[; and] for schedule AD, AR, AS or AT employees; or

(ii) two weeks of salary, up to a maximum of 24 weeks, for each year of consecutive exempt service in the executive branch for schedule AB and AC employees; and

(b) if eligible for COBRA, the level of medical insurance coverage only at the time of severance shall be provided at the rate of two pay periods for each year of consecutive exempt service, up to a maximum of 13 pay periods.

**R477-6-12. Human Resource Transactions.**

The Executive Director, DHRM, shall publicize procedures for processing payroll and human resource transactions and documents.

**KEY:** wages, employee benefit plans, insurance, personnel management

**Date of Enactment or Last Substantive Amendment:** 2017

**Notice of Continuation:** February 2, 2012

**Authorizing, and Implemented or Interpreted Law:** 63F-1-106; 67-19-6; 67-19-12; 67-19-12.5; 67-19-15.1(4)

Human Resource Management,  
Administration  
**R477-8**  
Working Conditions

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41808

FILED: 06/14/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to reorganize a rule section to avoid unintended application of provisions.

**SUMMARY OF THE RULE OR CHANGE:** This change reorganizes Section R477-8-17 by eliminating Subsection R477-8-1(3) and moving its content into Subsection R477-8-1(1) so that it does not also apply to Subsection R477-8-1(2).

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 20A-3-103 and Section 67-19-6 and Section 67-19-6.7

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no direct compliance cost for these amendments. This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to business. Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the "Utah Personnel Management Act," Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
HUMAN RESOURCE MANAGEMENT  
ADMINISTRATION  
ROOM 2120 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Bryan Embley by phone at 801-538-3069, or by Internet E-mail at bkembley@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017**

**AUTHORIZED BY:** Debbie Cragun, Executive Director

**R477. Human Resource Management, Administration.**

**R477-8. Working Conditions.**

**R477-8-1. Work Week.**

(1) The state's standard work week begins Saturday at 12:00am and ends the following Friday at 11:59pm. FLSA nonexempt employees may not deviate from this work week.

(2) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt alternative business hours under Section 67-25-201.

(3) Agency management shall establish work schedules and may approve a flexible starting and ending time for an employee as long as scheduling is consistent with overtime provisions of Section R477-8-4.

(4) An employee is required to work the assigned schedule and be at work on time. An employee who is late, regardless of the reason including inclement weather, shall, with management approval, make up the lost time by using accrued leave, leave without pay or adjusting their work schedule.

(5) An employee's time worked shall be calculated in increments of 15 minutes. This rule incorporates by reference 29 CFR 785.48 (2012) for rounding practices when calculating time worked.

#### **R477-8-2. Telecommuting.**

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

- (a) establish a written policy governing telecommuting;
- (b) enter into a written contract with each participating employee to specify conditions, such as use of state or personal equipment, protecting confidential information, and results such as identifiable benefits to the state and how customer needs are being met;
- (c) not allow participating employees to violate overtime rules;
- (d) not compensate for normal commute time; and
- (e) document telecommuting authorization in the Utah Performance Management system.

#### **R477-8-3. Lunch, Break and Exercise Release Periods.**

(1) Each full time work day may include a minimum of 30 minutes non-compensated lunch period, at the discretion of agency management.

- (a) Lunch periods may not be used to shorten a work day.
- (2) An employee may take a 15 minute compensated break period for every four hours worked.
  - (a) Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.
- (3) Compensated exercise release time may be allowed at agency discretion for up to three days per week for 30 minutes.
  - (a) Participating agencies shall have a written policy regarding exercise release time.
  - (b) Work time exercise that is a bona fide job requirement is not subject to this section.
- (4) Authorization for exercise time and regular scheduled lunch breaks less than 30 minutes shall be documented in the Utah Performance Management system.

(5) As requested and after consultation with an employee, reasonable, daily break periods shall be granted for the first year following the birth of a child to allow an employee to express breast milk for her child.

- (a) A private location, other than a restroom, shall be provided.
- (b) Appropriate temporary storage shall be provided for expressed milk.

#### **R477-8-4. Overtime Standards.**

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Section 67-19-6.7.

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

- (a) prior supervisory approval for all overtime worked;
  - (b) recordkeeping guidelines for all overtime worked;
  - (c) verification that there are sufficient funds in the budget to compensate for overtime worked.
- (2) Overtime compensation designations are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.

(a) An employee may appeal the FLSA designation to the agency human resource field office. Further appeals may be filed directly with the United States Department of Labor, Wage and Hour Division. Sections 67-19-31, 67-19a-301 and Title 63G, Chapter 4 may not be applied for FLSA appeals purposes.

(3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period may not be counted as hours worked when calculating overtime accrual. Hours worked over two or more weeks may not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(4) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

#### **R477-8-5. Compensatory Time for FLSA Nonexempt Employees.**

(1) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or accrual of compensatory time at time and one half.

(a) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero at the rate of pay in the old position in the same pay period that the employee is:

- (i) transferred from one agency to a different agency; or
- (ii) promoted, reclassified, reassigned or transferred to an FLSA exempt position.

#### **R477-8-6. Compensatory Time for FLSA Exempt Employees.**

(1) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval.

Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by unit number and communicate it to employees. Overtime years shall be set at one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will establish the date for the agency at the last pay period of the calendar year. An agency may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.

(b) The limit on compensatory time accrued by an FLSA exempt employee may not be less than 80 hours.

(i) Any compensatory time earned by an FLSA exempt employee over the limit shall be paid out in the pay period it is earned.

(c) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(d) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

- (i) at the end of the employee's established overtime year;
- (ii) upon assignment to another agency;
- (iii) changes FLSA status to nonexempt; or
- (iv) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

(e) Schedule AB employees may not be compensated for compensatory time except with time off.

#### **R477-8-7. Nonexempt Public Safety Personnel.**

(1) To be considered for overtime compensation under this rule, a law enforcement or correctional officer shall meet the following criteria:

- (a) be a uniformed or plain clothes sworn officer;
  - (b) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accidental or willful injury, and to prevent and detect crimes;
  - (c) have the power to arrest;
  - (d) be POST certified or scheduled for POST training;
- and
- (e) perform over 80% law enforcement duties.

(2) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.

- (a) 171 hours in a work period of 28 consecutive days; or
- (b) 86 hours in a work period of 14 consecutive days.

(3) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.

- (a) 212 hours in a work period of 28 consecutive days; or
- (b) 106 hours in a work period of 14 consecutive days.

(4) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

- (a) the Fair Labor Standards Act, Section 207(k);
- (b) 29 CFR 553.230;
- (c) the state's payroll period; and
- (d) the approval of the Executive Director, DHRM.

#### **R477-8-8. Time Reporting.**

(1) Employees shall complete and submit a state approved biweekly time record that accurately reflects the hours actually worked, including:

- (a) approved and unapproved overtime;
- (b) on-call time;
- (c) stand-by time;
- (d) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and
- (e) approved leave time.

(2) An employee who fails to accurately record time may be disciplined.

(3) Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.

(4) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record may be disciplined.

(5) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, DHRM or designee.

#### **R477-8-9. Hours Worked.**

(1) An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be disciplined.

(a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

- (i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;
- (ii) the employee is completely relieved from duty and allowed to leave the job;
- (iii) the employee is relieved until a definite specified time; or
- (iv) the relief period is long enough for the employee to use as the employee sees fit.

#### **R477-8-10. On-call Time.**

(1) An FLSA nonexempt employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call. A FLSA exempt employee required by agency management to be available for on-call work may be compensated

at agency discretion, not to exceed a rate of one hour for every 12 hours the employee is on-call.

(a) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is available for a call to duty. An employee may not be in on-call status while using leave or while otherwise unable to respond to a call to duty.

(b) Agencies who enter into on-call agreements with employees shall have an agency policy consistent with this rule and finance policy.

(c) On-call status shall be designated by a supervisor and shall be in writing and documented in the Utah Performance Management system on an annual basis. Carrying a pager or cell phone shall not constitute on-call time without this written agreement.

(d) The employee shall record the hours spent in on-call status, and any actual hours worked, on the official time record, for the specific date the hours were incurred, in order to be paid.

(e) An employee may not record on-call hours and actual hours worked for the same period of time. On-call hours, actual hours worked, and leave hours cannot exceed 24 hours in a day.

(f) An employee shall round on-call hours to the nearest two decimal places. Hours of on-call pay shall be calculated by subtracting the number of hours worked in the on-call period from the number of hours in the on-call period then dividing the result by 12.

#### **R477-8-11. Stand-by Time.**

(1) An employee restricted to stand-by at a specified location ready for work shall be paid full-time or overtime, as appropriate. An employee shall be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(2) The meal periods of police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours shall be counted as working time, unless an express agreement excludes the time.

#### **R477-8-12. Commuting and Travel Time.**

(1) Normal commuting time from home to work and back may not count towards hours worked.

(2) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(3) Time an employee spends traveling on a special one day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(4) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(5) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to nonworking days, as well as regular working days. However, regular meal period time is not counted.

#### **R477-8-13. Excess Hours.**

(1) An employee may use excess hours the same way as annual leave.

(a) An employee may not work hours which would lead to the accrual of excess hours without prior management approval.

(b) An employee may not use any leave time, other than holiday and jury leave, that results in the accrual of excess hours.

(c) An employee may not accumulate more than 80 excess hours.

(d) Agency management shall pay out excess hours:

(i) for all hours accrued above the limit set by DHRM;

(ii) when an employee is assigned from one agency to another; and

(iii) upon separation.

(e) Agency management may pay out excess hours:

(i) automatically in the same pay period accrued;

(ii) at any time during the year as determined appropriate by a state agency or division; or

(iii) upon request of the employee and approval by the agency head.

#### **R477-8-14. Dual State Employment.**

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status (exempt or nonexempt) for any secondary position(s) shall be the same as the primary position.

(4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

(9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions under Subsection R477-9-2(1).

**R477-8-15. Reasonable Accommodation.**

Employees and applicants seeking reasonable accommodation shall be evaluated under state and federal law. This shall be done in conjunction with the agency ADA coordinator. The ADA coordinator shall consult with the Division of Risk management prior to denying any accommodation request.

**R477-8-16. Fitness For Duty Evaluations.**

Fitness for duty medical evaluations may be performed under any of the following circumstances:

- (1) return to work from injury or illness except as prohibited by federal law;
- (2) when management determines that there is a direct threat to the health or safety of self or others;
- (3) in conjunction with corrective action, performance or conduct issues, or discipline; or
- (4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

**R477-8-17. Temporary Transitional Assignment.**

(1) Agency management may place an employee in a temporary transitional assignment when an employee is unable to perform essential job functions due to temporary health restrictions. Time spent on such an assignment may be counted as leave for purposes of R477-7-1(9).

(2) Temporary transitional assignments may also be part of any of the following:

- (a) when management determines that there is a direct threat to the health or safety of self or others;
- (b) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;
- (c) where there is a bona fide occupational qualification for retention in a position;
- (d) while an employee is being evaluated to determine if reasonable accommodation is appropriate.

~~[(3) Time spent on a temporary transitional assignment may be counted as leave for purposes of 477-7-1(9).]~~

**R477-8-18. Change in Work Location.**

(1) An involuntary change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond the current one way commute, unless:

- (a) the change in work location is communicated to the employee at employment; or
- (b) the agency either pays to move the employee consistent with Section R25-6-8 and Finance Policy FIACCT 05-03.03, or reimburses commuting expenses up to the cost of a move.

**R477-8-19. Agency Policies and Exemptions.**

(1) Each agency may write its own policies for work schedules, overtime, leave usage, and other working conditions consistent with these rules.

**R477-8-20. Background Checks.**

In order to protect the citizens of the State of Utah and state resources and with the approval of the agency head, agencies may establish background check policies requiring specific employees to submit to a criminal background check through the Department of Public Safety, Bureau of Criminal Identification.

(1) Agencies who have statewide responsibility for confidential information, sensitive financial information, or handle state funds may require employees to submit to a background check, including employees who work in other state agencies.

(2) The cost of the background check will be the responsibility of the employing agency.

**R477-8-21. Policy Exceptions.**

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

**KEY: breaks, telecommuting, overtime, dual employment**

**Date of Enactment or Last Substantive Amendment: 2017**

**Notice of Continuation: February 2, 2012**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-6.7; 20A-3-103**

Human Services, Services for People  
with Disabilities

**R539-10**

Short-Term Limited Waiting List  
Services

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41802

FILED: 06/13/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule change incorporates feedback that the Division of Services for People with Disabilities has received from recipients of those services, as well as internal staff to improve the provision of these services in a timely and efficient manner with new protocols and procedures in place.

**SUMMARY OF THE RULE OR CHANGE:** This rule amendment changes the time frames with which recipients of short-term limited respite care services may use their allotted budgets from being available only during the fiscal year in which they were granted to being available for 365 days from the date the budget and plan was activated. This rule also clarifies the selection process for determining who is selected to participate in the short-term limited respite care program for that year, and removes unnecessary language regarding eligibility requirements. It provides a preference for those families who were not selected in previous years while still

allowing the Division to provide services to those who have received it in the previous year, provided the Division has sufficient funds to do so. This change also eliminates form selection and enrollment process for short-term limited family skill building.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-5-102

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** Review of the amendments to this rule confirms that there is no additional anticipated cost or savings to the state budget as a result of these changes. This rule changes time frames and the selection process but does not impact funding for the Division, services providers, recipients, or the public.

♦ **LOCAL GOVERNMENTS:** Review of the amendments to this rule confirms that there is no additional anticipated cost or savings to the local government as a result of these changes. Local governments neither enforce nor are affected by the time frames and selection process for short-term limited respite care services. Therefore, no cost or savings to local governments are anticipated.

♦ **SMALL BUSINESSES:** Review of the amendments to this rule confirms that there is no additional anticipated cost or savings to small business as a result of these changes. Adjusting the time frames and selection process does not affect small business because the number of people served by small or large provider agencies stay the same, as do the services provided.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Review of the amendments to this rule confirms that there is no additional anticipated cost or savings to other persons as a result of these changes. Adjusting the time frames and selection process does not affect individuals, partnerships or other persons because the total number of individuals served remains the same as do the services provided. The changes result in no additional cost savings and do not result in any compliance costs, and therefore does not impact the funding for the Division, services providers, recipients, or the public.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The amendments to this rule do not result in any compliance costs for persons with disabilities, persons' families or guardians, or any other persons or entities. This rule changes time frames and the selection process but does not impact funding for the Division, services providers, recipients, or the public.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The Department of Human Services anticipates no financial impact on businesses. This rule changes time frames and the selection process but does not impact funding for the Division, services providers, recipients, or the public. After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to business.

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

HUMAN SERVICES  
SERVICES FOR PEOPLE WITH DISABILITIES  
195 N 1950 W 3RD FLR  
SALT LAKE CITY, UT 84116

or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jolene Hanna by phone at 801-538-4154, or by Internet E-mail at [jhanna@utah.gov](mailto:jhanna@utah.gov)

♦ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at [jhonesrobbins@utah.gov](mailto:jhonesrobbins@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

AUTHORIZED BY: Angella Pinna, Director

**R539. Human Services, Services for People with Disabilities.**

**R539-10. Short-Term Limited Waiting List Services.**

**R539-10-1. Purpose and Authority.**

(1) The purpose of this rule is to provide:

(a) procedures and standards for the determination of eligibility for persons on the waiting list to receive short-term, limited services from the Division.

(2) This rule is authorized by Subsections 62A-5-102(2); 62A-5-102(7)[(e)].

**R539-10-2. Definitions.**

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-2.

(2) In addition:

(a) "Active Status" means a person has a current needs assessment score and is on the Division's waiting list.

(b) "Respite" is a service provided in a person's residence or other approved residential setting, designed to give relief to or during the temporary absence of a person's primary caregiver.

**R539-10-3. Eligibility.**

(1) A person is eligible for short-term limited waiting list services if:

~~[(a) the person has met eligibility criteria for non-waiver services as set forth in R539-1-1;]~~

~~[(b)]a~~ the person is not receiving ongoing services with the Division; and

~~[(e)]b~~ the person is currently in active status on the Division's waiting list.

**R539-10-4. Limitations.**

(1) With the exception of Short-Term Limited Respite Care Services, [F]funds granted must be used during the fiscal year in which they are granted, beginning July 1st of the year granted and ending June 30th of the following year.

(a) If there is no plan to use the funds or if the funds are unused, those funds will return to the Division and may be reallocated to another eligible person.

(2) Funds granted for Short-Term Limited Respite Care Services must be used within 365 days of the date in which the plan is activated.

(a) if funds are unused within 365 days of the date in which the plan is activated, those funds will return to the Division and shall be reallocated to another eligible person as set forth in Subsection R539-10-5(2)(c).

~~[(b) In the case of short-term limited family skill building and preservation classes, openings that become available due to families dropping out of the program or other circumstances, shall be filled if possible by additional families from the same geographical area that meet all eligibility criteria.]~~

(3) Funds may be withdrawn or reduced at any time and the establishment of a person's budget does not constitute an obligation for the Division to provide services or funding.

#### **R539-10-5. Selection for Short-Term Limited Respite Care Services.**

(1) Non-lapsing Funds may be available to provide short-term limited respite care services for persons determined eligible who are on the Division's waiting list.

(2) ~~[When]~~If the Division determines that sufficient funds are available to provide short-term limited respite care services, persons will be selected to receive short-term limited respite care according to the following method:

(a) The Division shall identify all persons on the waiting list who have indicated that they are in need of respite services;

(b) Persons identified by the Division as needing respite services, ~~who had not been selected to receive respite services in the previous selection period,~~ shall be grouped together, from which the Division shall use a random selection process to select persons to receive short-term limited respite care services.

(c) if the Division determines that sufficient funds are available to provide additional short-term limited respite care services, after all persons who had not been selected to receive respite services during the previous selection period have been given an opportunity to receive short-term limited respite care services, the Division may use a random selection process to select persons to receive short-term limited respite care services from the remaining persons on the waiting list who have indicated that they are still in need of respite services regardless of whether the person had been selected previously.

(d) a sibling of a person selected to receive short-term limited respite care services, at the discretion of the Division, may also be selected to receive short-term limited respite care services in the same selection period despite not being selected.

(3) Notwithstanding the foregoing, the Division Emergency Services Management Committee (ESMC) may select a person on the waiting list to receive short-term limited respite care services if the ESMC determines that short-term limited respite care services are appropriate to address the emergency circumstances faced by the person.

#### **R539-10-6. Short-Term Limited Respite Care Provider Options.**

(1) Short-term limited respite care services may be provided through either the Self-Administered Services Model or the traditional Agency-Based Provider Model or a combination of both.

(2) If the person elects the Self-Administered Services Model to provide short-term limited respite care, the following requirements must be met:

(a) the person must select a fiscal agent, through which all payments to employees must be made;

(b) the person must adhere to all additional requirements set forth in Section R539-5.

#### ~~[R539-10-7. Additional Participation Requirements for Short-Term Limited Family Skill Building and Preservation Classes.~~

~~————(1) In order to be eligible for participation in short-term family skill building and preservation classes the family of the eligible person must agree to the following additional requirements:~~

~~————(a) To sign a participation agreement stating that the family will participate fully in the offered short-term family skill building and preservation classes;~~

~~————(b) To have the person's waiting list needs assessment re-evaluated within six months of completing participation in the short-term family skill building and preservation classes;~~

#### ~~R539-10-8. Selection and Enrollment for Short-Term Limited Family Skill Building and Preservation Classes.~~

~~————(1) Nonlapsing Funds may be available to provide short-term limited family skill building and preservation classes for persons determined eligible who are on the Division's waiting list.~~

~~————(2) When the Division determines that sufficient funds are available to provide short-term limited family skill building and preservation classes, persons will be selected to participate in the family skill building and preservation classes according to the following parameters:~~

~~————(a) The Division shall advertise an open enrollment period to all persons with an active status on the Division's waiting list;~~

~~————(b) During the open enrollment period, the Division will accept applications for a two-week period from persons or their families wishing to participate;~~

~~————(i) Additional enrollment periods may be offered as the Division deems necessary;~~

~~————(c) Applications will be reviewed to determine an applicant's eligibility;~~

~~————(d) Eligible applicants will be admitted into the program in the order in which they have applied to participate, in the respective geographical area in which they live;~~

~~————(i) If the number of applications for the respective geographical area exceeds 300 during the open enrollment period, all eligible program applicants will be grouped together from which participants will be selected to participate using a random selection process;]~~



**R539-10-[9]7. Short-Term Limited Service Brokering Services.**

(1) Non-lapsing Funds may be available to provide short-term limited service brokering services for persons determined eligible who are on the Division's waiting list.

(2) When the Division determines that sufficient funds are available to provide short-term limited service brokering services, persons will be selected to receive short-term limited service brokering services according to need as determined from information supplied to the Division.

**KEY:** waiting lists, family preservation, respite, service brokering

**Date of Enactment or Last Substantive Amendment:** [December 30, 2013]2017

**Authorizing, and Implemented or Interpreted Law:** 62A-5-102(7)

**Natural Resources, Wildlife Resources  
R657-6  
Taking Upland Game**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41832

FILED: 06/15/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the upland game program as approved by the Wildlife Board.

**SUMMARY OF THE RULE OR CHANGE:** The proposed revisions: 1) clarify the definition of "Baiting"; 2) clarify possession of live protected wildlife; 3) clarify closures on all National Wildlife Refuges; and 4) make technical corrections.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This amendment clarifies existing rule language. It does not make any changes to the process or employee workload. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.

♦ **LOCAL GOVERNMENTS:** Since this amendment has minimal impact on individual hunters and no impact on the local governments, DWR finds that this filing does not create

any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

♦ **SMALL BUSINESSES:** This amendment clarifies existing rule language and therefore does not have the potential to generate a cost or savings impact to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment clarifies existing rule language and therefore does not have the potential to generate a cost or savings impact to sportsmen or the other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** DWR determines that this amendment will not create additional costs for those who participate in wildlife-related activities in Utah.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

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

NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017**

**AUTHORIZED BY:** Mike Fowlks, Deputy Director

**R657. Natural Resources, Wildlife Resources.**

**R657-6. Taking Upland Game.**

**R657-6-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking upland game.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

**R657-6-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices ~~[birds]~~upland game.

(b) "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for upland game to, on, or over any areas where hunters are attempting to take them.

(c) "CFR" means the Code of Federal Regulations.

(~~[e]~~d) "Falconry" means the sport of taking quarry by means of a trained raptor.

(~~[d]~~e) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property.

(~~[e]~~f) "Migratory game bird" means, for the purposes of this rule, American crow, mourning dove, white-winged dove, band-tailed pigeon, and Sandhill crane.

(~~[f]~~g) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.

(~~[g]~~h) "Upland game" means pheasant, quail, chukar partridge, gray partridge, greater sage-grouse, ruffed grouse, dusky grouse, sharp-tailed grouse, cottontail rabbit, snowshoe hare, white-tailed ptarmigan, and the following migratory game birds: American crow, mourning dove, white-winged dove, band-tailed pigeon, and Sandhill crane.

**R657-6-13. Baiting.**

(1) A person may not hunt upland game by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. An area is considered baited for 10 days after bait is removed, or 10 days after bait in an area is eaten. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any upland game, except Sandhill crane, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

**R657-6-15. Possession of Live Protected Wildlife.**

~~[A]It is unlawful for any person [may not possess live,]to hold in captivity at any time any protected wildlife, except as provided by Title 23, Wildlife Resources Code or any rules and regulations of the Wildlife Board.~~ Protected wildlife that is wounded must be immediately killed and shall be included in the hunter's bag limit.

**R657-6-16. Tagging Requirements.**

(1) The carcass of a Sandhill crane, ~~[Greater]greater~~ greater sage grouse, or ~~[Sharp]sharp~~ sharp-tailed grouse must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue Sandhill crane, ~~[Greater]greater~~ greater sage grouse, or ~~[Sharp]sharp~~ sharp-tailed grouse after any of the notches have been removed from the tag or the tag has been detached from the permit.

**R657-6-21. Closed Areas.**

A person may not hunt upland game in any area posted closed by the Division or any of the following areas:

(1) Salt Lake International Airport boundaries as posted.

(2) Incorporated municipalities: Many incorporated municipalities prohibit the discharge of firearms and other weapons. Check with the respective city officials for specific boundaries and limitations.

(3) Wildlife Management Areas:

(a) Waterfowl management areas are open for hunting upland game only during designated waterfowl hunting seasons or as authorized by the Division, including: Blue Lake, Clear Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Scott M. Matheson Wetland Preserve, Stewart Lake, and Timpie Springs.

(b) ~~[Fish Springs]All National Wildlife [Refuge is closed to upland game hunting]Refuges unless declared open by the managing authority.~~

(c) Goshen Warm Springs is closed to upland game hunting.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing.

**KEY: wildlife, birds, rabbits, game laws**

**Date of Enactment or Last Substantive Amendment:**  
~~[November 10, 2015]2017~~

**Notice of Continuation: June 8, 2015**

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19**

**Natural Resources, Wildlife Resources****R657-54****Taking Wild Turkey****NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 41833

FILED: 06/15/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the wild turkey program as approved by the Wildlife Board.

**SUMMARY OF THE RULE OR CHANGE:** The proposed revisions clarify the definition of "Baiting".

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This amendment clarifies existing rule language. It does not make any changes to the process or employee workload. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since these amendments will impact only the individual sportsmen wishing to participate in turkey hunting and has no impact on the local governments, DWR finds that this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment clarifies existing rule language and therefore does not have the potential to generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment clarifies existing rule language and therefore does not have the potential to generate a cost or savings impact to sportsmen or the other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** DWR determines that this amendment will not create additional costs for those who wish to participate in turkey hunts.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses.

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

NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/07/2017

AUTHORIZED BY: Mike Fowlks, Deputy Director

**R657. Natural Resources, Wildlife Resources.****R657-54. Taking Wild Turkey.****R657-54-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2003 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking wild turkey.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the guidebook of the Wildlife Board for taking upland game and wild turkey.

**R657-54-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices ~~birds~~ wild turkey.

(b) "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for upland game to, on, or over any areas where hunters are attempting to take them.

([b]c) "CFR" means the Code of Federal Regulations.

([e]d) "Falconry" means the sport of taking quarry by means of a trained raptor.

**R657-54-3. Application Procedure for Wild Turkey.**

(1) Permits for wild turkey will be issued pursuant to R657-62-25.

**R657-54-4. Authorized Weapons.**

(1) Wild turkey may be taken only with

(a) Archery equipment, including a draw-lock, or a crossbow using broadhead tipped arrows or bolts: or

(b) a shotgun no larger than 10 gauge and no smaller than 28 gauge, firing shot sizes ranging between BB and no. 8.

**R657-54-5. Shooting Hours.**

(1) Wild turkey may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

([b]a) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the guidebook of the Wildlife Board for taking upland game and wild turkey.

**R657-54-8. Live Decoys and Electronic Calls.**

A person may not take a wild turkey by the use or aid of live decoys, ~~records or tapes of~~ recorded turkey calls or sounds, or electronically amplified imitations of turkey calls.

**R657-54-9. Baiting.**

A person may not hunt turkey using bait, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. An area is considered baited for 10 days after bait is removed, or 10 days after bait in an area is eaten.

**KEY: wildlife, wild turkey, game laws**

**Date of Enactment or Last Substantive Amendment:** [~~August 11, 2014~~2017]

**Notice of Continuation:** August 18, 2014

**Authorizing, and Implemented or Interpreted Law:** 23-14-18; 23-14-19

Science Technology and Research  
Governing Authority, Administration

**R856-1**

USTAR Technology Acceleration  
Program Grants

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)

DAR FILE NO.: 41804

FILED: 06/13/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for one of USTAR's new grant programs, the USTAR Technology Acceleration Program (TAP) grants. This rule facilitates the grant under Section 63M-2-503 by establishing the eligibility and reporting criteria for an entity to receive a grant including: 1) the form and process of submitting a grant application; 2) a description of entities eligible to apply for a grant; 3) a description of specific categories of projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

**SUMMARY OF THE RULE OR CHANGE:** This rule describes the eligibility, reporting, and other criteria required for an entity to receive a grant under Section 63M-2-503, including: 1) the form and process of submitting a grant application; 2) a description of entities eligible to apply for a grant; 3) a description of specific categories of projects that

are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The change is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63M-2-302(1)(h)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

◆ **LOCAL GOVERNMENTS:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

◆ **SMALL BUSINESSES:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** If successful in winning a grant, awardees will be required to report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**  
I. **WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY:** After conducting a thorough analysis, it was determined that this proposed rule is expected to have a cost savings for business. It is a grant program that provides businesses with funding to develop new technologies, saving them some of the costs to develop those technologies. II. **AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** The aggregate funding for this particular grant is up to \$4,500,000 per year. It is estimated to impact up to 40 companies that could be awarded funding per year. III. **AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** The small business that could be impacted would be the estimated up to 40 companies that could be awarded funding. IV. **A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-**

TIME AND ONGOING COSTS: The company and university would receive funding from USTAR to offset the company's research and development costs. The total aggregate savings for businesses could be up to \$4,500,000 annually.

V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: Any potential costs on businesses would be limited to the time and materials spent to complete an application and will affect only those that choose to apply. Businesses that are awarded funding will be required to report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 SCIENCE TECHNOLOGY AND RESEARCH  
 GOVERNING AUTHORITY  
 ADMINISTRATION  
 60 E NORTH TEMPLE  
 THIRD FLOOR  
 SALT LAKE CITY, UT 84111  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Peter Jay by phone at 801-372-3969, or by Internet E-mail at [pjay@utah.gov](mailto:pjay@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/14/2017

AUTHORIZED BY: Ivy Estabrooke, Executive Director

**R856. Science Technology and Research Governing Authority (Utah), Administration.**

**R856-1. USTAR Technology Acceleration Program Grants.**

**[R856-1-1. Authority.**

~~(1) Subsection 63M-2-503(2) requires the USTAR governing authority to make rules for the eligibility, award process, and reporting criteria for each grant program administered by USTAR.~~

**R856-1-2. Purpose and Goals.**

~~(1) The USTAR Technology Acceleration Program provides grants and other support to assist the following:~~

~~(a) start-ups and early stage companies to accelerate the development of a new technology; and,~~

~~(b) later stage companies to mature a new technology.~~

~~(2) The goals of the program are to:~~

~~(a) enhance the state's innovation system by supporting the development, retention, and attraction of science and technology companies in Utah; and,~~

~~(b) accelerate the growth of high-potential technology companies in the state leading to the creation of high-paying science and technology jobs in Utah.~~

**R856-1-3. Definitions.**

~~(1) "Applicant" means a company applying for a USTAR TAP Grant.~~

~~(2) "Awardee" means a company that has been awarded a TAP Grant.~~

~~(3) "Company" means a privately owned corporation, limited liability company, partnership, or other business entity or association and:~~

~~(a) does not include an individual, sole proprietorship, or higher education institution; and,~~

~~(b) is represented by persons at least 18 years old.~~

~~(4) "Governing authority" means the Utah Science, Technology and Research governing authority.~~

~~(5) "TAP" means the USTAR Technology Acceleration Program, its activities and services.~~

~~(6) "TAP grant" means the competitive grant funding awarded and administered by USTAR under TAP.~~

~~(7) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.~~

~~(8) "Technology Gap" means the disparity between a company's existing technology or technological capacity and what is needed to develop a commercial application for a product.~~

~~(9) "Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the U.S. Department of Defense.~~

~~(10) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for TAP grant funding as described in Subsection R856-1-4(2) below.~~

~~(11) "USTAR" means the Utah Science, Technology and Research Initiative.~~

**R856-1-4. Eligibility Criteria.**

~~(1) Company must be Utah-based.~~

~~(a) To be considered "Utah-based," a company must:~~

~~(i) be registered with the Utah Division of Corporations as an active, domestic, for-profit business entity, in good standing;~~

~~(ii) maintain its principal place of business in Utah; and,~~

~~(iii) not relocate the business or substantial portions of its employees, operations, or management outside of the State of Utah.~~

~~(b) If a company does not meet the criteria in Subsection R856-1-4(1)(a) above, or if it cannot be reasonably determined whether the company meets the criteria, the governing authority, in its discretion and upon approval by a majority vote, may determine whether a company should be considered a Utah-based company for purposes of the TAP grant by weighing the following factors:~~

~~(i) relative size of the entity including the number of employees in Utah and the relative size of operations in the state;~~

~~(ii) whether the company is registered as a domestic, for-profit business entity in Utah and has a business license in the appropriate Utah city or county;~~

~~(iii) whether the company's principal place of business is Utah;~~

~~(iv) likelihood that the company will maintain a significant presence in the state of Utah; and,~~

~~(v) degree to which the company's activities and operations positively impact Utah's economy.~~

~~(2) Company must be developing a technology in a targeted industry sector.~~

~~(a) USTAR will identify the industry sector(s) eligible to receive a TAP grant in the TAP application materials.~~

~~(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state~~

~~(i) In selecting industry sectors eligible to receive support from TAP, the governing authority may consider the following factors:~~

~~(A) statewide or regional importance of the industry to Utah's economy;~~

~~(B) relative size of the sector, its stability, and growth potential;~~

~~(C) characteristics of the state's existing workforce, including education and training;~~

~~(D) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;~~

~~(E) the potential for the industry sector to develop new jobs and business opportunities in the state; and,~~

~~(F) Likelihood that research in this sector will result in creation of a company in Utah or IP transfer to an existing Utah company;~~

~~(3) The company must be developing a technology assessed to be between a TRL of 3-5.~~

**~~R856-1-5. Application Form and Submission Guidelines.~~**

~~(1) For each new round of grants, USTAR will provide a program announcement and make applications and instructions available on USTAR's website and in paper form upon request.~~

~~(2) The instructions will include the following:~~

~~(a) The procedure for submitting an application.~~

~~(b) Specific instructions for application content which will include:~~

~~(i) description of the company's technology and commercialization objectives;~~

~~(ii) list of technical milestones;~~

~~(iii) potential market;~~

~~(iv) potential economic impact on Utah economy; and,~~

~~(v) timeline for completion.~~

~~(c) Specific instructions for the required budget outline, including:~~

~~(i) total project cost;~~

~~(ii) a description of funds already secured for activities related to this project;~~

~~(iii) an itemized budget detailing planned use of grant funds; and,~~

~~(iv) breakdown of costs to complete each milestone.~~

~~(d) Description of the application evaluation process and scoring system.~~

~~(e) Instructions for reporting project results and completing annual follow-up surveys.~~

~~(3) Completed applications must be received on or before the specified deadline in the application instructions.~~

~~(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-1-6 and R856-1-7 herein.~~

**~~R856-1-6. Application Review Procedure.~~**

~~(1) Initial eligibility screening:~~

~~(a) USTAR will conduct an initial eligibility screening for each application to ensure:~~

~~(i) Completeness;~~

~~(ii) Verification of minimum eligibility requirements; and~~

~~(iii) Appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.~~

~~(b) Any application that fails to meet the criteria in Rule 6 Section (2) will be rejected.~~

~~(2) Panel Review:~~

~~(a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-1-7.~~

~~(i) Each expert panel will consist of at least two technical expert one business expert, and one investment expert.~~

~~(ii) Technical subject-matter experts will assess the scientific and technical merits of the proposal.~~

~~(iii) Business subject-matter experts will evaluate the business model, project cost, commercialization strategy, and potential economic impacts of the proposal~~

~~(iv) Investment experts will evaluate the proposal and provide feedback to USTAR.~~

~~(v) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:~~

~~(A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;~~

~~(B) relevant work experience and practical training in the field;~~

~~(C) knowledge of the target industry sector in Utah;~~

~~(D) experience evaluating grant proposals;~~

~~(E) general investment experience; and,~~

~~(F) any other factors USTAR deems important.~~

~~(vi) USTAR will screen the experts for conflicts of interest before reviews are initiated.~~

~~(3) Governing authority review:~~

~~(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.~~

~~(b) Recommendations from the subcommittee concerning which projects should be awarded a grant will be presented to the full governing authority for final approval.~~

**~~R856-1-7. Application Evaluation Criteria.~~**

~~(1) The panel of subject matter experts will use a scoring system to evaluate and rank grant applications and determine grant amounts.~~

~~(a) The scoring criteria will be made available during the application period.~~

~~(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:~~

- ~~(i) technical merit;~~
- ~~(ii) strength and maturity of company and management;~~
- ~~(iii) potential for economic impact, as measured by:~~
  - ~~(A) job creation;~~
  - ~~(B) product sales;~~
  - ~~(C) potential revenue due to expansion of current business or development of new businesses; and/or~~
  - ~~(D) projected time to revenue or job creation;~~
- ~~(iv) market need, technical and management experience and qualifications;~~
- ~~(v) reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed and matching funds available);~~
- ~~(vi) reasonableness of proposed milestones and timelines; and~~

~~(vii) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.~~

~~(2) TAP Grants must be used to accelerate the development and commercialization of a technology and project proposals must identify specific technical milestones leading to the proposed outcome.~~

~~(3) Examples of acceptable milestones must be specific to the project may include:~~

- ~~(a) research and development activities;~~
- ~~(b) proof of concept;~~
- ~~(c) product validation; and,~~
- ~~(d) product development.~~

**~~R856-1-8. Grant Amount, Award, and Required Agreement.~~**

~~(1) USTAR will have the discretion to determine the maximum amount of funding that may be awarded for each round of TAP based on available funds and quality of applicant pool.~~

~~(2) USTAR reserves the right to award funding for any application in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.~~

~~(3) Upon award of the TAP grant, and prior to any disbursement of funds, Company must enter into a written agreement with USTAR governing the use of grant funding.~~

~~(4) Unless addressed in the terms and conditions of the written agreement between company and USTAR, the following provisions shall apply:~~

- ~~(a) company must remain a Utah-based company for at least five years from initial disbursement of TAP funding;~~
- ~~(b) company may not use TAP grant funding to provide a primary benefit to any state other than Utah; and,~~
- ~~(c) for all other eligibility requirements, company must maintain eligibility status for the TAP program until the project is complete, all milestones have been met, final dispersant of funding has been made, and first year reporting has been completed.~~

~~(5) A company that violates the requirements of Subsection R856-1-8(4) forfeits the grant funding and must repay all or a portion of funds received as part of the TAP grant.~~

**~~R856-1-9. Contract Modifications.~~**

~~(1) Company may request a modification to the terms of a TAP agreement.~~

~~(2) USTAR may deny a modification request for any reason.~~

~~(3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.~~

~~(a) Nonsubstantive changes may include the following:~~

- ~~(i) changes to timelines of less than one month if it is the first such modification;~~
- ~~(ii) corrections to clerical errors in the application materials;~~
- ~~(iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;~~

~~(4) Substantive changes must be approved by the USTAR governing authority.~~

~~(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement.~~

**~~R856-1-10. Funding Distribution.~~**

~~(1) Initial funding of no more than 50% of the total grant award will be provided within a reasonable time after a TAP grant is approved to allow company to meet initial milestones.~~

~~(2) Remaining grant funds will be disbursed upon successful completion of designated milestones.~~

~~(3) Specific funding details will be provided in the program announcement and in each TAP grant contract.~~

~~(4) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.~~

**~~R856-1-11. Milestones and Reporting.~~**

~~(1) Companies are required to provide reporting as specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds.]~~

**~~R856-1-1. Authority.~~**

~~(1) Subsection 63M-2-503(2) requires the USTAR governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.~~

**~~R856-1-2. Purpose and Goals.~~**

~~(1) The Technology Acceleration Program (TAP) provides funding and other support to Utah companies to accelerate the research and development of new technologies that have a strong market potential.~~

~~(2) The goals of TAP are to:~~

- ~~(a) enhance Utah's innovation system by supporting the development, retention, and attraction of science and technology companies; and,~~

(b) accelerate the growth of high-potential technology companies, leading to the creation of high-paying science and technology jobs in Utah.

(3) Proposals will be reviewed on a competitive basis. All projects funded through TAP must have an identified market and/or commercialization path.

(4) Anticipated duration of projects will be 12-18 months. Funding must be budgeted by State fiscal year (July 1 - June 30) and funding will be dependent on meeting milestones and continued USTAR appropriation.

**R856-1-3. Definitions.**

(1) "Applicant" means a company applying for a USTAR TAP Grant.

(2) "Awardee" means a company that has been awarded a TAP Grant.

(3) "Company" or "Companies" means a privately owned corporation, limited liability company, partnership, or other business entity or association and:

(a) does not include an individual, sole proprietorship, or higher-education institution; and

(b) is represented by persons at least 18 years old.

(4) "Governing Authority" means the Utah Science, Technology and Research Governing Authority.

(5) "TAP" means the USTAR Technology Acceleration Program, its activities and services.

(6) "TAP grant" means the competitive grants awarded as part of the USTAR Technology Acceleration Program.

(7) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for TAP grant funding as described in Subsection R856-1-4(1) below.

(8) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual application, or intellectual property.

(9) "Technology gap" means the disparity between a company's existing technology or technological capacity and what is needed to develop a commercial application for a product.

(10) "Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).

(11) "USTAR" means the Utah Science, Technology and Research Initiative.

**R856-1-4. Eligibility Criteria at Time of Application.**

(1) Company must be developing a technology in a targeted industry sector.

(a) USTAR will identify the industry sector(s) eligible to receive a TAP grant in the TAP application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state

(i) In selecting industry sectors eligible to receive support from TAP, the governing authority may consider the following factors:

(A) statewide or regional importance of the industry to Utah's economy;

(B) relative size of the sector, its stability, and growth potential;

(C) characteristics of the state's existing workforce, including education and training;

(D) the current availability of other sources of funding or risk capital (public or private) for companies in the technology sector;

(E) the potential for the industry sector to develop new jobs and business opportunities in the state; and

(2) The company must be developing a technology assessed to be between a TRL of 3-5.

**R856-1-5. Eligibility Criteria at Time of Award and for Maintenance of Grant.**

(1) Company must meet the following size, revenue, and funding criteria:

(a) have fewer than 50 employees;

(b) have less than one-million dollars in annual revenue; and

(c) not raised more than five-million dollars in private funding, excluding non-dilutive funding.

(2) Company must be Utah-based.

(a) To be considered Utah-based, a company must:

(i) be registered with the Utah Division of Corporations as an active, for-profit business entity, in good standing;

(ii) have a valid business license from the governing locality at the company's primary location;

(iii) have a substantial presence in the state of Utah;

(A) "substantial presence" means that at least 90% of company's employees are employed in the State of Utah;

(B) company must be approved by the USTAR governing authority according to R856-1-5(2) with consideration given at time of award.

(iv) maintain employees in Utah, which will require the company to provide a copy of its most recent reporting for unemployment insurance with the Utah Department of Workforce Services;

(v) maintain its principal place of business in Utah; and

(vi) not relocate the company or substantial portions of its employees, operations, or management outside of the State of Utah.

(b) If a company does not meet the criteria in Subsection R856-1-5(1), or if it cannot be reasonably determined whether the company meets the criteria, the governing authority, in its discretion and upon approval by a majority vote, may determine whether a company should be considered a Utah-based company for purposes of the TAP grant by weighing the following factors:

(i) relative size of the entity including the number of employees in Utah and the relative size of operations in the state;

(ii) whether the company is registered as a for-profit business entity in Utah and has a business license in the appropriate Utah city or county;

(iii) whether the company's principal place of business is Utah;

(iv) likelihood that the company will maintain a substantial presence in the state of Utah;



(v) whether the technology will be developed in Utah and how much will be based in Utah when it is completed; and,

(vi) degree to which the company's activities and operations positively impact Utah's economy.

**R856-1-6. Application and Submission Guidelines.**

(1) For each new round of grants, USTAR will provide a program announcement and make applications and instructions available on USTAR's website, and in paper form upon request.

(2) The instructions will include the following:

(a) The procedure for submitting an application.

(b) Specific instructions for application content which will include:

(i) description of the company's technology and commercialization plan and objectives;

(ii) list of technical milestones;

(iii) description of potential market for product;

(iv) potential economic impact on Utah's economy; and,

(v) timeline for completion.

(c) Specific instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds already secured for activities related to this project;

(iii) an itemized budget detailing planned use of grant funds; and,

(iv) a breakdown of costs to complete each milestone.

(d) Description of the application evaluation process and scoring system.

(e) Instructions for reporting project results and completing annual follow-up surveys.

(3) Completed applications must be received on or before the specified deadline in the application instructions.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-1-7 and R856-1-8 herein.

**R856-1-7. Application Review Procedure.**

(1) Initial eligibility screening.

(a) USTAR will conduct an initial eligibility screening for each application to ensure:

(i) completeness;

(ii) strict conformity with application instructions;

(iii) verification of minimum eligibility requirements; and

(iv) appropriateness of applicant's reported TRL assessment, technical merit, proposed timelines, and budget.

(b) Any application that fails to meet the criteria in R856-1-7(1) will be rejected and not considered for review.

(2) Panel review.

(a) Accepted applications will be reviewed by independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in R856-1-8.

(i) Each expert panel will consist of at least two technical subject-matter-experts and one business or industry expert.

(ii) Each expert will review the proposals using an established scoring rubric provided by USTAR that includes evaluation on technical merit, commercialization strategy, economic

impact to the state and budget and any other factors considered relevant by USTAR.

(iii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the target industry sector in Utah;

(D) experience evaluating grant proposals;

(E) general investment experience; and,

(F) any other factors USTAR deems important.

(iv) USTAR will screen the experts for conflicts of interest before reviews are initiated, using the conflict of interest policy on USTAR's website. Experts are participating in the application review as a volunteer for USTAR. Each expert is obligated under contract to maintain the classification of records, and to keep information protected and confidential as described in the Utah Government Records Access and Management Act (GRAMA).

(3) Governing authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations for TAP grants.

(b) The subcommittee will recommend projects for award and award amounts of grant funding to the full governing authority for final approval.

**R856-1-8. Evaluation and Award Criteria.**

(1) The panel of subject matter experts will use an established scoring system to evaluate and rank grant applications and determine grant amounts.

(a) The scoring criteria will be made available during the application period.

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) technical merit of proposal;

(ii) strength and experience of company and management team;

(iii) appropriate technology readiness level (TRL 3-5);

(iv) potential economic impact, as measured by:

(A) job creation;

(B) product sales;

(C) potential revenue due to expansion of current business or development of a new businesses; and, or,

(D) projected time to revenue or job creation;

(v) market need,

(vi) technical and management experience and qualifications;

(vii) commercialization strategy

(viii) reasonableness of the proposed budget, including whether the amounts are appropriate for the work proposed;

(ix) reasonableness of proposed milestones;

(x) proposed timeline is achievable and will not exceed 18 months; and

(xi) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

**R856-1-9. Grant Amount, Award, and Required Contract.**

(1) USTAR will have the discretion to limit the amount of funding that may be awarded for each TAP based on available funds, scope of project, and quality of proposal.

(2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.

(3) Upon award of the TAP grant, and prior to any disbursement of funds, Company must enter into a contract with USTAR governing the use of grant funding.

(4) Unless addressed in the terms and conditions of the contract between company and USTAR, the following provisions shall apply:

(a) company must remain a Utah-based company for at least five years from initial disbursement of TAP funding;

(b) grant funding may not be used to provide a primary benefit to any state or country other than Utah; and

(c) for all other eligibility requirements, company must maintain eligibility status for the TAP program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.

(5) Violations of Subsection R856-1-9(4) may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the TAP grant.

**R856-1-10. Contract Modifications.**

(1) Company may request a modification to the terms of a TAP contract.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to milestone due dates, if the changes do not change the total length of the project;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law.

(b) USTAR staff can issue a "stop work" order until the project can be reviewed by the USTAR governing authority in a closed meeting to determine whether to end a contract due to failed milestones.

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement when required by State procurement regulations.

**R856-1-11. Milestones.**

(1) TAP funding must be used to accelerate the research and development of a technology from TRL level 3 to 5 to a higher TRL level, and project proposals must identify specific milestones leading to the proposed outcome.

(2) Examples of acceptable milestones must be specific to the project may include:

(a) research and development activities;

(b) proof of concept;

(c) product validation; and,

(d) product development.

(3) Remaining grant funds will be disbursed upon successful completion of designated milestones.

(4) Specific funding details will be provided in the program announcement and in each TAP grant contract.

**R856-1-12. Funding Distribution.**

(1) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.

(2) Specific funding details will be provided in the program announcement and in each TAP grant contract.

(3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

**R856-1-13. Reporting.**

(1) Companies are required to provide reporting as specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds.

**KEY: Utah Science Technology and Research (USTAR), Technology Acceleration Program (TAP) grants, technology readiness level (TRL)**

**Date of Enactment or Last Substantive Amendment: [November 16, 2016]2017**

**Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)**

Science Technology and Research  
Governing Authority, Administration

**R856-2**

USTAR University-Industry Partnership  
Program Grants

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)

DAR FILE NO.: 41812

FILED: 06/14/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M,

Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for USTAR's second grant program, the USTAR University-Industry Partnership Program Grants. This rule facilitates the grant under Section 63M-2-503 by establishing the eligibility and reporting criteria for an entity to receive a grant including: 1) the form and process of submitting a grant application; 2) a description of entities eligible to apply for a grant; 3) a description of specific categories of projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

**SUMMARY OF THE RULE OR CHANGE:** This rule establishes the USTAR Industry Partnership Program Grants and describes the eligibility, reporting, and other criteria required for an entity to receive a grant under Section 63M-2-503, including: 1) the form and process of submitting a grant application; 2) a description of entities eligible to apply for a grant; 3) a description of specific types of research projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The change is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63M-2-302(1)(h)

**ANTICIPATED COST OR SAVINGS TO:**  
 ♦ **THE STATE BUDGET:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.  
 ♦ **LOCAL GOVERNMENTS:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.  
 ♦ **SMALL BUSINESSES:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.  
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** If successful in winning a grant, awardees will be required to

report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**  
 I. **WHETHER A FISCAL IMPACT TO BUSINESS IS EXPECTED AS A RESULT OF THE PROPOSED RULE AND, IF SO, A DESCRIPTION OF WHY:** After conducting a thorough analysis, it was determined that this proposed rule is expected to have a cost savings for business. It is a grant program where businesses partner with universities to perform research and development on the development of new technologies. USTAR provides matching or shared funds to assist with the research and development.  
 II. **AN ESTIMATE OF THE TOTAL NUMBER OF BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** the grant funding for this particular grant is up to \$1,000,000 per year. It is estimated to impact up to 20 companies that could win awards for matching USTAR IPP funding.  
 III. **AN ESTIMATE OF THE SMALL BUSINESS ESTABLISHMENTS IN UTAH EXPECTED TO BE IMPACTED:** The small business that could be impacted would be the estimated up to 20 companies that could win awards.  
 IV. **A DESCRIPTION OF THE SOURCES OF COST OR SAVINGS AS WELL AS THE EXPECTED NET SAVINGS OR COST TO BUSINESS ESTABLISHMENTS AND SMALL BUSINESS ESTABLISHMENTS AS A RESULT OF THE PROPOSED RULE OVER A ONE-YEAR PERIOD, IDENTIFYING ONE-TIME AND ONGOING COSTS:** The company and university would receive funding from USTAR to offset the company's research and development costs. The total aggregate savings for businesses could be up to \$1,000,000 annually.  
 V. **DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS:** Any potential costs on businesses would be limited to the time and materials spent to complete an application and will affect only those that choose to apply. Businesses that are awarded funding will be required to report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
 SCIENCE TECHNOLOGY AND RESEARCH  
 GOVERNING AUTHORITY  
 ADMINISTRATION  
 60 E NORTH TEMPLE  
 THIRD FLOOR  
 SALT LAKE CITY, UT 84111  
 or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Peter Jay by phone at 801-372-3969, or by Internet E-mail at [pjay@utah.gov](mailto:pjay@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/14/2017

AUTHORIZED BY: Ivy Estabrooke, Executive Director

**R856. Science Technology and Research Governing Authority (Utah), Administration.**

**R856-2. USTAR University-Industry Partnership Program Grants.**

**[R856-2-1. Authority.**

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the eligibility, award process, and reporting criteria for each grant program administered by USTAR.

**R856-2-2. Purpose.**

USTAR's Industry Partnership Program promotes the development of industry-university partnerships for technology development. This program will accelerate the commercialization of technology and innovation by teaming industry and university research expertise to address specific technology problems or gaps identified by a Utah company. The technology development will lead to a new product or a market advantage for the company.

**R856-2-3. Definitions.**

(1) "Applicant" means a collaboration between a company and university researcher for a particular project.

(2) "Awardee(s)" means a project that has been awarded an Industry Partnership Program Grant.

(3) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(4) "Company" means a privately-owned corporation, limited liability company, partnership, or other business entity or association and:

(a) does not include an individual, sole proprietorship, or higher education institution; and,

(b) is represented by persons at least 18 years old.

(5) "Commercialization plan" means the strategy or process by which a company will introduce a technology into the market.

(6) "IPP" means the USTAR Industry Partnership Program, its activities and services.

(7) "IPP Grant" means the competitive grants awarded and administered as part of the USTAR Industry Partnership Program.

(8) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(9) "Technology gap" means the disparity between a company's existing technology or technological capacity and what is needed to develop a commercial application for a product.

(10) "Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the U.S. Department of Defense.

(11) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for IPP grants using the selection criteria described in these rules.

(12) "University" means any public or not-for-profit institution of higher education located in Utah.

(13) "USTAR" means the Utah Science, Technology and Research Initiative.

**R856-2-4. Eligibility Criteria.**

(1) Proposal must be jointly developed by a Utah-based company and a university.

(2) Proposal must be submitted by an authorized body within the university.

(3) An authorized representative from the company must certify that:

(a) Company lacks technical capacity to resolve stated technology gap;

(b) The proposed university technology will resolve the technology gap; and,

(c) Company commits to provide a cost-share contribution in the form of a defined amount of funding paid to the university and/or in-kind contributions as defined in Sections R856-2-4 and R856-2-5.

(4) Company must have a substantial presence in Utah.

(a) A substantial presence, for purposes of the IPP grant, requires the following:

(i) company must be properly registered with the Utah Division of Corporations as an active, for-profit business entity, in good standing; and,

(ii) company must be properly licensed in the appropriate city or county.

(b) Additionally, USTAR shall, according to its judgment and discretion, determine whether a company has a substantial presence for purposes of the IPP grant by weighing the following factors:

(i) size of workforce in Utah;

(ii) percentage of company's total workforce in Utah.

(iii) amount of matching funds

(iv) pays business taxes to the State of Utah.

(v) relative size of the entity including the number of employees in Utah and the relative size of operations in the state;

(vi) whether the company is registered as a domestic, for-profit business entity in Utah and has a business license in the appropriate Utah city or county;

(vii) whether the company's principal place of business is Utah;

(viii) likelihood that the company will maintain a significant presence in the state of Utah; and,

(ix) the degree to which the company's activities and operations positively impact Utah's economy.

(5) Cost-sharing required:

(a) Company must pledge a matching contribution to support the project;

(b) Company matching funds may be provided via:

(i) Direct payment to university for the research project; and/or

(ii) "In-kind" contribution, which may include:

- ~~\_\_\_\_\_ (A) Company Subject Matter Expert(s) (SME);~~
- ~~\_\_\_\_\_ (B) Materials and equipment;~~
- ~~\_\_\_\_\_ (C) Work/research space;~~
- ~~\_\_\_\_\_ (D) Travel and other company expenses budgeted for the project; or,~~
- ~~\_\_\_\_\_ (E) Other contributions, as approved by USTAR.~~
- ~~\_\_\_\_\_ (e) A one-to-one match is not required. USTAR retains discretion to approve the ratio of the match. In determining the ratio of the match, USTAR considerations may include:~~
  - ~~\_\_\_\_\_ (i) size of company; and,~~
  - ~~\_\_\_\_\_ (ii) potential economic impact to state.~~
- ~~\_\_\_\_\_ (d) University will provide USTAR with documentation of funding received from company to fulfill the company cost-share commitment prior to completion of the project.~~
- ~~\_\_\_\_\_ (e) All reported cost share is subject to audit by USTAR.~~
- ~~\_\_\_\_\_ (5) IPP is open to companies with a technology gap between TRL 2-5.~~

**~~R856-2-5. Application Form and Submission Guidelines.~~**

- ~~\_\_\_\_\_ (1) USTAR will provide the following instructions for applicants:~~
  - ~~\_\_\_\_\_ (a) A general procedure for submitting an application.~~
  - ~~\_\_\_\_\_ (b) Instructions for application content, which includes:~~
    - ~~\_\_\_\_\_ (i) description of technology gap;~~
    - ~~\_\_\_\_\_ (ii) commercialization plan if technology gap is solved;~~
    - ~~\_\_\_\_\_ (iii) description of technical milestones and qualification of team to meet milestones;~~
    - ~~\_\_\_\_\_ (iv) potential economic impact on Utah economy; and,~~
    - ~~\_\_\_\_\_ (v) timeline for completion.~~
  - ~~\_\_\_\_\_ (c) Instructions for providing an outlined budget for total project cost, including:~~
    - ~~\_\_\_\_\_ (i) a description of funds already secured;~~
    - ~~\_\_\_\_\_ (ii) an itemized budget detailing planned use of grant funds; and,~~
    - ~~\_\_\_\_\_ (iii) funding by milestones and timelines.~~
  - ~~\_\_\_\_\_ (d) Description of the application evaluation process and scoring system.~~
  - ~~\_\_\_\_\_ (e) Instructions for reporting project results and completing annual follow-up surveys.~~
- ~~\_\_\_\_\_ (2) The IPP grant application and instructions will be available on USTAR's website and in paper form upon request.~~
- ~~\_\_\_\_\_ (3) All completed applications will be reviewed and awardees selected via the criteria and method outlined herein.~~

**~~R856-2-6. Application Review Procedure.~~**

- ~~\_\_\_\_\_ (1) Pre-screening:~~
  - ~~\_\_\_\_\_ (a) Companies and researchers are encouraged to work with USTAR headquarters or a USTAR regional director in identifying appropriate researchers and developing a proposal.~~
  - ~~\_\_\_\_\_ (b) Universities may perform an initial analysis and assessment of the project to be submitted with the application.~~
- ~~\_\_\_\_\_ (2) Initial eligibility screening:~~
  - ~~\_\_\_\_\_ (a) USTAR will conduct an initial eligibility screening for each application to ensure:~~
    - ~~\_\_\_\_\_ (i) completeness;~~
    - ~~\_\_\_\_\_ (ii) verification of minimum eligibility requirements; and~~
    - ~~\_\_\_\_\_ (iii) appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.~~

- ~~\_\_\_\_\_ (b) Any application that fails to meet the criteria in Subsection R856-2-6(2) will be rejected.~~
  - ~~\_\_\_\_\_ (3) Panel Review:~~
    - ~~\_\_\_\_\_ (a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-2-7.~~
      - ~~\_\_\_\_\_ (i) Each expert panel will consist of at least two technical experts and one business expert.~~
      - ~~\_\_\_\_\_ (ii) Technical subject-matter experts will assess the scientific and technical merits of the proposal.~~
      - ~~\_\_\_\_\_ (iii) Business subject-matter experts will provide feedback on the applicant's evaluate the business model, project cost, commercialization strategy, and potential economic impacts of the proposal.~~
      - ~~\_\_\_\_\_ (iv) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:~~
        - ~~\_\_\_\_\_ (A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;~~
        - ~~\_\_\_\_\_ (B) relevant work experience and practical training in the field;~~
        - ~~\_\_\_\_\_ (C) knowledge of the target industry sector in Utah;~~
        - ~~\_\_\_\_\_ (D) experience evaluating grant proposals; and,~~
        - ~~\_\_\_\_\_ (E) any other factors USTAR deems important.~~
      - ~~\_\_\_\_\_ (v) USTAR will screen the experts for conflicts of interest before reviews are initiated.~~
    - ~~\_\_\_\_\_ (4) Governing authority review:~~
      - ~~\_\_\_\_\_ (i) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.~~
      - ~~\_\_\_\_\_ (ii) Recommendations from the subcommittee concerning which projects should be awarded a grant will be presented to the full governing authority for final approval.~~
- ~~R856-2-7. Evaluation and Award Criteria.~~**
- ~~\_\_\_\_\_ (1) The peer review and business experts will use a scoring system to evaluate and rank grant applications and determine grant amounts:~~
    - ~~\_\_\_\_\_ (a) The scoring criteria will be made available during the application period;~~
    - ~~\_\_\_\_\_ (b) The scoring system will be designed to assess each proposal and may include:~~
      - ~~\_\_\_\_\_ (i) Technical merit;~~
      - ~~\_\_\_\_\_ (ii) Appropriate technology readiness level (TRL 2-5);~~
      - ~~\_\_\_\_\_ (iii) Proposed milestones are reasonably obtainable with the recommended technical approach;~~
      - ~~\_\_\_\_\_ (iv) Proposed timeline is achievable and will not exceed 18 months;~~
      - ~~\_\_\_\_\_ (v) Potential for economic impact, as measured by potential for:~~
        - ~~\_\_\_\_\_ (A) Potential revenue due to expansion of current business or development of new businesses;~~
        - ~~\_\_\_\_\_ (B) Product sales; and/or~~
        - ~~\_\_\_\_\_ (C) Projected time to revenue or job creation.~~
      - ~~\_\_\_\_\_ (vi) Commercialization plan/Market need;~~
      - ~~\_\_\_\_\_ (vii) Technical capabilities and experience of the team; and,~~

\_\_\_\_\_ (viii) Realism of the proposed costs and commitment of matching funds.

**~~R856-2-8. Grant Amount, Award, and Required Contract.~~**

\_\_\_\_\_ (1) USTAR will have the discretion to limit the maximum amount of funding that may be awarded for each IPP grant based on available funds, scope of project, and quality of proposal.

\_\_\_\_\_ (2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgement and discretion of the governing authority.

\_\_\_\_\_ (3) Upon award of an IPP grant, and prior to any disbursement of funds, university must enter into a contract with USTAR governing the use of grant funding.

\_\_\_\_\_ (4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

\_\_\_\_\_ (a) company must maintain a substantial presence in the state for at least five years subsequent to initial disbursement of grant funds;

\_\_\_\_\_ (b) IPP grant funding may not be used to provide a primary benefit to any state other than Utah; and,

\_\_\_\_\_ (c) for all other eligibility requirements, company must maintain eligibility status for the IPP program until the project is complete, all milestones have been met, final dispersant of funding has been made, and first year reporting has been completed.

\_\_\_\_\_ (5) Violations of Subsection R856-2-8(4) of this section may result in forfeiture of grant funding and require repayment of all or a portion of the funding received as part of the IPP program.

**~~R856-2-9. Contract Modifications.~~**

\_\_\_\_\_ (1) University and Company may request a modification to the terms of an IPP contract.

\_\_\_\_\_ (2) USTAR may deny a modification request for any reason.

\_\_\_\_\_ (3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

\_\_\_\_\_ (a) Nonsubstantive changes may include the following:

\_\_\_\_\_ (i) changes to timelines of less than one month if it is the first such modification;

\_\_\_\_\_ (ii) corrections to clerical errors in the application materials;

\_\_\_\_\_ (iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;

\_\_\_\_\_ (4) Substantive changes must be approved by the USTAR governing authority.

\_\_\_\_\_ (5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

**~~R856-2-10. Milestones and Reporting.~~**

\_\_\_\_\_ (1) Companies are required to provide the reporting, as applicable, specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds.

\_\_\_\_\_ (2) University is required to provide the reporting, as applicable, specified in Sections 63M-2-702 and 63M-2-704.]

**R856-2-1. Authority.**

\_\_\_\_\_ Subsection 63M-2-503(2) requires the USTAR governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

**R856-2-2. Purpose and Goals.**

\_\_\_\_\_ USTAR's Industry Partnership Program promotes the development of industry-university partnerships for technology-based economic development. This program will accelerate the commercialization of technology and innovation by teaming industry and university research expertise to address specific technology problems or gaps identified by a company with a substantial presence in Utah. The technology development will lead to a new product or a market advantage for the company.

**R856-2-3. Definitions.**

\_\_\_\_\_ (1) "Applicant" means a company and a university researcher applying for a particular collaborative project.

\_\_\_\_\_ (2) "Awardee(s)" means a project that has been awarded an Industry Partnership Program Grant.

\_\_\_\_\_ (3) "Governing Authority" means the Utah Science, Technology and Research Governing Authority.

\_\_\_\_\_ (4) "Company" or "Companies" means a privately-owned corporation, limited liability company, partnership, or other business entity or association and:

\_\_\_\_\_ (a) does not include an individual, sole proprietorship, or higher-education institution; and,

\_\_\_\_\_ (b) is represented by persons at least 18 years old.

\_\_\_\_\_ (5) "Commercialization plan" means the strategy or process by which a company will introduce a technology into the market.

\_\_\_\_\_ (6) "IPP" means the USTAR Industry Partnership Program, its activities and services.

\_\_\_\_\_ (7) "IPP Grant" means the competitive grants awarded and administered as part of the USTAR Industry Partnership Program.

\_\_\_\_\_ (8) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for IPP grants using the selection criteria described in these rules.

\_\_\_\_\_ (9) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual application, or intellectual property.

\_\_\_\_\_ (10) "Technology gap" means the disparity between a company's existing technology or technological capacity and what is needed to develop a commercial application for a product.

\_\_\_\_\_ (11) "Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).

\_\_\_\_\_ (12) "University" means any public or not-for-profit institution of higher education located in Utah.

\_\_\_\_\_ (13) "USTAR" means the Utah Science, Technology and Research Initiative.

**R856-2-4. Eligibility Criteria.**

\_\_\_\_\_ (1) Company must be developing a technology in a targeted industry sector.

\_\_\_\_\_ (a) USTAR will identify the industry sector(s) eligible to receive a TAP grant in the TAP application materials.

\_\_\_\_\_ (b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state

\_\_\_\_\_ (i) In selecting industry sectors eligible to receive support from TAP, the governing authority may consider the following factors:

\_\_\_\_\_ (A) statewide or regional importance of the industry to Utah's economy;

\_\_\_\_\_ (B) relative size of the sector, its stability, and growth potential;

\_\_\_\_\_ (C) characteristics of the state's existing workforce, including education and training;

\_\_\_\_\_ (D) the current availability of other sources of funding or risk capital (public or private) for companies in the technology sector;

\_\_\_\_\_ (E) the potential for the industry sector to develop new jobs and business opportunities in the state; and

\_\_\_\_\_ (2) Proposal must be jointly developed by a company with a substantial presence in Utah as defined in R856-2-4(4), and a university.

\_\_\_\_\_ (3) Proposal must be submitted by an authorized body within the university. (Eg. Office of Sponsored Programs).

\_\_\_\_\_ (4) An authorized representative from the company must certify that:

\_\_\_\_\_ (a) company lacks technical capacity to resolve stated technology gap;

\_\_\_\_\_ (b) the proposed university technology will resolve the technology gap; and,

\_\_\_\_\_ (c) company commits to provide a cost-share contribution in the form of a defined amount of funding paid to the university and/or in-kind contributions as defined in Sections R856-2-4 and R856-2-5.

\_\_\_\_\_ (5) Company must have a substantial presence in Utah.

\_\_\_\_\_ (a) A substantial presence, for purposes of the IPP grant, requires the following:

\_\_\_\_\_ (i) be registered with the Utah Division of Corporations as an active, for-profit business entity, in good standing;

\_\_\_\_\_ (ii) have a valid business license from the governing locality at the company's primary location;

\_\_\_\_\_ (iii) meet the following criteria for employees in the state of Utah:

\_\_\_\_\_ (A) if the company has 8 full time equivalent employees or less, at least 50% must be employed in Utah;

\_\_\_\_\_ (B) if the company has 9-36 full time equivalent employees, at least 4 employees or 25%, whichever is greater, must be employed in Utah;

\_\_\_\_\_ (C) if the company has over 36 full time equivalents, at least 10 people must be employed in Utah; or

\_\_\_\_\_ (D) as approved by USTAR governing authority.

\_\_\_\_\_ (iv) maintain its principal place of business in Utah; and,

\_\_\_\_\_ (v) not relocate the company or substantial portions of its employees, operations, or management outside of the State of Utah.

\_\_\_\_\_ (b) Additionally, USTAR shall, according to its judgment and discretion, determine whether a company has a substantial

presence for purposes of the IPP grant by weighing the following factors:

\_\_\_\_\_ (i) size of workforce in Utah;

\_\_\_\_\_ (ii) percentage of company's total workforce in Utah;

\_\_\_\_\_ (iii) amount of matching funds;

\_\_\_\_\_ (iv) business taxes paid to the State of Utah;

\_\_\_\_\_ (v) relative size of the entity including the number of employees in Utah and the relative size of operations in the state;

\_\_\_\_\_ (vi) whether the company is registered as a domestic, for-profit business entity in Utah and has a business license in the appropriate Utah city or county;

\_\_\_\_\_ (vii) whether the company's principal place of business is in Utah;

\_\_\_\_\_ (viii) likelihood that the company will maintain a substantial presence in the state of Utah; and,

\_\_\_\_\_ (ix) the degree to which the company's activities and operations positively impact Utah's economy.

\_\_\_\_\_ (6) Cost-sharing required:

\_\_\_\_\_ (a) Company must pledge a matching contribution to support the project;

\_\_\_\_\_ (b) Company matching funds may be provided via:

\_\_\_\_\_ (i) Direct payment to university for the research project; and/or

\_\_\_\_\_ (ii) "In-kind" contribution, which may include:

\_\_\_\_\_ (A) Company Subject Matter Expert(s) (SME) time on the project;

\_\_\_\_\_ (B) Materials and equipment;

\_\_\_\_\_ (C) Work/research space;

\_\_\_\_\_ (D) Travel and other company expenses budgeted for the project; or,

\_\_\_\_\_ (E) Other contributions, as approved by USTAR.

\_\_\_\_\_ (c) A one-to-one match is not required. USTAR retains discretion to approve the ratio of the match. In determining the ratio of the match, USTAR considerations may include:

\_\_\_\_\_ (i) size of company;

\_\_\_\_\_ (ii) budgetary requirements to complete the project; and,

\_\_\_\_\_ (iii) potential economic impact to state.

\_\_\_\_\_ (b) University will provide USTAR with documentation of funding received from company to fulfill the company cost-share commitment prior to completion of the project.

\_\_\_\_\_ (c) All reported cost- share is subject to audit by USTAR.

#### **R856-2-5. Application and Submission Guidelines.**

\_\_\_\_\_ (1) USTAR will accept applications for IPP grants on an ongoing basis.

\_\_\_\_\_ (2) USTAR will provide the following instructions for applicants:

\_\_\_\_\_ (a) The procedure for submitting an application.

\_\_\_\_\_ (b) Specific instructions for application content, which will include:

\_\_\_\_\_ (i) description of the company's technology and commercialization plan and objectives;

\_\_\_\_\_ (ii) list of technical milestones;

\_\_\_\_\_ (iii) description of potential market for product;

\_\_\_\_\_ (iv) potential economic impact on Utah's economy; and,

\_\_\_\_\_ (v) timeline for completion.

\_\_\_\_\_ (c) Instructions for providing an outlined budget for total project cost, including:

- \_\_\_\_\_ (i) total project cost;
- \_\_\_\_\_ (ii) a description of funds secured or dedicated to the project;
- \_\_\_\_\_ (iii) an itemized budget detailing planned use of grant funds; and
- \_\_\_\_\_ (iv) a breakdown of costs to complete each milestone.
- \_\_\_\_\_ (d) Description of the application evaluation process and scoring system.
- \_\_\_\_\_ (e) Instructions for reporting project results and completing annual follow-up surveys.
- \_\_\_\_\_ (3) The IPP grant application and instructions will be available on USTAR's website and in paper form upon request.
- \_\_\_\_\_ (4) All completed applications will be reviewed and awardees selected via the criteria and method outlined herein.

**R856-2-6. Application Review Procedure.**

- \_\_\_\_\_ (1) Pre-screening.
- \_\_\_\_\_ (a) Companies are encouraged to work with USTAR headquarters or a USTAR regional director to define the technology gap and identify appropriate researchers at universities.
- \_\_\_\_\_ (b) Universities may perform an initial analysis and assessment of the project to be submitted with the application.
- \_\_\_\_\_ (2) Initial eligibility screening.
- \_\_\_\_\_ (a) USTAR will conduct an initial eligibility screening for each application to ensure:
  - \_\_\_\_\_ (i) completeness;
  - \_\_\_\_\_ (ii) strict conformity with application instructions;
  - \_\_\_\_\_ (iii) verification of minimum eligibility requirements;
  - \_\_\_\_\_ (iv) appropriateness of applicant's reported TRL assessment, technical merit, proposed timelines, and budget.
- \_\_\_\_\_ (b) Any application that fails to meet the criteria in Subsection R856-2-6(2) will be rejected and not considered for review.
- \_\_\_\_\_ (3) Panel Review.
- \_\_\_\_\_ (a) Accepted applications will be reviewed independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-2-7.
  - \_\_\_\_\_ (i) Each expert will review the proposals using an established scoring rubric provided by USTAR that includes evaluation on technical merit, commercialization strategy, economic impact to the state and budget and any other factors considered relevant by USTAR.
  - \_\_\_\_\_ (ii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:
    - \_\_\_\_\_ (A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;
    - \_\_\_\_\_ (B) relevant work experience and practical training in the field;
    - \_\_\_\_\_ (C) knowledge of the target industry sector in Utah;
    - \_\_\_\_\_ (D) experience evaluating grant proposals; and
    - \_\_\_\_\_ (E) any other factors USTAR deems important.
  - \_\_\_\_\_ (iii) USTAR will screen the experts for conflicts of interest before reviews are initiated, using the conflict of interest policy on USTAR's website. Experts are participating in the application review as a volunteer for USTAR. Each expert is

obligated under contract to maintain the classification of records and to keep information protected and confidential as described in the Utah Government Records Access and Management Act (GRAMA).

- \_\_\_\_\_ (4) Governing authority review.
- \_\_\_\_\_ (a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations for IPP grants.
- \_\_\_\_\_ (b) The subcommittee will recommend projects for award and award amounts of grant funding to the full governing authority for final approval.

**R856-2-7. Evaluation and Award Criteria.**

- \_\_\_\_\_ (1) The panel of subject matter experts will use an established scoring system to evaluate and rank grant applications (if there is more than 1) and recommend grant amounts:
  - \_\_\_\_\_ (a) The scoring criteria will be made available during the application period;
  - \_\_\_\_\_ (b) The scoring system will be designed to assess and compare each proposal across several categories, which may include:
    - \_\_\_\_\_ (i) technical merit of proposal;
    - \_\_\_\_\_ (ii) strength and experience of company and management team;
    - \_\_\_\_\_ (iii) appropriate technology readiness level (TRL 2-5);
    - \_\_\_\_\_ (iv) potential for economic impact, as measured by potential for:
      - \_\_\_\_\_ (A) job creation
      - \_\_\_\_\_ (B) product sales;
      - \_\_\_\_\_ (C) potential revenue due to expansion of current business or development of new businesses; and/or
      - \_\_\_\_\_ (D) projected time to revenue or job creation.
      - \_\_\_\_\_ (v) market need;
      - \_\_\_\_\_ (vi) technical capabilities and experience of the team;
      - \_\_\_\_\_ (vii) commercialization strategy;
      - \_\_\_\_\_ (viii) reasonableness of the proposed budget and commitment of matching funds, including whether the amounts are appropriate for the work proposed;
      - \_\_\_\_\_ (ix) reasonableness of proposed milestones;
      - \_\_\_\_\_ (x) proposed timeline is achievable and will not exceed 18 months; and
      - \_\_\_\_\_ (xi) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

**R856-2-8. Grant Amount, Award, and Required Contract.**

- \_\_\_\_\_ (1) USTAR will have the discretion to limit the amount of funding that may be awarded for each IPP grant based on available funds, scope of project, and quality of proposal.
- \_\_\_\_\_ (2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.
- \_\_\_\_\_ (3) Upon award of an IPP grant, and prior to any disbursement of funds, university and company must enter into contract(s) with USTAR governing the use of grant funding and requirements for participation in the IPP.



(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

(a) company must maintain a substantial presence in the state for at least five years subsequent to initial disbursement of grant funds:

(b) IPP grant funding may not be used to provide a primary benefit to any state or country other than Utah; and,

(c) for all other eligibility requirements, company must maintain eligibility status for the IPP program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.

(5) Violations of Subsection R856-2-8(4) may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the IPP program.

**R856-2-9. Contract Modifications.**

(1) University and Company may request a modification to the terms of an IPP contract.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, non-substantive changes.

(a) Non-substantive changes may include the following:

(i) changes to timelines of less than one month if it is the first such modification;

(ii) changes to milestone due dates, if the changes do not change the total length of the project;

(iii) corrections to clerical errors in the application materials;

(iv) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;

(b) USTAR staff can issue a "stop work" order until the project can be reviewed by the USTAR governing authority in a closed meeting to determine whether to end a contract due to failed milestones.

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement when required by State procurement regulations.

**R856-2-10. Milestones.**

(1) IPP grant funding must be used to accelerate the research and development of a technology from TRL level 2 to 5 to a higher TRL level, and project proposals must identify specific milestones leading to the proposed outcome.

(2) Examples of acceptable milestones must be specific to the project may include:

(a) research and development activities;

(b) proof of concept;

(c) product validation; and,

(d) product development.

(3) Remaining grant funds will be disbursed upon successful completion of designated milestones.

(4) Specific funding details will be provided in the program announcement and in each IPP grant contract.

**R856-2-11. Funding Distribution.**

(1) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.

(2) Specific funding details will be provided in the program announcement and in each IPP grant contract.

(3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding will be grounds to terminate the contract and any future funding.

**R856-2-12. Reporting.**

(1) Companies are required to provide the reporting, as applicable, specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds.

(2) University is required to provide the reporting, as applicable, specified in Sections 63M-2-702 and 63M-2-704.

**KEY: Utah Science Technology and Research (USTAR), Industry Partnership Program (IPP), technology readiness level (TRL)**

**Date of Enactment or Last Substantive Amendment: [November 16, 2016]2017**

**Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)**

**Science Technology And Research  
Governing Authority, Administration**

**R856-3**

**USTAR University Technology  
Acceleration Grants**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)

DAR FILE NO.: 41813

FILED: 06/14/2017

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for a USTAR grant program, the USTAR University Technology Acceleration Grants. This rule facilitates the grant under Section 63M-2-503 by establishing the eligibility and reporting criteria for an entity to receive a grant including: 1) the form and process of submitting a grant application; 2) a description of entities eligible to apply for a grant; 3) a description of specific categories of projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify the language in the administrative rules for the

grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

**SUMMARY OF THE RULE OR CHANGE:** This rule establishes the USTAR University Technology Acceleration Grants program and describes the eligibility criteria for an entity to receive a grant under Section 63M-2-503, including: 1) the form and process of submitting a grant application; 2) a description of which entities are eligible to apply for a grant; 3) the specific categories of projects that are eligible for a UTAG; 4) the criteria for awarding grants and determining grant amount; and 5) the contracting and reporting requirements of grant recipients. The change is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63M-2-302(1)(h)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
- ◆ **LOCAL GOVERNMENTS:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
- ◆ **SMALL BUSINESSES:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** If successful in winning a grant, awardees will be required to report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to business.

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

SCIENCE TECHNOLOGY AND RESEARCH  
GOVERNING AUTHORITY  
ADMINISTRATION  
60 E NORTH TEMPLE

THIRD FLOOR  
SALT LAKE CITY, UT 84111  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Peter Jay by phone at 801-372-3969, or by Internet E-mail at [pjay@utah.gov](mailto:pjay@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 08/14/2017**

**AUTHORIZED BY:** Ivy Estabrooke, Executive Director

**R856. Science Technology and Research Governing Authority (Utah), Administration.**

**R856-3. USTAR University Technology Acceleration Grants.**

**[R856-3-1. Authority:**

~~Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the eligibility, award process, and reporting criteria for each grant program administered by USTAR.~~

**R856-3-2. Purpose and Goals:**

~~(1) University Technology Acceleration Grants provide funding to individual researchers or research teams employed by a Utah not-for-profit college or university to support research, discovery and innovation that has a strong market potential.~~

~~(2) Proposals will be reviewed on a competitive basis. All projects funded through UTAG must have an identified market and/or commercialization path.~~

~~(3) Anticipated duration of projects will be 12-18 months. Funding must be budgeted by State fiscal year (1JUL-30JUN) and funding will be dependent on meeting milestones and continued USTAR appropriation.~~

**R856-3-3. Definitions:**

~~(1) "Applicant" means an individual researcher or a research team applying for a USTAR UTAG.~~

~~(2) "Awardee" means an individual researcher or team that have been awarded a UTAG.~~

~~(3) "Governing authority" means the Utah Science, Technology and Research Governing Authority.~~

~~(4) "University" means any public or not-for-profit institution of higher education located in Utah.~~

~~(5) "UTAG" means the University Technology Acceleration Grants administered by the Utah Science, Technology and Research Initiative.~~

~~(6) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.~~

~~(7) "Technology Readiness Level" or "TRL" level means Technology Readiness Level, as defined by the U.S. Department of Defense at <https://www.army.mil/e2/c/downloads/404653.pdf>~~

~~(8) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for UTAG grant funding as described in Rule 4 Section B, below.~~

(9) "USTAR" means the Utah Science, Technology and Research Initiative.

**R856-3-4. Eligibility Criteria.**

(1) Individual researchers or research teams employed by a Utah University are eligible to apply for UTAG.

(2) Individual researchers or research teams must be developing a technology in a targeted industry sector.

(a) USTAR will identify the "Industry Sector(s)" eligible to receive a UTAG in the UTAG application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state.

(c) In selecting industry sectors eligible to receive support from UTAG, the Governing Authority may consider the following factors:

(i) statewide or regional importance of the industry to Utah's economy;

(ii) relative size of the sector, its stability, and growth potential;

(iii) characteristics of the state's workforce including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(v) the potential for the industry sector to develop new jobs and business opportunities in the state;

(vi) whether research in this sector will lead to creation of a company in Utah or IP transfer to an existing Utah company; and,

(vii) any other factor the governing authority deems relevant.

(3) If applicable, applicant must have an identified regulatory pathway.

(4) Realistic and verifiable commercialization path for market entry.

(5) Applicant must be developing a technology assessed to be between a TRL of 2-5.

**R856-3-5. Application Form and Submission Guidelines.**

(1) For each new round of grants, USTAR will provide a program announcement and make applications and instructions available on USTAR's website and in paper form upon request.

(2) The instructions will include the following:

(a) The procedure for submitting an application.

(b) Specific instructions for application content which will include:

(i) description of the company's technology and commercialization objectives;

(ii) list of technical milestones;

(iii) potential market;

(iv) potential economic impact on Utah economy; and,

(v) timeline for completion.

(c) Specific instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds already secured for activities related to this project;

(iii) an itemized budget detailing planned use of grant funds; and,

(iv) breakdown of costs to complete each milestone.

(d) Description of the application evaluation process and scoring system.

(e) Instructions for reporting project results and completing annual follow-up surveys.

(3) Completed applications must be received on or before the specified deadline in the application instructions.

(4) Completed applications must be received on or before the specified deadline in the application instructions.

(5) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-3-6 and R856-3-7 herein.

**R856-3-6. Application Review Process.**

(1) University Pre-screening.

(a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

(2) Initial eligibility screening.

(a) USTAR will conduct an initial eligibility screening for each application to ensure:

(i) completeness;

(ii) verification of minimum eligibility requirements; and

(iii) appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.

(b) Any application that fails to meet the criteria in Subsection R856-3-6(2) will not be accepted.

(3) Panel Review.

(a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-3-7.

(i) Each expert panel will consist of at least two technical experts and one business expert.

(ii) Technical subject-matter experts will assess the scientific and technical merits of the proposal.

(iii) Business subject-matter experts will evaluate the business model, project cost, commercialization strategy, and potential economic impacts of the proposal;

(iv) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the target industry sector in Utah;

(D) experience evaluating grant proposals; and,

(E) any other factors USTAR deems important.

(v) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict-of-interest policy available on USTAR's website.

(4) Governing authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

\_\_\_\_\_ (b) The subcommittee will recommend projects and amounts of grant funding to the full governing authority for final approval.

**R856-3-7. Evaluation and Award Criteria.**

\_\_\_\_\_ (1) The panel of subject matter experts will use a scoring system to evaluate and rank grant applications and determine grant amounts:

\_\_\_\_\_ (a) The scoring criteria will be made available during the application period;

\_\_\_\_\_ (b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

\_\_\_\_\_ (i) Technical merit;

\_\_\_\_\_ (ii) Strength and maturity of research or management team, as applicable;

\_\_\_\_\_ (iii) Appropriate technology readiness level (TRL 2-5);

\_\_\_\_\_ (iv) Potential economic impact, as measured by:

\_\_\_\_\_ (A) Job creation;

\_\_\_\_\_ (B) Product sales;

\_\_\_\_\_ (C) Potential revenue due to expansion of current business or development of a new business; and, or,

\_\_\_\_\_ (D) Projected time to revenue or job creation;

\_\_\_\_\_ (v) Market need, technical and management experience and qualifications;

\_\_\_\_\_ (vi) Reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed additional funds available to complete work);

\_\_\_\_\_ (vii) Reasonableness of proposed milestones;

\_\_\_\_\_ (viii) Proposed timeline is achievable and will not exceed 18 months; and,

\_\_\_\_\_ (ix) Any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

**R856-3-8. Grant Amount, Award, and Required Contract.**

\_\_\_\_\_ (1) USTAR will have the discretion to limit the amount of funding that may be awarded for each UTAG based on available funds, scope of project, and quality of proposal.

\_\_\_\_\_ (2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgement and discretion of the governing authority.

\_\_\_\_\_ (3) Upon award of a UTAG, and prior to any disbursement of funds, university must enter into a contract with USTAR governing the use of grant funding.

\_\_\_\_\_ (4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

\_\_\_\_\_ (a) grant funding may not be used to provide a primary benefit to any state other than Utah; and,

\_\_\_\_\_ (b) for all other eligibility requirements, awardee must maintain eligibility status for the UTAG program until the project is complete, all milestones have been met, final dispersant of funding has been made, and first year reporting has been completed.

\_\_\_\_\_ (5) Violations of Subsection R856-3-8(4) may result in forfeiture of grant funding and require repayment of all or a portion of the funding received as part of the program.

**R856-3-9. Contract Modifications.**

\_\_\_\_\_ (1) University may request a modification to the terms of an UTAG contract.

\_\_\_\_\_ (2) USTAR may deny a modification request for any reason.

\_\_\_\_\_ (3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

\_\_\_\_\_ (a) Nonsubstantive changes may include the following:

\_\_\_\_\_ (i) changes to timelines of less than one month if it is the first such modification;

\_\_\_\_\_ (ii) corrections to clerical errors in the application materials;

\_\_\_\_\_ (iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;

\_\_\_\_\_ (4) Substantive changes must be approved by the USTAR governing authority.

\_\_\_\_\_ (5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

**R856-3-10. Milestones.**

\_\_\_\_\_ (1) UTAG funding must be used to accelerate the development and commercialization of a technology and project proposals must identify specific milestones leading to the proposed outcome.

\_\_\_\_\_ (2) Examples of acceptable milestones must be specific to the project, and may include:

\_\_\_\_\_ (a) Research and development activities;

\_\_\_\_\_ (b) Proof of concept;

\_\_\_\_\_ (c) Product validation; or,

\_\_\_\_\_ (d) Product development.

\_\_\_\_\_ (3) Remaining grant funds will be disbursed upon successful completion of designated milestones. Specific funding details will be provided in the program announcement and in each UTAG contract.

**R856-3-11. Funding Distribution.**

\_\_\_\_\_ (1) Initial funding of no more than 50% of the total grant award will be provided within 30 days of contract signature. Remaining grant funds will be disbursed upon successful completion of designated milestones.

\_\_\_\_\_ (2) Specific funding details will be provided in the program announcement and in each UTAG grant contract.

\_\_\_\_\_ (3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

**R856-3-12. Milestones and Reporting.**

\_\_\_\_\_ (1) Companies are required to provide reporting as specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds; or,

\_\_\_\_\_ (2) University is required to provide the reporting for researchers or research teams, as applicable, specified in Sections 63M-2-702 and 63M-2-704.]

**R856-3-1. Authority.**

\_\_\_\_\_ Subsection 63M-2-503(2) requires the USTAR governing authority to make rules establishing the eligibility, award process, and reporting criteria for each grant program administered by USTAR.

**R856-3-2. Purpose and Goals.**

(1) University Technology Acceleration Grants (UTAG) provide funding to individual researchers or research teams employed by a Utah not-for-profit college or university to support research, discovery and innovation that has a strong market potential.

(2) Proposals will be reviewed on a competitive basis. All projects funded through UTAG must have an identified market and/or commercialization path.

(3) Anticipated duration of projects will be 12-18 months. Funding must be budgeted by State fiscal year (July 1 - June 30) and funding will be dependent on meeting milestones and continued USTAR appropriation.

**R856-3-3. Definitions.**

(1) "Applicant" means an individual researcher or a research team applying for a USTAR UTAG.

(2) "Awardee" means an individual researcher or team that has been awarded a UTAG.

(3) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(4) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for UTAG grant funding as described in R856-3-4(2).

(5) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual application, or intellectual property.

(6) "Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).

(7) "University" means any public or not-for-profit institution of higher education located in Utah.

(8) "USTAR" means the Utah Science, Technology and Research Initiative.

(9) "UTAG" means the University Technology Acceleration Grants administered by the Utah Science, Technology and Research Initiative.

**R856-3-4. Eligibility Criteria.**

(1) Individual researchers or research teams employed by a Utah University are eligible to apply for UTAG.

(2) Individual researchers or research teams must be developing a technology in a targeted industry sector.

(a) USTAR will identify the "Industry Sector(s)" eligible to receive a UTAG in the UTAG application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state.

(c) In selecting industry sectors eligible to receive support from UTAG, the governing authority may consider the following factors:

(i) statewide or regional importance of the industry to Utah's economy;

(ii) relative size of the sector, its stability, and growth potential;

(iii) characteristics of the state's workforce including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(v) the potential for the industry sector to develop new jobs and business opportunities in the state;

(vi) whether research in this sector will lead to creation of a company in Utah or IP transfer to an existing Utah company; and,

(vii) any other factor the governing authority deems relevant.

(3) If applicable, applicant must have an identified regulatory pathway.

(4) Applicant must have a realistic and verifiable commercialization path for market entry.

(5) Applicant must be developing a technology assessed to be between a TRL of 3-4.

**R856-3-5. Application and Submission Guidelines.**

(1) For each new round of grants, USTAR will provide a program announcement and make applications and instructions available on USTAR's website and in paper form upon request.

(2) The instructions will include the following:

(a) The procedure for submitting an application.

(b) Specific instructions for application content which will include:

(i) description of the company's technology and commercialization plan and objectives;

(ii) list of technical milestones;

(iii) description of potential market for the product;

(iv) potential economic impact on Utah's economy; and,

(v) timeline for completion.

(c) Specific instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds secured for activities related to the project;

(iii) an itemized budget detailing planned use of grant funds; and,

(iv) a breakdown of costs to complete each milestone.

(d) Description of the application evaluation process and scoring system.

(e) Instructions for reporting project results and completing annual follow-up surveys.

(3) Completed applications must be received on or before the specified deadline in the application instructions from an authorized agent of the university.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-3-6 and R856-3-7 herein.

**R856-3-6. Application Review Procedure.**

(1) University Pre-screening.

(a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

(2) Initial eligibility screening.

(a) USTAR will conduct an initial eligibility screening for each application to ensure:

(i) completeness;  
(ii) strict conformity with application instructions;  
(iii) verification of minimum eligibility requirements; and  
(iv) appropriateness of applicant's reported TRL assessment, technical merit, proposed timelines, and budget.

(b) Any application that fails to meet the criteria in Subsection R856-3-6(2) and R856-3-5(1)-(4) will be rejected and not considered for review.

(3) Panel Review.

(a) Accepted applications will be reviewed by a panel of independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Section R856-3-7.

(i) Each expert panel will consist of at least two technical subject-matter experts and one business or industry expert.

(ii) Each expert will review the proposals using an established scoring rubric provided by USTAR that includes evaluation on technical merit, commercialization strategy, economic impact to the state and budget and any other factors considered relevant by USTAR.

(iii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications, including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the target industry sector in Utah;

(D) experience evaluating grant proposals; and

(E) any other factors USTAR deems important.

(iv) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website. Experts are participating in the application review as a volunteer for USTAR. Each expert is obligated under contract to maintain the classification of records and to keep information protected and confidential as described in the Utah Government Records Access and Management Act (GRAMA).

(4) Governing authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations for UTAG funding.

(b) The subcommittee will recommend projects and amounts of grant funding to the full governing authority for final approval.

**R856-3-7. Application Evaluation and Award Criteria.**

(1) The panel of subject matter experts will use an established scoring system to evaluate and rank grant applications and recommend grant amounts.

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) technical merit of proposal;

(ii) strength and experience of research or management team, as applicable;

(iii) appropriate technology readiness level (TRL 3-4);

(iv) potential economic impact, as measured by:

(A) job creation;

(B) product sales;

(C) potential revenue due to expansion of current business or development of a new business; and, or

(D) projected time to revenue or job creation;

(v) market need, technical and management experience and qualifications;

(vi) commercialization strategy;

(vii) reasonableness of the proposed budget, including whether the amounts are appropriate for the work proposed;

(viii) reasonableness of proposed milestones;

(ix) proposed timeline is achievable and will not exceed 18 months; and

(x) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

**R856-3-8. Grant Amount, Award, and Required Contract.**

(1) USTAR will have the discretion to limit the amount of funding that may be awarded for each UTAG based on available funds, scope of project, and quality of proposal.

(2) No overhead, F&A, G&A or any other indirects will be funded by the UTAG program.

(3) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgement and discretion of the governing authority.

(4) Upon award of a UTAG, and prior to any disbursement of funds, university must enter into a contract with USTAR governing the use of grant funding.

(5) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

(a) grant funding may not be used to provide a primary benefit to any state or country other than Utah; and

(b) for all other eligibility requirements, awardee must maintain eligibility status for the UTAG program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.

(6) Violations of Subsection R856-3-8(4) may result in forfeiture of grant funding and require repayment of all or a portion of the funding received as part of the program.

**R856-3-9. Contract Modifications.**

(1) University may request a modification to the terms of an UTAG contract.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to timelines of less than one month if it is the first such modification;

(ii) changes to milestone due dates, if the changes do not change the total length of the project;

(iii) corrections to clerical errors in the application materials;

(iv) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law;

(b) USTAR staff can issue a "stop work" order until the project can be reviewed by the USTAR governing authority in a closed meeting to determine whether to end a contract due to failed milestones.

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement when required by State procurement regulations.

**R856-3-10. Milestones.**

(1) UTAG funding must be used to accelerate the research and development of a technology from TRL level 3 to 4 to a higher TRL level, and project proposals must identify specific milestones leading to the proposed outcome.

(2) Examples of acceptable milestones must be specific to the project, and may include:

(a) research and development activities,

(b) proof of concept,

(c) product validation; or,

(d) product development.

(3) Remaining grant funds will be disbursed upon successful completion of designated milestones.

(4) Specific funding details will be provided in the program announcement and in each UTAG contract.

**R856-3-11. Funding Distribution.**

(1) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.

(2) Specific funding details will be provided in the program announcement and in each UTAG grant contract.

(3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

**R856-3-12. Reporting.**

(1) Companies are required to provide reporting as specified in Section 63M-2-703 for at least five (5) years following initial receipt of grant funds; or,

(2) University is required to provide the reporting for researchers or research teams, as applicable, specified in Sections 63M-2-702 and 63M-2-704.

**KEY: Utah Science Technology and Research (USTAR), University Technology Acceleration Grants (UTAG), technology readiness level (TRL)**

**Date of Enactment or Last Substantive Amendment: [November 16, 2016]2017**

**Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)**

Science Technology and Research  
Governing Authority, Administration  
**R856-4**  
USTAR Science Technology Initiation  
Grant

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)

DAR FILE NO.: 41815

FILED: 06/14/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for one of USTAR's new grant programs, the USTAR Science Technology Initiation Grants. The new rule facilitates the grant under Section 63M-2-503 by establishing the eligibility and reporting criteria for an entity to receive a grant including: 1) the form and process of submitting a grant application; 2) a description of entities eligible to apply for a grant; 3) a description of specific categories of projects that are eligible for a grant; 4) the criteria that will be considered in evaluating and awarding grants; and 5) the contracting and reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

**SUMMARY OF THE RULE OR CHANGE:** The Science Technology Initiation Grant (STIG) provides grants to support university-affiliated researchers to develop preliminary data and to conduct proof of concept experiments or other precursor research activities required to pursue larger, commercially-oriented grants from a federal agency, grant making foundation, industry, or related entity. The goal of STIG is to increase the amount of external research funding received by Utah's universities, promote interdisciplinary and cross-university collaboration, and strengthen the research and development capacity at state universities in commercially-oriented areas aligned to existing state industry sectors. STIGs are to be administered to the university that employs the applicant. The repeal and reenact is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63M-2-302(1)(h)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
- ◆ LOCAL GOVERNMENTS: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
- ◆ SMALL BUSINESSES: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: If successful in winning a grant, awardees will be required to report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost since it will vary given the pay of the individual conducting the reporting.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to business. The Science and Technology Initiation Grant (STIG) program provides grants to support university-affiliated researchers (rather than businesses) in the development of preliminary data to conduct proof of concept experiments or other precursor research activities required to pursue larger grants from a federal agency, grant making foundation, industry, or related entity.

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

SCIENCE TECHNOLOGY AND RESEARCH  
GOVERNING AUTHORITY  
ADMINISTRATION  
60 E NORTH TEMPLE  
THIRD FLOOR  
SALT LAKE CITY, UT 84111  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Peter Jay by phone at 801-372-3969, or by Internet E-mail at [pjay@utah.gov](mailto:pjay@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/14/2017

AUTHORIZED BY: Ivy Estabrooke, Executive Director

**R856. Science Technology and Research Governing Authority (Utah), Administration.**

**R856-4. USTAR Science Technology Initiation Grant.**

**[R856-4-1. Authority.**

~~Subsection 63M-2-503(2) requires the USTAR governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.~~

**R856-4-2. Purpose and Goals.**

~~(1) The Science and Technology Initiation Grant (STIG) provides grants to support university affiliated researchers to the development of preliminary data, conduct proof of concept experiments or other precursor research activities required to pursue larger, commercially-oriented grants from a federal agency, grant making foundation, industry or related entity.~~

~~(2) The goal of STIG is to increase the amount of external research funding received by Utah's universities, promote interdisciplinary and cross-university collaboration and strengthen the research and development capacity at state Universities in commercially-oriented areas aligned to existing state industry sectors.~~

~~(3) STIG grants are to be administered to the university that employs the applicant.~~

**R856-4-3. Definitions.**

~~(1) "Applicant" means the university affiliated researcher or research team for a particular project.~~

~~(2) "Awardee(s)" means a project that has been awarded a Science and Technology Initiation Grant (STIG).~~

~~(3) "Governing authority" means the Utah Science, Technology and Research Governing Authority.~~

~~(4) "Commercialization plan" means the strategy or process by which a company will introduce a technology into the market.~~

~~(5) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.~~

~~(6) "Technology Readiness Level" or "TRL" level means the method of estimating technology maturity used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).~~

~~(7) "Targeted funding" means the larger commercially-oriented grant or other external funding offered by a federal agency, grant making foundation, or related entity for which the researcher will apply after using the STIG grant to develop required data.~~

~~(8) "Grant making foundation" means any not for profit organization that awards research grants (e.g. The Bill and Melinda Gates Foundation, The Lemelson Foundation, etc).~~

~~(9) "Targeted Industry Sector" means the Utah industry or industries designated by USTAR for purposes of eligibility for STIG grants using the selection criteria described in these rules.~~

~~(10) "University" means any college, university, or other public or not-for-profit higher education institution with it's primary location in Utah.~~



~~(11) "USTAR" means the Utah Science, Technology and Research Initiative.~~

~~(12) "STIG" and "STIG grant" mean the Science and Technology Initiation Grant, a competitive grant program administered by USTAR.~~

**R856-4-4. Eligibility Criteria.**

~~(1) Individual researchers or research teams employed by a University are eligible to apply for a STIG grant.~~

~~(2) Applicants must identify the specific targeted funding source and the award type or solicitation.~~

~~(3) Applicants must propose using grant funds to support specific research and development activities, such as developing proofs of concept or performing initial data generation, necessary to develop requisite data for applicant's technology to be eligible for the targeted funding.~~

~~(4) Applicant's existing technology must be assessed to be between TRL 0-3.~~

~~(5) Collaborations among researchers at different universities and/or among researchers in different disciplines, while not required, will be given priority in the evaluation process described in Rule 7.~~

~~(6) USTAR funding cannot be used as a material benefit to another state. Funding from a STIG grant must be used within the State of Utah.~~

~~(7) Applicants must be developing a technology in an eligible industry sector.~~

~~(a) USTAR will identify the "Industry Sector(s)" eligible to receive a STIG in the STIG application materials.~~

~~(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the eligible technology sectors to ensure they are strategically selected to maximize the potential benefit to the state and align with USTAR's economic development objectives.~~

~~(c) In selecting industry sectors eligible to receive support from STIG, the Governing Authority may consider the following factors:~~

~~(i) statewide or regional importance of the industry to Utah's economy;~~

~~(ii) relative size of the sector, its stability, and growth potential;~~

~~(iii) characteristics of the state's workforce including education and training;~~

~~(iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;~~

~~(v) the potential for the industry sector to develop new jobs and business opportunities in the state;~~

~~(vi) likelihood that research in this sector will result in creation of a company in Utah or IP transfer to an existing Utah company; and;~~

~~(vii) any other factor the governing authority deems relevant.~~

~~(6) Applicants must obtain a cost-sharing commitment from each university that will receive funding from a STIG grant;~~

~~(a) matching funds may be provided via:~~

~~(i) Direct payment to university for the research project; and/or~~

~~(ii) "In-kind" contribution, which may include:~~

~~(A) Salary of university affiliated researcher or personnel;~~

~~(B) Cost of Subject Matter Expert(s) (SME);~~

~~(C) Materials and equipment;~~

~~(D) Work/research space;~~

~~(E) Travel and other expenses budgeted for the project; or,~~

~~(F) Other contributions, as approved by USTAR~~

**R856-4-5. Application Form and Submission Guidelines.**

~~(1) USTAR will accept applications for STIG grants on an ongoing basis.~~

~~(2) USTAR will make applications and instructions available on USTAR's website and also in paper form upon request.~~

~~(3) The instructions will include the following:~~

~~(a) The procedure for submitting an application.~~

~~(b) Specific instructions for application content which will include:~~

~~(i) The procedure for submitting an application.~~

~~(ii) Specific instructions for application content, including:~~

~~(A) description of the target grant;~~

~~(B) list of technical milestones; and,~~

~~(C) timeline for completion of research.~~

~~(iii) Specific instructions for the required budget outline, including:~~

~~(1) total project cost;~~

~~(2) a description of any funds already secured for activities related to this project;~~

~~(3) an itemized budget detailing planned use of grant funds; and,~~

~~(4) breakdown of costs to complete each milestone.~~

~~(iv) Description of the application evaluation process and scoring system.~~

~~(v) Instructions for reporting project results and completing annual follow-up surveys.~~

~~(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Rules 6-7 herein.~~

**R856-4-6. Application Review Procedure.**

~~(1) University Pre-screening:~~

~~(a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.~~

~~(2) Initial eligibility screening:~~

~~(a) USTAR will conduct an initial eligibility screening for each application to ensure:~~

~~(i) Completeness;~~

~~(ii) Verification of minimum eligibility requirements; and~~

~~(iii) Appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.~~

~~(b) Any application that fails to meet the criteria in Rule 6 Section (2) will be rejected.~~

~~(3) Panel Review:~~

~~(a) Accepted applications will be reviewed by independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Rule 7.~~

~~(i) Each expert panel will consist of at least two technical subject matter experts who will assess the scientific and technical merits of the proposal and the alignment to the funding source.~~

~~(ii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:~~

~~(A) academic qualifications including whether the expert has a terminal degree in a relevant field;~~

~~(B) relevant work experience and practical training in the field;~~

~~(C) knowledge of the target industry sector in Utah;~~

~~(D) experience evaluating grant proposals; and,~~

~~(E) any other factors USTAR deems important.~~

~~(iii) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website.~~

~~(4) Governing Authority review.~~

~~(i) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.~~

~~(ii) The subcommittee will recommend projects for award and award amounts of grant funding to the full governing authority for final approval.~~

**R856-4-7. Evaluation and Award Criteria.**

~~(1) The panel of subject matter experts will use a scoring system to evaluate and rank grant applications and determine grant amounts.~~

~~(a) The scoring criteria will be made available during the application period;~~

~~(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:~~

~~(i) technical merit of proposal;~~

~~(ii) appropriate technology readiness level (TRL 0-3);~~

~~(iii) whether proposal involves a collaboration between researchers at more than one university;~~

~~(iv) whether the proposal involves a collaboration between researchers in more than one discipline;~~

~~(v) competitiveness of the proposed project and team for the target grant;~~

~~(vi) potential future economic benefit to the state;~~

~~(vii) reasonableness of the proposed budget, including whether the amounts are appropriate for the work proposed;~~

~~(viii) reasonableness of proposed milestones and timelines; and~~

~~(ix) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance.~~

**R856-4-8. Grant Amount, Award, and Required Contract.**

~~(1) USTAR will have the discretion to limit the amount of funding that may be awarded for each STIG based on available funds, scope of project, and quality of proposal.~~

~~(2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation~~

~~criteria set forth in these rules and according to the sole judgment and discretion of USTAR and the governing authority.~~

~~(3) Upon award of a STIG, and prior to any disbursement of funds, university(ies) must enter into a contract with USTAR governing the use of STIG grant funding.~~

~~(4) Unless addressed in the terms and conditions of the contract between university(ies) and USTAR, the following provisions shall apply:~~

~~(a) grant funding may not be used to provide a primary benefit to any state or nation-state other than Utah; and,~~

~~(b) for all other eligibility requirements, awardees must maintain eligibility status for the STIG program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year of reporting has been completed.~~

~~(5) Violations of Rule 8, Section 4 may result in forfeiture of grant funding and require repayment of all or a portion of the funding received as part of the program.~~

**R856-4-9. Contract Modifications.**

~~(1) University may request a modification to the terms of an STIG contract.~~

~~(2) USTAR may deny a modification request for any reason.~~

~~(3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.~~

~~(a) Nonsubstantive changes may include the following:~~

~~(i) changes to timelines of less than one month if it is the first such modification;~~

~~(ii) corrections to clerical errors in the application materials;~~

~~(iii) technical changes that do not alter the budget, company's eligibility status, or violate any state or federal law;~~

~~(4) Substantive changes must be approved by the USTAR governing authority.~~

~~(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.~~

**R856-4-10. Milestones.**

~~(1) STIG funding must be used by individual researchers or research teams to develop proof of concept and/or initial data generation projects needed to apply for the targeted funding.~~

~~(2) Acceptable milestones must be specific to the project and designed to result in achieving the targeted funding.~~

~~(3) Specific funding details will be provided in the program announcement and in each STIG contract.~~

**R856-4-11. Funding Distribution.**

~~(1) Initial funding of no more than 50% of the total grant award will be provided within 30 days of a signed contract to allow the recipient to meet initial milestones.~~

~~(2) Remaining grant funds will be disbursed upon successful completion of designated milestones as set forth in the contract.~~

~~(3) Specific funding details will be provided in the program announcement and in each STIG grant contract.~~

~~(4) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract.~~

**R856-4-12. Milestones and Reporting.**

~~(1) All universities receiving STIG funding are required to provide the reporting for researchers or research teams as specified in Section 63M-2-702 and 704, as applicable.]~~

**R856-4-1. Authority.**

Subsection 63M-2-503(2) requires the USTAR governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

**R856-4-2. Purpose and Goals.**

(1) The Science and Technology Initiation Grant (STIG) program provides grants to support university affiliated researchers in the development of preliminary data, to conduct proof of concept experiments or other precursor research activities required to pursue larger grants from a federal agency, grant making foundation, industry or related entity.

(2) The goal of STIG is to increase the amount of external research funding received by Utah's universities, promote interdisciplinary and cross-university collaboration and strengthen the research and development capacity, particularly in commercially-oriented areas aligned to existing state industry sectors.

(3) STIG grants are to be administered to the university that employs the applicant.

**R856-4-3. Definitions.**

(1) "Applicant" means the university affiliated researcher or research team applying for a STIG for a particular project.

(2) "Awardee(s)" means a project that has been awarded a STIG.

(3) "Commercialization plan" means the strategy or process by which a company will introduce a technology into the market.

(4) "Governing Authority" means the Utah Science, Technology and Research Governing Authority.

(5) "Grant making foundation" means any non-profit or not-for-profit organization that awards research grants.

(6) "STIG" and "STIG grant" mean the Science and Technology Initiation Grant, a competitive grant program administered by USTAR.

(7) "Targeted funding" means the larger commercially-oriented grant or other external funding offered by a federal agency, grant making foundation, or related entity for which the researcher will apply after using the STIG grant to develop required data.

(8) "Targeted Industry Sector" means the Utah industry or industries designated as such by USTAR for purposes of eligibility for STIG grants grant funding as described in these rules.

(9) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual application, or intellectual property.

(10) "Technology Readiness Level" or "TRL" level means the method of characterization of the maturity of the

technology used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).

(11) "University" means any college, university, or other public or not-for-profit higher education institution with its primary location in Utah.

(12) "USTAR" means the Utah Science, Technology and Research Initiative.

**R856-4-4. Eligibility Criteria.**

(1) Individual researchers or research teams employed by a University are eligible to apply for a STIG grant.

(2) Applicants must identify the specific targeted funding source and the award type or solicitation.

(3) Applicants must propose using grant funds to support specific research and development activities, such as developing proofs of concept or performing initial data generation, necessary to develop requisite data for applicant's technology to be eligible for the targeted funding.

(4) Collaborations among researchers at different universities and/or among researchers in different disciplines, while not required, will be given priority in the evaluation process described in R856-4-7.

(5) USTAR funding cannot be used as a material benefit to another state or country. Funding from a STIG grant must be used within the State of Utah.

(6) Applicants must be developing a technology in a targeted industry sector.

(a) USTAR will identify the industry sectors eligible to receive a STIG in the STIG application materials.

(b) The USTAR governing authority will, according to its discretion and judgment, review and approve the targeted technology sectors to ensure they are strategically selected to align with USTAR's economic development objectives and maximize the potential benefit to the state.

(c) In selecting industry sectors eligible to receive support from STIG, the governing authority may consider the following factors:

(i) statewide or regional importance of the industry to Utah's economy;

(ii) relative size of the sector, its stability, and growth potential;

(iii) characteristics of the state's existing workforce including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for companies in the technology sector;

(v) the potential for the industry sector to develop new jobs and business opportunities in the state;

(vi) likelihood that research in this sector will result in creation of a company in Utah or IP transfer to an existing Utah company; and,

(vii) any other factor the governing authority deems relevant.

(7) Applicant's existing technology must be assessed to be between TRL 1-3.

(8) Applicants must obtain a cost-sharing commitment from each university that will receive funding from a STIG grant:

(a) matching funds may be provided via:

(i) Direct payment to university for the research project; and/or

(ii) "In-kind" contribution, which may include:

(A) salary of university affiliated researcher or personnel;

(B) cost of Subject Matter Expert(s) (SME);

(C) materials and equipment;

(D) work/research space;

(E) travel and other expenses budgeted for the project; or

(F) other contributions, as approved by USTAR

**R856-4-5. Application and Submission Guidelines.**

(1) USTAR will accept applications for STIG grants on an ongoing basis.

(2) USTAR will make applications and instructions available on USTAR's website and also in paper form upon request.

(3) The instructions will include the following:

(a) The procedure for submitting an application.

(b) Specific instructions for application content which will include:

(i) description of the company's technology and commercialization plan and objectives;

(ii) list of technical milestones;

(iii) description of potential market for the product;

(iv) potential economic impact on Utah's economy and

(v) timeline for completion.

(c) Specific instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds secured for activities related to the project;

(iii) an itemized budget detailing planned use of grant funds; and

(iv) breakdown of costs to complete each milestone.

(d) Description of the application evaluation process and scoring system.

(e) Instructions for reporting project results and completing annual follow-up surveys.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in R856-4-(6)-(7).

**R856-4-6. Application Review Procedure.**

(1) University Pre-screening.

(a) Universities may perform an initial analysis and assessment of the project to be submitted with the application.

(2) Initial eligibility screening.

(a) USTAR will conduct an initial eligibility screening for each application to ensure:

(i) completeness;

(ii) strict conformity with application instructions;

(iii) verification of minimum eligibility requirements; and

(iv) appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.

(b) Any application that fails to meet the criteria in R856-4-6(2) will be rejected and not considered for review.

(3) Panel Review.

(a) Accepted applications will be reviewed by independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in R856-4-7.

(i) Each expert panel will consist of at least two technical subject-matter experts.

(ii) Each expert will review the proposals using an established scoring rubric provided by USTAR that includes evaluation on technical merit, commercialization strategy, economic impact to the state and budget and any other factors considered relevant by USTAR.

(iii) USTAR will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications including whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the target industry sector in Utah;

(D) experience evaluating grant proposals; and

(E) any other factors USTAR deems important.

(iv) USTAR will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website. Experts are participating in the application review as a volunteer for USTAR. Each expert is obligated under contract to maintain the classification of records and to keep information protected and confidential as described in the Utah Government Records Access and Management Act (GRAMA).

(4) Governing Authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations for STIG grants.

(b) The subcommittee will recommend projects for award and award amounts of grant funding to the full governing authority for final approval.

**R856-4-7. Evaluation and Award Criteria.**

(1) The panel of subject matter experts will use an established scoring system to evaluate and rank grant applications and recommend grant amounts.

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) technical merit of proposal;

(ii) strength and experience of the team;

(iii) appropriate technology readiness level (TRL 1-3);

(iv) whether proposal involves a collaboration between researchers at more than one university;

(v) whether the proposal involves a collaboration between researchers in more than one discipline;

(vi) competitiveness of the proposed project and team for the target grant;

(vii) potential economic impact, as measured by:

(A) job creation;

- \_\_\_\_\_ (B) product sales;
- \_\_\_\_\_ (C) potential revenue due to expansion of current business or development of a new business; and, or,
- \_\_\_\_\_ (D) projected time to revenue or job creation;
- \_\_\_\_\_ (viii) reasonableness of the proposed budget, including whether the amounts are appropriate for the work proposed;
- \_\_\_\_\_ (ix) reasonableness of proposed milestones and timelines; and
- \_\_\_\_\_ (x) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

**R856-4-8. Grant Amount, Award, and Required Contract.**

- \_\_\_\_\_ (1) USTAR will have the discretion to limit the amount of funding that may be awarded for each STIG based on available funds, scope of project, and quality of proposal.
- \_\_\_\_\_ (2) USTAR reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of USTAR and the governing authority.
- \_\_\_\_\_ (3) Upon award of a STIG, and prior to any disbursement of funds, university(ies) must enter into a contract with USTAR governing the use of STIG grant funding.
- \_\_\_\_\_ (4) Unless addressed in the terms and conditions of the contract between university(ies) and USTAR, the following provisions shall apply:
  - \_\_\_\_\_ (a) grant funding may not be used to provide a primary benefit to any state or country other than Utah; and,
  - \_\_\_\_\_ (b) for all other eligibility requirements, awardees must maintain eligibility status for the STIG program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year of reporting has been completed.
- \_\_\_\_\_ (5) Violations of Subsection R856-4-8(4) may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the program.

**R856-4-9. Contract Modifications.**

- \_\_\_\_\_ (1) University may request a modification to the terms of an STIG contract.
- \_\_\_\_\_ (2) USTAR may deny a modification request for any reason.
- \_\_\_\_\_ (3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.
  - \_\_\_\_\_ (a) Nonsubstantive changes may include the following:
    - \_\_\_\_\_ (i) changes to timelines of less than one month if it is the first such modification;
    - \_\_\_\_\_ (ii) changes to milestone due dates, if the changes do not change the total length of the project;
    - \_\_\_\_\_ (iii) corrections to clerical errors in the application materials;
    - \_\_\_\_\_ (iv) technical changes that do not alter the budget, company's eligibility status, or violate any state or federal law;
  - \_\_\_\_\_ (b) USTAR staff can issue a "stop work" order until the project can be reviewed by the USTAR governing authority in a closed meeting to determine whether to end a contract due to failed milestones.

- \_\_\_\_\_ (4) Substantive changes must be approved by the USTAR governing authority.
- \_\_\_\_\_ (5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement when required by State procurement regulations.

**R856-4-10. Milestones.**

- \_\_\_\_\_ (1) STIG funding must be used by individual researchers or research teams to develop proof of concept and/or initial data generation projects needed to apply for the targeted funding. Project proposals must identify specific milestones leading to the proposed outcome.
- \_\_\_\_\_ (2) Examples of acceptable milestones must be specific to the project and designed to result in achieving the targeted funding, may include:
  - \_\_\_\_\_ (a) research and development activities;
  - \_\_\_\_\_ (b) proof of concept;
  - \_\_\_\_\_ (c) product validation; and,
  - \_\_\_\_\_ (d) product development.
- \_\_\_\_\_ (3) Remaining grant funds will be disbursed upon successful completion of designated milestones.
- \_\_\_\_\_ (4) Specific funding details will be provided in the program announcement and in each STIG contract.

**R856-4-11. Funding Distribution.**

- \_\_\_\_\_ (1) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.
- \_\_\_\_\_ (2) Specific funding details will be provided in the program announcement and in each STIG grant contract.
- \_\_\_\_\_ (3) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

**R856-4-12. Reporting.**

- \_\_\_\_\_ (1) All universities receiving STIG funding are required to provide the reporting for researchers or research teams as specified in Section 63M-2-702 and 704, as applicable.

**KEY: USTAR, TRL, STIG**

**Date of Enactment or Last Substantive Amendment: [March 22], 2017**

**Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)**

**Science Technology and Research  
 Governing Authority, Administration  
 R856-5  
 USTAR Energy Research Triangle  
 Professors Grant**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)  
 DAR FILE NO.: 41828  
 FILED: 06/14/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for one of USTAR's new grant programs, the USTAR Energy Research Triangle Professors Grant. This rule establishes the eligibility and reporting criteria for an entity to receive a grant under Section 63M-2-503 including: 1) the form and process of submitting a grant application; 2) which entities are eligible to apply for a USTAR Energy Research Triangle Professors Grant; 3) specific categories of projects that are eligible; 4) the criteria for awarding grants and determining grant amounts; and 5) the reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

**SUMMARY OF THE RULE OR CHANGE:** This rule establishes the USTAR Energy Research Triangle Professors grant program, which is a collaborative effort between USTAR and the Utah Governor's Office of Energy Development (GOED) and will be administered according to this rule. Grants provide funding for projects in which research teams from at least three Utah non-profit higher education institutions collaborate to address energy-related technical challenges important to economic growth in the state of Utah. Anticipated duration of projects will be 12 to 18 months. Funding must be budgeted by state fiscal year (July 1 through June 30) and funding will be dependent on meeting milestones and continued USTAR/GOED appropriation. The change is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63M-2-302(1)(h)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.
- ◆ **LOCAL GOVERNMENTS:** None--Only universities can apply for these grants. Therefore, local government entities are not affected by this rule.
- ◆ **SMALL BUSINESSES:** None--Only universities can apply for these grants. It is anticipated that small businesses will benefit from the research of universities that receive this grant, since the grant is established to create economic growth in Utah. However, USTAR is unable to estimate any

fiscal benefit for small businesses as a result of this rule, because the impact is indirect and will vary depending on circumstance.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Only universities can apply for these grants. Therefore, persons other than small business are not affected by this rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** If successful in winning a grant, awardees will be required to report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to business. Energy Research Triangle Professors Grants provide funding to university faculty research professors for student-led projects.

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

SCIENCE TECHNOLOGY AND RESEARCH  
GOVERNING AUTHORITY  
ADMINISTRATION  
60 E NORTH TEMPLE  
THIRD FLOOR  
SALT LAKE CITY, UT 84111  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Peter Jay by phone at 801-372-3969, or by Internet E-mail at [pjay@utah.gov](mailto:pjay@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017**

**THIS RULE MAY BECOME EFFECTIVE ON: 08/14/2017**

**AUTHORIZED BY:** Ivy Estabrooke, Executive Director

**R856. Science Technology and Research Governing Authority (Utah), Administration.**

~~[R856-5. USTAR Energy Research Triangle Professors Grant.~~

~~**R856-5-1. Authority.**~~

~~Subsection 63M-2-503(2) requires the USTAR governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.~~

~~**R856-5-2. Purpose and Goals.**~~

~~(1) The USTAR Energy Research Triangle Professors grant program is a collaborative effort between USTAR and The~~

Utah Governor's Office of Energy Development and will be administered according to these rules:

(2) Grants provide funding for projects in which research teams from at least 3 Utah non-profit higher education institutions collaborate to address energy related technical challenges important to economic growth in the state of Utah.

(3) Anticipated duration of projects will be 12-18 months. Funding must be budgeted by State fiscal year (1JUL-30JUN) and funding will be dependent on meeting milestones and continued USTAR/OED appropriation.

**R856-5-3. Definitions.**

(1) "Applicant" means the research team for a particular project.

(2) "Awardee(s)" means a project that has been awarded an Energy Research Triangle - Professor grant.

(3) "Commercialization plan" means the strategy or process by which a researcher or research team will introduce a technology into the market.

(4) "ERT-P" and "ERT-P grant" mean the Energy Research Triangle - Professor grant program, a competitive grant program administered by USTAR.

(5) "Governing authority" means the Utah Science, Technology and Research Governing Authority.

(6) "Lead university" is defined as the university which applies for ERT-P funding and is the principal contact between USTAR and the research team.

(7) "OED" means the Utah Governor's Office of Energy Development.

(8) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.

(9) "Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).

(10) "University" means any college, university, or other public or not-for-profit higher education institution with its primary location in Utah.

(11) "USTAR" means the Utah Science, Technology and Research Initiative.

(12) "UTAG" means the University Technology Acceleration Grants administered by the Utah Science, Technology and Research Initiative.

**R856-5-4. Eligibility Criteria.**

(1) ERT-P grant is available to university research teams that meet the following guidelines:

(a) Research team must include at least three researchers.

(b) Research team must include at least three Utah universities or colleges.

(c) Research team must include at least two Utah research universities under the Carnegie Classification of Institutions of Higher Education ([http://carnegieclassifications.iu.edu/classification\\_descriptions/basic.php](http://carnegieclassifications.iu.edu/classification_descriptions/basic.php)). The following three Utah universities are currently classified as research universities:

(i) University of Utah;

(ii) Utah State University;

(iii) Brigham Young University;

(d) Research team may include at least one researcher from universities in the state of Utah other than those listed in (1) (c);

(2) Research team must be developing a technology with applications that can address Utah-specific energy and natural resource issues.

(a) USTAR/OED may specify a specific subsector of Utah's energy and natural resource industry as a priority for grant funding in the ERT-P application materials.

(b) ERT-P grants are targeted at energy and natural resource innovation and development.

(c) In selecting targeted energy and natural resource subsectors eligible to receive support from ERT-P, the governing authority may consider the following factors:

(A) statewide or regional importance of the subsector to Utah's economy;

(B) relative size of the subsector, its stability, and growth potential;

(C) characteristics of the state's existing workforce, including education and training;

(D) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(E) the potential for the subsector to develop new jobs and business opportunities in the state; and,

(F) the likelihood that research in this subsector will result in the creation of a company in Utah or IP transfer to an existing Utah company.

(3) Eligible technologies will be between a TRL 2-5 at the time of the anticipated grant award;

(4) Applicants may not receive ERT-P funding and UTAG funding for the same technology in the same Utah fiscal year.

**R856-5-5. Application Form and Submission Guidelines.**

(1) For each round of grants, USTAR/OED will provide a program announcement and make applications and instructions available on USTAR and/or OED's website, and in paper form upon request.

(2) Completed applications must be received on or before the specified deadline in the application instructions.

(3) The instructions will include the following:

(a) The procedure for submitting an application.

(b) Specific instructions for application content which will include:

(i) The procedure for submitting an application:

(A) description of the target grant;

(B) list of technical milestones; and,

(C) timeline for completion of research.

(ii) Specific instructions for the required budget outline, including:

(A) total project cost;

(B) a description of any funds already secured for activities related to this project;

(C) an itemized budget detailing planned use of grant funds; and,

(D) breakdown of costs to complete each milestone.

(iii) Description of the application evaluation process and scoring system.

~~(iv) Instructions for reporting project results and completing annual follow-up surveys.~~

~~(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Rules 6-7 herein.~~

**R856-5-6. Application Review Procedure.**

~~(1) Initial eligibility screening.~~

~~(a) USTAR/OED will conduct an initial eligibility screening for each application to ensure:~~

~~(i) Completeness;~~

~~(ii) Verification of minimum eligibility requirements; and~~

~~(iii) Appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.~~

~~(b) Any application that fails to meet the criteria in Rule 6 Section (1) will be rejected.~~

~~(2) Panel Review.~~

~~(a) Accepted applications will be reviewed by subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Rule 7.~~

~~(i) USTAR/OED will have discretion to select the experts for the review panels and shall consider, as applicable:~~

~~(A) academic qualifications including whether the expert has a terminal degree in a relevant field;~~

~~(B) relevant work experience and practical training in the field;~~

~~(C) knowledge of the the commercial/industrial energy sector or sub-sector in Utah;~~

~~(D) experience evaluating grant proposals; and;~~

~~(E) any other factors USTAR/OED deems important.~~

~~(ii) USTAR/OED will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website. The experts will also be required to sign an NDA.~~

~~(iii) Governing authority review. A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.~~

~~(iv) Recommendations from the subcommittee concerning which projects should be awarded a grant and the proposed budget will be presented to the full governing authority for approval.~~

**R856-5-7. Evaluation and Award Criteria.**

~~(1) The expert panel will use a scoring system to evaluate and rank grant applications and determine grant amounts.~~

~~(a) The scoring criteria will be made available during the application period;~~

~~(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:~~

~~(i) Technical merit;~~

~~(ii) Strength and maturity of research and management team, as applicable;~~

~~(iii) Appropriate technology readiness level (TRL 2- 5);~~

~~(iv) Potential economic impact, as measured by:~~

~~(A) Job creation;~~

~~(B) Potential revenue due to expansion of current business or development of a new business; and/or;~~

~~(C) Projected time to revenue or job creation;~~

~~(v) Market need, technical and management experience and qualifications;~~

~~(vi) Reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed);~~

~~(vii) Reasonableness of proposed milestones;~~

~~(viii) Proposed timeline is achievable and will not exceed 18 months; and;~~

~~(ix) Any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.~~

**R856-5-8. Grant Amount, Award, and Required Contract.**

~~(1) USTAR/OED will have the discretion to limit the amount of funding that may be awarded for each ERT-P based on available funds, scope of project, and quality of proposal.~~

~~(2) USTAR/OED reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.~~

~~(3) Upon award of an ERT-P, and prior to any disbursement of funds, each lead university must enter into a contract with USTAR governing the use of grant funding.~~

~~(a) The "lead university" is defined as the principal investigator's university~~

~~(b) Subcontracts to the remaining universities will be administered by the lead university.~~

~~(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:~~

~~(a) grant funding may not be used to provide a primary benefit to any state other than Utah; and;~~

~~(b) for all other eligibility requirements, awardee must maintain eligibility status for the ERT-P program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.~~

~~(5) Violations of Rule 8, Section 4 may result in forfeiture of grant funding and require repayment of all or a portion of the funding received as part of the program.~~

**R856-5-9. Contract Modifications.**

~~University may request a modification to the terms of an ERT-P contract.~~

~~(1) USTAR may deny a modification request for any reason.~~

~~(2) USTAR shall have discretion to agree to reasonable, non-substantive changes.~~

~~(a) Nonsubstantive changes may include the following:~~

~~(i) changes to timelines of less than one month if it is the first such modification;~~

~~(ii) corrections to clerical errors in the application materials;~~

~~(iii) technical changes that do not alter the budget, company's eligibility status, or violate any state or federal law;~~

~~(3) Substantive changes must be approved by the USTAR governing authority.~~

~~(4) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.~~



**R856-5-10. Funding Distribution.**

~~(1) Funding will be provided to the lead university and will be distributed per the subcontracts to each of the supporting universities.~~

~~(2) Initial funding of no more than 50% of the total grant award will be provided within a reasonable time after the ERT-P grant is approved to allow the university team to meet initial milestones.~~

~~(3) Remaining grant funds for individual milestones will be disbursed upon successful completion of those milestones.~~

~~(4) A portion of the final milestone funding will be withheld until final reporting is received.~~

~~(5) Specific funding details will be provided in the program announcement and in each ERT-P grant contract.~~

~~(6) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.~~

**R856-5-11. Milestones and Reporting.**

~~(1) Research team is required to provide reporting, as applicable, specified in Sections 63M-2-702 and 704.]~~

**R856-5. Utah Science, Technology, and Research (USTAR) Energy Research Triangle Professors (ERT-P) Grant.****R856-5-1. Authority.**

Subsection 63M-2-503(2) requires the Utah Science, Technology and Research (USTAR) governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

**R856-5-2. Purpose and Goals.**

(1) The USTAR Energy Research Triangle (ERT) Professors (ERT-P) grant program is a collaborative effort between USTAR and The Utah Governor's Office of Energy Development (OED) and will be administered according to these rules.

(2) Grants provide funding to university faculty research professors for student-led projects in which research teams from at least 3 universities seek to address technical hurdles related to energy and/or natural resource challenges important to economic growth in the state of Utah.

(3) Anticipated duration of projects will be 12 months. Funding must be budgeted by State fiscal year (July 1 - June 30) and funding will be dependent on meeting milestones and continued USTAR/OED appropriation.

**R856-5-3. Definitions.**

(1) "Applicant" means the research team for a particular project.

(2) "Awardee(s)" means a project that has been awarded an Energy Research Triangle - Professor grant.

(3) "Commercialization plan" means the strategy or process by which a researcher or research team will introduce a technology into the market.

(4) "ERT-P" and "ERT-P grant" mean the Energy Research Triangle - Professor grant program, a competitive grant program administered by USTAR.

(5) "ERT-S" and "ERT-Scholars" means the Energy Research Triangle - Scholars grant program, a competitive grant program administered by USTAR.

(6) "Governing authority" and "GA" means the Utah Science, Technology and Research Governing Authority.

(7) "Lead university" is defined as the university which applies for ERT-P funding and is the principal contact between USTAR and the research team.

(8) "OED" means the Utah Governor's Office of Energy Development.

(9) "Research faculty" means a full time employee of a Utah university.

(10) "Research team" means at least three research faculty representing at least three universities.

(11) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material applications, virtual or digital applications, or intellectual property.

(12) "Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).

(13) "University" means any college, university, or other public or not-for-profit higher education institution with its primary location in Utah.

(14) "USTAR" means the Utah Science, Technology and Research Initiative.

(15) "UTAG" means the University Technology Acceleration Grants administered by USTAR.

**R856-5-4. Eligibility Criteria.**

(1) The ERT-P grant is available to university research teams that meet the following guidelines:

(a) Research team must include at least three researchers.

(b) Research team must include at least three Utah universities.

(c) Research team must include at least two Utah research universities under the Carnegie Classification of Institutions of Higher Education

([http://carnegieclassifications.iu.edu/classification\\_descriptions/basic.php](http://carnegieclassifications.iu.edu/classification_descriptions/basic.php)). The following three Utah universities are currently classified as research universities (as of 5/1/2017):

(i) Brigham Young University;

(ii) University of Utah;

(iii) Utah State University;

(2) Research team must be developing a technology with applications that can address technical challenges related to energy and/or natural resource challenges important to economic development in the state of Utah.

(a) USTAR/OED may specify a specific subsector of Utah's energy and natural resource industry as a priority for grant funding in the ERT-P application materials.

(b) ERT-P grants are targeted at energy and natural resource innovation and development.

(c) In selecting targeted energy and natural resource subsectors eligible to receive support from ERT-P, the governing authority may consider the following factors:

(i) statewide or regional importance of the subsector to Utah's economy;

(ii) relative size of the subsector, its stability, and growth potential;

(iii) characteristics of the state's existing workforce, including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(v) the potential for the subsector to develop new jobs and business opportunities in the state; and

(vi) the likelihood that research in this subsector will result in the creation of a company in Utah or IP transfer to an existing Utah company.

(3) Eligible technologies will be between a TRL of 2-5 at the time of the application.

(4) Applicants may not receive ERT-P, ERT-S and/or UTAG funding for the same technology in the same Utah fiscal year.

(5) ERT-P funds cannot support development of a technology beyond a TRL of 6.

#### **R856-5-5. Application and Submission Guidelines.**

(1) For each round of grants, USTAR/OED will provide a program announcement and make applications and instructions available on USTAR and/or OED's website, and in paper form upon request.

(2) Completed applications must be received on or before the specified deadline in the application instructions.

(3) The instructions will include the following:

(a) The procedure for submitting an application.

(b) Specific instructions for application content which will include:

(i) technical overview of the project:

(A) description of the technology and commercialization plan and objectives;

(B) list of technical milestones;

(C) Description of potential market for product;

(D) Potential economic impact on Utah's economy; and

(E) timeline for completion.

(ii) Specific instructions for the required budget outline, including:

(A) total project cost;

(B) a description of funds secured for activities related to this project;

(C) an itemized budget detailing planned use of grant funds; and

(D) breakdown of costs to complete each milestone.

(iii) Description of the application evaluation process and scoring system.

(iv) Instructions for reporting project results and completing annual follow-up surveys.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in R856-5-6 and R856-5-7.

#### **R856-5-6. Application Review Procedure.**

(1) Initial eligibility screening.

(a) USTAR/OED will conduct an initial eligibility screening for each application to ensure:

(i) completeness;

(ii) strict conformity with application instructions

(iii) verification of minimum eligibility requirements; and

(iv) appropriateness of applicant's reported TRL assessment, technical merit, proposed timelines, and budget.

(b) Any application that fails to meet the criteria in R856-5-6(1) will be rejected and not considered for review.

(2) Panel Review.

(a) Accepted applications will be reviewed by independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in R856-5-7.

(i) Each expert panel will consist of at least two technical subject-matter-experts and one business or industry expert.

(ii) Each expert will review the proposals using an established scoring rubric provided by USTAR that includes evaluation on technical merit, commercialization strategy, economic impact to the state and budget and any other factors considered relevant by USTAR.

(iii) USTAR/OED will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the commercial/industrial energy or natural resources sector or sub-sector in Utah;

(D) experience evaluating grant proposals;

(E) general investment experience; and,

(F) any other factors USTAR/OED deems important.

(iv) USTAR/OED will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website. Experts are participating in the application review as a volunteer for USTAR. Each expert is obligated under contract to maintain the classification of records and to keep information protected and confidential as described in the Utah Government Records Access and Management Act (GRAMA).

(3) Governing authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.

(b) The subcommittee will recommend projects for award and award amounts of a grant funding to the full governing authority for final approval.

(c) The Governor or his designee must approve the projects.

#### **R856-5-7. Evaluation and Award Criteria.**

(1) The panel of subject matter experts will use an established scoring system to evaluate and rank grant applications and recommend grant amounts.

(a) The scoring criteria will be made available during the application period;

(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

(i) technical merit of proposal;

(ii) strength and experience of research and management team;

(iii) appropriate technology readiness level

(iv) potential economic impact, as measured by:

(A) job creation;  
(B) potential for the development of original intellectual property;  
(C) potential for technology transfer to industry or establishment of a start-up company;  
(D) projected time to revenue or job creation;  
(E) other measures of economic impact such as natural resource, environmental or Utah-specific impacts;  
(v) market need;  
(vi) technical and management experience and qualifications;  
(vii) reasonableness of the proposed budget, including whether the amounts are appropriate for the work proposed;  
(viii) reasonableness of proposed milestones;  
(ix) proposed timeline is achievable and will not exceed 12 months; and,  
(x) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

**R856-5-8. Grant Amount, Award, and Required Contract.**

(1) USTAR/OED will have the discretion to limit the amount of funding that may be awarded for each ERT-P based on available funds, scope of project, and quality of proposal.

(2) USTAR/OED reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.

(3) Upon award of an ERT-P, and prior to any disbursement of funds, each lead university must enter into a contract with USTAR governing the use of grant funding.

(a) The "lead university" is defined as the principal investigator's university

(b) Subcontracts to the remaining universities will be administered by the lead university.

(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:

(a) grant funding may not be used to provide a primary benefit to any state or country other than Utah; and,

(b) for all other eligibility requirements, awardee must maintain eligibility status for the ERT-P program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.

(5) Violations of R856-5-8(4) may result in forfeiture of grant funding and may require repayment of all or a portion of the funding received as part of the program.

(6) University overhead, F&A or G&A are not allowed on ERT-P awards.

**R856-5-9. Contract Modifications.**

(1) University may request a modification to the terms of an ERT-P contract.

(2) USTAR may deny a modification request for any reason.

(3) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Nonsubstantive changes may include the following:

(i) changes to milestone due dates, if the changes do not change the total length of the project;

(ii) corrections to clerical errors in the application materials;

(iii) technical changes to conditions that do not alter the budget, applicant's eligibility status, or violate any state or federal law;

(b) USTAR staff can issue a "stop work" order until the project can be reviewed by the USTAR governing authority in a closed meeting to determine whether to end a contract due to failed milestones.

(4) Substantive changes must be approved by the USTAR governing authority.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement when required by State procurement regulations.

**R856-5-10. Milestones.**

(1) Award funding must be used to accelerate the research and development of a technology from one TRL level to a higher TRL level, and project proposals must identify specific milestones leading to the proposed outcome.

(2) Examples of acceptable milestones must be specific to the student researcher to engage in project may include:

(a) research under and development activities;

(b) proof of concept;

(c) product validation; and,

(d) product development.

(3) Remaining grant funds will be disbursed upon successful completion of designated milestones.

(4) Specific funding details will be provided in the program announcement and in each grant contract.

**R856-5-11. Funding Distribution.**

(1) Award funding shall be made to the lead university and will be distributed per the subcontracts to each of the supporting universities.

(2) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.

(3) Specific funding details will be provided in the program announcement and in each ERT-P grant contract.

(4) Failure to successfully complete the milestones will be grounds to terminate the contract and any future funding.

**R856-5-11. Milestones and Reporting.**

(1) Research team is required to provide reporting, as applicable, specified in Sections 63M-2-702 and 704 for at least (5) years following initial receipt of the grant funds.

**KEY: ERT Professors Grant, TRL, USTAR**

**Date of Enactment or Last Substantive Amendment: [March 22], 2017**

**Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)**

**Science Technology and Research  
Governing Authority, Administration  
R856-6  
USTAR Energy Research Triangle  
Scholars Grant**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)  
DAR FILE NO.: 41829  
FILED: 06/14/2017

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is a result of S.B. 166 from the 2016 General Session, now codified in Utah Code Title 63M, Chapter 2. Subsection 63M-2-503(2) requires the Utah Science Technology and Research (USTAR) Initiative to create rules governing all USTAR grant programs. This rule is for one of USTAR's new grant programs, the USTAR Energy Research Triangle Scholars Grant. This rule establishes the eligibility and reporting criteria for an entity to receive a grant under Section 63M-2-503 including: 1) the form and process of submitting a grant application; 2) which entities are eligible to apply for a USTAR Energy Research Triangle Scholars Grant; 3) specific categories of projects that are eligible; 4) the criteria for awarding grants and determining grant amounts; and 5) the reporting requirements of grant recipients. The repeal and reenact is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

**SUMMARY OF THE RULE OR CHANGE:** This rule establishes the USTAR Energy Research Triangle Scholars grant program, which is a collaborative effort between USTAR and the Utah Governor's Office of Energy Development (GOED) and will be administered according to these rules. Grants provide funding to university faculty research professors for student-led projects that seek to address technical challenges related to energy issues important to economic growth in the state of Utah. Anticipated duration of projects will be 12 to 18 months. Funding must be budgeted by state fiscal year (July 1 through June 30) and funding will be dependent on meeting milestones and continued USTAR appropriation. The change is to: 1) clarify the language in the administrative rules for the grant; 2) update terms and conditions for entities eligible to apply for the grant, criteria for evaluating and awarding grant funding, and contracting and reporting requirements of grant recipients; and 3) to make USTAR administrative rule language similar across grant programs.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63M-2-302(1)(h)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** None--It is funded by appropriations that have already been allocated to USTAR for these purposes.

◆ **LOCAL GOVERNMENTS:** None--Only universities can apply for these grants. Therefore, local government entities are not affected by this rule.

◆ **SMALL BUSINESSES:** None--Only universities can apply for these grants. It is anticipated that small businesses will benefit from the research of universities that receive this grant, since the grant is established to create economic growth in Utah. However, USTAR is unable to estimate any fiscal benefit for small businesses as a result of this rule, because the impact is indirect and will vary depending on circumstance.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Only universities can apply for these grants. Therefore, persons other than small business are not affected by this rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** If successful in winning a grant, awardees will be required to report data for at least five years subsequent at approximately an hour/year of effort. USTAR is unable to estimate the exact cost, since it will vary given the pay of the individual conducting the reporting.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact to businesses. Only universities can apply for these grants. Therefore, businesses are not affected by this rule. It is anticipated that businesses will likely benefit from the research of universities that receive this grant, since the grant is established to create economic growth in Utah. However, USTAR is unable to estimate any fiscal benefit for small businesses as a result of this rule because the impact is indirect and will vary depending on circumstance.

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

SCIENCE TECHNOLOGY AND RESEARCH  
GOVERNING AUTHORITY  
ADMINISTRATION  
60 E NORTH TEMPLE  
THIRD FLOOR  
SALT LAKE CITY, UT 84111  
or at the Office of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Peter Jay by phone at 801-372-3969, or by Internet E-mail at [pjay@utah.gov](mailto:pjay@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/31/2017

THIS RULE MAY BECOME EFFECTIVE ON: 08/14/2017

AUTHORIZED BY: Ivy Estabrooke, Executive Director

**R856. Science Technology and Research Governing Authority (Utah), Administration.**

~~**R856-6. USTAR Energy Research Triangle Scholars Grant.**~~

~~**R856-6-1. Authority.**~~

~~Subsection 63M-2-503(2) requires the USTAR governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.~~

~~**R856-6-2. Purpose and Goals.**~~

~~(1) The USTAR Energy Research Triangle Scholars grant program is a collaborative effort between USTAR and The Utah Governor's Office of Energy Development and will be administered according to these rules.~~

~~(2) Grants provide funding to university faculty research professors for student-led projects that seek to address technical challenges related to energy issues important to economic growth in the state of Utah.~~

~~(3) Anticipated duration of projects will be 12-18 months. Funding must be budgeted by State fiscal year (1JUL-30JUN) and funding will be dependent on meeting milestones and continued USTAR appropriation.~~

~~**R856-6-3. Definitions.**~~

~~(1) "Applicant" means the researcher for a particular project.~~

~~(2) "Awardee" means a project that has been awarded an Energy Research Triangle Scholars grant.~~

~~(3) "Commercialization plan" means the strategy or process by which a researcher will introduce a technology into the market.~~

~~(4) "ERT-S" and "ERT-S grant" mean the Energy Research Triangle Scholar grant program, a competitive grant program administered by USTAR.~~

~~(5) "Governing authority" means the Utah Science, Technology and Research Governing Authority.~~

~~(6) "OED" means the Utah Governor's Office of Energy Development.~~

~~(7) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual, or intellectual property.~~

~~(8) "Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).~~

~~(9) "University" means any college, university, or other public or not-for-profit higher education institution with its primary location in Utah.~~

~~(10) "USTAR" means the Utah Science, Technology and Research Initiative.~~

~~(11) "ERT-P" and "ERT-P grant" mean the Energy Research Triangle - Professor grant program, a competitive grant program administered by USTAR.~~

~~(12) "UTAG" means the University Technology Acceleration Grants administered by the Utah Science, Technology and Research Initiative.~~

~~**R856-6-4. Eligibility Criteria.**~~

~~(1) The ERT-S grant is restricted to university affiliated researchers for student-lead projects meeting the following guidelines:~~

~~(a) Project must be led by currently matriculated students in good standing.~~

~~(b) Project must be led by student enrolled in a nonprofit Utah university.~~

~~(c) Student project must be overseen by a research professor at a nonprofit Utah university.~~

~~(2) Student researcher must be developing a technology with applications that can address Utah-specific energy and natural resource issues.~~

~~(a) USTAR/OED may specify a specific subsector of Utah's energy and natural resource industry as a priority for grant funding in the ERT-S application materials.~~

~~(b) ERT-S grants are targeted at energy and natural resource innovation and development.~~

~~(c) In selecting targeted energy and natural resource subsectors eligible to receive support from ERT-S, the governing authority may consider any or all of the following factors:~~

~~(A) statewide or regional importance of the subsector to Utah's economy;~~

~~(B) relative size of the subsector, its stability, and growth potential;~~

~~(C) characteristics of the state's existing workforce, including education and training;~~

~~(D) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;~~

~~(E) the potential for the subsector to develop new jobs and business opportunities in the state; and,~~

~~(F) the likelihood that research in this subsector will result in the creation of a company in Utah or IP transfer to an existing Utah company.~~

~~(3) Student researcher must be developing a technology assessed at the start of the project to be between a TRL of 2 and 5.~~

~~(4) ERT-S, ERT-P funding and UTAG funding cannot be requested for the same technology in the same fiscal year.~~

~~**R856-6-5. Application Form and Submission Guidelines.**~~

~~(1) For each round of grants, USTAR/OED will provide a program announcement and make applications and instructions available on USTAR and/or OED's website and in paper form upon request.~~

~~(2) Completed applications must be received on or before the specified deadline in the application instructions.~~

~~(3) The instructions will include the following:~~  
~~(a) The procedure for submitting an application;~~  
~~(b) Specific instructions for application content which will include:~~  
~~(i) The procedure for submitting an application;~~  
~~(A) description of the technology;~~  
~~(B) list of technical milestones; and;~~  
~~(C) timeline for completion of research;~~  
~~(ii) Specific instructions for the required budget outline, including:~~  
~~(A) total project cost;~~  
~~(B) a description of any funds already secured for activities related to this project;~~  
~~(C) an itemized budget detailing planned use of grant funds; and;~~  
~~(D) breakdown of costs to complete each milestone.~~  
~~(iii) Description of the application evaluation process and scoring system.~~  
~~(iv) Instructions for reporting project results and completing annual follow-up surveys.~~  
~~(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Rules 6-7 herein.~~

**R856-6-6. Application Review Procedure.**

~~(1) Initial eligibility screening:~~  
~~(a) USTAR/OED will conduct an initial eligibility screening for each application to ensure:~~  
~~(i) Completeness;~~  
~~(ii) Verification of minimum eligibility requirements; and~~  
~~(iii) Appropriateness of applicant's reported TRL assessment, proposed timelines, and budget.~~  
~~(b) Any application that fails to meet the criteria in Rule 6 Section (1) will be rejected.~~  
~~(2) Panel Review:~~  
~~(a) Accepted applications will be reviewed by subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in Rule 7.~~  
~~(i) USTAR/OED will have discretion to select the experts for the review panels and shall consider, as applicable:~~  
~~(A) academic qualifications including whether the expert has a terminal degree in a relevant field;~~  
~~(B) relevant work experience and practical training in the field;~~  
~~(C) knowledge of the the commercial/industrial energy sector or sub-sector in Utah;~~  
~~(D) experience evaluating grant proposals; and;~~  
~~(E) any other factors USTAR/OED deems important.~~  
~~(ii) USTAR/OED will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website.~~  
~~(3) Governing authority review:~~  
~~(i) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations.~~  
~~(ii) Recommendations from the subcommittee concerning which projects should be awarded a grant and the budget for the grant will be presented to the full governing authority for approval.~~

**R856-6-7. Evaluation and Award Criteria.**

~~(1) The expert panel will use a scoring system to evaluate and rank grant applications and determine grant amounts.~~  
~~(a) The scoring criteria will be made available during the application period;~~  
~~(b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:~~  
~~(i) Technical merit;~~  
~~(ii) Strength and maturity of research or management team, as applicable;~~  
~~(iii) Appropriate technology readiness level (TRL 2-5);~~  
~~(iv) Potential economic impact, as measured by:~~  
~~(A) Job creation;~~  
~~(B) Potential revenue due to expansion of current business or development of a new business; and/or;~~  
~~(C) Projected time to revenue or job creation;~~  
~~(D) Other measures of economic impact such as natural resource impacts.~~  
~~(v) Market need, technical and management experience and qualifications;~~  
~~(vi) Reasonableness of cost proposal (i.e. size and allocation of budget is appropriate for the work proposed);~~  
~~(vii) Reasonableness of proposed milestones;~~  
~~(viii) Proposed timeline is achievable and will not exceed 18 months;~~  
~~(ix) Potential for positive impact on student's professional development goals and;~~  
~~(x) Any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.~~

**R856-6-8. Grant Amount, Award, and Required Contract.**

~~(1) USTAR/OED will have the discretion to limit the amount of funding that may be awarded for each ERT-S based on available funds, scope of project, and quality of proposal.~~  
~~(2) USTAR/OED reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.~~  
~~(3) Upon award of a ERT-S, and prior to any disbursement of funds, each university must enter into a contract with USTAR governing the use of grant funding.~~  
~~(4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:~~  
~~(a) grant funding may not be used to provide a primary benefit to any state other than Utah; and;~~  
~~(b) for all other eligibility requirements, awardee must maintain eligibility status for the ERT-S program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.~~  
~~(5) Violations of Rule 8, Section 4 may result in forfeiture of ERT-S grant funding and require repayment of all or a portion of the funding received as part of the program.~~

**R856-6-9. Contract Modifications.**

~~University may request a modification to the terms of an ERT-S contract.~~

~~(1) USTAR may deny a modification request for any reason.~~

~~(2) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.~~

~~(a) Nonsubstantive changes may include the following:~~

~~(i) changes to timelines of less than one month if it is the first such modification;~~

~~(ii) corrections to clerical errors in the application materials;~~

~~(iii) technical changes that do not alter the budget, company's eligibility status, or violate any state or federal law;~~

~~(3) Substantive changes must be approved by the USTAR governing authority.~~

~~(4) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.~~

**R856-6-10. Funding Distribution.**

~~(1) Award funding shall be made to the university faculty research professor mentoring the student. The professor will then distribute funds to the student researcher to engage in research under the professor's direction.~~

~~(2) Initial funding of no more than 50% of the total grant award will be provided within a reasonable time after an ERT-S grant is approved to allow the student researcher to meet initial milestones.~~

~~(3) Remaining grant funds for individual milestones will be disbursed upon successful completion of those milestones.~~

~~(4) A portion of the grant may be retained until final reporting is received.~~

~~(5) Specific funding details will be provided in the program announcement and in each ERT-S grant contract.~~

~~(6) Failure to successfully complete the milestones may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.~~

**R856-6-11. Milestones and Reporting.**

~~(1) Student researcher is required to provide reporting, as applicable, specified in Section 63M-2-702 and 704.]~~

**R856-6. Utah Science, Technology and Research (USTAR) Energy Research Triangle Scholars (ERT-S) Grant.****R856-6-1. Authority.**

Subsection 63M-2-503(2) requires the Utah Science, Technology and Research (USTAR) governing authority to make rules describing the purpose, eligibility criteria, award process, and reporting requirements for each grant program administered by USTAR.

**R856-6-2. Purpose and Goals.**

(1) The USTAR Energy Research Triangle (ERT) Scholars (ERT-S) grant program is a collaborative effort between USTAR and the Utah Governor's Office of Energy Development (OED) and will be administered according to these rules.

(2) Grants provide funding to university faculty research professors for student-led projects that seek to address technical

hurdles related to energy and/or natural resource challenges important to economic growth in the state of Utah.

(3) Anticipated duration of projects will be 12 months. Funding must be budgeted by State fiscal year (July 1 - June 30) and funding will be dependent on meeting milestones and continued USTAR/OED appropriation.

**R856-6-3. Definitions.**

(1) "Applicant" means the university faculty research professor and student for a particular project.

(2) "Awardee" means a project that has been awarded an Energy Research Triangle - Scholars grant.

(3) "Commercialization plan" means the strategy or process by which a researcher will introduce a technology into the market.

(4) "ERT-S" and "ERT-S grant" mean the Energy Research Triangle - Scholar grant program, a competitive grant program administered by USTAR.

(5) "Governing authority" and "GA" means the Utah Science, Technology and Research Governing Authority.

(6) "OED" means the Utah Governor's Office of Energy Development.

(7) "Technology" includes applications of scientific research such as inventions, methods, processes, or other material, virtual or digital application, or intellectual property.

(8) Technology Readiness Level" or "TRL" level means the characterization of the maturity of the technology used by the federal government (<http://ustar.org/our-programs/tap-technology-acceleration-program/tap-technology-readiness-levels/>).

(9) "University" means any college, university, or other public or not-for-profit higher education institution with its primary location in Utah.

(10) "USTAR" means the Utah Science, Technology and Research Initiative.

(11) "ERT-P" and "ERT-P grant" mean the Energy Research Triangle - Professor grant program, a competitive grant program administered by USTAR.

(12) "UTAG" means the University Technology Acceleration Grants administered by USTAR.

**R856-6-4. Eligibility Criteria.**

(1) The ERT-S grant is restricted to university researchers for student-led projects meeting the following guidelines:

(a) Project must be led by currently matriculated student in good standing.

(b) Project must be led by student enrolled in a university.

(c) Student project must be overseen by a research professor at a university.

(2) Student researcher must be developing a technology with applications that can address technical hurdles related to energy and/or natural resource challenges important to economic growth in the state of Utah.

(a) USTAR/OED may specify a specific subsector of Utah's energy and natural resource industry as a priority for grant funding in the ERT-S application materials.

(b) In selecting targeted energy and natural resource subsectors eligible to receive support from ERT-S, the governing authority may consider any or all of the following factors:

(i) statewide or regional importance of the subsector to Utah's economy;

(ii) relative size of the subsector, its stability, and growth potential;

(iii) characteristics of the state's existing workforce, including education and training;

(iv) the current availability of other sources of funding or risk capital (public or private) for early-stage companies in the technology sector;

(v) the potential for the subsector to develop new jobs and business opportunities in the state; and,

(vi) the likelihood that research in this subsector will result in the creation of a company in Utah or IP transfer to an existing Utah company.

(3) Eligible technologies will be between a TRL of 2 and 5 at the time of application.

(4) Applicants may not receive ERT-S, ERT-P and/or UTAG funding for the same technology in the same Utah fiscal year.

(5) ERT-S funds cannot support development of a technology beyond a TRL of 6.

#### **R856-6-5. Application and Submission Guidelines.**

(1) For each round of grants, USTAR/OED will provide a program announcement and make applications and instructions available on USTAR and/or OED's website and in paper form upon request.

(2) The instructions will include the following:

(a) The procedure for submitting an application.

(b) Specific instructions for application content, which will include:

(i) description of the company's technology and commercialization plan and objectives;

(ii) list of technical milestones;

(iii) description of potential market for product;

(iv) potential economic impact on Utah's economy; and,

(v) timeline for completion.

(c) Specific instructions for the required budget outline, including:

(i) total project cost;

(ii) a description of funds secured for activities related to the project;

(iii) an itemized budget detailing planned use of grant funds; and,

(iv) a breakdown of costs to complete each milestone.

(d) Description of the application evaluation process and scoring system.

(e) Instructions for reporting project results and completing annual follow-up surveys.

(3) Completed applications must be received on or before the specified deadline in the application instructions.

(4) All complete applications will be reviewed and awardees selected via the criteria and method outlined in Sections R856-6-6 and R856-6-7 herein.

#### **R856-6-6. Application Review Procedure.**

(1) Initial eligibility screening.

(a) USTAR/OED will conduct an initial eligibility screening for each application to ensure:

(i) completeness;

(ii) strict conformity with application instructions;

(iii) verification of minimum eligibility requirements; and

(iv) appropriateness of applicant's reported TRL assessment, technical merit, proposed timelines, and budget.

(b) Any application that fails to meet the criteria in R856-6-6(1) will be rejected and not considered for review.

(2) Panel Review.

(a) Accepted applications will be reviewed by independent subject-matter experts ("expert panel") who will evaluate and score the applicant's proposed research project using the criteria in R856-6-7.

(i) Each expert panel will consist of at least two technical subject-matter-experts and one business or industry expert.

(ii) Each expert will review the proposals using an established scoring rubric provided by USTAR that includes evaluation on technical merit, commercialization strategy, economic impact to the state and budget and any other factors considered relevant by USTAR.

(iii) USTAR/OED will have discretion to select the independent experts for the expert review panels and shall consider, as applicable:

(A) academic qualifications including, for a technical subject-matter expert, whether the expert has a terminal degree in a relevant field;

(B) relevant work experience and practical training in the field;

(C) knowledge of the commercial/industrial energy or natural resources sector or sub-sector in Utah;

(D) experience evaluating grant proposals;

(E) general investment experience; and,

(F) any other factors USTAR/OED deems important.

(iv) USTAR/OED will screen the experts for conflicts of interest before reviews are initiated using the conflict of interest policy available on USTAR's website. Experts are participating in the application review as a volunteer for USTAR. Each expert is obligated under contract to maintain the classification of records and to keep information protected and confidential as described in the Utah Government Records Access and Management Act (GRAMA).

(3) Selection Committee.

(a) USTAR and OED may hold a selection committee to discuss the outcomes of the panel review.

(4) Governing authority review.

(a) A subcommittee of the governing authority will convene to review the expert panel's scores and develop recommendations for grants.

(b) The subcommittee will recommend projects for award and award amounts of grant funding to the full governing authority for final approval.

(c) The Governor or his designee must approve the projects.

#### **R856-6-7. Evaluation and Award Criteria.**

(1) The panel of subject matter experts will use an established scoring system to evaluate and rank grant applications and recommend grant amounts.

(a) The scoring criteria will be made available during the application period;



\_\_\_\_\_ (b) The scoring system will be designed to assess and compare each applicant across several categories, which may include:

- \_\_\_\_\_ (i) technical merit of proposal;
- \_\_\_\_\_ (ii) strength and experience of company and management team;
- \_\_\_\_\_ (iii) appropriate technology readiness level
- \_\_\_\_\_ (iv) abilities and potential of the student to complete the research and/or pursue a career related to energy or natural resources;
- \_\_\_\_\_ (v) potential economic impact, as measured by:
  - \_\_\_\_\_ (A) potential for the development of original intellectual property;
  - \_\_\_\_\_ (B) potential for technology transfer to industry or establishment of a start-up company;
  - \_\_\_\_\_ (C) projected time to revenue or job creation;
  - \_\_\_\_\_ (D) other measures of economic impact such as natural resource, environmental or Utah- specific impacts.
  - \_\_\_\_\_ (E) Any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities
- \_\_\_\_\_ (vi) market need,
- \_\_\_\_\_ (vii) technical and management experience and qualifications of faculty advisor;
- \_\_\_\_\_ (viii) commercialization strategy
- \_\_\_\_\_ (ix) reasonableness of the proposed budget, including whether the amounts are appropriate for the work proposed;
- \_\_\_\_\_ (x) reasonableness of proposed milestones;
- \_\_\_\_\_ (xi) proposed timeline is achievable and will not exceed 18 months; and
- \_\_\_\_\_ (xii) any other factor indicative of applicant's ability to produce measurable and timely impacts on the state in areas related to the economic development performance metrics used to evaluate USTAR's activities.

**R856-6-8. Grant Amount, Award, and Required Contract.**

- \_\_\_\_\_ (1) USTAR/OED will have the discretion to limit the amount of funding that may be awarded for each ERT-S based on available funds, scope of project, and quality of proposal.
- \_\_\_\_\_ (2) USTAR/OED reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all applications based on the eligibility and evaluation criteria set forth in these rules and according to the judgment and discretion of the governing authority.
- \_\_\_\_\_ (3) Upon award of a ERT-S, and prior to any disbursement of funds, each university must enter into a contract with USTAR governing the use of grant funding.
- \_\_\_\_\_ (4) Unless addressed in the terms and conditions of the contract between university and USTAR, the following provisions shall apply:
  - \_\_\_\_\_ (a) grant funding may not be used to provide a primary benefit to any state or country other than Utah; and
  - \_\_\_\_\_ (b) for all other eligibility requirements, awardee must maintain eligibility status for the ERT-S program until the project is complete, all milestones have been met, final disbursement of funding has been made, and first year reporting has been completed.

\_\_\_\_\_ (5) Violations of R856-6-8(4) may result in forfeiture of ERT-S grant funding and may require repayment of all or a portion of the funding received as part of the program.

\_\_\_\_\_ (6) University overhead, F&A or G&A are not allowed on ERT-S awards.

**R856-6-9. Contract Modifications.**

\_\_\_\_\_ University may request a modification to the terms of an ERT-S contract.

- \_\_\_\_\_ (1) USTAR may deny a modification request for any reason.
- \_\_\_\_\_ (2) USTAR shall have discretion to agree to reasonable, nonsubstantive changes.
  - \_\_\_\_\_ (a) Nonsubstantive changes may include the following:
    - \_\_\_\_\_ (i) changes to milestone due dates, if the changes do not change the total length of the project;
    - \_\_\_\_\_ (ii) corrections to clerical errors in the application materials;
    - \_\_\_\_\_ (iii) technical changes to conditions that do not alter the budget, applicant's eligibility status, or violate any state or federal law;
  - \_\_\_\_\_ (b) USTAR staff can issue a "stop work" order until the project can be reviewed by the USTAR governing authority in a closed meeting to determine whether to end a contract due to failed milestones.
- \_\_\_\_\_ (3) Substantive changes must be approved by the USTAR governing authority.
- \_\_\_\_\_ (4) All approved changes shall be made in writing and through an amendment modifying the terms of the grant agreement when required by State procurement regulations.

**R856-6-10. Milestones**

- \_\_\_\_\_ (1) Award funding must be used to accelerate the research and development of a technology from one TRL level to a higher TRL level, and project proposals must identify specific milestones leading to the proposed outcome.
- \_\_\_\_\_ (2) Examples of acceptable milestones must be specific to the student researcher to engage in project may include:
  - \_\_\_\_\_ (a) research under and development activities;
  - \_\_\_\_\_ (b) proof of concept;
  - \_\_\_\_\_ (c) product validation; and,
  - \_\_\_\_\_ (d) product development.
- \_\_\_\_\_ (3) Remaining grant funds will be disbursed upon successful completion of designated milestones.
- \_\_\_\_\_ (4) Specific funding details will be provided in the program announcement and in each grant contract.

**R856-6-11. Funding Distribution.**

- \_\_\_\_\_ (5) Award funding must be made to the university faculty research professor mentoring the student. The professor will then distribute funds to the student researcher to engage in research under the professor's direction.
- \_\_\_\_\_ (6) Expenses for each milestone will be reimbursed upon successful completion of that milestone, as outlined in the contract.
- \_\_\_\_\_ (7) Specific funding details will be provided in the program announcement and in each ERT-S grant contract.

(8) Failure to successfully complete the milestones may result in recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

**R856-6-12. Reporting.**

(1) Student researcher is required to provide reporting, as applicable, specified in Section 63M-2-702 and 704 for at least (5) years following initial receipt of the grant funds.

**KEY: ERT Scholars Grant, TRL, USTAR**

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

**Authorizing, and Implemented or Interpreted Law: 63M-2-302(h)**

---

**End of the Notices of Proposed Rules Section**

## NOTICES OF 120-DAY (EMERGENCY) RULES

---

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Office of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

---

### Administrative Services, Finance **R25-7**

### Travel-Related Reimbursements for State Employees

#### NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 41797

FILED: 06/09/2017

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Due to the increase in consumer price index for food, the Division of Finance has determined that reimbursements rates should also increase. Also, the reimbursement rate will increase per mile for a private vehicle. This is because the rate is based on the Utah Division of Fleet Operations costs for mileage reimbursements, which increased.

**SUMMARY OF THE RULE OR CHANGE:** The rule increases reimbursement rates for in-state food reimbursements, and increases mileage reimbursements for use of a private vehicle. (Editor's Note: A corresponding proposed amendment is under Filing No. 41798 in this issue, July 1, 2017, of the Bulletin.)

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

**EMERGENCY RULE REASON AND JUSTIFICATION:** REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

**JUSTIFICATION:** The Division of Finance is required by Section 63A-3-107 to make rules governing in-state and out-of-state travel expenses and to set travel rates. This is done on a fiscal year basis. Any changes in travel rates need to be in place by 07/01/2017. Travel reimbursements for employees and board members will be inaccurate if the rule is not changed.

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There will potentially be an increased cost to the state as in-state food per diem rates have increased, and mileage reimbursement rates have increased for private vehicles. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

♦ **LOCAL GOVERNMENTS:** There will potentially be an increased cost to certain local governments as in-state food per diem rates have increased, and mileage reimbursement rates have increased for private vehicles. However, the Division cannot determine exactly what the increase will be

as that depends on the amount of travel by individuals eligible for reimbursement.

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

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals eligible for reimbursement will see a slight increase in their per diem reimbursement amounts for in-state travel, and people will see a slight increase in their mileage reimbursement if using a private vehicle. However, the Division cannot determine exactly what the increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

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

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** I have reviewed these changes with the Division of Finance Director and believe these changes are reasonable and warranted. After conducting a thorough analysis, it was determined that this proposed rule will not result in a fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ADMINISTRATIVE SERVICES  
FINANCE  
ROOM 2110 STATE OFFICE BLDG  
450 N STATE ST  
SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

EFFECTIVE: 07/01/2017

AUTHORIZED BY: John Reidhead, Director

**R25. Administrative Services, Finance.**

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

**R25-7-1. Purpose.**

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

**R25-7-2. Authority and Exemptions.**

This rule is established pursuant to:

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

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

**R25-7-3. Definitions.**

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

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

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

(4) "Finance" means the Division of Finance.

(5) "Home-Base" means the location the employee leaves from and/or returns to.

(6) "Per diem" means an allowance paid daily.

(7) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(8) "Rate" means an amount of money.

(9) "Reimbursement" means money paid to compensate an employee for money spent.

(10) "State employee" means any person who is paid on the state payroll system.

**R25-7-4. Eligible Expenses.**

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

**R25-7-5. Approvals.**

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

**R25-7-6. Reimbursement for Meals.**

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is ~~[\$41.00]~~\$42.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	\$10.00
Lunch	\$14.00
Dinner	<del>[\$17.00]</del> <u>\$18.00</u>
Total	<del>[\$41.00]</del> <u>\$42.00</u>

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

TABLE 2

Out-of-State Travel Meal Allowances

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

(4) When traveling to a Tier I premium location (Anchorage, Chicago, Hawaii, New York City, San Francisco, and Seattle), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to ~~[\$66]~~\$67 per day.

When traveling to a Tier II premium location (Atlanta, Baltimore, Boston, Dallas, Los Angeles, San Diego, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to ~~[\$57]~~\$58 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the premium location allowance as follows:

Tier I Location

(i) If breakfast is provided deduct \$15, leaving a premium allowance for lunch and dinner of actual up to ~~[\$51]~~\$52.

(ii) If lunch is provided deduct \$20, leaving a premium allowance for breakfast and dinner of actual up to ~~[\$46]~~\$47.

(iii) If dinner is provided deduct ~~[\$31]~~\$32, leaving a premium allowance for breakfast and lunch of actual up to \$35.

Tier II Location

(i) If breakfast is provided deduct \$13, leaving a premium allowance for lunch and dinner of actual up to ~~[\$44]~~\$45.

(ii) If lunch is provided deduct \$17, leaving a premium allowance for breakfast and dinner of actual up to ~~[\$40]~~\$41.

(iii) If dinner is provided deduct ~~[\$27]~~\$28, leaving a premium allowance for breakfast and lunch of actual up to \$30.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed the actual meal cost, with original receipts, not to exceed the United States Department of State Meal and Incidental Expenses (M and IE) rate for their location.

(a) The traveler may ~~[combine the]~~use both reimbursement methods during a trip; however, they must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

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

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

TABLE 3

The Day Travel Begins

1st Quarter a.m. 12:00-5:59 *B, L, D In-State <del>[\$41.00]</del> <u>\$42.00</u>	2nd Quarter a.m. 6:00-11:59 *L, D <del>[\$31.00]</del> <u>\$32.00</u>	3rd Quarter p.m. 12:00-5:59 *D <del>[\$17.00]</del> <u>\$18.00</u>	4th Quarter p.m. 6:00-11:59 *no meals \$0
\$46.00	\$36.00	\$22.00	\$0

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

(b) The days at the location.

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

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

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

TABLE 4

The Day Travel Ends

1st Quarter a.m. 12:00-6:00 *no meals In-State \$0	2nd Quarter a.m. 6:01-12:00 *B \$10.00	3rd Quarter p.m. 12:01-6:00 *B, L \$24.00	4th Quarter p.m. 6:01-11:59 *B, L, D \$46.00
\$0	\$10.00	\$24.00	<del>[\$41.00]</del> <u>\$42.00</u>

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

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

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

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

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

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

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

(c) Dinner is paid when the employee leaves their home base and returns ~~at 6~~ after 6:00 p.m. ~~[-or later.]~~

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

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

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

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

**R25-7-8. Reimbursement for Lodging.**

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

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

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

TABLE 5  
Cities with Differing Rates

Beaver	\$75.00 plus tax and mandatory fees
Blanding	\$75.00 plus tax and mandatory fees
Bluff	\$90.00 plus tax and mandatory fees
Brigham City	\$80.00 plus tax and mandatory fees
Bryce Canyon City	\$75.00 plus tax and mandatory fees

Cedar City	\$80.00 plus tax and mandatory fees
Duchesne	\$80.00 plus tax and mandatory fees
Ephraim	\$75.00 plus tax and mandatory fees
Farmington	\$85.00 plus tax and mandatory fees
Fillmore	\$75.00 plus tax and mandatory fees
Garden City	\$80.00 plus tax and mandatory fees
Green River	\$85.00 plus tax and mandatory fees
<u>Hanksville</u>	<u>\$75.00 plus tax and mandatory fees</u>
Heber	\$85.00 plus tax and mandatory fees
Kanab	\$85.00 plus tax and mandatory fees
Layton	\$85.00 plus tax and mandatory fees
Logan	\$85.00 plus tax and mandatory fees
<u>Mexican Hat</u>	<u>\$90.00 plus tax and mandatory fees</u>
Moab	\$100.00 plus tax and mandatory fees
Monticello	\$80.00 plus tax and mandatory fees
Ogden	\$85.00 plus tax and mandatory fees
Park City/Midway	\$100.00 plus tax and mandatory fees
Price	\$75.00 plus tax and mandatory fees
Provo/Orem/Lehi/American Fork/Springville	\$85.00 plus tax and mandatory fees
Roosevelt/Ballard	\$90.00 plus tax and mandatory fees
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	\$100.00 plus tax and mandatory fees
St. George/Washington/Springdale/Hurricane	\$85.00 plus tax and mandatory fees
Torrey	\$85.00 plus tax and mandatory fees
Tremonton	\$90.00 plus tax and mandatory fees
Vernal	\$95.00 plus tax and mandatory fees
All Other Utah Cities	\$70.00 plus tax and mandatory fees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **R25-7-9. Reimbursement for Incidentals.**

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

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

(a) Tips for doormen and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above \$19.99.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of \$20 or more.

(3) Registration should be paid in advance on a state warrant, or with a state ~~[purchase]~~purchasing card~~;~~~~[or with a state travel card.]~~

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when they arrive, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with them.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.

(5) Allowances for personal telephone calls made while out of town on state business overnight may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.

(a) Four nights or less - actual amount up to \$2.50 per night.

(b) Five to eleven nights - actual amount up to \$20.00

(c) Twelve nights to thirty nights - actual amount up to \$30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to \$18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of \$5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

#### **R25-7-10. Reimbursement for Transportation.**

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

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

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

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

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

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

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

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

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

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

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

(b) Reimbursement for a private vehicle will be at the rate of [~~38~~40] cents per mile or 53 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 53 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of [~~38~~40] cents per mile.

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

(d) Any exceptions to this mileage reimbursement rate guidance must be approved in writing by the employees Executive Director or designee.

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

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

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

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

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

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

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of [~~38~~40] cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Reimbursement will be made at 53 cents per mile.

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

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

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

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

**Date of Enactment or Last Substantive Amendment: July 1, 2017**

**Notice of Continuation: April 15, 2013**

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

#### End of the Notices of 120-Day (Emergency) 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.

---

## Administrative Services, Debt Collection **R21-1**

### Transfer of Collection Responsibility of State Agencies

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41743  
FILED: 06/07/2017

#### **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 established pursuant to Subsections 63A-3-502(3)(m), 63A-3-502(7)(f), 63A-3-502(4)(g), and 63A-3-502(6)(b), as well as Section 15-1-4 and the Office of State Debt Collection intent language and fees authorized by the Legislature in applicable laws. Subsection 63A-3-502(3)(m) authorizes the Office to establish procedures for writing off accounts receivable for accounting and collection purposes. Subsection 63A-3-502(7)(f) authorizes the Office to require state agencies to bill and make initial collection efforts of its receivables up to the time the accounts must be transferred. Subsection 63A-3-502(7)(a) authorizes the Office to require state agencies to transfer collection responsibility to the Office or its designee according to time limits specified by the Office. Subsection 63A-3-502(4)(g) authorizes Office to establish a fee to cover the administrative costs of collection, a late penalty fee, and an interest charge by following the procedures and requirements of Section 63J-1-504. Subsection 63A-3-502(6)(b) prohibits the Office from assessing the interest charge established by

the Office under Subsection 63A-3-502(4)(g) on an account receivable subject to the postjudgment interest rate established by Section 15-1-4. Section 15-1-4 requires civil and criminal judgments of the district court and justice court to bear interest at the federal postjudgment interest rate and sets forth the procedures to be followed. The annual Appropriation Act authorizes the fees charged by the Office to collect accounts and provides legislative intent language allowing the costs of collection to be collected from the debtor.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is to establish the procedures by which agencies shall bill and make initial collection efforts according to a coordinated schedule, the method to be used by agencies to transfer their delinquent accounts receivable to the Office of State Debt Collection or its designee for additional collection action, write-off of receivables, and the procedures and allocation of costs of collection established pursuant to Subsections 63A-3-502(4)(g) and 63A-3-502(6)(b), Section R15-1-4, and by the Legislature in applicable laws. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ADMINISTRATIVE SERVICES  
DEBT COLLECTION  
ROOM 4130 STATE OFFICE BLDG  
450 N STATE ST  
SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

AUTHORIZED BY: John Reidhead, Director

EFFECTIVE: 06/07/2017

**Auditor, Administration**

**R123-3**

**State Auditor Adjudicative Proceedings**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41764  
 FILED: 06/07/2017

**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: Title 63G, Chapter 4, requires the Office of the State Auditor to establish rule in order to hold adjudicative proceedings.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In order for the Office of the State Auditor to hold adjudicative proceedings, statute requires a rule to be in place. Therefore, this rule should be continued.

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

AUDITOR  
 ADMINISTRATION  
 ROOM E310 EAST BUILDING  
 420 N STATE ST  
 SALT LAKE CITY, UT 84114-2310  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Phalin Flowers by phone at 801-538-1361, or by Internet E-mail at pflowers@utah.gov

AUTHORIZED BY: Phalin Flowers, Administrative Assistant

EFFECTIVE: 06/07/2017

**Auditor, Administration**

**R123-4**

**Public Petitions for Declaratory Orders**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41765  
 FILED: 06/07/2017

**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: Title 63G, Chapter 4, requires the Office of the State Auditor to establish rule in order to receive and review public petitions for declaratory orders.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In order for the Office of the State Auditor to receive and review public petitions for declaratory orders, statute requires a rule to be in place. Therefore, this rule should be continued.

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

AUDITOR  
 ADMINISTRATION  
 ROOM E310 EAST BUILDING  
 420 N STATE ST  
 SALT LAKE CITY, UT 84114-2310  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Phalin Flowers by phone at 801-538-1361, or by Internet E-mail at pflowers@utah.gov

AUTHORIZED BY: Phalin Flowers, Administrative Assistant

EFFECTIVE: 06/07/2017

**Auditor, Administration  
R123-5**

**Audit Requirements for Audits of  
Political Subdivisions and Nonprofit  
Organizations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41766  
FILED: 06/07/2017

**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: Sections 51-2a-201 and 51-2a-201.5 require the Office of the State Auditor to establish rule in order to provide guidelines, qualifications criteria, and procurement procedures for certain audits.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In order for the Office of the State Auditor to provide guidelines, qualifications criteria, and procurement procedures for certain audits, statute requires a rule to be in place. Therefore, this rule should be continued.

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

AUDITOR  
ADMINISTRATION  
ROOM E310 EAST BUILDING  
420 N STATE ST  
SALT LAKE CITY, UT 84114-2310  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Phalin Flowers by phone at 801-538-1361, or by Internet E-mail at pflowers@utah.gov

AUTHORIZED BY: Phalin Flowers, Administrative Assistant

EFFECTIVE: 06/07/2017

**Commerce, Securities  
R164-9**

**Registration by Coordination**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41718  
FILED: 06/02/2017

**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: Section 61-1-9 of the Utah Uniform Securities Act establishes registration by coordination as one of two methods of registering securities offerings in the state of Utah. Section 61-1-24 of the Utah Uniform Securities Act allows the division to make rules necessary to carry out the provisions of the chapter.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule defines key terms and establishes the specific procedures to which an applicant for registration by coordination must adhere in order to obtain approval of its registration statement. The rule also coordinates registration procedures with Canada under the multijurisdictional disclosure system. Therefore, this rule should be continued.

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

COMMERCE  
SECURITIES  
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:  
♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director

EFFECTIVE: 06/02/2017

**Commerce, Securities**  
**R164-10**  
**Registration by Qualification**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 41719  
 FILED: 06/02/2017

**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: Section 61-1-10 of the Utah Uniform Securities Act establishes registration by qualification as one of two methods of registering securities offerings in the state of Utah. Section 61-1-24 of the Utah Uniform Securities Act allows the division to make rules necessary to carry out the provisions of the chapter.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule defines key terms, sets forth filing and procedural requirements, and provides a comprehensive disclosure regimen for offerings registered by qualification. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 COMMERCE  
 SECURITIES  
 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:  
 ♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director

EFFECTIVE: 06/02/2017

---

**Commerce, Securities**  
**R164-11**  
**Registration Statement**  
**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 41720  
 FILED: 06/02/2017

**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: Section 61-1-24 of the Utah Uniform Securities Act allows the division to make rules necessary to carry out the provisions of the chapter. Subsection 61-1-11(7)(b) authorizes the division to determine escrow and impounding requirements. Subsection 61-1-11.1(9) authorizes the division to establish rules for the conduct of fairness hearings.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule was established to ensure disclosure of material information, prevent fraud, and limit excessive promoter profits in registered securities offerings. In addition, the rule serves to establish procedures for fairness hearings and for the impound of funds in offerings registered by qualification until the division approves a release of those funds. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 COMMERCE  
 SECURITIES  
 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:  
 ♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director

EFFECTIVE: 06/02/2017

---

Commerce, Securities  
**R164-12**  
Sales Commission

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41721  
FILED: 06/02/2017

**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: Section 61-1-24 of the Utah Uniform Securities Act allows the division to make rules necessary to carry out the provisions of the chapter.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As a protection for investors, this rule limits the amount of commission-related compensation that can be paid to agents in connection with a public offering. Therefore, this rule should be continued.

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

COMMERCE  
SECURITIES  
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:  
♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director

EFFECTIVE: 06/02/2017

Commerce, Securities  
**R164-14**  
Exemptions

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41722  
FILED: 06/02/2017

**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: Section 61-1-14 establishes the various exemptions from registration under the Utah Uniform Securities Act. Subsections 61-1-14(1)(i) and 61-1-14(2)(v) allow the division to exempt from registration by rule such securities or transactions as to which the division director finds that registration is not necessary or appropriate for the protection of investors.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule aids the public in qualifying for exemptions from registration by setting forth in detail filing and qualification requirements for many of the statutory exemptions. It also establishes several additional exemptions by rule. Therefore, this rule should be continued.

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

COMMERCE  
SECURITIES  
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:  
♦ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at bnjohnson@utah.gov

AUTHORIZED BY: Keith Woodwell, Director

EFFECTIVE: 06/02/2017

Commerce, Securities  
**R164-15**  
Federal Covered Securities

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41723  
 FILED: 06/02/2017

**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: Section 61-1-15.5 governs federal covered securities and states that the division may, by rule or order, require filing of documents relating to federal covered securities. Section 61-1-24 allows the division to make rules when necessary to carry out the provisions of the chapter.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule prescribes the notice filing procedures authorized by Section 61-1-15.5. The operation of this rule helps to ensure that the division receives notice of federal covered securities offered to residents of this state. These filings include Rule 506 offerings, Mutual Funds, and Offerings under Tier II of Regulation A. Therefore, this rule should be continued.

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

COMMERCE  
 SECURITIES  
 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:

◆ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at [bnjohnson@utah.gov](mailto:bnjohnson@utah.gov)

AUTHORIZED BY: Keith Woodwell, Director

EFFECTIVE: 06/02/2017

---

Commerce, Securities  
**R164-26**  
 Consent to Service of Process

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41726  
 FILED: 06/02/2017

**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: Subsection 61-1-26(7) of the Utah Uniform Securities Act requires that every applicant for registration and every issuer shall consent to have the division or its director be its attorney to receive service of any lawful, noncriminal process. Section 61-1-24 authorizes the division to make rules necessary to carry out the provisions of the Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Act allows the division to accept service of process for individuals or companies registered under the Act. This rule outlines the process. Therefore, this rule should be continued. For the service to be effective, the plaintiff in the action (whether the division or a private party) must send a copy of the process, by registered mail, to the defendant's or respondent's last address filed with the division. This creates an obligation for applicants and issuers to provide the division with current address information.

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

COMMERCE  
 SECURITIES  
 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:

◆ Benjamin Johnson by phone at 801-530-6134, by FAX at 801-530-6980, or by Internet E-mail at [bnjohnson@utah.gov](mailto:bnjohnson@utah.gov)

AUTHORIZED BY: Keith Woodwell, Director

EFFECTIVE: 06/02/2017

---



Education, Administration  
**R277-101**  
Utah State Board of Education  
Procedures

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41732  
FILED: 06/06/2017

**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: Section 53A-1-401 allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-101 continues to be necessary because it provides the procedures to be followed by the Board in its conduct of the public's business in order to hear from those who desire to be heard on public education matters in the state and to effectively and efficiently utilize the time of the Board. Therefore, this rule should be continued.

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

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

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

EFFECTIVE: 06/06/2017

Education, Administration  
**R277-410**  
Accreditation of Schools

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41733  
FILED: 06/06/2017

**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: Section 53A-1-401 allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Section 53A-1-402 directs the Board to establish rules governing school accreditation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-410 continues to be necessary because it provides procedures for qualifying secondary school required accreditation. Therefore, this rule should be continued.

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

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

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

EFFECTIVE: 06/06/2017

Education, Administration  
**R277-460**  
Distribution of Substance Abuse  
Prevention Account

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41734  
FILED: 06/06/2017

**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: Section 53A-13-102 directs the Utah State Board of Education (Board) to adopt rules providing for instruction on the harmful affects of controlled substances; and Section 53A-1-401 allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-460 continues to be necessary because it provides procedures for distribution of the Board's share of the money from the Substance Abuse Prevention Account. Therefore, this rule should be continued.

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

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

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

EFFECTIVE: 06/06/2017

Education, Administration  
**R277-484**  
Data Standards

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41735  
FILED: 06/06/2017

**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: Section 53A-1-401 allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Subsection 53A-1-413(8) requires the Board to make rules regarding local education agency (LEA) inclusion of data in an LEA's student information system.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-484 continues to be necessary because it provides standards and procedures for timely submission of data by LEAs which supports the operation of required educational accountability and financial systems. Therefore, this rule should be continued.

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

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

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

EFFECTIVE: 06/06/2017

Education, Administration  
**R277-485**  
Loss of Enrollment

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41736  
FILED: 06/06/2017

**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: Section 53A-1-401 allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-485 continues to be necessary because it establishes guidelines for funding school districts with a loss in enrollment. Therefore, this rule should be continued.

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

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

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

EFFECTIVE: 06/06/2017

---

Education, Administration  
**R277-488**  
Critical Languages Program

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41737  
FILED: 06/06/2017

**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: Section 53A-15-105 requires the Utah State Board of Education (Board) to establish a Dual Language Immersion program; and Section 53A-1-401 allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-488 continues to be necessary because it establishes criteria and procedures for distributing funds to schools participating in the Dual Language Immersion Program. Therefore, this rule should be continued.

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

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

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

EFFECTIVE: 06/06/2017

---

Education, Administration  
**R277-489**  
 Early Intervention Program

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 41738  
 FILED: 06/06/2017

**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: Section 53A-1-401 allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; Section 53A-17a-167 directs the Board to distribute funds appropriated for the early intervention program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-489 continues to be necessary because it establishes criteria and procedures to administer and distribute funds for the early intervention program. Therefore, this rule should be continued.

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

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

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

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

EFFECTIVE: 06/06/2017

Education, Administration  
**R277-520**  
 Appropriate Licensing and Assignment of Teachers

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
 DAR FILE NO.: 41739  
 FILED: 06/06/2017

**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: Section 53A-1-401 allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Subsection 53A-6-104(2)(a) authorizes the Board to rank, endorse, or classify licenses.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-520 continues to be necessary because it provides criteria for local schools boards to employ educators in appropriate assignments and for the Board to provide state funding to local school boards for appropriately qualified and assigned staff. Therefore, this rule should be continued.

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

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

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

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

EFFECTIVE: 06/06/2017

Education, Administration  
**R277-733**  
Adult Education Programs

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41740  
FILED: 06/06/2017

**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: Section 53A-15-401 vests general control and supervision over adult education in the Utah State Board of Education (Board); Subsection 53A-1-402(1) allows the Board to adopt minimum standards for programs; and Section 53A-1-401 allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-733 continues to be necessary because it describes curriculum and allocation formulas, and provides program and operation procedures for the adult education program. Therefore, this rule should be continued.

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

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

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

EFFECTIVE: 06/06/2017

Education, Administration  
**R277-735**  
Corrections Education Programs

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41741  
FILED: 06/06/2017

**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: Section 53A-1-403.5 makes the Utah State Board of Education (Board), along with the Utah Department of Corrections, responsible for the education of inmates in custody; and Section 53A-1-401 allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-735 continues to be necessary because it specifies operation standards and procedures for inmates in corrections education programs that are the responsibility of the public school system. Therefore, this rule should be continued.

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

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

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

EFFECTIVE: 06/06/2017

Education, Administration  
**R277-911**  
Secondary Career and Technical  
Education

Environmental Quality, Water Quality  
**R317-801**  
Utah Sewer Management Program  
(USMP)

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41742  
FILED: 06/06/2017

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41800  
FILED: 06/12/2017

**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: Section 53A-1-401 allows the Utah State Board of Education (Board) to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and Section 53A-15-202 allows the Board to establish minimum standards for career and technical education (CTE) programs.

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 19-5-107 authorizes the Utah Water Quality Board to require discharge permits to control the management of sewage sludge or to prevent or control the discharge of pollutants, including effluent limitations for the discharge of waste into the waters of the state. Subsection 19-5-108(1) authorizes the Utah Water Quality Board to make rules and require the submission of plans, specifications, and other information to the director in connection with the issuance of discharge permits.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

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 since the implementation of the rule five years ago.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R277-911 continues to be necessary because it establishes standards and procedures for local education agencies seeking to qualify for funds administered by the Board for CTE programs in the public education system. Therefore, this rule should be continued.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of the rule is to ensure proper operation and maintenance of sewer collection systems in the state of Utah. The rule has minimum standards for planning, design, operation, and maintenance of sewer collection systems. The rule requires that these minimum standards be met by federal, state, municipal, and special service districts that own and operate sewer collection systems within the state of Utah. The rule requires reporting of sanitary sewer overflows to ensure that the public and environment are protected from discharges from a sewer collection system. Therefore, this rule should be continued.

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

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

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

ENVIRONMENTAL QUALITY  
WATER QUALITY  
THIRD FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

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

EFFECTIVE: 06/06/2017

## DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

AUTHORIZED BY: Brad Johnson, Deputy Director

EFFECTIVE: 06/12/2017

## Health, Health Care Financing, Coverage and Reimbursement Policy

### **R414-60A**

#### Drug Utilization Review Board

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41803

FILED: 06/13/2017

#### **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 authorized by Section 26-18-102, which sets forth membership requirements for the Drug Utilization Review (DUR) Board. In addition, 42 CFR 456.716 requires the Department of Health to establish a DUR Board that includes health care professionals with knowledge and expertise in prescribing, dispensing, or evaluating drugs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department received a comment from the American Academy of Physician Assistants, which recommended a proposed change to include physician assistants among those who sit on the DUR Board.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In response to the comment above, DUR Board composition has minimum and maximum thresholds to include physician and pharmacist members based on federal law. Although the Department encourages participation by all provider groups, it cannot include every provider group and maintain statutory thresholds. The Department will continue this rule because it implements DUR Board composition and membership requirements, and spells out board member responsibilities to provide medically necessary and cost effective services for Medicaid recipients.

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Office of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 06/13/2017

## Health, Health Care Financing, Coverage and Reimbursement Policy

### **R414-60B**

#### Preferred Drug List

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41811

FILED: 06/14/2017

#### **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 authorized by Section 26-18-2.4 which allows the Department of Health to reimburse for certain classes of drugs on the Preferred Drug List (PDL), spells out prior authorization requirements, and sets forth prescription override exceptions. In addition, Section 26-18-3 requires the Department to implement the Medicaid drug program through administrative rules, and Section 26-1-5 grants the Department the authority to adopt these rules for implementation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule

because it implements PDL eligibility, specifies the purpose of the PDL in relation to certain classes of drugs, clarifies that coverage is based on clinical and cost effectiveness, spells out prior authorization requirements, implements Pharmacy and Therapeutics (P&T) Committee composition and membership, implements P&T Committee responsibilities and functions, and sets forth provisions for the P&T Committee to make determinations based on clinical and cost-related factors.

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 06/14/2017

**Human Services, Recovery Services  
R527-378**

**Withholding of Social Security Benefits**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41724  
FILED: 06/02/2017

**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 enacted under Section 62A-11-107 which authorizes the Office of Recovery Services (ORS) to adopt, amend, and enforce rules necessary to carry out its statutory responsibilities. This rule deals with the statutory responsibility concerning income withholding for collection of child support as specified in Section 62A-11-104. This rule clarifies that an income withholding notice to the Social Security Administration must be limited to 25 percent of the benefit amount if Social Security is the obligor's sole means of support.

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 since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The statutes under which this rule is enacted are still in effect and the rule is reflected in the current policy, practices, and procedures of ORS. Therefore, this rule should be continued.

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

HUMAN SERVICES  
RECOVERY SERVICES  
515 E 100 S  
SALT LAKE CITY, UT 84102-4211  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Casey Cole by phone at 801-741-7523, by FAX at 801-536-8509, or by Internet E-mail at cacole@utah.gov  
◆ Julene Robbins by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjonesrobbins@utah.gov

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 06/02/2017

**Human Services, Recovery Services  
R527-601**

**Establishing or Modifying an  
Administrative Award for Child Support**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41725  
FILED: 06/02/2017

**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 enacted under Section 78B-12-203 which requires each parent to provide verification of current income for the purpose of calculating the amount of a child support award under Utah's child support guidelines, and Section 78B-12-201 which permits the moving party in a child support action to submit the best



evidence available concerning the other party's income if the financial verification required under Section 78B-12-203 is not available. It also requires that the evidence be provided in affidavit form and that a copy of the affidavit be provided to the other party before the evidence is submitted. This rule defines "best evidence available" and describes the method of providing the affidavit to the other party.

**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 since the last five-year review of the rule.

**REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY:** The statutes under which this rule is enacted are still in effect. They describes what is meant by "best evidence available", and specifies the method for providing the non-moving party with an affidavit describing the evidence before the evidence is used in determining the amount of a child support award. Therefore, this rule should be continued.

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

HUMAN SERVICES  
RECOVERY SERVICES  
515 E 100 S  
SALT LAKE CITY, UT 84102-4211  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Casey Cole by phone at 801-741-7523, by FAX at 801-536-8509, or by Internet E-mail at [cacole@utah.gov](mailto:cacole@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](mailto:jhjonessrobbins@utah.gov)

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 06/02/2017

---

**Human Services, Recovery Services**  
**R527-928**  
**Lost Checks**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41727  
FILED: 06/02/2017

**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: Section 62A-11-107 gives the Office of Recovery Services (ORS) the authority to carry out its responsibilities under state law. Section 62A-11-104 gives ORS the authority to provide child support services to individuals if the office has received an application for child support services, the state has provided public assistance, or a child of the home lives in the protective custody, temporary custody, or custody or care of the state. These services include the distribution of collected child support money to a payee.

**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 since the last five-year review of the rule.

**REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY:** The rule is necessary because of the laws that require ORS to collect and disburse collected child support money to the appropriate payee can sometimes result in a lost, stolen, or forged check. The rule provides ORS with the procedures and process for assisting the payee in reissuing a warrant, if appropriate, when a check is lost, stolen, or forged. Therefore, this rule should be continued.

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

HUMAN SERVICES  
RECOVERY SERVICES  
515 E 100 S  
SALT LAKE CITY, UT 84102-4211  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Casey Cole by phone at 801-741-7523, by FAX at 801-536-8509, or by Internet E-mail at [cacole@utah.gov](mailto:cacole@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](mailto:jhjonessrobbins@utah.gov)

AUTHORIZED BY: Liesa Stockdale, Director

EFFECTIVE: 06/02/2017

---

**Insurance, Administration**  
**R590-122**  
**Permissible Arbitration Provisions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41731  
FILED: 06/05/2017

**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: Subsection 31A-2-201(3) authorizes the commissioner to make rules to implement the provisions of the Insurance Code, Title 31A. As a result of this authority, this rule defines the term "permissible arbitration" as set forth in Subsections 31A-21-313(3)(c) and 31A-21-314(2).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is important that this rule be continued because it provides guidance to insurance companies about the type of arbitration provisions they may put into their policies. These provisions provide steps to be taken by insureds who disagree with the settlement of their claims and would like to involve a third party in the settlement process. The rule gives the department the authority to make sure these provisions are fair and nondiscriminatory.

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

INSURANCE  
ADMINISTRATION  
ROOM 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [sgooch@utah.gov](mailto:sgooch@utah.gov)

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 06/05/2017

---

**Insurance, Administration**  
**R590-149**  
**Americans with Disabilities Act (ADA)**  
**Grievance Procedures**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41729  
FILED: 06/05/2017

**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: The purpose of this rule is to implement the provisions of 28 CFR 35 and Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the Insurance Department, or be subjected to discrimination by the department because of a disability. Subsection 63G-3-201(3) requires rulemaking when the department issues a written interpretation of a state or federal legal mandate. Subsection 31A-2-201(3)(a) authorizes the commissioner to write rules to implement the provisions of the Insurance Code, Title 31A.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is important that this rule be continued because it provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or the benefits of the services, programs, and activities of the Insurance Department. The rule needs to remain in force so that the department will be in compliance with the federal Americans with Disabilities Act.

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

INSURANCE  
ADMINISTRATION  
ROOM 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [sgooch@utah.gov](mailto:sgooch@utah.gov)

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 06/05/2017

Insurance, Administration  
**R590-173**  
 Credit for Reinsurance

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 41730  
 FILED: 06/05/2017

**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: Section 31A-2-201 authorizes the commissioner to write rules to implement the provisions of the Insurance Code, Title 31A. In this case, the rule sets forth requirements that are necessary to carry on the provisions of Section 31A-17-404.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department received one comment regarding this rule during the past five years. The comment was in support of the rule and its efforts to implement collateral reform for reinsurance.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Credit for reinsurance has relevance for many Utah insurance companies and may be a significant factor in establishing their solvency position. The rule lays out the detailed requirements that apply to this important area. It provides protection to the ceding insurers within the state of Utah and to the individuals insured. Therefore, this rule should be continued.

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

INSURANCE  
 ADMINISTRATION  
 ROOM 3110 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [sgooch@utah.gov](mailto:sgooch@utah.gov)

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 06/05/2017

---

Insurance, Administration  
**R590-240**  
 Procedure to Obtain Exemption of  
 Student Health Programs From  
 Insurance Code

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 41728  
 FILED: 06/05/2017

**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: Subsection 31A-1-103(3)(d) specifies by rule business transactions that are exempted from insurance regulation. Section 31A-2-201 authorizes the commissioner to write rules to implement the Insurance Code, Title 31A.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule during the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it provides guidance regarding procedures that institutions of higher education must follow in order to obtain exemption of student health programs from the Insurance Code.

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

INSURANCE  
 ADMINISTRATION  
 ROOM 3110 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [sgooch@utah.gov](mailto:sgooch@utah.gov)

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 06/05/2017

---

Natural Resources; Oil, Gas and Mining Board  
**R641-100**  
General Provisions

Natural Resources; Oil, Gas and Mining Board  
**R641-101**  
Parties

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41744  
FILED: 06/07/2017

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41745  
FILED: 06/07/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board  
**R641-102**  
Appearances and Representations

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41746  
FILED: 06/07/2017

**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 authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board  
**R641-103**  
Intervention

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41747  
FILED: 06/07/2017

**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 authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board  
**R641-104**  
Pleadings

Natural Resources; Oil, Gas and Mining Board  
**R641-105**  
Filing and Service

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41748  
FILED: 06/07/2017

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41749  
FILED: 06/07/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board  
**R641-106**  
Notice and Service

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41750  
FILED: 06/07/2017

**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 authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board  
**R641-107**  
Prehearing Conference

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41751  
FILED: 06/07/2017

**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 authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board  
**R641-108**  
Conduct of Hearings

Natural Resources; Oil, Gas and Mining Board  
**R641-109**  
Decisions and Orders

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41752  
FILED: 06/07/2017

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41753  
FILED: 06/07/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

EFFECTIVE: 06/07/2017



Natural Resources; Oil, Gas and  
Mining Board  
**R641-110**

Rehearing and Modification of Existing  
Orders

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41754  
FILED: 06/07/2017

**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 authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

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

NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ James Owen by phone at 801-538-5328, or by Internet E-mail at [jcowen@utah.gov](mailto:jcowen@utah.gov)

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and  
Mining Board  
**R641-111**

Declaratory Rulings

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 41755  
FILED: 06/07/2017

**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 authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

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

NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ James Owen by phone at 801-538-5328, or by Internet E-mail at [jcowen@utah.gov](mailto:jcowen@utah.gov)

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board  
**R641-112**  
Rulemaking

Natural Resources; Oil, Gas and Mining Board  
**R641-113**  
Hearing Examiners

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41756  
FILED: 06/07/2017

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41757  
FILED: 06/07/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 63G-3-101 et seq., the Utah Administrative Rulemaking Act, which requires the Board of Oil, Gas and Mining to promulgate rules in accordance with such act. In addition, the Board has been granted rulemaking authority in Section 40-6-5 and Subsections 40-8-6(1) and 40-10-6(1).

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that petitioners, the Board, and parties interested in commenting on the Board's rules are clear that the rulemaking procedure by the Board of Oil, Gas and Mining will be in accordance with the Utah Administrative Rulemaking Act.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board  
**R641-114**

Exhaustion of Administrative Remedies

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41758  
FILED: 06/07/2017

**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 authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

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

NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board  
**R641-115**

Deadline for Judicial Review

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 41759  
FILED: 06/07/2017

**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 authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

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

NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board  
**R641-116**

Judicial Review of Formal Adjudicative Proceedings

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41760  
FILED: 06/07/2017

**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 authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at [jcowen@utah.gov](mailto:jcowen@utah.gov)

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board  
**R641-117**

Civil Enforcement

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41761  
FILED: 06/07/2017

**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 authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at [jcowen@utah.gov](mailto:jcowen@utah.gov)

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

Natural Resources; Oil, Gas and Mining Board  
**R641-118**  
Waivers

Natural Resources; Oil, Gas and Mining Board  
**R641-119**  
Severability

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41762  
FILED: 06/07/2017

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**  
DAR FILE NO.: 41763  
FILED: 06/07/2017

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 40-6-10(1) which requires the Board of Oil, Gas and Mining to enact rules governing its practice and procedure that are not inconsistent with the Administrative Procedures Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Written comments were received from the Bureau of Land Management, Utah State Office, and from the Office of Surface Mining, Denver Field Branch, in April of 2017. Neither federal agency was opposed to renewal nor had any recommendations for modification.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued so that the rules for practice and procedure for proceedings before the Board of Oil, Gas and Mining remain in place for use by petitioners, respondents, the Board, and other parties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
OIL, GAS AND MINING BOARD  
ROOM 1210  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ James Owen by phone at 801-538-5328, or by Internet E-mail at jcowen@utah.gov

AUTHORIZED BY: John Baza, Director

AUTHORIZED BY: John Baza, Director

EFFECTIVE: 06/07/2017

EFFECTIVE: 06/07/2017

**Natural Resources, Wildlife Resources  
R657-14  
Commercial Harvesting of Protected  
Aquatic Wildlife**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41834  
FILED: 06/15/2017

**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: Under Sections 23-14-3, 23-14-18, and 23-14-19, the Wildlife Board is authorized and required to regulate and prescribe the means by which wildlife may be taken.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-14 were received since July 2012, when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-14 provides the procedures, standards, and requirements for: harvesting protected aquatic wildlife for use as fish bait; commercially harvesting brine shrimp and brine shrimp eggs; and seining protected wildlife. The provisions adopted in this rule are effective. Continuation of this rule is necessary for continued success for allowing harvesting of protected aquatic wildlife for use as fish bait and seining protected wildlife.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: Mike Fowlks, Deputy Director

EFFECTIVE: 06/15/2017

**Transportation; Operations, Traffic and  
Safety  
R920-4  
Special Road Use or Event**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 41767  
FILED: 06/08/2017

**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 required by and enacted under the authority of Subsection 72-1-212(2) and Sections 72-1-201 and 41-6a-1111. Subsection 72-1-212(2) expressly requires the Department of Transportation to make rules governing the issuance of a special use permit to maintain public safety and serve the needs of the traveling public. Section 72-1-201 provides that the Department shall maintain state transportation systems that are safe, reliable, environmentally sensitive, and serve the needs of the traveling public, commerce, and industry. Section 72-1-201 also requires the Department to establish standards and procedures regarding the technical details of administration of the state transportation systems as established by statute and administrative rule. Section 41-6a-1111 allows bicycle racing events on a highway under certain conditions approved by the Department.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments from interested persons received during and since the last five-year review, but there was a complete rewrite of the rule in January 2016.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should continue in order to keep in place the procedure and criteria for granting special use permits on public highways to maintain public safety and serve the needs of the traveling public. Additional policy reasons supporting the rule are stated in Subsections R920-4-1(1) and (2).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
TRANSPORTATION  
OPERATIONS, TRAFFIC AND SAFETY  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W

SALT LAKE CITY, UT 84119-5998  
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cwnewman@utah.gov](mailto:cwnewman@utah.gov)
- ◆ James Palmer by phone at 801-965-4000, by FAX at 801-965-4338, or by Internet E-mail at [jimpalmer@utah.gov](mailto:jimpalmer@utah.gov)

AUTHORIZED BY: Carlos Braceras, Executive Director

EFFECTIVE: 06/08/2017

---

**End of the Five-Year Notices of Review and Statements of Continuation Section**





## NOTICES OF RULE EFFECTIVE DATES

---

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

**NOTICES OF EFFECTIVE DATE** are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

---

### Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal & Reenact  
REP = Repeal

### Agriculture and Food

Animal Industry  
No. 41471 (AMD): R58-21. Trichomoniasis  
Published: 05/01/2017  
Effective: 06/14/2017

### Commerce

Occupational and Professional Licensing  
No. 41474 (AMD): R156-24b-102. Definitions  
Published: 05/01/2017  
Effective: 06/08/2017

No. 41473 (AMD): R156-42a-304. Continuing Education  
Published: 05/01/2017  
Effective: 06/08/2017

### Securities

No. 41465 (AMD): R164-14-2b. Manual Listing Exemption  
Published: 05/01/2017  
Effective: 06/08/2017

### Crime Victim Reparations

Administration  
No. 41475 (AMD): R270-1. Award and Reparation  
Standards  
Published: 05/01/2017  
Effective: 06/07/2017

### Environmental Quality

Air Quality  
No. 41355 (AMD): R307-101-3. Version of Code of Federal  
Regulations Incorporated by Reference  
Published: 04/01/2017  
Effective: 06/08/2017

No. 41356 (AMD): R307-210. Stationary Sources  
Published: 04/01/2017  
Effective: 06/08/2017

No. 41357 (AMD): R307-214. National Emission Standards  
for Hazardous Air Pollutants  
Published: 04/01/2017  
Effective: 06/08/2017

### Health

Health Care Financing, Coverage and Reimbursement Policy  
No. 41446 (AMD): R414-1-5. Incorporations by Reference  
Published: 05/01/2017  
Effective: 06/14/2017

No. 41379 (AMD): R414-60-2. Definitions  
Published: 04/15/2017  
Effective: 06/14/2017

No. 41429 (AMD): R414-303-4. Medicaid for Parents and  
Caretaker Relatives, Pregnant Women, Children, and  
Individuals Infected with Tuberculosis Using MAGI  
Methodology  
Published: 04/15/2017  
Effective: 07/01/2017

### Public Safety

Administration  
No. 41373 (AMD): R698-8. Local Public Safety and  
Firefighter Surviving Spouse Trust Fund  
Published: 04/15/2017  
Effective: 06/07/2017

NOTICES OF RULE EFFECTIVE DATES

---

No. 41369 (NEW): R698-9. Utah Law Enforcement  
Memorial Support Restricted Account  
Published: 04/01/2017  
Effective: 06/07/2017

Emergency Management  
No. 41380 (AMD): R704-2. Statewide Mutual Aid Act  
Activation  
Published: 04/15/2017  
Effective: 06/09/2017

No. 41358 (AMD): R704-3. Local Government Emergency  
Response Loan Program  
Published: 04/01/2017  
Effective: 06/07/2017

Tax Commission  
Administration

No. 41468 (AMD): R861-1A-16. Utah State Tax Commission  
Management Plan Pursuant to Utah Code Ann. Section 59-1-  
207  
Published: 05/01/2017  
Effective: 06/08/2017

Property Tax

No. 41469 (AMD): R884-24P-24. Form for Notice of  
Property Valuation and Tax Changes Pursuant to Utah Code  
Ann. Sections 59-2-918.5 through 59-2-924  
Published: 05/01/2017  
Effective: 06/08/2017

**End of the Notices of Rule Effective Dates Section**

**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

---

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2017 through June 15, 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).

**Editor's Note: Due to space constraints, the Keyword Index is not included in this Bulletin.**

Questions regarding the index and the information it contains should be addressed to the Office of Administrative Rules (801-538-3003).

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
<b>ADMINISTRATIVE SERVICES</b>					
<u>Debt Collection</u>					
R21-1	Transfer of Collection Responsibility of State Agencies	41374	NSC	04/10/2017	Not Printed
R21-1	Transfer of Collection Responsibility of State Agencies	41743	5YR	06/07/2017	Not Printed
R21-2	Office of State Debt Collection Administrative Procedures	41376	5YR	03/17/2017	2017-8/59
R21-3	Debt Collection Through Administrative Offset	41377	5YR	03/17/2017	2017-8/59
<u>Facilities Construction and Management</u>					
R23-1	Procurement Rules with Numbering Related to the Procurement Code	41266	5YR	02/01/2017	2017-4/57
R23-3	Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting	40947	AMD	01/20/2017	2016-23/6
R23-19	Facility Use Rules	41267	5YR	02/01/2017	2017-4/57
R23-20	Free Speech Activities	41268	5YR	02/01/2017	2017-4/58
R23-30	State Facility Energy Efficiency Fund	40946	AMD	01/20/2017	2016-23/11
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	41127	EMR	01/06/2017	2017-3/71
R25-7	Travel-Related Reimbursements for State Employees	41147	AMD	03/10/2017	2017-3/2
R25-14	Payment of Attorney's Fees in Death Penalty Cases	41124	5YR	01/06/2017	2017-3/79
R25-20	Indigent Defense Funds Board, Procedures for Electronic Meetings	41327	5YR	02/21/2017	2017-6/29
<u>Fleet Operations</u>					
R27-1	Definitions	41105	AMD	02/21/2017	2017-2/4
R27-3	Vehicle Use Standards	41106	AMD	02/21/2017	2017-2/6
R27-4	Vehicle Replacement and Expansion of State Fleet	41107	AMD	02/21/2017	2017-2/12
<u>Inspector General of Medicaid Services (Office of)</u>					
R30-1	Office of Inspector General of Medicaid Services	41487	5YR	04/21/2017	2017-10/163
<u>Purchasing and General Services</u>					
R33-4-101b	Vendors with Exclusive Authorization to Bid	41292	NSC	03/06/2017	Not Printed
R33-8-102	Adding Additional Funds to a Contract	41023	AMD	02/02/2017	2016-24/4
R33-16	Protests	40898	AMD	01/20/2017	2016-22/10

Risk Management

R37-1	Risk Management General Rules	41601	5YR	05/05/2017	2017-11/209
R37-2	Risk Management State Workers' Compensation Insurance Administration	41602	5YR	05/05/2017	2017-11/210
R37-3	Risk Management Adjudicative Proceedings	41603	5YR	05/05/2017	2017-11/210
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	41604	5YR	05/05/2017	2017-11/211

AGRICULTURE AND FOOD

Administration

R51-2	Administrative Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food	41120	5YR	01/03/2017	2017-2/45
-------	-------------------------------------------------------------------------------------------------------	-------	-----	------------	-----------

Animal Industry

R58-1	Admission, Identification, and Inspection of Livestock, Poultry, and Other Animals	41168	5YR	01/12/2017	2017-3/79
R58-3	Brucellosis Vaccination Requirements	41164	5YR	01/12/2017	2017-3/80
R58-6	Poultry	41165	5YR	01/12/2017	2017-3/80
R58-11	Slaughter of Livestock and Poultry	40951	AMD	01/12/2017	2016-23/16
R58-11	Slaughter of Livestock and Poultry	41372	NSC	04/05/2017	Not Printed
R58-11	Slaughter of Livestock and Poultry	41467	NSC	05/15/2017	Not Printed
R58-18	Elk Farming	41162	5YR	01/12/2017	2017-3/81
R58-19	Compliance Procedures	41194	5YR	01/18/2017	2017-4/58
R58-21	Trichomoniasis	41471	AMD	06/14/2017	2017-9/5
R58-22	Equine Infectious Anemia (EIA)	41163	5YR	01/12/2017	2017-3/81
R58-23	Equine Viral Arteritis (EVA)	41167	5YR	01/12/2017	2017-3/82

Horse Racing Commission (Utah)

R52-7	Horse Racing	41102	AMD	03/06/2017	2017-1/4
-------	--------------	-------	-----	------------	----------

Plant Industry

R68-19	Compliance Procedures	41195	5YR	01/18/2017	2017-4/59
--------	-----------------------	-------	-----	------------	-----------

Regulatory Services

R70-101	Bedding, Upholstered Furniture and Quilted Clothing	40918	AMD	01/26/2017	2016-22/12
R70-101	Bedding, Upholstered Furniture and Quilted Clothing	41371	NSC	04/05/2017	Not Printed
R70-201	Compliance Procedures	41160	5YR	01/12/2017	2017-3/82
R70-320	Minimum Standards for Milk for Manufacturing Purposes, Its Production and Processing	41166	5YR	01/12/2017	2017-3/83
R70-350	Ice Cream and Frozen Dairy Food Standards	41159	5YR	01/12/2017	2017-3/83
R70-360	Procedure for Obtaining a License to Test Milk for Payment	41161	5YR	01/12/2017	2017-3/84
R70-530	Food Protection	41344	5YR	03/06/2017	2017-7/81
R70-530	Food Protection	41370	NSC	04/05/2017	Not Printed
R70-550	Utah Inland Shellfish Safety Program	41158	5YR	01/12/2017	2017-3/84
R70-560	Inspection and Regulation of Cottage Food Production Operations	41157	5YR	01/12/2017	2017-3/85

ALCOHOLIC BEVERAGE CONTROL

Administration

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

ATTORNEY GENERAL

Administration

R105-1	Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services	40950	AMD	01/20/2017	2016-23/19
--------	---------------------------------------------------------------------------------------------------------	-------	-----	------------	------------

RULES INDEX

R105-1	Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services	41466	5YR	04/10/2017	2017-9/41
R105-1-6	Small Purchases	41295	NSC	03/06/2017	Not Printed
AUDITOR					
<u>Administration</u>					
R123-3	State Auditor Adjudicative Proceedings	41764	5YR	06/07/2017	Not Printed
R123-4	Public Petitions for Declaratory Orders	41765	5YR	06/07/2017	Not Printed
R123-5	Audit Requirements for Audits of Political Subdivisions and Nonprofit Organizations	41766	5YR	06/07/2017	Not Printed
CAPITOL PRESERVATION BOARD (STATE)					
<u>Administration</u>					
R131-3	Use of Magnetometers on Capitol Hill	41573	5YR	05/02/2017	2017-11/211
COMMERCE					
<u>Consumer Protection</u>					
R152-6	Utah Administrative Procedures Act Rules	40920	AMD	01/09/2017	2016-22/21
R152-34	Postsecondary Proprietary School Act Rules	41610	5YR	05/08/2017	2017-11/212
<u>Occupational and Professional Licensing</u>					
R156-1	General Rule of the Division of Occupational and Professional Licensing	41299	AMD	04/11/2017	2017-5/8
R156-5a	Podiatric Physician Licensing Act Rule	41047	AMD	02/07/2017	2017-1/11
R156-11a	Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule	41198	5YR	01/19/2017	2017-4/59
R156-11a	Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule	41260	AMD	03/27/2017	2017-4/4
R156-16a	Optometry Practice Act Rule	41275	5YR	02/02/2017	2017-5/61
R156-16a-304	Continuing Education	41110	AMD	02/21/2017	2017-2/18
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	41706	5YR	05/30/2017	2017-12/35
R156-22-302c	Qualifications for Licensure - Experience Requirements	41286	NSC	03/06/2017	Not Printed
R156-24b-102	Definitions	41474	AMD	06/08/2017	2017-9/8
R156-31b-502	Unprofessional Conduct	41308	NSC	03/06/2017	Not Printed
R156-31b-703b	Scope of Nursing Practice Implementation	41113	NSC	01/18/2017	Not Printed
R156-37	Utah Controlled Substances Act Rule	41289	5YR	02/06/2017	2017-5/61
R156-37f-301	Access to Database Information	41339	NSC	04/05/2017	Not Printed
R156-37f-303	Access to Opioid Prescription Information Via an Electronic Data System	41265	NSC	02/23/2017	Not Printed
R156-38b	State Construction Registry Rule	41349	AMD	05/08/2017	2017-7/4
R156-42a-304	Continuing Education	41473	AMD	06/08/2017	2017-9/9
R156-44a-601	Delegation of Nursing Tasks	41340	NSC	04/05/2017	Not Printed
R156-46b-202	Informal Adjudicative Proceedings	41169	AMD	03/13/2017	2017-3/8
R156-46b-202	Informal Adjudicative Proceedings	41354	NSC	04/05/2017	Not Printed
R156-47b	Massage Therapy Practice Act Rule	41436	5YR	04/04/2017	2017-9/41
R156-55a	Utah Construction Trades Licensing Act Rule	41348	AMD	05/08/2017	2017-7/6
R156-55b-102	Definitions	41261	AMD	03/27/2017	2017-4/5
R156-55c	Plumber Licensing Act Rule	41298	AMD	04/10/2017	2017-5/12
R156-55d	Burglar Alarm Licensing Rule	41199	5YR	01/19/2017	2017-4/60
R156-56	Building Inspector and Factory Built Housing Licensing Act Rule	41144	5YR	01/10/2017	2017-3/85
R156-64	Deception Detection Examiners Licensing Act Rule	41145	5YR	01/10/2017	2017-3/86
R156-67	Utah Medical Practice Act Rule	41111	AMD	02/21/2017	2017-2/20
R156-68-304	Qualified Continuing Professional Education	41112	AMD	02/21/2017	2017-2/22
R156-76	Professional Geologist Licensing Act Rule	41279	5YR	02/02/2017	2017-5/62
R156-76-501	Administrative Penalties - Unlawful Conduct	41346	AMD	05/08/2017	2017-7/14
R156-76-501	Administrative Penalties - Unlawful Conduct	41606	NSC	05/23/2017	Not Printed
R156-78B	Prelitigation Panel Review Rule	41146	5YR	01/10/2017	2017-3/87

Real Estate

R162-2f	Real Estate Licensing and Practices Rules	40952	AMD	01/19/2017	2016-23/26
R162-2f	Real Estate Licensing and Practices Rules	41350	AMD	05/10/2017	2017-7/15

Securities

R164-9	Registration by Coordination	41718	5YR	06/02/2017	Not Printed
R164-10	Registration by Qualification	41719	5YR	06/02/2017	Not Printed
R164-11	Registration Statement	41720	5YR	06/02/2017	Not Printed
R164-12	Sales Commission	41721	5YR	06/02/2017	Not Printed
R164-14	Exemptions	41722	5YR	06/02/2017	Not Printed
R164-14-2b	Manual Listing Exemption	41465	AMD	06/08/2017	2017-9/10
R164-15	Federal Covered Securities	41723	5YR	06/02/2017	Not Printed
R164-26	Consent to Service of Process	41726	5YR	06/02/2017	Not Printed
R164-101	Securities Fraud Reporting Program Act	41293	5YR	02/07/2017	2017-5/63

CORRECTIONS

Administration

R251-106	Media Relations	41338	5YR	03/02/2017	2017-7/81
R251-107	Executions	41456	5YR	04/06/2017	2017-9/42
R251-107	Executions	41495	NSC	05/15/2017	Not Printed
R251-305	Visiting at Community Correctional Centers	41447	5YR	04/05/2017	2017-9/43
R251-306	Sponsors in Community Correctional Centers	41451	5YR	04/05/2017	2017-9/43
R251-401	Supervision Fees	41707	5YR	05/31/2017	2017-12/36
R251-703	Vehicle Direction Station	41450	5YR	04/05/2017	2017-9/43
R251-703	Vehicle Direction Station	41461	NSC	05/15/2017	Not Printed
R251-704	North Gate	41449	5YR	04/05/2017	2017-9/44
R251-705	Inmate Mail Procedures	41448	5YR	04/05/2017	2017-9/44
R251-705	Inmate Mail Procedures	41621	NSC	05/31/2017	Not Printed
R251-706	Inmate Visiting	41457	5YR	04/06/2017	2017-9/45
R251-707	Legal Access	41463	5YR	04/07/2017	2017-9/45
R251-707	Legal Access	41622	NSC	05/31/2017	Not Printed
R251-710	Search	41453	5YR	04/05/2017	2017-9/46

CRIME VICTIM REPARATIONS

Administration

R270-1	Award and Reparation Standards	41475	AMD	06/07/2017	2017-9/16
R270-1-20	Medical Awards	41142	AMD	03/10/2017	2017-3/9

EDUCATION

Administration

R277-101	Utah State Board of Education Procedures	41732	5YR	06/06/2017	Not Printed
R277-106	Utah Professional Practices Advisory Commission Appointment Process	41086	AMD	02/07/2017	2017-1/14
R277-106	Utah Professional Practices Advisory Commission Appointment Process	41315	NSC	03/06/2017	Not Printed
R277-113	LEA Fiscal Policies and Accountability	41073	AMD	02/07/2017	2017-1/16
R277-114	Corrective Action and Withdrawal or Reduction of Program Funds	41074	AMD	02/07/2017	2017-1/22
R277-210	Utah Professional Practices Advisory Commission (UPPAC), Definitions	41087	AMD	02/07/2017	2017-1/24
R277-211-6	Proposed Consent to Discipline	41088	AMD	02/07/2017	2017-1/28
R277-211-6	Proposed Consent to Discipline	41363	AMD	05/10/2017	2017-7/18
R277-212	UPPAC Hearing Procedures and Reports	41089	AMD	02/07/2017	2017-1/30
R277-404	Requirements for Assessments of Student Achievement	41033	AMD	01/24/2017	2016-24/7
R277-410	Accreditation of Schools	41733	5YR	06/06/2017	Not Printed
R277-417	Prohibiting LEAs and Third Party Providers from Offering Incentives or Reimbursements for Enrollment or Participation	41188	AMD	03/14/2017	2017-3/12
R277-425	Budgeting, Accounting, and Auditing for Utah Local Education Agencies (LEAs)	41091	REP	02/07/2017	2017-1/36
R277-460	Distribution of Substance Abuse Prevention Account	41734	5YR	06/06/2017	Not Printed

RULES INDEX

R277-479	Charter School Special Education Student Funding Formula	41360	5YR	03/15/2017	2017-7/82
R277-483	Persistently Dangerous Schools	41364	REP	05/10/2017	2017-7/19
R277-484	Data Standards	41735	5YR	06/06/2017	Not Printed
R277-485	Loss of Enrollment	41736	5YR	06/06/2017	Not Printed
R277-488	Critical Languages Program	41737	5YR	06/06/2017	Not Printed
R277-489	Early Intervention Program	41738	5YR	06/06/2017	Not Printed
R277-499	Seal of Biliteracy	41004	NEW	01/10/2017	2016-23/30
R277-503	Licensing Routes	41005	AMD	01/10/2017	2016-23/31
R277-507	Driver Education Endorsement	41006	AMD	01/10/2017	2016-23/36
R277-507-3	Endorsement Requirements	41189	AMD	03/14/2017	2017-3/14
R277-512	Online Licensure	41007	AMD	01/10/2017	2016-23/39
R277-517	LEA Codes of Conduct	41008	NEW	01/10/2017	2016-23/41
R277-519	Educator Inservice Procedures and Credit	41316	5YR	02/14/2017	2017-5/63
R277-519	Educator Inservice Procedures and Credit	41318	AMD	04/10/2017	2017-5/15
R277-520	Appropriate Licensing and Assignment of Teachers	41739	5YR	06/06/2017	Not Printed
R277-521	National Board Certification Reimbursement	41075	NEW	02/07/2017	2017-1/38
R277-526	Paraeducator to Teacher Scholarship Program	41092	AMD	02/07/2017	2017-1/39
R277-531	Public Educator Evaluation Requirements (PEER)	41009	AMD	01/10/2017	2016-23/43
R277-533	District Educator Evaluation Systems	41010	AMD	01/10/2017	2016-23/45
R277-602	Special Needs Scholarships - Funding and Procedures	41093	AMD	02/07/2017	2017-1/41
R277-612	Foreign Exchange Students	41361	5YR	03/15/2017	2017-7/82
R277-612	Foreign Exchange Students	41365	AMD	05/10/2017	2017-7/22
R277-615	Standards and Procedures for Student Searches	41362	5YR	03/15/2017	2017-7/83
R277-615	Standards and Procedures for Student Searches	41366	AMD	05/10/2017	2017-7/24
R277-702	Procedures for the Utah High School Completion Diploma	41186	5YR	01/17/2017	2017-3/87
R277-702	Procedures for the Utah High School Completion Diploma	41190	AMD	03/14/2017	2017-3/15
R277-708	Enhancement for At-Risk Students	41331	NSC	03/14/2017	Not Printed
R277-717	High School Course Grading Requirements	41191	NEW	03/14/2017	2017-3/18
R277-733	Adult Education Programs	41740	5YR	06/06/2017	Not Printed
R277-735	Corrections Education Programs	41741	5YR	06/06/2017	Not Printed
R277-752	Special Education Intensive Services Fund	41076	NEW	02/07/2017	2017-1/45
R277-801	Services for Students with Sensory Impairments	41192	NEW	03/14/2017	2017-3/20
R277-911	Secondary Career and Technical Education	41742	5YR	06/06/2017	Not Printed
R277-915	Work-Based Learning Programs for Interns	41094	AMD	02/07/2017	2017-1/46
R277-916	Career and Technical Education Introduction and Work-Based Learning Programs	41317	5YR	02/14/2017	2017-5/64
R277-916	Career and Technical Education Introduction and Work-Based Learning Programs	41319	AMD	04/10/2017	2017-5/17

ENVIRONMENTAL QUALITY

Administration

R305-1	Records Access and Management	41301	5YR	02/13/2017	2017-5/64
--------	-------------------------------	-------	-----	------------	-----------

Air Quality

R307-101-3	Version of Code of Federal Regulations Incorporated by Reference	41355	AMD	06/08/2017	2017-7/25
R307-105	General Requirements: Emergency Controls	41629	5YR	05/15/2017	2017-11/212
R307-110	General Requirements: State Implementation Plan	41231	5YR	01/27/2017	2017-4/61
R307-120	General Requirements: Tax Exemption for Air Pollution Control Equipment	41230	5YR	01/27/2017	2017-4/61
R307-125	Clean Air Retrofit, Replacement, and Off-Road Technology Program	41099	AMD	03/03/2017	2017-1/48
R307-130	General Penalty Policy	41229	5YR	01/27/2017	2017-4/62
R307-135	Enforcement Response Policy for Asbestos Hazard Emergency Response Act	41228	5YR	01/27/2017	2017-4/62
R307-210	Stationary Sources	41356	AMD	06/08/2017	2017-7/26



R307-214	National Emission Standards for Hazardous Air Pollutants	41630	5YR	05/15/2017	2017-11/213
R307-214	National Emission Standards for Hazardous Air Pollutants	41357	AMD	06/08/2017	2017-7/27
R307-301	Utah and Weber Counties: Oxygenated Gasoline Program As a Contingency Measure	41227	5YR	01/27/2017	2017-4/63
R307-302	Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber Counties	40773	AMD	02/01/2017	2016-19/38
R307-302	Solid Fuel Burning Devices	40773	CPR	02/01/2017	2017-1/102
R307-320	Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program	41226	5YR	01/27/2017	2017-4/64
R307-325	Ozone Nonattainment and Maintenance Areas: General Requirements	41225	5YR	01/27/2017	2017-4/64
R307-326	Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries	41223	5YR	01/27/2017	2017-4/65
R307-327	Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage	41222	5YR	01/27/2017	2017-4/65
R307-328	Gasoline Transfer and Storage	41221	5YR	01/27/2017	2017-4/66
R307-335	Degreasing and Solvent Cleaning Operations	41220	5YR	01/27/2017	2017-4/66
R307-341	Ozone Nonattainment and Maintenance Areas: Cutback Asphalt	41219	5YR	01/27/2017	2017-4/67
R307-343	Emissions Standards for Wood Furniture Manufacturing Operations	41218	5YR	01/27/2017	2017-4/67
R307-401	Permit: New and Modified Sources	41631	5YR	05/15/2017	2017-11/213
R307-403	Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas	41632	5YR	05/15/2017	2017-11/214
R307-406	Visibility	41634	5YR	05/15/2017	2017-11/214
R307-410	Permits: Emissions Impact Analysis	41636	5YR	05/15/2017	2017-11/215
R307-414	Permits: Fees for Approval Orders	41638	5YR	05/15/2017	2017-11/216
R307-415	Permits: Operating Permit Requirements	41639	5YR	05/15/2017	2017-11/216
R307-417	Permits: Acid Rain Sources	41640	5YR	05/15/2017	2017-11/217
R307-420	Permits: Ozone Offset Requirements in Davis and Salt Lake Counties	41641	5YR	05/15/2017	2017-11/217
R307-421	Permits: PM10 Offset Requirements in Salt Lake County and Utah County	41642	5YR	05/15/2017	2017-11/218
R307-424	Permits: Mercury Requirements for Electric Generating Units	41432	EXT	04/03/2017	2017-9/53
R307-424	Permits: Mercury Requirements for Electric Generating Units	41643	5YR	05/15/2017	2017-11/218
R307-841	Residential Property and Child-Occupied Facility Renovation	41100	AMD	05/09/2017	2017-1/50
R307-841	Residential Property and Child-Occupied Facility Renovation	41100	CPR	05/09/2017	2017-7/68
R307-842	Lead-Based Paint Activities	41101	AMD	05/09/2017	2017-1/53
R307-842	Lead-Based Paint Activities	41101	CPR	05/09/2017	2017-7/70
<u>Drinking Water</u>					
R309-535-5	Fluoridation	40769	AMD	03/07/2017	2016-19/43
R309-535-5	Fluoridation	40769	CPR	03/07/2017	2016-24/44
<u>Environmental Response and Remediation</u>					
R311-200	Underground Storage Tanks: Definitions	41394	5YR	03/27/2017	2017-8/60
R311-201	Underground Storage Tanks: Certification Programs and UST Operator Training	41395	5YR	03/27/2017	2017-8/60
R311-202	Federal Underground Storage Tank Regulations	41396	5YR	03/27/2017	2017-8/61
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
R311-203	Underground Storage Tanks: Technical Standards	41397	5YR	03/27/2017	2017-8/62
R311-204	Underground Storage Tanks: Closure and Remediation	41398	5YR	03/27/2017	2017-8/63

RULES INDEX

R311-205	Underground Storage Tanks: Site Assessment Protocol	41399	5YR	03/27/2017	2017-8/64
R311-206	Underground Storage Tanks: Certificate of Compliance and Financial Assurance Mechanisms	41400	5YR	03/27/2017	2017-8/64
R311-207	Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks	41401	5YR	03/27/2017	2017-8/65
R311-208	Underground Storage Tank Penalty Guidance	41402	5YR	03/27/2017	2017-8/66
R311-209	Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation	41403	5YR	03/27/2017	2017-8/66
R311-210	Administrative Procedures	41404	5YR	03/27/2017	2017-8/67
R311-211	Corrective Action Cleanup Standards Policy - UST and CERCLA Sites	41405	5YR	03/27/2017	2017-8/68
R311-212	Administration of the Petroleum Storage Tank Loan Program	41406	5YR	03/27/2017	2017-8/69
R311-401	Hazardous Substances Priority List	41206	5YR	01/20/2017	2017-4/68
<u>Waste Management and Radiation Control, Radiation</u>					
R313-15	Standards for Protection Against Radiation	41177	5YR	01/17/2017	2017-3/88
R313-21	General Licenses	41178	5YR	01/17/2017	2017-3/88
R313-24	Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements	41179	5YR	01/17/2017	2017-3/89
R313-30	Therapeutic Radiation Machines	41180	5YR	01/17/2017	2017-3/90
R313-34	Requirements for Irradiators	41181	5YR	01/17/2017	2017-3/90
R313-35	Requirements for X-Ray Equipment Used for Non-Medical Applications	41183	5YR	01/17/2017	2017-3/91
R313-37	Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material	41184	5YR	01/17/2017	2017-3/91
R313-38	Licenses and Radiation Safety Requirements for Well Logging	41185	5YR	01/17/2017	2017-3/92
<u>Waste Management and Radiation Control, Waste Management</u>					
R315-15-13	Registration and Permitting of Used Oil Handlers	40879	AMD	02/13/2017	2016-21/32
<u>Water Quality</u>					
R317-1	Definitions and General Requirements	40995	AMD	03/27/2017	2016-23/49
R317-1	Definitions and General Requirements	40995	CPR	03/27/2017	2017-4/44
R317-1-7	TMDLs	40987	AMD	01/30/2017	2016-23/54
R317-3	Design Requirements for Wastewater Collection, Treatment and Disposal Systems	41613	5YR	05/09/2017	2017-11/219
R317-5	Large Underground Wastewater Disposal (LUWD) Systems	41492	5YR	04/25/2017	2017-10/163
R317-9	Administrative Procedures	41431	NSC	05/15/2017	Not Printed
R317-12	Certification of Water Pollution Control Facility or Freestanding Pollution Control Property	41193	5YR	01/17/2017	2017-3/93
R317-550	Rules for Liquid Waste Operations	41493	5YR	04/25/2017	2017-10/164
R317-560	Rules for the Design, Construction, and Maintenance of Vault Privies and Earthen Pit Privies	41494	5YR	04/25/2017	2017-10/164
R317-801	Utah Sewer Management Program (USMP)	41800	5YR	06/12/2017	Not Printed
EXAMINERS (BOARD OF)					
<u>Administration</u>					
R320-101	Procedures for Electronic Meetings	41294	5YR	02/07/2017	2017-5/65
FINANCIAL INSTITUTIONS					
<u>Credit Unions</u>					
R337-10	Rule Designating Applicable Federal Law for Credit Unions Subject to the Jurisdiction of the Department of Financial Institutions	41197	5YR	01/18/2017	2017-4/68

Nondepository Lenders

R343-1	Rule Governing Form of Disclosures For Title Lenders, Who Are Under the Jurisdiction of the Department of Financial Institutions	41123	5YR	01/06/2017	2017-3/93
--------	----------------------------------------------------------------------------------------------------------------------------------	-------	-----	------------	-----------

GOVERNOR

Criminal and Juvenile Justice (State Commission on)

R356-3	Electronic Meetings	41182	NEW	03/13/2017	2017-3/23
R356-101 (Changed to R356-2)	Judicial Nominating Commissions	41297	NSC	03/06/2017	Not Printed

Economic Development

R357-1	Rural Fast Track Program	41430	5YR	03/31/2017	2017-8/69
R357-3	Economic Development Tax Increment Financing Tax Credit	40932	AMD	02/22/2017	2016-22/56
R357-19	Business Resource Centers	40961	NEW	02/22/2017	2016-23/55

Economic Development, Pete Suazo Utah Athletic Commission

R359-1	Pete Suazo Utah Athletic Commission Act Rule	41425	5YR	03/30/2017	2017-8/70
--------	----------------------------------------------	-------	-----	------------	-----------

HEALTH

Administration

R380-1	Petitions for Department Declaratory Orders	41434	5YR	04/03/2017	2017-9/46
R380-5	Petitions for Declaratory Orders on Orders Issued by Committees	41435	5YR	04/03/2017	2017-9/47
R380-10	Informal Adjudicative Proceedings	41488	5YR	04/21/2017	2017-10/165
R380-20	Government Records and Access Management	41433	5YR	04/03/2017	2017-9/47
R380-60	Local Health Department Emergency Protocols	41333	5YR	03/01/2017	2017-6/29
R380-77	Coordination of Patient Identification and Validation Services	40996	NEW	02/01/2017	2016-23/58
R380-77	Coordination of Patient Identification and Validation Services	41055	NSC	02/01/2017	Not Printed
R380-100	Americans with Disabilities Act Grievance Procedures	41490	5YR	04/24/2017	2017-10/165
R380-400	Use of Statistical Sampling and Extrapolation	40993	REP	01/10/2017	2016-23/59

Children's Health Insurance Program

R382-10-11	Household Composition and Income Provisions	40997	AMD	01/17/2017	2016-23/62
------------	---------------------------------------------	-------	-----	------------	------------

Disease Control and Prevention, Environmental Services

R392-302	Design, Construction and Operation of Public Pools	41381	AMD	06/01/2017	2017-8/6
R392-502	Hotel, Motel, and Resort Sanitation	41367	5YR	03/15/2017	2017-7/83
R392-510	Utah Indoor Clean Air Act	41368	5YR	03/15/2017	2017-7/84

Disease Control and Prevention, Epidemiology

R386-702	Communicable Disease Rule	41038	AMD	01/27/2017	2016-24/12
----------	---------------------------	-------	-----	------------	------------

Disease Control and Prevention, Laboratory Improvement

R444-11	Rules for Approval to Perform Blood Alcohol Examinations	41000	REP	01/20/2017	2016-23/64
---------	----------------------------------------------------------	-------	-----	------------	------------

Disease Control and Prevention, Laboratory Services

R438-10	Rules for Establishment of a Procedure to Examine the Blood of All Adult Pedestrians and All Drivers of Motor Vehicles Killed in Highway Accidents for the Presence and Concentration of Alcohol, for the Purpose of Deriving Statistics Therefrom	40868	REP	01/11/2017	2016-21/46
R438-12	Rule for Law Enforcement Blood Draws	41119	EXT	01/03/2017	2017-2/47

Disease Control and Prevention; HIV/AIDS, Tuberculosis Control/Refugee Health

R388-803	HIV Test Reporting	40901	REP	02/01/2017	2016-22/59
R388-804	Special Measures for the Control of Tuberculosis	41334	AMD	05/11/2017	2017-6/4

RULES INDEX

Family Health and Preparedness, Child Care Licensing

R430-1 General Licensing, Certificate, and Enforcement Provisions, Child Care Facilities 41472 EXT 04/12/2017 2017-9/53

Family Health and Preparedness, Emergency Medical Services

R426-5 Emergency Medical Services Training and Certification Standards 41332 AMD 04/26/2017 2017-6/7  
 R426-9 Trauma and EMS System Facility Designations 41029 AMD 02/01/2017 2016-24/30

Family Health and Preparedness, Licensing

R432-31 Life with Dignity Order 41310 5YR 02/13/2017 2017-5/66  
 R432-40 Long-Term Care Facility Immunizations 41309 5YR 02/13/2017 2017-5/66  
 R432-100 General Hospital Standards 41324 AMD 05/16/2017 2017-5/25  
 R432-150 Nursing Care Facility 41311 5YR 02/13/2017 2017-5/67  
 R432-150 Nursing Care Facility 41325 AMD 05/16/2017 2017-5/31  
 R432-151 Mental Disease Facility 41312 5YR 02/13/2017 2017-5/67  
 R432-152 Mental Retardation Facility 41313 5YR 02/13/2017 2017-5/68  
 R432-201 Mental Retardation Facility: Supplement "A" to the Small Health Care Facility Rule 41314 5YR 02/13/2017 2017-5/68  
 R432-270 Assisted Living Facilities 41056 AMD 02/13/2017 2017-1/74  
 R432-700 Home Health Agency Rule 41323 AMD 05/15/2017 2017-5/38

Family Health and Preparedness, WIC Services

R406-100 Special Supplemental Nutrition Program for Women, Infants and Children 41254 5YR 01/30/2017 2017-4/69  
 R406-200 Program Overview 41255 5YR 01/30/2017 2017-4/70  
 R406-201 Outreach Program 41256 5YR 01/30/2017 2017-4/70  
 R406-202 Eligibility 41257 5YR 01/30/2017 2017-4/71  
 R406-301 Clinic Guidelines 41258 5YR 01/30/2017 2017-4/71

Health Care Financing, Coverage and Reimbursement Policy

R414-1 Utah Medicaid Program 41321 5YR 02/15/2017 2017-5/65  
 R414-1-5 Incorporations by Reference 41104 AMD 02/15/2017 2017-1/68  
 R414-1-5 Incorporations by Reference 41446 AMD 06/14/2017 2017-9/25  
 R414-1A Medicaid Policy for Experimental, Investigational or Unproven Medical Practices 41423 5YR 03/29/2017 2017-8/70  
 R414-10A Transplant Services Standards 41125 5YR 01/06/2017 2017-3/94  
 R414-21 Physical Therapy and Occupational Therapy 41126 5YR 01/06/2017 2017-3/94  
 R414-38 Personal Care Services 41326 5YR 02/17/2017 2017-6/30  
 R414-60 Medicaid Policy for Pharmacy Program 41174 AMD 04/01/2017 2017-3/25  
 R414-60 Medicaid Policy for Pharmacy Program 41556 5YR 04/28/2017 2017-10/166  
 R414-60-2 Definitions 41379 AMD 06/14/2017 2017-8/30  
 R414-60A Drug Utilization Review Board 41803 5YR 06/13/2017 Not Printed  
 R414-60A-2 DUR Board Composition and Membership Requirements 41175 AMD 04/01/2017 2017-3/27  
 R414-60B Preferred Drug List 41811 5YR 06/14/2017 Not Printed  
 R414-61-2 Incorporation by Reference 41290 AMD 04/20/2017 2017-5/24  
 R414-100 Medicaid Primary Care Network Services 41588 5YR 05/05/2017 2017-11/219  
 R414-200 Non-Traditional Medicaid Health Plan Services 41589 5YR 05/05/2017 2017-11/220  
 R414-302-6 Residents of Institutions 41070 AMD 02/15/2017 2017-1/72  
 R414-304 Income and Budgeting 41211 AMD 03/28/2017 2017-4/22  
 R414-304-5 MAGI-Based Coverage Groups 40998 AMD 01/17/2017 2016-23/63  
 R414-305-7 Treatment of Trusts 41428 AMD 06/01/2017 2017-8/32  
 R414-307 Eligibility for Home and Community-Based Services Waivers 41422 5YR 03/29/2017 2017-8/71  
 R414-308-7 Change Reporting and Benefit Changes 41212 AMD 03/28/2017 2017-4/26  
 R414-310 Medicaid Primary Care Network Demonstration Waiver 41689 5YR 05/22/2017 2017-12/36  
 R414-310-13 Change Reporting and Benefit Changes 41213 AMD 03/28/2017 2017-4/28  
 R414-504 Nursing Facility Payments 41054 AMD 02/15/2017 2017-1/73

HERITAGE AND ARTS

Administration

R450-1 Government Records Access and Management Act Rules 41288 5YR 02/03/2017 2017-5/69

R450-1	Government Records Access and Management Act Rules	41287	NSC	03/06/2017	Not Printed
R450-2	Preservation Pro Fee	41709	5YR	05/31/2017	2017-12/37
<u>Arts and Museums</u>					
R451-1	Utah Arts Council General Program Rules	41196	5YR	01/18/2017	2017-4/72
R451-2	Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collections	41201	5YR	01/20/2017	2017-4/72
<u>History</u>					
R455-1	Adjudicative Proceedings	41341	5YR	03/02/2017	2017-7/85
R455-12	Computerized Record of Cemeteries, Burial Locations and Plots, and Granting Matching Funds	41342	5YR	03/02/2017	2017-7/86
<u>Library</u>					
R458-1	Adjudicative Procedures	41708	5YR	05/31/2017	2017-12/37

HUMAN RESOURCE MANAGEMENT

Administration

R477-1	Definitions	41270	EXT	02/02/2017	2017-5/75
R477-1	Definitions	41524	5YR	04/27/2017	2017-10/167
R477-2	Administration	41271	EXT	02/02/2017	2017-5/75
R477-2	Administration	41526	5YR	04/27/2017	2017-10/168
R477-3	Classification	41272	EXT	02/02/2017	2017-5/75
R477-3	Classification	41527	5YR	04/27/2017	2017-10/168
R477-4	Filling Positions	41273	EXT	02/02/2017	2017-5/75
R477-4	Filling Positions	41528	5YR	04/27/2017	2017-10/169
R477-5	Employee Status and Probation	41274	EXT	02/02/2017	2017-5/76
R477-5	Employee Status and Probation	41529	5YR	04/27/2017	2017-10/169
R477-6	Compensation	41276	EXT	02/02/2017	2017-5/76
R477-6	Compensation	41530	5YR	04/27/2017	2017-10/170
R477-7	Leave	41277	EXT	02/02/2017	2017-5/76
R477-7	Leave	41531	5YR	04/27/2017	2017-10/170
R477-8	Working Conditions	41278	EXT	02/02/2017	2017-5/76
R477-8	Working Conditions	41532	5YR	04/27/2017	2017-10/171
R477-9	Employee Conduct	41280	EXT	02/02/2017	2017-5/77
R477-9	Employee Conduct	41533	5YR	04/27/2017	2017-10/171
R477-10	Employee Development	41281	EXT	02/02/2017	2017-5/77
R477-10	Employee Development	41537	5YR	04/27/2017	2017-10/172
R477-11	Discipline	41282	EXT	02/02/2017	2017-5/77
R477-11	Discipline	41538	5YR	04/27/2017	2017-10/172
R477-12	Separations	41283	EXT	02/02/2017	2017-5/77
R477-12	Separations	41541	5YR	04/27/2017	2017-10/173
R477-13	Volunteer Programs	41284	EXT	02/02/2017	2017-5/77
R477-13	Volunteer Programs	41542	5YR	04/27/2017	2017-10/173
R477-15	Workplace Harassment Prevention	41285	EXT	02/02/2017	2017-5/78
R477-15	Workplace Harassment Prevention	41543	5YR	04/27/2017	2017-10/174

HUMAN SERVICES

Administration

R495-884	Kinship Locate	41217	5YR	01/27/2017	2017-4/73
R495-885	Employee Background Screenings	41114	AMD	02/23/2017	2017-2/23

Administration, Administrative Hearings

R497-100	Adjudicative Proceedings	41057	AMD	02/07/2017	2017-1/78
----------	--------------------------	-------	-----	------------	-----------

Administration, Administrative Services, Licensing

R501-1	General Provisions	40929	R&R	01/17/2017	2016-22/67
R501-1	General Provisions	41117	NSC	01/18/2017	Not Printed
R501-14	Human Service Program Background Screening	40931	AMD	01/17/2017	2016-22/77
R501-14	Human Service Program Background Screening	41173	AMD	03/21/2017	2017-3/28

RULES INDEX

R501-21	Outpatient Treatment Programs	40930	R&R	03/24/2017	2016-22/83
R501-21	Outpatient Treatment Programs	40930	CPR	03/24/2017	2017-4/49
<u>Child and Family Services</u>					
R512-204	Child Protective Services, New Caseworker Training	41483	5YR	04/18/2017	2017-10/174
R512-311	Out-of-Home Services. Psychotropic Medication Oversight Panel	40933	NEW	01/10/2017	2016-23/67
<u>Juvenile Justice Services</u>					
R547-3	Juvenile Jail Standards	41385	5YR	03/27/2017	2017-8/71
R547-6	Youth Parole Authority Policies and Procedures	41386	5YR	03/27/2017	2017-8/72
R547-7	Juvenile Holding Room Standards	41387	5YR	03/27/2017	2017-8/72
R547-10	Ex-Offender Policy	41388	5YR	03/27/2017	2017-8/73
R547-12	Division of Juvenile Justice Services Classification of Records	41389	5YR	03/27/2017	2017-8/73
R547-13	Guidelines for Admission to Secure Youth Detention Facilities	41390	5YR	03/27/2017	2017-8/74
R547-14	Possession of Prohibited Items in Juvenile Detention Facilities	41391	5YR	03/27/2017	2017-8/74
<u>Recovery Services</u>					
R527-37	Closure Criteria for Support Cases	41210	5YR	01/23/2017	2017-4/73
R527-250	Emancipation	41170	AMD	04/14/2017	2017-3/34
R527-255	Substantial Change in Circumstances	41207	5YR	01/23/2017	2017-4/74
R527-300	Income Withholding	41208	5YR	01/23/2017	2017-4/75
R527-330	Posting Priority of Payments Received	41209	5YR	01/23/2017	2017-4/75
R527-330	Posting Priority of Payments Received	41691	NSC	06/13/2017	Not Printed
R527-378	Withholding of Social Security Benefits	41724	5YR	06/02/2017	Not Printed
R527-412	Intercept of Unemployment Compensation	41214	5YR	01/26/2017	2017-4/76
R527-601	Establishing or Modifying an Administrative Award for Child Support	41725	5YR	06/02/2017	Not Printed
R527-928	Lost Checks	41727	5YR	06/02/2017	Not Printed
<u>Substance Abuse and Mental Health</u>					
R523-4	Screening, Assessment, Prevention, Treatment and Recovery Support Standards for Adults Required to Participate in Services by the Criminal Justice System	40934	AMD	01/17/2017	2016-23/68
R523-11-3	Certification Requirements for DUI Educational Providers	40999	AMD	01/17/2017	2016-23/75
INSURANCE					
<u>Administration</u>					
R590-68	Insider Trading of Equity Securities of Domestic Stock Insurance Companies	41438	5YR	04/04/2017	2017-9/48
R590-70	Insurance Holding Companies	41134	5YR	01/09/2017	2017-3/95
R590-70	Insurance Holding Companies	40954	R&R	01/10/2017	2016-23/77
R590-85	Individual Accident and Health Insurance and Individual and Group Medicare Supplement Rates	41439	5YR	04/04/2017	2017-9/48
R590-95	Rule to Permit the Same Minimum Nonforfeiture Standards for Men and Women Insureds Under the 1980 CSO and 1980 CET Mortality Tables	41135	5YR	01/09/2017	2017-3/95
R590-102	Insurance Department Fee Payment Rule	41259	AMD	03/24/2017	2017-4/34
R590-108	Interest Rate During Grace Period or Upon Reinstatement of Policy	41443	5YR	04/04/2017	2017-9/49
R590-114	Letters of Credit	41136	5YR	01/09/2017	2017-3/96
R590-116	Valuation of Assets	41215	5YR	01/26/2017	2017-4/76
R590-117	Valuation of Liabilities	41216	5YR	01/26/2017	2017-4/77
R590-120	Surety Bond Forms	41437	5YR	04/04/2017	2017-9/49
R590-122	Permissible Arbitration Provisions	41731	5YR	06/05/2017	Not Printed
R590-142	Continuing Education Rule	41137	5YR	01/09/2017	2017-3/96
R590-143	Life and Health Reinsurance Agreements	41138	5YR	01/09/2017	2017-3/97
R590-146	Medicare Supplement Insurance Standards	41441	5YR	04/04/2017	2017-9/50

R590-147	Annual and Quarterly Statement Filing Instructions	41139	5YR	01/09/2017	2017-3/98
R590-149	Americans with Disabilities Act (ADA) Grievance Procedures	41729	5YR	06/05/2017	Not Printed
R590-150	Commissioner's Acceptance of Examination Reports	41140	5YR	01/09/2017	2017-3/98
R590-173	Credit for Reinsurance	40955	AMD	01/10/2017	2016-23/83
R590-173	Credit for Reinsurance	41730	5YR	06/05/2017	Not Printed
R590-203	Health Grievance Review Process	41440	5YR	04/04/2017	2017-9/50
R590-238	Captive Insurance Companies	41569	5YR	05/02/2017	2017-11/220
R590-239	Exemption of Student Health Centers from Insurance Code	41442	5YR	04/04/2017	2017-9/51
R590-240	Procedure to Obtain Exemption of Student Health Programs From Insurance Code	41728	5YR	06/05/2017	Not Printed
R590-248-4	Mandatory Fraud Reporting Process	41322	AMD	04/07/2017	2017-5/55
R590-262	Health Data Authority Health Insurance Claims Reporting	41345	5YR	03/06/2017	2017-7/86
R590-262	Health Data Authority Health Insurance Claims Reporting	41172	AMD	03/10/2017	2017-3/36
R590-262-2	Purpose and Scope	41378	NSC	04/10/2017	Not Printed
R590-273	Continuing Care Provider Rule	40953	NEW	04/07/2017	2016-23/94
R590-273	Continuing Care Provider Rule	40953	CPR	04/07/2017	2017-5/58

Title and Escrow Commission

R592-14	Delay or Failure to Record Documents and the Insuring of Properties with the False Appearance of Unmarketability as Unfair Title Insurance Practices	41141	5YR	01/09/2017	2017-3/99
---------	------------------------------------------------------------------------------------------------------------------------------------------------------	-------	-----	------------	-----------

JUDICIAL PERFORMANCE EVALUATION COMMISSION

Administration

R597-3-8	Judicial Written Statements	41026	AMD	02/17/2017	2016-24/35
R597-3-9	Judicial Discipline	41027	AMD	02/17/2017	2016-24/35

LABOR COMMISSION

Adjudication

R602-1	General Provisions	41605	5YR	05/08/2017	2017-11/221
R602-1	General Provisions	41635	NSC	05/25/2017	Not Printed
R602-2	Adjudication of Workers' Compensation and Occupational Disease Claims	41612	5YR	05/09/2017	2017-11/222
R602-2	Adjudication of Workers' Compensation and Occupational Disease Claims	41633	NSC	06/01/2017	Not Printed

Administration

R600-2	Operations	41587	5YR	05/05/2017	2017-11/221
R600-2-1	Business Hours	41637	NSC	05/31/2017	Not Printed

MONEY MANAGEMENT COUNCIL

Administration

R628-17	Limitations on Commercial Paper and Corporate Notes	41424	5YR	03/30/2017	2017-8/75
---------	-----------------------------------------------------	-------	-----	------------	-----------

NATURAL RESOURCES

Forestry, Fire and State Lands

R652-1	Definition of Terms	41012	AMD	01/10/2017	2016-23/97
R652-1	Definition of Terms	41407	5YR	03/28/2017	2017-8/76
R652-3	Applicant Qualifications and Application Forms	41408	5YR	03/28/2017	2017-8/77
R652-4	Application Fees and Assessments	41409	5YR	03/28/2017	2017-8/77
R652-5	Payments, Royalties, Audits, and Reinstatements	41411	5YR	03/29/2017	2017-8/78
R652-6	Government Records Access and Management	41412	5YR	03/29/2017	2017-8/78
R652-20	Mineral Resources	41413	5YR	03/29/2017	2017-8/79
R652-30	Special Use Leases	41414	5YR	03/29/2017	2017-8/79

RULES INDEX

R652-40	Easements	41415	5YR	03/29/2017	2017-8/80
R652-50	Range Management	41416	5YR	03/29/2017	2017-8/80
R652-60	Cultural Resources	41417	5YR	03/29/2017	2017-8/81
R652-70	Sovereign Lands	41418	5YR	03/29/2017	2017-8/81
R652-90	Sovereign Land Management Planning	41419	5YR	03/29/2017	2017-8/82
R652-100	Materials Permits	41420	5YR	03/29/2017	2017-8/82
R652-120	Wildland Fire	41011	AMD	01/10/2017	2016-23/99
R652-121	Wildland Fire Suppression Fund	41013	AMD	01/10/2017	2016-23/102
R652-122	County Cooperative Agreements with State for Fire Protection	41014	AMD	01/10/2017	2016-23/105
R652-123	Exemptions to Wildland Fire Suppression Fund	41015	REP	01/10/2017	2016-23/111
R652-140	Utah Forest Practices Act	41143	5YR	01/10/2017	2017-3/99
<u>Oil, Gas and Mining Board</u>					
R641-100	General Provisions	41744	5YR	06/07/2017	Not Printed
R641-101	Parties	41745	5YR	06/07/2017	Not Printed
R641-102	Appearances and Representations	41746	5YR	06/07/2017	Not Printed
R641-103	Intervention	41747	5YR	06/07/2017	Not Printed
R641-104	Pleadings	41748	5YR	06/07/2017	Not Printed
R641-105	Filing and Service	41749	5YR	06/07/2017	Not Printed
R641-106	Notice and Service	41750	5YR	06/07/2017	Not Printed
R641-107	Prehearing Conference	41751	5YR	06/07/2017	Not Printed
R641-108	Conduct of Hearings	41752	5YR	06/07/2017	Not Printed
R641-109	Decisions and Orders	41753	5YR	06/07/2017	Not Printed
R641-110	Rehearing and Modification of Existing Orders	41754	5YR	06/07/2017	Not Printed
R641-111	Declaratory Rulings	41755	5YR	06/07/2017	Not Printed
R641-112	Rulemaking	41756	5YR	06/07/2017	Not Printed
R641-113	Hearing Examiners	41757	5YR	06/07/2017	Not Printed
R641-114	Exhaustion of Administrative Remedies	41758	5YR	06/07/2017	Not Printed
R641-115	Deadline for Judicial Review	41759	5YR	06/07/2017	Not Printed
R641-116	Judicial Review of Formal Adjudicative Proceedings	41760	5YR	06/07/2017	Not Printed
R641-117	Civil Enforcement	41761	5YR	06/07/2017	Not Printed
R641-118	Waivers	41762	5YR	06/07/2017	Not Printed
R641-119	Severability	41763	5YR	06/07/2017	Not Printed
<u>Oil, Gas and Mining: Oil and Gas</u>					
R649-2-9	Refusal to Agree	41614	EMR	05/09/2017	2017-11/207
<u>Parks and Recreation</u>					
R651-102	Government Records Access Management Act	41382	5YR	03/23/2017	2017-8/75
R651-215-8	River Throw Bag in Lieu of Type IV PFD	41154	AMD	03/10/2017	2017-3/38
R651-301	State Recreation Fiscal Assistance Programs	41383	5YR	03/23/2017	2017-8/76
R651-410	Off-Highway Vehicle Safety Equipment	41347	5YR	03/07/2017	2017-7/87
R651-411	OHV Use in State Parks	41043	AMD	02/16/2017	2016-24/36
R651-614-5	Hunting with Firearms	41042	AMD	02/16/2017	2016-24/37
R651-633	Special Closures or Restrictions	41044	AMD	02/16/2017	2016-24/38
<u>Water Rights</u>					
R655-1	Wells Used for the Discovery and Production of Geothermal Energy in the State of Utah	41593	5YR	05/05/2017	2017-11/223
R655-6	Administrative Procedures for Informal Proceedings Before the Division of Water Rights	41592	5YR	05/05/2017	2017-11/223
R655-15	Administrative Procedures for Distribution Systems and Water Commissioners	41591	5YR	05/05/2017	2017-11/224
<u>Wildlife Resources</u>					
R657-2	Adjudicative Proceedings	41580	5YR	05/03/2017	2017-11/224
R657-4	Possession of Live Game Birds	41583	5YR	05/03/2017	2017-11/225
R657-9	Taking Waterfowl, Wilson's Snipe and Coot	41153	AMD	03/13/2017	2017-3/39
R657-14	Commercial Harvesting of Protected Aquatic Wildlife	41834	5YR	06/15/2017	Not Printed
R657-16	Aquaculture and Fish Stocking	41149	REP	03/13/2017	2017-3/40
R657-22	Commercial Hunting Areas	41581	5YR	05/03/2017	2017-11/225
R657-27	License Agent Procedures	41353	5YR	03/13/2017	2017-7/87
R657-29	Government Records Access Management Act	41579	EXD	05/03/2017	2017-11/231



R657-30	Fishing License for the Terminally Ill	41582	5YR	05/03/2017	2017-11/226
R657-38	Dedicated Hunter Program	41148	AMD	03/13/2017	2017-3/44
R657-43	Landowner Permits	41330	5YR	02/27/2017	2017-6/30
R657-44	Big Game Depredation	41668	5YR	05/18/2017	2017-12/38
R657-50	Error Remedy	41352	5YR	03/13/2017	2017-7/88
R657-59	Private Fish Ponds	41150	AMD	03/13/2017	2017-3/49
R657-60	Aquatic Invasive Species Interdiction	41151	AMD	03/13/2017	2017-3/61
R657-62	Drawing Application Procedures	41098	AMD	02/07/2017	2017-1/82
R657-62	Drawing Application Procedures	41152	AMD	03/13/2017	2017-3/67

NAVAJO TRUST FUND

Trustees

R661-3	Utah Navajo Trust Fund Residency Policy	40892	AMD	03/14/2017	2016-22/90
R661-6	Utah Navajo Trust Fund Higher Education Financial Assistance and Scholarship Program	40893	AMD	03/14/2017	2016-22/92

PARDONS (BOARD OF)

Administration

R671-101	Rules	41122	5YR	01/05/2017	2017-3/100
R671-202	Notification of Hearings	41241	5YR	01/30/2017	2017-4/78
R671-203	Victim Input and Notification	41242	5YR	01/30/2017	2017-4/78
R671-205	Credit for Time Served	41243	5YR	01/30/2017	2017-4/79
R671-206	Competency of Offenders	41269	EXD	02/02/2017	2017-5/79
R671-207	Mentally Ill and Deteriorated Offender Custody Transfer	41244	5YR	01/30/2017	2017-4/79
R671-301	Personal Appearance	41245	5YR	01/30/2017	2017-4/80
R671-302	News Media and Public Access to Hearings	41246	5YR	01/30/2017	2017-4/80
R671-303	Information Received, Maintained or Used by the Board	41240	5YR	01/30/2017	2017-4/81
R671-304	Hearing Record	41247	5YR	01/30/2017	2017-4/81
R671-305	Board Decisions and Orders	41239	5YR	01/30/2017	2017-4/82
R671-308	Offender Hearing Assistance	41248	5YR	01/30/2017	2017-4/82
R671-310	Rescission Hearings	41249	5YR	01/30/2017	2017-4/83
R671-311	Special Attention Reviews, Hearings, and Decisions	41250	5YR	01/30/2017	2017-4/83
R671-311-3	Earned Time Adjustments	41081	AMD	02/15/2017	2017-1/83
R671-315	Pardons	41251	5YR	01/30/2017	2017-4/84
R671-316	Redetermination	41238	5YR	01/30/2017	2017-4/84
R671-402	Special Conditions of Parole	41176	5YR	01/17/2017	2017-3/100
R671-402	Special Conditions of Parole	41252	5YR	01/30/2017	2017-4/85
R671-403	Restitution	41121	5YR	01/05/2017	2017-3/101
R671-405	Parole Termination	41253	5YR	01/30/2017	2017-4/85

PUBLIC LANDS POLICY COORDINATING OFFICE

Administration

R694-1	Archaeology Permits	41444	5YR	04/04/2017	2017-9/51
--------	---------------------	-------	-----	------------	-----------

PUBLIC SAFETY

Administration

R698-8	Local Public Safety and Firefighter Surviving Spouse Trust Fund	41373	AMD	06/07/2017	2017-8/42
R698-9	Utah Law Enforcement Memorial Support Restricted Account	41369	NEW	06/07/2017	2017-7/32

Driver License

R708-2	Commercial Driver Training Schools	41203	5YR	01/20/2017	2017-4/86
R708-3	Driver License Point System Administration	41128	5YR	01/08/2017	2017-3/101
R708-7	Functional Ability in Driving: Guidelines for Physicians	41133	5YR	01/08/2017	2017-3/102
R708-8	Review Process: Driver License Medical Review Section	41129	5YR	01/08/2017	2017-3/102
R708-14	Adjudicative Proceedings for Driver License Actions Involving Alcohol and Drugs	41130	5YR	01/08/2017	2017-3/103

RULES INDEX

R708-21	Third-Party Testing	41204	5YR	01/20/2017	2017-4/86
R708-25	Commercial Driver License Applicant Fitness Certification	41200	REP	03/27/2017	2017-4/41
R708-27	Certification of Driver Education Teachers in the Public Schools to Administer Knowledge and Driving Skills Tests	41202	5YR	01/20/2017	2017-4/87
R708-34	Medical Waivers for Intrastate Commercial Driving Privileges	41132	5YR	01/08/2017	2017-3/104
R708-35	Adjudicative Proceedings for Driver License Offenses Not Involving Alcohol or Drug Actions	41131	5YR	01/08/2017	2017-3/104
R708-39	Physical and Mental Fitness Testing	41205	5YR	01/20/2017	2017-4/87
<u>Emergency Management</u>					
R704-2	Statewide Mutual Aid Act Activation	41380	AMD	06/09/2017	2017-8/44
R704-3	Local Government Emergency Response Loan Program	40956	NEW	01/12/2017	2016-23/112
R704-3	Local Government Emergency Response Loan Program	41358	AMD	06/07/2017	2017-7/33
<u>Fire Marshal</u>					
R710-1	Concerns Servicing Portable Fire Extinguishers	41571	5YR	05/02/2017	2017-11/226
R710-2	Rules Pursuant to the Utah Fireworks Act	41572	5YR	05/02/2017	2017-11/227
R710-2	Rules Pursuant to the Utah Fireworks Act	41692	NSC	06/13/2017	Not Printed
R710-3	Assisted Living Facilities	41574	5YR	05/03/2017	2017-11/227
R710-3-3	Definitions	41693	NSC	06/13/2017	Not Printed
R710-4	Buildings Under the Jurisdiction of the State Fire Prevention Board	41575	5YR	05/03/2017	2017-11/228
R710-7	Concerns Servicing Automatic Fire Suppression Systems	41584	5YR	05/04/2017	2017-11/228
R710-7-8	Requirements For All Approved Systems	41694	NSC	06/13/2017	Not Printed
R710-8	Day Care Rules	41343	5YR	03/06/2017	2017-7/88
R710-9	Rules Pursuant to the Utah Fire Prevention and Safety Act	41577	5YR	05/03/2017	2017-11/229

PUBLIC SERVICE COMMISSION

Administration

R746-1	Public Service Commission Administrative Procedures Act Rule	41116	NEW	03/06/2017	2017-2/27
R746-100	Practice and Procedures Governing Formal Hearings	41115	REP	03/06/2017	2017-2/33
R746-101-1	Definitions	41669	NSC	06/05/2017	Not Printed
R746-110-3	Rate Increases	41670	NSC	06/05/2017	Not Printed
R746-200-7	Termination of Service	41337	AMD	05/15/2017	2017-7/59
R746-240-1	General Provisions	41671	NSC	06/05/2017	Not Printed
R746-310	Uniform Rules Governing Electricity Service by Electric Utilities	41672	NSC	06/05/2017	Not Printed
R746-312	Electrical Interconnection	41673	NSC	06/05/2017	Not Printed
R746-313	Electric Service Reliability	41514	5YR	04/27/2017	2017-10/175
R746-313	Electrical Service Reliability	41674	NSC	06/05/2017	Not Printed
R746-320	Uniform Rules Governing Natural Gas Service	41667	5YR	05/17/2017	2017-12/38
R746-320	Uniform Rules Governing Natural Gas Service	41676	NSC	06/13/2017	Not Printed
R746-340-1	General	41677	NSC	06/13/2017	Not Printed
R746-341	Lifeline Rule	41031	AMD	03/24/2017	2016-24/40
R746-341	Lifeline Rule	41031	CPR	03/24/2017	2017-4/54
R746-344-3	Hearing Process	41678	NSC	06/13/2017	Not Printed
R746-345-1	Authorization	41679	NSC	06/13/2017	Not Printed
R746-349	Competitive Entry and Reporting Requirements	41262	5YR	01/31/2017	2017-4/88
R746-349-3	Filing Requirements	41680	NSC	06/13/2017	Not Printed
R746-351	Pricing Flexibility	41263	5YR	01/31/2017	2017-4/89
R746-365	Intercarrier Service Quality	41681	NSC	06/13/2017	Not Printed
R746-400	Public Utility Reports	41513	5YR	04/27/2017	2017-10/176
R746-400-4	Reports to the Commission	41682	NSC	06/13/2017	Not Printed
R746-401-1	Applicability	41683	NSC	06/13/2017	Not Printed
R746-409-6	Remedies	41684	NSC	06/13/2017	Not Printed
R746-420	Requests for Approval of a Solicitation Process	41393	5YR	03/27/2017	2017-8/83

R746-430	Procedural and Informational Requirements for Action Plans, for an Approval of a Significant Energy Resource, for Determination of Whether to Proceed, and for Waivers of a Solicitation Process or of an Approval of a Significant Energy Resource	41392	5YR	03/27/2017	2017-8/83
R746-440	Voluntary Resource Decision	41264	5YR	01/31/2017	2017-4/89
R746-700	Complete Filings for General Rate Case and Major Plant Addition Applications	41685	NSC	06/13/2017	Not Printed

REGENTS (BOARD OF)

Administration

R765-606	Utah Leveraging Educational Assistance Partnership Program	40915	REP	03/14/2017	2016-22/109
----------	------------------------------------------------------------	-------	-----	------------	-------------

University of Utah, Commuter Services

R810-2	Parking Meters and Other Pay Parking Spaces	41302	5YR	02/13/2017	2017-5/69
R810-5	Permit Types and Eligibility	41303	5YR	02/13/2017	2017-5/70
R810-6	Permit Prices and Refunds	41304	5YR	02/13/2017	2017-5/70
R810-9	Contractors and Their Employees	41305	5YR	02/13/2017	2017-5/71
R810-9	Contractors and Their Employees	41328	NSC	03/14/2017	Not Printed
R810-10	Enforcement System	41306	5YR	02/13/2017	2017-5/71
R810-11	Appeals System	41307	5YR	02/13/2017	2017-5/72

SCHOOL AND INSTITUTIONAL TRUST LANDS

Administration

R850-1	Definition of Terms	41697	5YR	05/23/2017	2017-12/39
R850-2	Trust Land Management Objectives	41696	5YR	05/23/2017	2017-12/39
R850-3	Applicant Qualifications, Application Forms, and Application Processing	41695	5YR	05/23/2017	2017-12/40
R850-11	Procurement	41489	5YR	04/24/2017	2017-10/176
R850-41	Rights of Entry	41291	5YR	02/07/2017	2017-5/72
R850-90	Land Exchanges	41155	5YR	01/12/2017	2017-3/105
R850-120	Beneficiary Use of Institutional Trust Land	41156	5YR	01/12/2017	2017-3/105

SCIENCE TECHNOLOGY AND RESEARCH GOVERNING AUTHORITY

Administration

R856-4	USTAR Science Technology Initiation Grant	41095	NEW	03/22/2017	2017-1/85
R856-5	USTAR Energy Research Triangle Professors Grant	41096	NEW	03/22/2017	2017-1/88
R856-6	USTAR Energy Research Triangle Scholars Grant	41097	NEW	03/22/2017	2017-1/92

TAX COMMISSION

Administration

R861-1A-16	Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207	41468	AMD	06/08/2017	2017-9/28
------------	---------------------------------------------------------------------------------------	-------	-----	------------	-----------

Property Tax

R884-24P-24	Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924	41469	AMD	06/08/2017	2017-9/30
R884-24P-57	Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330	41455	NSC	06/01/2017	Not Printed

TECHNOLOGY SERVICES

Administration

R895-3	Computer Software Licensing, Copyright, Control, Retention, and Transfer	41454	5YR	04/06/2017	2017-9/52
--------	--------------------------------------------------------------------------	-------	-----	------------	-----------

RULES INDEX

---

TRANSPORTATION

Administration

R907-80 Disposition of Surplus Land 41384 NEW 05/22/2017 2017-8/48

Operations, Aeronautics

R914-3 Aircraft Registration Enforcement 40937 NEW 01/18/2017 2016-23/114  
 R914-3 Aircraft Registration Enforcement 41421 AMD 05/22/2017 2017-8/53

Operations, Traffic and Safety

R920-4 Special Road Use or Event 41767 5YR 06/08/2017 Not Printed  
 R920-50 Ropeway Operation Safety 41476 EXT 04/13/2017 2017-9/53

Program Development

R926-4 Establishing and Defining a Functional Classification of Highways in the State of Utah 41375 5YR 03/17/2017 2017-8/84  
 R926-13-4 Highways Within the State That Are Designated as State Scenic Byways 41053 AMD 02/07/2017 2017-1/95  
 R926-15-5 Highways Within the State That Are Designated as State Scenic Backways 41329 NSC 03/14/2017 Not Printed

VETERANS' AND MILITARY AFFAIRS

Administration

R978-1 Rule Governing Veterans' Affairs 41335 5YR 03/01/2017 2017-6/31  
 R978-1 Rule Governing Veterans' Affairs 41351 AMD 05/09/2017 2017-7/63

WORKFORCE SERVICES

Administration

R982-101 Americans with Disabilities Complaint Procedure 41711 5YR 05/31/2017 2017-12/40  
 R982-201 Government Records Access and Management Act 41712 5YR 05/31/2017 2017-12/41  
 R982-301 Councils 41713 5YR 05/31/2017 2017-12/41  
 R982-403-5 Income Exclusions 41594 NSC 05/23/2017 Not Printed  
 R982-601 Provider Code of Conduct 41714 5YR 05/31/2017 2017-12/42

Employment Development

R986-100 Employment Support Programs 41595 NSC 05/23/2017 Not Printed  
 R986-200 Family Employment Program 41596 NSC 05/23/2017 Not Printed  
 R986-300-305 Failure to Comply with an Employment Plan 41597 NSC 05/23/2017 Not Printed  
 R986-400-401 Authority for General Assistance (GA) and Applicable Rules 41598 NSC 05/23/2017 Not Printed  
 R986-600 Workforce Investment Act 41336 AMD 05/01/2017 2017-6/18  
 R986-600 Workforce Innovation and Opportunity Act 41599 NSC 05/23/2017 Not Printed  
 R986-700-706 Provider Rights and Responsibilities 41171 AMD 04/01/2017 2017-3/68  
 R986-900 Food Stamps 41600 NSC 05/23/2017 Not Printed

Unemployment Insurance

R994-102 Employment Security Act, Public Policy and Authority 41515 EXD 04/27/2017 2017-10/179  
 R994-106 Combined Wage Claims 41516 EXD 04/27/2017 2017-10/179  
 R994-303 Contribution Rates 41517 EXD 04/27/2017 2017-10/179  
 R994-401 Payment of Benefits 41518 EXD 04/27/2017 2017-10/180  
 R994-402 Extended Benefits (EB) 41519 EXD 04/27/2017 2017-10/180  
 R994-403-202 Qualifying Elements for Approval of Training 41427 AMD 05/30/2017 2017-8/54  
 R994-404 Payment Following Workers' Compensation 41686 5YR 05/19/2017 2017-12/42  
 R994-405-2 Separations from a Temporary Help Company (THC) 41103 AMD 03/01/2017 2017-1/97  
 R994-406 Fraud, Fault and Nonfault Overpayments 41687 5YR 05/19/2017 2017-12/43  
 R994-508 Appeal Procedures 41426 AMD 05/30/2017 2017-8/56