

UTAH STATE BULLETIN

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

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

Office of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for November 2017 Medicaid Rate Changes

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

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between September 16, 2017, 12:00 a.m., and October 02, 2017, 11:59 p.m. are included in this, the October 15, 2017, issue of the *Utah State Bulletin*.

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

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 Rules being repealed are completely struck out.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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least November 14, 2017. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through February 12, 2018, the agency may notify the Office of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Office of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

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

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

The Proposed Rules Begin on the Following Page

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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42179

FILED: 10/02/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this proposed rule amendment is to correct and clarify the existing rule, to add provisions regarding the responsibilities of a branch broker, to replace the current state approved Real Estate Purchase Contract (REPC) form with a newly approved REPC form, and to add the Deposit of Earnest Money With Title Company Addendum to Real Estate Purchase Contract form as a state-approved form available for use by licensees.

SUMMARY OF THE RULE OR CHANGE: In Section R162-2f-401a, the change corrects a typographical and a reference error. In Section R162-2f-401b, the change clarifies that a licensee must obtain the written consent of all owners of a property in order to advertise, offer to sell, or lease the property. In Subsection R162-2f-401c(2), the change requires that a branch broker exercise active supervision of all licensees and unlicensed staff employed by or affiliated with the branch and be personally responsible and accountable for all responsibilities and duties assigned to the branch broker by the principal broker and accepted by the branch broker. In Subsection R162-2f-401c(3), the change includes a branch broker from the exclusion of accountability already provided to a principal broker for certain violations of rule by an affiliated licensee or an unlicensed staff member when the branch broker follows the requirements set out in Subsection R162-2f-401c(3). In Section R162-2f-401f, the change approves for use by licensees the newly approved REPC form and the Deposit of Earnest Money With Title Company Addendum to Real Estate Purchase Contract form.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2f-103(1)(a) and Subsection 61-2f-206(8) and Subsection 61-2f-306(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division of Real Estate (Division) has the staff and budget in place to administer this proposed amendment. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact, affect those resources, or result in any additional cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Local governments are not required to comply with or enforce the Real Estate Licensing

and Practices Rules. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to local governments.

◆ **SMALL BUSINESSES:** The proposed amendment does not create new obligations for small businesses nor does it increase the cost associated with any existing obligation. However, some real estate brokerages employ one or more branch brokers who are affected by the proposed rule amendment. The proposed rule amendment in Subsection R162-2f-401c(2) would require a branch broker to actively supervise the conduct of all licensees and unlicensed staff employed by or affiliated with the branch or branches supervised by the branch broker. The Division and Real Estate Commission believe and understand that in most instances branch brokers have always been active in supervising the licensees and staff affiliated with the branch. It is conceivable that a branch broker may request or negotiate for additional compensation from the brokerage as a result of the obligation in the proposed amendment. However, after conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to small businesses because branch brokers have already been supervising licensees and staff for policy or business reasons.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendment does not create new obligations for persons other than small businesses, businesses, or local government entities nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule amendment in Subsection R162-2f-401c(2) would require a branch broker to actively supervise the conduct of all licensees and unlicensed staff employed by or affiliated with the branch or branches supervised by the branch broker. The Division and Real Estate Commission believe and understand that in most instances branch brokers have always been active in supervising the licensees and staff affiliated with the branch. In these instances, the branch brokers have been supervising licensees and staff as a result of a policy or business decision, not because of an obligation imposed by administrative rule. If the proposed amendment is made effective, a branch broker will be subjected to a new obligation that requires active supervision. To the extent that a branch broker has not been actively supervising licensees or unlicensed staff affiliated with the branch, or, if a branch broker feels obligated to increase the time spent actively supervising as a result of the proposed rule, the branch broker may incur a compliance cost. The compliance cost will be reflected in the amount of time spent supervising and possibly additional time documenting the supervision. The amount of time required to actively supervise licensees and staff will vary from branch to branch depending on the

number of licensees and staff affiliated with the branch. The value of the time spent supervising will also vary from branch broker to branch broker. The current REPC approved for use by licensees is being phased out and a new REPC form has been approved for use. Licensees may use the current REPC form until end of December 2017. Beginning in January 2018, licensees must (with a few exceptions) use the newly approved REPC. The current and new REPC forms are available online on the Division website at no cost to affected persons. The newly approved Deposit of Earnest Money With Title Company Addendum to Real Estate Purchase Contract form will also be on the Division website at no cost to affected persons. These forms are also available to many licensees from associations of which they are members. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of these amendments is to establish, by rule, provisions regarding the responsibilities of a branch broker to exercise active supervision over licensed and unlicensed staff employed by or affiliated with a branch broker, to apply to branch brokers the same safe harbor for compliance with the rule as currently accorded to a principal broker, and to approve for use by licensees the newly approved REPC form and the newly approved Deposit of Earnest Money with Title Company Addendum to Real Estate Purchase Contract form. Only the first of these amendments has any potential for fiscal impact upon small businesses. However, after conducting a thorough analysis, the Division has determined that the proposed rule amendment will not result in a fiscal impact to small businesses because branch brokers have already been supervising licensed and unlicensed staff, and there will be little or no change to current practices by branch brokers.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Justin Barney by phone at 801-530-6603, or by Internet E-mail at justinbarney@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2017

AUTHORIZED BY: Jonathan Stewart, Director

R162. Commerce, Real Estate.

R162-2f. Real Estate Licensing and Practices Rules.

R162-2f-401a. Affirmative Duties Required of All Licensed Individuals.

An individual licensee shall:

(1) uphold the following fiduciary duties in the course of representing a principal:

(a) loyalty, which obligates the agent to place the best interests of the principal above all other interests, including the agent's own;

(b) obedience, which obligates the agent to obey all lawful instructions from the principal;

(c) full disclosure, which obligates the agent to inform the principal of any material fact the agent learns about:

(i) the other party; or

(ii) the transaction;

(d) confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:

(i) a defect in the property; or

(ii) the client's ability to perform on the contract;

(e) reasonable care and diligence;

(f) holding safe and accounting for all money or property entrusted to the agent; and

(g) any additional duties created by the agency agreement;

(2) for the purpose of defining the scope of the individual's agency, execute a written agency agreement between the individual and the individual's principal, including:

(a) seller(s) the individual represents;

(b) buyer(s) the individual represents;

(c) buyer(s) and seller(s) the individual represents as a limited agent in the same transaction pursuant to this Subsection (4);

(d) the owner of a property for which the individual will provide property management services; and

(e) a tenant whom the individual represents;

(3) in order to represent both principals in a transaction as a limited agent, obtain prior informed consent by:

(a) clearly explaining in writing to both parties:

(i) that each is entitled to be represented by a separate agent;

(ii) the type(s) of information that will be held confidential;

(iii) the type(s) of information that will be disclosed; and

(iv) the circumstances under which the withholding of information would constitute a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations;

(b) obtaining a written acknowledgment from each party affirming that the party waives the right to:

(i) undivided loyalty;

(ii) absolute confidentiality; and

(iii) full disclosure from the licensee; and

(c) obtaining a written acknowledgment from each party affirming that the party understands that the licensee will act in a neutral capacity to advance the interests of each party;

(4) when acting under a limited agency agreement:

(a) act as a neutral third party; and

(b) uphold the following fiduciary duties to both parties:

(i) obedience, which obligates the limited agent to obey all lawful instructions from the parties, consistent with the agent's duty of neutrality;

(ii) reasonable care and diligence;

(iii) holding safe all money or property entrusted to the limited agent; and

(iv) any additional duties created by the agency agreement;

(5) when making an offer or solicitation to buy, sell, lease or rent real property as a principal, either directly or indirectly, or as an agent for a client, a licensee shall disclose in the initial contact with the other party the fact that the licensee holds a license with the division, whether the license status is active or inactive;

(6)[(5)] prior to executing a binding agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:

(a) the licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease, or rent real property;

(b) the fact that the licensee holds a license with the division, whether the license status is active or inactive, in any circumstance where the licensee is a principal in an agreement to buy, sell, lease, or rent real property;

(c) the licensee's agency relationship(s);

(d)(i) the existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and

(ii) the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance;

(7)[(6)] in order to offer any property for sale or lease, make reasonable efforts to verify the accuracy and content of the information and data to be used in the marketing of the property;

(8)[(7)] in order to offer a residential property for sale, disclose the source on which the licensee relies for any square footage data that will be used in the marketing of the property:

(a) in the written agreement, executed with the seller, through which the licensee acquires the right to offer the property for sale; and

(b) in a written disclosure provided to the buyer, at the licensee's direction, at or before the deadline for the seller's disclosure per the contract for sale;

(9)[(8)] upon initial contact with another agent in a transaction, disclose the agency relationship between the licensee and the client;

(10)[(9)] when executing a binding agreement in a sales transaction, confirm the prior agency disclosure:

(a) in the currently approved Real Estate Purchase Contract; or

(b) in a separate provision with substantially similar language incorporated in or attached to the binding agreement;

(10) when executing a lease or rental agreement, confirm the prior agency disclosure by:

(a) incorporating it into the agreement; or

(b) attaching it as a separate document;

(12)[(11)] if the licensee desires to act as a sub-agent for the purpose of showing property owned by a seller who is under contract with another brokerage, prior to showing the seller's property:

(a) notify the listing brokerage that sub-agency is requested; and

(b) enter into a written agreement with the listing brokerage with which the seller has contracted:

(i) consenting to the sub-agency; and

(ii) defining the scope of the agency;

(c) obtain from the listing brokerage all available information about the property; and

(d) uphold the same fiduciary duties outlined in this Subsection (1);

(13)[(12)] provide copies of a lease or purchase agreement, properly signed by all parties, to the party for whom the licensee acts as an agent;

(14)(a)[(13)(a)] in identifying the seller's brokerage in paragraph 5 of the approved Real Estate Purchase Contract, use:

(i) the principal broker's individual name; or

(ii) the principal broker's brokerage name; and

(b) personally fulfill the licensee's agency relationship with the client, notwithstanding the information used to complete paragraph 5;

(15)[(14)] timely inform the licensee's principal broker or branch broker of real estate transactions in which:

(a) the licensee is involved as agent or principal;

(b) the licensee has received funds on behalf of the principal broker; or

(c) an offer has been written;

(16)(a)[(15)(a)] disclose in writing to all parties to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and

(b) ensure that any such compensation is paid to the licensee's principal broker;

(17)(a)[(16)(a)] in negotiating and closing a transaction, a licensee may fill out those legal forms as provided for in Section 61-2f-306;

(18)[(17)] use an approved addendum form to make a counteroffer or any other modification to a contract;

(19)[(18)] in order to sign or initial a document on behalf of a principal in a sales transaction:

(a) obtain prior written authorization in the form of a power of attorney duly executed by the principal;

(b) retain in the file for the transaction a copy of said power of attorney;

(c) attach said power of attorney to any document signed or initialed by the individual on behalf of the principal;

(d) sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact;" and

(e) initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name);"

(20)[(19)] in order to sign or initial a document on behalf of a principal in a property management transaction:

(a) obtain prior written authorization executed by the principal which specifically identifies the actions that are authorized to be taken on behalf of the principal;

(b) retain in the file for the transaction a copy of the written authorization;

(c) sign as follows: "by (Licensee's Name), on behalf of Owner;" and

(d) initial as follows: "by (Licensee's [initials]initials), on behalf of Owner;"

(21)[(20)] if employing an unlicensed individual to provide assistance in connection with real estate transactions, adhere to the provisions of Section R162-2f-401g;

~~(22)~~~~(21)~~ strictly adhere to advertising restrictions as outlined in Section R162-2f-401h;

~~(23)~~~~(22)~~ as to a guaranteed sales agreement, provide full disclosure regarding the guarantee by executing a written contract that contains:

- (a) the conditions and other terms under which the property is guaranteed to be sold or purchased;
- (b) the charges or other costs for the service or plan;
- (c) the price for which the property will be sold or purchased; and
- (d) the approximate net proceeds the seller may reasonably expect to receive;

~~(24)~~~~(23)~~ immediately deliver money received in a real estate transaction to the principal broker for deposit; and

~~(25)~~~~(24)~~ as contemplated by Subsection 61-2f-401~~(20)~~~~(19)~~, when notified by the division that information or documents are required for investigation purposes, respond with the required information or documents in full and within ten business days.

R162-2f-401b. Prohibited Conduct As Applicable to All Licensed Individuals.

An individual licensee may not:

(1) engage in any of the practices described in Section 61-2f-401 et seq., whether acting as agent or on the licensee's own account, in a manner that:

- (a) fails to conform with accepted standards of the real estate sales, leasing, or management industries;
- (b) could jeopardize the public health, safety, or welfare; or
- (c) violates any provision of Title 61, Chapter 2f et seq. or the rules of this chapter;

(2) require parties to acknowledge receipt of a final copy of any document prepared by the licensee prior to all parties signing a contract evidencing agreement to the terms thereof;

(3) make a misrepresentation to the division:

- (a) in an application for license renewal; or
- (b) in an investigation.

(4)(a) propose, prepare, or cause to be prepared a document, agreement, settlement statement, or other device that the licensee knows or should know does not reflect the true terms of the transaction; or

(b) knowingly participate in a transaction in which such a false device is used;

(5) participate in a transaction in which a buyer enters into an agreement that:

- (a) is not disclosed to the lender; and
- (b) if disclosed, might have a material effect on the terms or the granting of the loan;

(6) use or propose the use of a double contract;

(7) place a sign on real property without the written consent of the property owner;

(8) take a net listing;

(9) sell listed properties other than through the listing broker;

(10) subject a principal to paying a double commission without the principal's informed consent;

(11) enter or attempt to enter into a concurrent agency representation when the licensee knows or should know that the principal has an existing agency representation agreement with another licensee;

(12) pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect, except that:

(a) a licensee may give a gift valued at \$150 or less to an individual in appreciation for an unsolicited referral of a prospect that results in a real estate transaction; and

(b) as to a property management transaction, a licensee may compensate an unlicensed employee or current tenant up to \$200 per lease for assistance in retaining an existing tenant or securing a new tenant;

(13) accept a referral fee from:

- (a) a lender; or
- (b) a mortgage broker;

(14) act as a real estate agent or broker in the same transaction in which the licensee also acts as a:

(a) mortgage loan originator, associate lending manager, or principal lending manager;

(b) appraiser or appraiser trainee;

(c) escrow agent; or

(d) provider of title services;

(15) act or attempt to act as a limited agent in any transaction in which:

(a) the licensee is a principal in the transaction; or

(b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction;

(16) make a counteroffer by striking out, whiting out, substituting new language, or otherwise altering:

(a) the boilerplate provisions of the Real Estate Purchase Contract; or

(b) language that has been inserted to complete the blanks of the Real Estate Purchase Contract;

(17) advertise or offer to sell or lease property without the written consent of:

(a) the owner(s) of the property; and

(b) if the property is currently listed, the listing broker;

(18) advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor;

(19) represent on any form or contract that the individual is holding client funds without actually receiving funds and securing them pursuant to Subsection R162-2f-401a~~(24)~~~~(23)~~;

(20) when acting as a limited agent, disclose any information given to the agent by either principal that would likely weaken that party's bargaining position if it were known, unless the licensee has permission from the principal to disclose the information;

(21) disclose, or make any use of, a short sale demand letter outside of the purchase transaction for which it is issued;

(22) in a short sale, have the seller sign a document allowing the licensee to lien the property; or

(23) charge any fee that represents the difference between:

(a) the total concessions authorized by a seller and the actual amount of the buyer's closing costs; or

(b) in a short sale, the sale price approved by the lender and the total amount required to clear encumbrances on title and close the transaction.

R162-2f-401c. Additional Provisions Applicable to~~[-Principal]~~ Brokers.

(1) A principal broker shall:

(a) strictly comply with the record retention and maintenance requirements of Subsection R162-2f-401k;

(b) provide to the person whom the principal broker represents in a real estate transaction:

(i) a detailed statement showing the current status of a transaction upon the earlier of:

(A) the expiration of 30 days after an offer has been made and accepted; or

(B) a buyer or seller making a demand for such statement; and

(ii) an updated transaction status statement at 30-day intervals thereafter until the transaction either closes or fails;

(c)(i) regardless of who closes a real estate transaction, ensure that final settlement statements are reviewed for content and accuracy at or before the time of closing by:

(A) the principal broker;

(B) an associate broker or branch broker affiliated with the principal broker; or

(C) the sales agent who is:

(I) affiliated with the principal broker; and

(II) representing the principal in the transaction; and

(ii) ensure the principals in each closed real estate transaction receive copies of all documents executed in the transaction closing;

(d) in order to assign all or part of the principal broker's compensation to an associate broker or sales agent in accordance with Section 61-2f-305, provide written instructions to the title insurance agent that include the following:

(i) an identification of the property involved in the real estate transaction;

(ii) an identification of the principal broker and sales agent or associate broker who will receive compensation in accordance with the written instructions;

(iii) a designation of the amount of compensation that will be received by both the principal broker and the sales agent or associate broker;

(iv) a prohibition against alteration of the written instructions by anyone other than the principal broker; and

(v) additional instructions at the discretion of the principal broker;

(e) obtain written consent from both the buyer and the seller before retaining any portion of an earnest money deposit being held by the principal broker;

(f) exercise active supervision over the conduct of all licensees and unlicensed staff employed by or affiliated with the principal broker, whether acting as:

(i) the principal broker for an entity; or

(ii) a branch broker;

(g) strictly adhere to the rules governing real estate auctions, as outlined in Section R162-2f-401i;

(h) strictly adhere to the rules governing property management, as outlined in Section R162-2f-401j;

(i)(i) except as provided in this Subsection (1)(i)(iii), within three business days of receiving a client's money in a real estate transaction, deposit the client's money into a trust account:

(A) maintained by the principal broker pursuant to Section R162-2f-403; or

(B) if the parties to the transaction agree in writing, maintained by:

(I) a title company pursuant to Section 31A-23a-406; or

(II) another authorized escrow entity; and

(ii) within three business days of receiving money from a client or a tenant in a property management transaction, deposit the money into a trust account maintained by the principal broker pursuant to Section R162-2f-403 or forward or deposit client or tenant money into an account maintained by the property owner;

(iii) a principal broker is not required to comply with this Subsection (1)(i)(i) or (ii) if:

(A) the contract or other written agreement states that the money is to be:

(I) held for a specific length of time; or

(II) as to a real estate transaction, deposited upon acceptance by the seller; or

(B) as to a real estate transaction, the Real Estate Purchase Contract or other written agreement states that a promissory note may be tendered in lieu of good funds and the promissory note:

(I) names the seller as payee; and

(II) is retained in the principal broker's file until closing;

(j)(i) maintain at the principal business location a complete record of all consideration received or escrowed for real estate and property management transactions; and

(ii) be personally responsible at all times for deposits held in the principal broker's trust account;

(k)(i)(A)(I) in a real estate transaction, assign a consecutive, sequential number to each offer; and

(II) assign a unique identification to each property management client; and

(B) include the transaction number or client identification, as applicable, on:

(I) trust account deposit records; and

(II) trust account checks or other equivalent records evidencing the transfer of trust funds;

(ii) maintain a separate transaction file for each offer in a real estate transaction, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;

(iii) maintain a record of each rejected offer in a real estate transaction that does not involve funds deposited to trust:

(A) in separate files; or

(B) in a single file holding all such offers; and

(l) if the principal broker assigns an affiliated associate broker or branch broker to assist the principal broker in accomplishing the affirmative duties outlined in this Subsection (1):

(i) actively supervise any such associate broker or branch broker; and

(ii) remain personally responsible and accountable for adequate supervision of all licensees and unlicensed staff affiliated with the principal broker.

(2) A branch broker shall:

(a) exercise active supervision over the conduct of all licensees and unlicensed staff employed by or affiliated with the branch or branches supervised by the branch broker; and

(b) be personally responsible and accountable for all other responsibilities and duties assigned to the branch broker by the principal broker and accepted by the branch broker.

[(2)](3) [A]Neither a principal broker nor a branch broker shall[not] be deemed in violation of [this-]Subsections (1)(f)and (2) where:

(a) an affiliated licensee or unlicensed staff member violates a provision of Title 61, Chapter 2f et seq. or the rules promulgated thereunder;

(b) the supervising broker had in place at the time of the violation specific written policies or instructions to prevent such a violation;

(c) reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures;

(d) upon learning of the violation, the broker attempted to prevent or mitigate the damage;

(e) the broker did not participate in the violation;

(f) the broker did not ratify the violation; and

(g) the broker did not attempt to avoid learning of the violation.

R162-2f-401f. Approved Forms.

(1) The following standard forms are approved by the commission and the Office of the Attorney General for use by all licensees:

(a)[(+)] July 19, 2017, [~~August 27, 2008~~], Real Estate Purchase Contract;

(b)[(+)] January 1, 1987, Uniform Real Estate Contract;

(c)[(+)] October 1, 1983, All Inclusive Trust Deed;

(d)[(+)] October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;

(e)[(+)] August 5, 2003, Addendum to Real Estate Purchase Contract;

(f)[(+)] August 27, 2008, Seller Financing Addendum to Real Estate Purchase Contract;

(g)[(+)] January 1, 1999, Buyer Financial Information Sheet;

(h)[(+)] August 27, 2008, FHA/VA Loan Addendum to Real Estate Purchase Contract;

(i)[(+)] January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;

(j)[(+)] January 1, 1999, Lead-based Paint Addendum to Real Estate Purchase Contract; and

(k)[(+)] January 1, 1999, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards.

(l) July 19, 2017, Deposit of Earnest Money With Title Company Addendum to Real Estate Purchase Contract.

KEY: real estate business, operational requirements, trust account records, notification requirements

Date of Enactment or Last Substantive Amendment: [May 10], 2017

Notice of Continuation: August 12, 2015

Authorizing, and Implemented or Interpreted Law: 61-2f-103(1); 61-2f-105; 61-2f-203(1)(e); 61-2f-206(3); 61-2f-206(4)(a); 61-2f-306; 61-2f-307

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42181

FILED: 10/02/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the proposed rule amendment is to clarify the experience required of an applicant with regard to exterior measurements of properties, to change the inspection requirements for trainee appraisers, to modify the standards for continuing education courses by a professional appraisal education organization, and to correct minor errors in the existing rule.

SUMMARY OF THE RULE OR CHANGE: In Section R162-2g-304b, the change allows a state-licensed appraiser who, within six months of renewing their license, qualifies for certification to pay a transfer fee rather than an application fee. In Section R162-2g-304c, the change corrects the number of experience hours required by an applicant for certification as a certified-general appraiser that are to be completed during the time when the applicant was a state-licensed appraiser or a state-certified residential appraiser. In Section R162-2g-304d, the change reduces the number of residential appraisals for which an exterior measurement is required from 100 to 35 and clarify the extent of the exterior measurement to be performed by the appraiser for qualifying experience. In Section R162-2g-307d, the change provides for the registration of a continuing education course by a professional appraisal education organization and distinguish between the standards of approval for a certified course and those for a registered course. In Section R162-2g-307f, the change distinguishes the requirements for instructor certification for a certified course and a registered course. In Section R162-2g-311, the change provides that a supervising trainer determine whether a trainee has demonstrated sufficient competency to be able to make unaccompanied inspections of residential properties after making a minimum of 35 inspections while accompanied by the supervising appraiser. This amendment could reduce the number of accompanied inspections from 100 to 35, depending on the determination of the supervising appraiser as to the sufficient competency of the trainee.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2g-201 and Section 61-2g-307 and Section 61-2g-311 and Section 61-2g-312 and Section 61-2g-313 and Section 61-2g-314

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Division of Real Estate (Division) has the staff and budget in place to administer this proposed amendment. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact affect, those resources, or result in any additional cost or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** Local governments are not required to comply with or enforce the Real Estate Licensing

Commerce, Real Estate R162-2g Real Estate Appraiser Licensing and Certification Administrative Rules

and Practices rules. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to local governments.

♦ **SMALL BUSINESSES:** The proposed amendment does not create new obligations for small businesses nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendment does not create new obligations for persons other than small businesses, businesses, or local government entities nor does it increase the cost associated with any existing obligation. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In each instance, the proposed rule amendment does not create new obligations for affected persons subject to the administrative rules but instead reduces obligations already existing under the current rule. After conducting a thorough analysis, it was determined that the proposed rule amendment will not result in a fiscal impact to affected persons except that it may reduce the time and expenses for affected persons if the proposed rule amendment is made effective.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These amendments: 1) allow a state-licensed appraiser who, within six months of renewing their license, qualifies for certification to pay a transfer fee rather than an application fee; 2) correct the number of experience hours required of an applicant for certification as a Certified-General Appraiser that are to be completed during the time when the applicant was a state-licensed appraiser or a state certified residential appraiser; 3) reduce for a trainee the number of residential appraisals for which an exterior measurement is required from the first 100 to the first 35 residential appraisals; 4) provide for the registration of a continuing education course by a professional appraisal education organization, and distinguish between the standards of approval for a certified course and those for a registered course; and 5) provide that a supervising trainer determine whether a trainee has demonstrated sufficient competency to be able to make unaccompanied inspections of residential properties after making a minimum of 35 inspections rather than require 100 accompanied inspections. Each of these amendments has a potential of reducing costs to small businesses. The precise amount of such cost reductions is indeterminate based on the circumstances of each case. In all events, no adverse fiscal impact to small businesses is contemplated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Justin Barney by phone at 801-530-6603, or by Internet E-mail at justinbarney@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/01/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/08/2017

AUTHORIZED BY: Jonathan Stewart, Director

R162. Commerce, Real Estate.

R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules.

R162-2g-304b. Application to Sit for the State-Certified Residential Appraiser Exam.

(1) An applicant to sit for the state-certified residential appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division, evidencing at least 2,500 hours of total appraisal experience, at least 500 of which:

(i) meet the requirements of Subsection R162-2g-304d;

(ii) are completed during the time when the applicant is licensed as a state-licensed appraiser:

(A) with the division; or

(B) in another state, if licensure was required in that state at the time the appraisal was performed; and

(iii) are accrued in no fewer than:

(A) 24 months from the date the applicant became an appraiser trainee for applicants submitting experience primarily from appendices 1 and 2; or

(B) 36 months from the date the applicant became an appraiser trainee for applicants submitting experience primarily from appendix 3;

(b) evidence of having received a Bachelor's degree or higher from an accredited college or university;

(c) evidence of having successfully completed a state-certified residential appraiser pre-licensing required core curriculum as described in Appendix 4, Table 1 and that has been certified by the division pursuant to Subsection R162-2g-307c; and

(d) except as provided in this Subsection (4)(a), a nonrefundable application fee.

(2) The pre-licensing curriculum required by Subsection(1) shall be provided by:

(a) a college or university;

- (b) a community or junior college;
- (c) a real estate appraisal or real estate related organization;
- (d) a state or federal agency or commission;
- (e) a proprietary school;
- (f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

(3)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (3)(a), an applicant shall:

- (i) return the examination application form to the testing service designated by the division; and
- (ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

(4)(a) A state-licensed appraiser who, within six months of renewing the license, submits an application and consequently qualifies for certification shall not be required to pay the entire application fee but shall instead pay the difference between the renewal fee and the application fee.

(b) A certification that is obtained under this Subsection (4) (a) shall expire on the same date that the license was due to expire prior to the granting of certification.

R162-2g-304c. Application to Sit for the State-Certified General Appraiser Exam.

(1) An applicant to sit for the state-certified general appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division, evidencing at least 3,000 hours of total appraisal experience, at least 1,000[~~at~~] of which:

- (i) meet the requirements of Subsection R162-2g-304d;
- (ii) are completed during the time when the applicant is licensed as a state-licensed appraiser or state-certified residential appraiser:

(A) with the division; or

(B) in another state, if licensure was required in that state at the time the appraisal was performed; and

(iii) are accrued in no fewer than:

(A) 30 months from the date the applicant became an appraiser trainee for applicants submitting experience primarily from appendices 1 and 2, or

(B) 42 months from the date the applicant became an appraiser trainee for applicants submitting experience primarily from appendix 3;

(b) evidence of having received a bachelor's degree or higher degree from an accredited college or university;

(c) evidence of having successfully completed a state-certified general appraiser pre-licensing required core curriculum as described in Appendix 4, Table 1 and that has been certified by the division pursuant to Subsection R162-2g-307c; and

(d) except as provided in this Subsection (4)(a)~~(5)(a)~~, a nonrefundable application fee.

(2) The pre-licensing curriculum required by Subsections (1)(c) shall be provided by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

(3)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (3)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

(4)(a) A state-licensed appraiser who, within six months of renewing the license, submits an application and consequently qualifies for certification shall not be required to pay the entire application fee but shall instead pay the difference between the renewal fee and the application fee. ~~[meets the requirements for certification and files a completed application shall pay a transfer fee rather than an application fee.]~~

(b) A certification that is obtained under this Subsection (4) (a) shall expire on the same date that the license was due to expire prior to the granting of certification. ~~[transfer.]~~

R162-2g-304d. Experience Hours.

(1)(a) Except as provided in this Subsection (1)(b), appraisal experience shall be measured in hours according to the appraisal experience hours schedules found in Appendices 1 through 3.

(b)(i) An applicant who has experience in categories other than those shown on the appraisal experience hours schedules, or who believes the schedules do not adequately reflect the applicant's experience or the complexity or time spent on an appraisal, may petition the board on an individual basis for evaluation and approval of the experience as being substantially equivalent to that required for licensure or certification.

(ii) Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the board may award the applicant an appropriate number of hours for the alternate experience.

(2) General restrictions.

(a) An applicant may not accrue more than 2,000 experience hours in any 12-month period.

(b) The board may not award credit for:

(i) appraisal experience earned more than five years prior to the date of application;

(ii) appraisals that were performed in violation of:

(A) Utah law;

(B) the law of another jurisdiction; or

(C) the administrative rules adopted by the division and the board;

(iii) appraisals that fail to comply with USPAP;

(iv) appraisals of the value of a business as distinguished from the appraisal of commercial real estate;

(v) personal property appraisals; or

(vi) an appraisal that fails to clearly and conspicuously disclose the contribution made by the applicant in completing the assignment.

(c) At least 50% of the appraisals submitted for experience credit shall be appraisals of properties located in Utah.

(d) With regard to experience hours claimed from the schedules found in Appendices 1 and 2:

(i) appraisals where only an exterior inspection of the subject property is performed shall be granted 90% of the credit awarded an appraisal that includes an interior inspection of the subject property; and

(ii) no more than 25% of the total experience required for licensure or certification may be earned from appraisals where the interior of the subject property is not inspected.

(e) A maximum of 250 experience hours may be earned from appraisal of vacant land.

(f) Appraisals on commercial or multi-unit form reports shall be awarded 75% of the credit normally awarded for the appraisal.

(g) Experience gained for work without a traditional client may qualify for experience hours but cannot exceed 50% of the total experience requirement. Work without a traditional client includes the following:

(i) a client hiring an appraiser for a business purpose; or

(ii) a practicum course so long as the course is approved by the AQB Course Approval Program and, if the course is taught in Utah either live or by distance education, also approved by the division.

(h) An applicant may receive credit only for experience hours actually worked by the applicant and as limited by the maximum experience hours described in these rules.

(3) Specific restrictions applicable to trainees applying for licensure.

(a)(i) A registered trainee may not claim experience hours for any appraisal work performed after January 1, 2015 unless the trainee and the trainee's supervisor(s) have completed the division-approved Supervisory Appraiser and Appraiser Trainee Course prior to performing the work to be claimed.

(ii) A trainee and the trainee's supervisor who signs the experience log shall document on the log the specific duties that the trainee performs for each appraisal.

(b) For each duty performed, the trainee shall be awarded a percentage of the total experience hours that may be awarded for the property type being appraised:

(i) pursuant to the appraisal experience hour schedules found in Appendices 1 through 3; and

(ii) with the following limitations for Appendix 2:

(A) participation in highest and best use analysis: 10% of total hours;

(B) participation in neighborhood description and analysis: 10% of total hours;

(C) property inspection: 20% of total hours, pursuant to this Subsection (3)(c);

(D) participation in land value estimate: 20% of total hours;

(E) participation in sales comparison property selection and analysis: 30% of total hours;

(F) participation in cost analysis: 20% of total hours;

(G) participation in income analysis: 30% of total hours;

(H) participation in the final reconciliation of value: 10% of total hours; and

(I) participation in report preparation: 20% of total hours.

(J) The applicant may claim up to 100% of the total hours allowed for the tasks listed in this Subsection(A) through (I).

(c) In order for a trainee to claim credit for an inspection pursuant to this Subsection (3)(b)(ii)(C):

(i) as to the first ~~35~~[40] residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must include:

(A) exterior measurement of the relatively permanent structures located on the subject property that are designed or intended for support, enclosure, shelter, or protection of persons, animals, or property having a permanent roof supported by columns or walls; [~~exterior of a property that is the subject of an appraisal;~~] and

(B) inspection of the exterior of a property that is used as a comparable in an appraisal; and

(ii) as to appraisals after the first ~~35~~[40] residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must satisfy all scope of work requirements.

(d) No more than one-third of the experience hours submitted toward licensure may come from any one of the categories identified in this Subsection (3)(b)(ii).

(4) Specific restrictions applicable to applicants for certification.

(a) An individual who obtained a license from the division through reciprocity shall provide to the division all records necessary for the division to verify that the individual satisfies the experience requirements outlined in these rules.

(b) The board may not award credit:

(i) for any appraisal where the applicant cannot prove more than 50% participation in the:

(A) data collection;

(B) verification of data;

(C) reconciliation;

(D) analysis;

(E) identification of property and property interests;

(F) compliance with USPAP standards; and

(G) preparation and development of the appraisal report; or

(ii) to more than one licensed appraiser per completed appraisal, except as provided in this Subsection (5).

(c)(i) An individual applying for certification as a state-certified residential appraiser shall document at least 75% of the hours submitted from:

(A) the residential experience hours schedule found in Appendix 1; or

(B) the residential portion of the mass appraisal hours schedule found in Appendix 3.

(ii) No more than 25% of the total hours submitted may be from:

(A) the general experience hours schedule found in Appendix 2; or

(B) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(d) An individual applying for certification as a state-certified general appraiser shall document at least 1,500 experience hours as having been earned from:

(i) the general experience hours schedule found in Appendix 2; or

(ii) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(5) Specific restrictions applicable to mass appraisers.

(a) Single-property appraisals performed under USPAP Standards 1 and 2 by mass appraisers shall be awarded full credit pursuant to Appendices 1 and 2.

(b) Review and supervision of appraisals by mass appraisers shall be awarded credit pursuant to this Subsection (6)(b)-(c).

(c)(i) Mass appraisers and mass appraiser trainees who perform 60% or more of the appraisal work shall be awarded full credit pursuant to Appendix 3.

(ii) Mass appraisers and mass appraiser trainees who perform between 25% and 59% of the appraisal work shall be awarded 50% credit pursuant to Appendix 3.

(iii) Mass appraisers and mass appraisal trainees who perform less than 25% of the appraisal work shall be awarded no credit for the appraisal assignment.

(d) In addition to submitting proof of required experience and samples, randomly selected from the experience log, of work conforming to USPAP Standard 6:

(i) a state-licensed appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least five appraisals conforming to USPAP Standards 1 and 2;

(ii) a state-certified residential appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight residential appraisals:

(A) conforming to USPAP Standards 1 and 2; and

(B) including the following property types:

(I) vacant property;

(II) two- to four-unit dwelling;

(III) non-complex single-family unit; and

(IV) complex single-family unit; and

(iii) a state-certified general appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight appraisals from Appendix 2 conforming to USPAP Standards 1 and 2.

(e) No more than 60% of the total hours submitted for licensure or certification may be earned from any combination of appraisal assignments related to:

(i) property improvement inspection;

(ii) land segregation (division);

(iii) CAMA data entry; and

(iv) sale ratio study.

(f)(i) Mass appraisal of property with a personal property component of less than 50% of value shall be awarded full credit pursuant to Appendix 3 for the type of property appraised.

(ii) Mass appraisal of property with a personal property component of 50% to 75% of value shall be awarded 50% credit pursuant to Appendix 3 for the type of property appraised.

(iii) Mass appraisal of property with a personal property component greater than 75%, but less than 100%, shall be awarded 25% credit pursuant to Appendix 3 for the type of property appraised.

(iv) Mass appraisal of property with no real property component shall be awarded no credit.

(g) The appraisals submitted for review pursuant to this Subsection (5)(d) shall be selected from the applicant's most recent work.

(6) Special circumstances - condemnation appraisals, review appraisals, supervision of appraisers, other real estate experience, and government agency experience.

(a) Condemnation appraisals. A condemnation appraisal shall be awarded an additional 50% of the hours normally awarded for the appraisal if the condemnation appraisal includes a before-and-after appraisal because of a partial taking of the property.

(b) Review appraisals.

(i) Review appraisals shall be awarded experience credit when the appraiser performs technical reviews of appraisals prepared by employees, associates, or others, provided the appraiser complies with USPAP Standards Rule 3 when the appraiser is required to comply with the rule.

(ii) Except as provided in this Subsection (6)(e)(i), the following credit shall be awarded for review of appraisals:

(A) desk review: 30% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours; and

(B) field review: 50% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours.

(c) Supervision of appraisers. Except as provided in this Subsection (6)(e)(i), supervision of appraisers shall be awarded 20% of the hours that would be awarded to the appraisal, up to a maximum of 500 hours.

(d) Other real estate experience acceptable for certification.

(i) Provided that an applicant demonstrates to the satisfaction of the board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions, the following activities may be used to satisfy up to 50% of the experience required for certification:

(A) preliminary valuation estimates;

(B) range of value estimates or similar studies;

(C) other real estate-related experience gained by:

(I) bankers;

(II) builders;

(III) city planners and managers; or

(IV) other individuals.

(ii) A comparative market analysis by an individual licensed under Section 61-2f et seq. may be granted up to 100% experience credit toward certification if:

(A) the analysis conforms with USPAP Standards Rules 1 and 2; and

(B) the individual demonstrates to the board that the individual uses similar techniques as appraisers to value properties and effectively utilize the appraisal process.

(iii) Except as provided in this Subsection (6)(e)(i), no more than 50% of the total experience required for certification may be earned through any combination of experience described in this Subsection (6)(b)-(d).

(e) Government agency experience.

(i) An individual who obtains experience hours in conjunction with investigation by a government agency is not subject to the hour limitations of this Subsection (6).

(ii) In addition to submitting proof of required experience, an applicant whose experience is earned primarily in conjunction with investigations by government agencies and through review of appraisals, with no opinion of value developed, shall submit proof of having complied with USPAP Standards 1 and 2 in performing appraisals as follows:

(A) if applying for state-licensed appraiser with experience reviewing residential appraisals, five appraisals of one-unit dwellings;

(B) if applying for state-certified residential appraiser with experience reviewing residential appraisals, eight appraisals of one-unit dwellings; and

(C) if applying for state-certified general appraiser with experience reviewing appraisals of property types listed in Appendix 2, at least eight appraisals of property types identified in Appendix 2.

(7) The board, at its discretion, may request the division to verify the claimed experience by any of the following methods:

(a) verification with the clients;

(b) submission of selected reports to the board; and

(c) field inspection of reports identified by the applicant at the applicant's office during normal business hours.

R162-2g-307d. Continuing Education Course Registration and Certification.

(1) The division and the board may not award continuing education credit for a course that is taught in Utah to registered, licensed, or certified appraisers unless the course is registered or certified prior to its being taught.

(2) To certify a continuing education course, an applicant shall, at least 30 days prior to the course being taught, submit a completed application as required by the division, including:

(a) name and contact information of the course sponsor and the entity through which the course will be provided;

(b) description of the physical facility where the course will be taught;

(c) the proposed number of credit hours for the course;

(d) identification of whether the method of instruction will be traditional education or distance education;

(e) title of the course;

(f) statement defining how the course will meet the objectives of continuing education by increasing the licensee's knowledge, professionalism, and ability to protect and serve the public;

(g) course outline including:

(i) a description of the subject matter covered in each 15-minute segment; and

(ii) a minimum of one learning objective for every hour of class time;

(h) the name and certification number of each certified instructor who will teach the course;

(i) copies of all materials that will be distributed to the participants;

(j) the procedure for pre-registration;

(k) the tuition or registration fee and a copy of the cancellation and refund policy;

(l) except for courses approved for distance education, the procedure for taking and maintaining control of attendance during class time;

(m) sample of the completion certificate;

(n) signed statement agreeing that the course provider will, within 10 business days of completing the class, upload to the division the following information:

(i) course name;

(ii) course certificate number assigned by the division;

(iii) date the course was taught;

(iv) number of credit hours; and

(v) names and license numbers of all students receiving continuing education credit;

(o) signed statement agreeing not to market personal sales products; and

(p) other information the division might require.

~~[(2)](3)~~ Standards for approval of a certified course.

(a)(i) A distance education course shall:

(A) provide interaction between the student and instructor; and

(B) include a written examination that requires a student to demonstrate mastery and fluency.

(ii) The division may approve a distance education course offered by a college or university if the college or university:

(A) offers distance education programs in other disciplines;

and

(B)(I) is accredited by the Commission on Colleges or a regional accreditation association; or

(II) is approved by the International Distance Education Certification Center.

(b) The course topic must be AQB-approved.

(c) The procedure for taking and maintaining control of attendance shall be more extensive than having the students sign a class roll.

(d) The completion certificate shall allow for entry of:

(i) licensee's name;

(ii) type of license;

(iii) license number;

(iv) date of course;

(v) name of the course provider;

(vi) course title;

~~(vii)~~~~[(viii)]~~ course certification number and expiration date;

~~(viii)~~~~[(ix)]~~ credit hours awarded; and

~~(ix)~~~~[(x)]~~ signatures of the course sponsor and the licensee.

(e) A real estate appraisal-related field trip that is submitted for continuing education credit may not include transit time to or from the field trip location as part of the credit hours awarded.

(4) Non-certified continuing education credit. Except as provided in Subsection ~~R162-2g-307d(1)~~~~[R162-2f-307d(1)]~~, the board may award continuing education credit on a case-by-case basis for the following:

(a) up to one-half of an individual's continuing education credit requirement for:

(i) participation, other than as a student, in appraisal educational processes and programs; or

(ii) teaching, program development, authorship of textbooks, or similar activities that are determined by the board to be equivalent to obtaining continuing education;

(b) service as a member of the experience review committee, or the technical advisory panel, if approved by the board and offered in accordance with AQB standards as a:

- (i) practicum course under this Subsection (3)(a); or
- (ii) course under this Subsection (3)(b); and
- (c) completion of any course that:

(i) meets the continuing education objectives of increasing the licensee's knowledge, professionalism, and ability to protect and serve the public; and

- (ii) is taught outside the state of Utah.

(5) Standards for approval of a registered course.

(a) A professional appraisal education organization may register a special event for continuing education, subject to the following conditions:

(i) the professional appraisal education organization shall submit a one-time application and registration fee to the division to register the organization as a qualified continuing education course provider and the special event for continuing education;

(ii) the division may grant approval of the special event based on the demonstrated experience of the professional appraisal education organization in providing, monitoring, and supervising quality professional course offerings.

(b) The registered organization is solely responsible for and accountable to the division:

(i) for the selection of appraisal instructors who are subject matter experts and industry qualified in the course(s) or segment of the course(s) they teach;

- (ii) to ensure that:

(A) course instructors have subject matter expertise in the content area they are instructing; and

(B) the course content of classes taught by both appraiser and non-appraiser course instructors is directly industry pertinent, relevant, and beneficial to and enhances the professional skills of the attending appraisers, and promotes the protection and wellbeing of the industry and the general public;

(iii) to monitor the attendance of each appraiser during the presentation of the course by taking and maintaining a list of attendees actually present during the presentation to ensure that an appraiser actually attends each CE course segment before providing a CE certificate or CE credit to the appraiser; and

(iv) to ensure that the registered course complies with the general criteria applicable to continuing education set forth in sections R162-2g-307a and R162-2g-307b.

(6)(a) The special event registered course may last for a maximum of seven consecutive days.

(b) The special event registered course is a single, one-time event and may not be repeated unless the professional appraisal education organization submits to the division an application and registration fee and receives division approval for a subsequent, single, one-time event.

(c) A professional appraisal education organization shall submit a separate course application for each course taught at the special event, however, only a single application fee is required to be paid to the division for each special event.

(d) The division maintains a fee schedule based on the total number of CE hours awarded for a CE course. The application and registration fee for a special event course is the fee from the division fee schedule.

R162-2g-307f. Instructor Certification for Continuing Education.

(1) [A]Except for the limited circumstances provided for in Section R162-2g-307d for special continuing education events conducted by a professional appraisal education organization, a continuing education course that is required to be certified shall be taught by a certified instructor.

(2) To obtain a continuing education instructor certification, and individual shall, at least 30 days prior to the date on which instruction is proposed to begin:

(a) evidence that the applicant meets the character and competency requirements outlined in Subsection R162-2g-302(2)-(3);

(b) submit a completed application form, as provided by the division;

(c) evidence:

(i) at least three years of full-time experience in the course subject;

(ii) college-level education related to the course subject; or

(iii) a combination of experience and education acceptable to the division;

(d) evidence:

(i) at least 12 months of full-time teaching experience;

(ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or

(iii) attendance at the division's Instructor Development Workshop;

(e) provide a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

(f) provide a signed statement agreeing not to market personal sales products;

(g) provide any other information the division requires; and

(h) pay a nonrefundable application fee.

(3) A continuing education instructor certification is valid for two years.

(4) To renew a continuing education instructor certification, an individual shall, prior to the date of expiration:

(a) submit a completed renewal application, as provided by the division;

(b)(i) evidence having taught a minimum of 12 continuing education credit hours during the past term of certification; or

(ii) provide a written explanation outlining the reason for not meeting the requirement having taught 12 continuing education credit hours and provide evidence satisfactory to the division that the applicant maintains an appropriate level of expertise; and

(c) pay a nonrefundable renewal fee.

(5)(a) To reinstate an expired continuing instructor certification within 30 days following the expiration date, an individual shall:

(i) comply with Subsection (4); and

(ii) pay a nonrefundable late fee.

(b) To reinstate an expired continuing instructor certification after 30 days and within six months following the expiration date, an individual shall:

(i) comply with Subsection (4); and

(ii) pay a nonrefundable reinstatement fee;

(c) After a continuing instructor certification has been expired for six months, an individual is required to apply as an original applicant and obtain a new certification.

R162-2g-311. Scope of Authority.

- (1) Trainees.
- (a) An individual who has properly qualified as a trainee pursuant to Subsection R162-2g-302 may perform appraisal-related duties within the competence and scope of authority of the state-certified supervisory appraiser as follows:
- (i) participating in property inspections;
 - (ii) measuring or assisting in the measurement of properties;
 - (iii) performing appraisal-related calculations;
 - (iv) participating in the selection of comparables for an appraisal assignment;
 - (v) making adjustments to comparables; and
 - (vi) drafting or assisting in the drafting of an appraisal report.
- (b) The trainee may have more than one supervisory appraiser.
- (c) The supervising appraiser shall be responsible to determine the point at which a trainee is competent to participate in each of the activities identified in this Subsection (1)(a), within the following limitations:
- (i) As to a minimum of the trainee's first 35[+00] inspections of residential properties:
 - (A) the trainee shall be accompanied and supervised by a state-certified appraiser;
 - (B) both the interior and the exterior of the properties shall be inspected; and
 - (C) the appraisal report shall comply with the requirements of Subsection R162-2g-502a(1)(g).
 - (ii) After the trainee's first 35 inspections, the supervising appraiser shall determine whether the trainee has demonstrated sufficient competency to continue making inspections of residential properties without being accompanied by the supervising appraiser.
 - (iii)[(++)] As to the trainee's first 20 inspections of non-residential properties:
 - (A) the trainee shall be accompanied and supervised by a state-certified general appraiser;
 - (B) both the interior and the exterior of the properties shall be inspected; and
 - (C) the appraisal report shall comply with the requirements of Subsection R162-2g-502a(1)(g).
 - (d) A trainee may not:
 - (i) solicit or accept an assignment on behalf of anyone other than:
 - (A) the trainee's supervisor; or
 - (B) the supervisor's appraisal firm;
 - (ii) sign an appraisal report or discuss an appraisal assignment with anyone other than:
 - (A) the appraiser responsible for the assignment;
 - (B) state enforcement agencies;
 - (C) third parties as may be authorized by due process of law; and
 - (D) a duly authorized professional peer review committee.
 - (e) The following are not subject to the scope of authority limitations of this Subsection (1):
 - (i) full-time elected county assessors; and
 - (ii) any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll.
- (2) State-licensed appraisers. In a federally-related transaction, state-licensed appraisers may appraise:

- (a) non-complex one- to four-residential units having a transaction value of less than \$1,000,000;
 - (b) complex one- to four- residential units having a transaction value of less than \$250,000; and
 - (c) vacant or unimproved land that is utilized for one- to four-family purposes, or for which the highest and best use is one- to four-family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.
- (3) State-licensed appraisers and state-certified residential appraisers may not perform appraisals of the following:
- (a) subdivisions for which:
 - (i) a development analysis/appraisal is necessary; or
 - (ii) a discounted cash flow analysis is required by the terms of the assignment; and
 - (b) vacant land if the highest and best use of the land is for five or more one- to four-family units.

KEY: real estate appraisals, school certification, instructor certification

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

Notice of Continuation: August 18, 2016

Authorizing, and Implemented or Interpreted Law: 61-2g-201(2)(h); 61-2g-202(1); 61-2g-205(5)(c); 61-2g-307(3); 61-2g-401(5)

Governor, Economic Development R357-21 Rural Jobs Tax Credit

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 42185

FILED: 10/02/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to define and clarify the standards required to apply for and receive a non-refundable tax credit under the Rural Jobs Act.

SUMMARY OF THE RULE OR CHANGE: The rule defines and clarifies the standards required to apply for and receive a non-refundable tax credit under the Rural Jobs Act created by S.B. 267 from the 2017 General Session. The rule sets out the requirements for applying to participate in the program including application requirements, deadlines, reporting requirements, and exiting the program.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63N-4-304(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule does not affect the state budget because the rule outlines standards for participating in the program that is being partially funded by a participant fee.

It does not require any additional funds or resources outside of what was allocated by S.B. 267 (2017).

♦ LOCAL GOVERNMENTS: This rule does not affect local governments because they cannot participate in the program.
 ♦ SMALL BUSINESSES: This rule does not affect small businesses because they cannot participate in the program.
 ♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule may impact larger venture capital firms in terms of cost spent in time by employees working toward fulfilling the requirements for the program application and compliance. However, such costs should be negligible and would be difficult to estimate because it would depend on the pay, skill, and expertise of employees at each application firm to determine the amount of time and employee wages spent.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost would only be associated with time and resources spent toward applying and adhering to the program requirements. The program is not compulsory and therefore any potentially affected person who cannot afford the potential cost of time and resources to apply and adhere to the rule can opt to not apply.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: All costs to potential applicants will likely be negligible and are not deemed to be prohibitive because they are standard costs associated with spending time applying for a grant and adhering to the grant requirements.

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

GOVERNOR
 ECONOMIC DEVELOPMENT
 60 E SOUTH TEMPLE
 THIRD FLOOR
 SALT LAKE CITY, UT 84111
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jeffrey Van Hulten by phone at 801-538-8694, by FAX at 801-538-8888, or by Internet E-mail at jeffreyvan@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2017

AUTHORIZED BY: Val Hale, Executive Director

R357. Governor, Economic Development.

R357-21. Rural Jobs Act.

R357-21-1. Purpose.

(1) The purpose of this Rule is to define and clarify the standards required to apply for and receive a non-refundable tax credit under the Rural Jobs Act.

R357-21-2. Authority.

(1) Rulemaking authority is provided in Utah Code Subsection 63N-4-304(4).

R357-21-3. Definitions.

(1) All terms used in this rule shall be defined as provided for in Utah Code Section 63N-4-302.

(2) Any term defined differently in this rule or not provided for in Utah Code Section 63N-4-302 shall be defined throughout this rule.

R357-21-4. Calculation of Time.

(1) For the purposes of the Utah Rural Jobs Act and this Rule, time will be calculated beginning the business day after the initial or triggering event.

(2) If the time within which an act is to be performed is sixty (60) days or less, the calculation of time will include business days and will not include weekends and holidays, unless otherwise indicated.

(3) If the time which an act is to be performed is sixty-one (61) days or more, weekends or holidays are included.

(a) If the ending day or due date occurs on a weekend day or a Utah state or federal holiday, the due date shall be 11:59 pm on the next business day following the weekend day or holiday.

R357-21-5. Applications.

(1) Receipt of Applications: All applications received on or before 11:59 pm on November 1, 2017 shall be considered received on November 1, 2017.

(a) For the purposes of the evidence required to qualify applicant is encouraged to show at least 5 individual rural investments, of \$5,000,000 or less, as part of \$50,000,000 total investments in nonpublic companies located in counties with fewer than 50,000 inhabitants.

(2) Priority of Applications for Certification: For all applications received on the same day.

(b) If there is additional investment authority to allocate after considering the applications received on the first day of submissions, then those applications will be considered on a first come first served basis until the total investment authority of \$42,000,000 has been allocated, except as outlined in 63N-4-303(8).

(c) If there is no additional investment authority to allocate after considering the applications received on the first day of applications, then the applicants who were not considered will be notified of eligibility approval and these applicants will stand in a first come first served basis for any recaptured allocation that may occur during the course of the program, except as outlined in 63N-4-303(8) and 63N-4-305(4).

(3) Notice of Allocation Approval shall be delivered through electronic mail and be considered received at the time stamp within the electronic mail notice, not at the time it is read.

(4) Additional Allocation: If, after an allocation is made, an applicant withdraws its request for investment authority, the amount that was allocated to the withdrawing applicant will be redistributed to any approved applicant that has not received the full amount of its requested investment authority on a pro rata basis with all approved applicants that have not received the full amount of their requested investment authority. If there are no approved applicants that have not received the full amount of their requested

investment authority then other approved applicants may receive allocations, using the same priority and method as set forth in within this rule and the Utah Rural Jobs Act.

(a) Approved applicants will be notified of an additional investment authority amount in writing. The applicant will have ten (10) days to either accept the additional investment authority or decline the additional investment authority. Failure to accept in writing will be deemed declination of additional investment authority.

(b) If the additional investment authority is declined, the amount will be redistributed to the remaining approved applicants that have not received the full amount of their requested investment authority and if none then to other approved applicants.

(c) Timing of issuance of additional investment authority: Any additional amounts received by approved applicants who have already received an allocation of investment authority shall have a new independent timeline from the original allocation amount unless the approved applicant requests to aggregate the timelines as set forth below:

(i) An applicant receiving additional investment authority may request to have the additional amount aggregated with the initial allocation by making such a request on official letter head to the office and by agreeing to waive the independent timeline of the additional investment authority amount;

(ii) If aggregation of an original allocation amount with an additional investment authority allocation amount may occur without violating the Utah Rural Jobs Act or this Rule, the Office will approve the request to aggregate the allocations; and

(iii) If the allocations are aggregated, all allocation shall be subject to the deadline for the original investment authority allocation.

(5) Notification of Maximum Funding Allocation: Once the maximum amount of funding has been allocated, applicants will be notified that there is no other allocation amount available for the fiscal year unless or until: an applicant's certification lapses, an applicant withdraws its request, or if funding is recaptured.

(6) A partnership, limited liability company or S-corporation will be considered a claimant for purposes of the Act and may file the affidavit set forth in Subsection 63N-4-303(2), provided it includes a list of its partners, members or shareholders and one of its partners, members or shareholders has Utah state tax liability. No penalty or fine will be assessed on a claimant that fails to make the investment set forth in an affidavit.

R357-21-6. Annual Fees.

(1) Recalculations: Each applicant will be notified of any recalculation of any annual fee at least ten (10) days before each annual reporting date. If no notice of recalculation is received, then the annual fee will be the same amount as it was the previous year and will be due along with the annual report.

R357-21-7. Full Funded Applicant.

(1) A notice of full funding pursuant to Utah Code Subsection 63N-4-303(7) shall be provided on official letterhead of the applicant and follow the format, documentation, and other requirements below:

(a) Bank statements, credit instruments, and all other supporting documentation to show full funding was achieved pursuant to all the requirements outlined in 63N-4-303(7); and

(b) any other documentation the office may request.

(2) If the approved applicant does not meet the requirements found in 63N-4-303(7) and/or is found to have lacking documentation as described in subsection 1 of this part, the office shall notify the applicant that its investment authority allocation has lapsed by issuing a Notice of Agency Action for Lapsed Allocation.

(a) The applicant will have ten (10) business days to submit to the Executive Director a challenge to a Notice of Agency Action for Lapsed Allocation.

(i) Any challenge to a Notice of Agency Action for Lapsed Allocation shall provide documentation that the requirements of Utah Code Subsection 63N-4-303(7) were met within sixty-five (65) days of notice of approval for investment authority allocation.

(ii) The executive director shall issue a final determination within 5 business days of receipt of such challenge.

R357-21-8. Form and Notice for Tax Credits.

(1) An approved applicant that has fully funded its investment authority allocation and has provided the evidence required in Utah Code Subsection 63N-4-303(7) shall notify the office annually of the entities that are eligible to use tax credits as follows:

(a) By submitting the a "Notification of Investment Authority Allocation for Rural Jobs Act Tax Credits" to the office on official letterhead;

(b) Each notice shall be accompanied by documentation of the investment made in the fund raised by the approved applicant with respect to the entity claiming a tax credit including investment amount, entity name, and entity FEIN.

(c) Each notice shall be accompanied by any documents requested by the office.

(d) For tax credits allowed to a partnership, limited liability company or S-corporation, the notice shall be accompanied by any and all necessary documentation or agreements to demonstrate how the credits will be used by the partners, members or shareholders.

(2) Each tax credit certificate shall contain the following contingencies:

(a) A certification provision requiring the entity receiving the tax credit to certify:

(i) it is subject to the recapture provisions set forth in Section 63N-4-305;

(ii) it will not sell the tax credit on the open market;

(b) Be available for use annually in accordance with the Applicable Percentages to the entity receiving the tax credit after receipt and acceptance of the approved applicant's annual report to the Office.

(i) Any event of recapture outlined by the Utah Small Business Jobs Act or this Rule shall prevent the use of an annual tax credit certificate to the entity receiving the tax credit.

R357-21-9. Reports.

(1) The annual reports required by Utah Code Section 63N-4-307 shall include all information required in statute and must also include, with respect to the first report for any eligible small business:

_____ (a) a baseline of the number employees at each eligible small business that receives an investment based on a payroll report of the eligible small business;

_____ (b) new state revenue generated by the eligible small business for the previous taxable year of the annual report;

_____ (c) all NAICS Code designations the eligible small business is officially subscribed to; and

_____ (d) a brief description of the eligible small business including general business activities; how investment funds are being utilized by the eligible small business, and any other information the approved applicant feels relevant.

_____ (2) New annual jobs shall be calculated on an annual basis by subtracting the baseline number of employees reported in paragraph (1) of this section from annual employment level of the eligible small business calculated by averaging the monthly payroll reports of the eligible small business for the applicable year, provided that such average with respect to the initial annual report for an eligible small business shall only include payroll reports for the months following the initial growth investment and shall be multiplied by fifty percent if such initial growth investment occurs after June 30 of the applicable year. New annual jobs reported may not be less than zero.

_____ (2) Within 5 days of its investment of 100% of its rural investment authority in growth investments in this state with at least 70% invested rural counties, the approved applicant must notify the office of the achievement of such milestone on a report that includes:

_____ (a) the name and location of each eligible small business;

_____ (b) the amount invested in each eligible small business; and

_____ (c) whether the eligible small business is located in a rural county.

_____ (3) For the initial and all subsequent annual reports

_____ (2) An approved applicant may submit the reports hereunder on its own forms, but all reports must be presented in plain language and simple to navigate.

R357-21-10. Recapture (Revocation).

_____ (1) If the office determines recapture is necessary pursuant to Utah Code Section 63N-4-305, the office shall issue a Provisional Notice of Agency Action for Recapture to both the approved applicant and the taxpayer that claimed the tax credit. Such notice shall be delivered to the approved applicant by (i) electronic mail and (ii) certified mail, and shall state under which provision of Utah Code Section 63N-4-305 the recapture is sought.

_____ (2) The 90 day cure period provided for in Utah Code Section 63N-4-305 begins on the day following receipt of the Provisional Notice of Agency Action for Recapture. If the action or omission upon which the recapture is based is cured during the 90 day cure period, the office shall issue a notice of cure to the approved applicant. If the action or omission upon which the recapture is based is not cured within the 90 cure period, the office shall issue a final Notice of Agency Action for Recapture to the approved applicant, the taxpayer that claimed the tax credit, and the Utah Tax Commission.

_____ (3) If after the 90 day cure period, the action or omission upon which the recapture is based is not cured, the Office shall issue a final notice of Agency Action for Recapture.

_____ (a) The Final Notice of Agency Action for Recapture shall also be sent to the Utah Tax Commission.

_____ (4) For purposes of remaining 100% invested during the compliance period, in the event that fund losses occur due to an

eligible small business' inability to meet their investment obligation, the rural investment company shall satisfy the 100% investment requirements of 63N-4-305(1) by reinvesting any capital that is recovered. Investment amounts not recovered will not have to be reinvested to satisfy the 100% investment requirements of 63N-4-305(1).

R357-21-11. Exit.

_____ (1) An approved applicant may exit the program pursuant to all requirements outlined in 63N-4-309.

_____ (2) The request for exit must be made on official letterhead of the approved applicant and contain the following:

_____ (a) The calculation used to determine the state reimbursement amount;

_____ (b) The aggregate new annual jobs reported in all prior annual reports;

_____ (c) The calculation used to determine the excess return amount including:

_____ (i) all relevant documentation used to show the present value of all growth investments made by the approved applicant on the day the approved applicant applies for exit from program.

_____ (A) relevant documentation must show from verifiable sources how the present value of each growth investment is determined and additional documentation may be requested by the office to verify all values provided.

_____ (ii) all relevant documentation that shows how any projected increase in an equity holder's federal or state tax liability, including penalties and interest, related to the equity holder's ownership, management, or operation of the rural investment company, was determined.

_____ (A) This may include actual tax filings of the equity holder whose increase is utilized in the excess return calculation.

KEY: rural development, rural jobs, tax credit

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, and Implemented or Interpreted Law: 63N-4-304(4)

Health, Disease Control and Prevention, Epidemiology **R386-900** Special Measures for the Operation of Syringe Exchange Programs

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42177

FILED: 10/02/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the change is to provide clarification on syringe exchange programs and requirements.

SUMMARY OF THE RULE OR CHANGE: This change clarifies the purpose of the syringe exchange program and provides additional clarification on operating requirements for entities operating syringe exchange programs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-7-8

MATERIALS INCORPORATED BY REFERENCE:

- ◆ Adds Syringe Services Program (SSP) Development and Implementation Guidelines for State and Local Health Departments, published by National Alliance of State & Territorial AIDS Directors, 2012
- ◆ Adds Guide to Developing and Managing Syringe Access Programs, published by Harm Reduction Coalition, 2010

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These revisions provide clarification only and do not add additional requirements that impact the state budget. The Department of Health (Department) is utilizing 1.0 FTE in federal funds to monitor, analyze, and report on syringe exchange programs throughout the state = \$54,329.60 (personnel and fringe).
- ◆ **LOCAL GOVERNMENTS:** These revisions provide clarification only and do not add additional requirements to impact local governments. Anticipated costs if a local health department chooses to operate a syringe exchange program include, but are not limited to: personnel costs, educational materials, syringes, and sharps disposals.
- ◆ **SMALL BUSINESSES:** These revisions provide clarification only and do not add additional requirements to impact small businesses. Anticipated costs if a small business chooses to operate a syringe exchange program include, but are not limited to: personnel costs, educational materials, syringes, and sharps disposals.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These revisions provide clarification only and do not add additional requirements to impact businesses. Anticipated costs if a business chooses to operate a syringe exchange program include, but are not limited to: personnel costs, educational materials, syringes, and sharps disposals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These revisions provide clarification only and do not add additional requirements that impact affected persons. Minimal personnel costs for entities operating a syringe exchange program for completing mandatory reporting forms and faxing/emailing forms to the Department.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendment clarifies a syringe exchange program includes not only the syringe but also other materials such as cotton filters, cookers, tourniquets, alcohol swabs, and condoms. The amendment clarifies operating requirements of a syringe exchange program. It also

incorporates by reference a "Guide to Developing and Managing Syringe Access Programs", and the "Syringe Services Program, (SSP) Development and Implementation Guidelines for State and Local Health Departments" published by the National Alliance of State and Territorial AIDS Directors, 2012. The revisions are clarifications with no additional requirements so there will be no fiscal impact on any business choosing to operate a syringe exchange program.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
EPIDEMIOLOGY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Erin Fratto by phone at 801-538-6701, or by Internet E-mail at efratto@utah.gov 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 11/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

**R386. Health, Disease Control and Prevention, Epidemiology.
R386-900. Special Measures for the Operation of Syringe Exchange Programs.**

R386-900-1. Authority.

This rule is authorized under Utah Code 26-7-8.

R386-900-2. Purpose.

This rule establishes operating and reporting requirements required of an entity operating a syringe exchange pursuant to 26-7-8.

R386-900-3. Definitions.

The following definitions apply to this rule:

(1) "Department" means the Utah Department of Health Bureau of Epidemiology Prevention, Treatment and Care Program.

(2) "Syringe exchange" ~~[is defined in 26-7-8.]~~ is a community-based program that provides access to sterile syringes and other clean and new prevention materials, including, but not limited to, cotton filters, cookers, tourniquets, alcohol swabs, and/or condoms, collects and properly disposes of used syringes, and provides information and referrals and other services as identified by population and community needs to reduce the harms associated with injection drug use; consistent with:

(a) the "Department of Health and Human Services Implementation Guidance to Support Certain Components of Syringe Services Programs, 2016" HHS 3/29/2016

(b) the CDC Syringe Services Programs standards and definitions.

- (3) "Operating entity" is defined in 26-7-8.
- (4) "HIV" means human immunodeficiency virus.
- (5) "HCV" means hepatitis C virus.
- (6) "HBV" means hepatitis B virus.
- (7) "Opiate antagonist" is defined by Chapter 55, Opiate Overdose Response Act.

R386-900-4. Operating Requirements.

(1) An operating entity intending to begin syringe exchange programming within a local community shall meet with local stakeholders, which should include: public health, mental health, substance abuse, law enforcement, local governing body, community councils, etc. This meeting should provide education on the purpose and goals of a syringe exchange program, syringe exchange protocols, awareness of operating entity's plans and community partnerships and will assess community readiness, norms, needs and parameters for implementing syringe exchange in that area. The operating entity shall provide UDOH meeting summary(s) which should include: participants, what was discussed, outcomes and plans for implementation. This documentation must be submitted for each major area where exchange will be conducted upon enrollment and submitted 30 days prior to the initiation of syringe exchange program operation in a new area.

[(+)](2) An operating entity shall utilize the department's enrollment form to provide written notice of intent to conduct syringe exchange activities to the department 15 days prior to conducting syringe exchange activities. If an operating entity discontinues syringe exchange activities, written notice shall also be submitted utilizing the department's report form within 15 days of termination of activities to the department.

[(2)](3) An operating entity must submit a safety protocol to the department for the prevention of needlestick and sharps injury before initiating syringe exchange activities.

[(3)](4) An operating entity shall submit a sharps disposal plan to the department. Sharps disposal is the financial responsibility of the entity operating and responsible for the syringe exchange program.

[(4)](5) An operating entity shall facilitate the exchange of an individuals used syringes by providing a disposable, medical grade sharps container for the disposal of used syringes.

[(5)](6) ~~[The operating entity shall exchange one or more new syringes in sealed sterile packages to the individual free of charge.]~~The operating entity shall exchange one or more new syringes in sealed sterile packages and may provide other clean and new prevention materials to the individual free of charge.

[(6)](7) As available, the department will provide syringes, education materials, and other resources to entities operating a syringe exchange program.

[(7)](8) An operating entity must provide and make available to all recipients of new syringe(s) verbal and written instruction on:

- (a) Methods for preventing the transmission of blood borne pathogens, including HIV, HBV and HCV;
- (b) Information and referral to drug and alcohol treatment;

- (c) Information and referral for HIV and HCV testing; and
- (d) How and where to obtain an opiate antagonist.

(9) The Department incorporates by reference the "Guide to Developing and Managing Syringe Access Programs", Harm Reduction Coalition, 2010.

(10) The Department incorporates by reference the "Syringe Services Program (SSP) Development and Implementation Guidelines for State and Local Health Departments" National Alliance of State & Territorial AIDS Directors, 2012.

R386-900-5. Reporting Requirements.

(1) All entities operating a syringe exchange program shall report aggregate data elements in accordance to 26-7-8 to the department on a quarterly basis, utilizing the format provided by the department which is to include:

- (a) Number of individuals who have exchanged syringes,
- (b) A self-reported or approximated number of used syringes exchanged for new syringes,
- (c) Number of new syringes provided in exchange for used syringes,
- (d) Educational materials distributed; and
- (e) Number of referrals provided.

R386-900-6. Penalty.

(1) Any person who violates any provision of R386-900 may be assessed a penalty as provided in section 26-23-6.

R386-900-7. Official References.

(1) Centers for Disease Control and Prevention (CDC), 2016, Program Guidance for Implementing Certain Components of Syringe Services Programs.

(2) Federal Register, Health and Human Services Department, 2011, Determination That a Demonstration Needle Exchange Program Would be Effective in Reducing Drug Abuse and the Risk of Acquired Immune Deficiency Syndrome Infection Among Intravenous Drug Users.

(3) Harm Reduction Coalition, 2006, Syringe Exchange Programs and Hepatitis C.

(4) Harm Reduction Coalition, 2006, Syringe Exchange Programs: Reducing the Risks of Needlestick Injuries.

(5) Substance Abuse and Mental Health Services Administration (SAMHSA), Summary of Syringe Exchange Program Studies.

(6) United States Department of Health and Human Services (HHS), 2016, Implementation Guidance to Support Certain Components of Syringe Services Programs.

(7) World Health Organization (WHO), 2004, Effectiveness of sterile needle and syringe programming in reducing HIV/AIDS among injecting drug users.

KEY: syringe exchange programs, needles, syringes

Date of Enactment or Last Substantive Amendment: [November 7, 2016]2017

Authorizing, and Implemented or Interpreted Law: 26-7-8

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-2A
Inpatient Hospital Services**

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 42178
FILED: 10/02/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to update and clarify Medicaid policy on coverage for inpatient hospital services.

SUMMARY OF THE RULE OR CHANGE: This amendment updates and removes definitions in the rule text to be consistent with current policy. It also clarifies member eligibility requirements, clarifies hospital admission requirements, clarifies policy for an inpatient psychiatric stay of a Prepaid Mental Health Plan (PMHP) member, and clarifies service coverage and limitations. It further includes new sections that outline policy for provider-preventable conditions and utilization control, and references policy for cost sharing and reimbursement.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this change only clarifies Medicaid policy. It neither affects service coverage to Medicaid members nor reimbursement to Medicaid providers.
- ◆ **LOCAL GOVERNMENTS:** There is no budget impact to local governments because they do not fund inpatient hospital services for Medicaid members.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change only clarifies Medicaid policy. It neither affects service coverage to Medicaid members nor reimbursement to Medicaid providers.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers nor to Medicaid members because this change only clarifies Medicaid policy. It neither affects service coverage nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid member because this change only clarifies Medicaid policy. It neither affects service coverage nor provider reimbursement.

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:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO BOX 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-2A. Inpatient Hospital Services.

R414-2A-1. Introduction and Authority.

This rule defines the scope of inpatient hospital services that are available to Medicaid clients for the treatment of disorders other than mental disease. This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.10.

R414-2A-2. Definitions.

(1) "Admission" means the acceptance of a Medicaid [client]member for inpatient hospital [services]care and treatment when the member meets established criteria for severity of illness and intensity of service and the required service cannot be provided in an alternative setting. [

(2) "Diagnosis Related Group (DRG)" is the CMS-coding that determines reimbursement for the resources that a hospital uses to treat a client with a specific diagnosis or medical need and is further described in Section R414-2A-9 of this rule.

(3) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment. [

([4]2) "Inpatient" is an individual whose severity of illness and intensity of service requires continuous care in a hospital[, as noted by InterQual Criteria as noted in Section R414-1-12].

([5]3) "Inpatient Hospital Services" are services that a hospital provides for the care and treatment of inpatients with disorders other than mental illness[, under the direction of a physician or other practitioner of the healing arts.

~~(6) "Leave of Absence" from an inpatient facility is a patient's absence for therapeutic or rehabilitative purposes where the patient does not return by midnight of the same day.]~~

~~([7]4) "Observation services" means services, often less than 24 hours, including use of a bed and monitoring by hospital staff, which are reasonable and necessary to evaluate the medical condition or determine the need for a possible admission to the hospital, [monitoring a patient to evaluate the patient's condition, symptoms, diagnosis, or appropriateness of inpatient admission.]~~

~~(8) "Other Practitioner of the Healing Arts" means a doctor of dental surgery or a podiatrist.]~~

~~([9]5) "Prepaid Mental Health Plan" means the Medicaid mental and/or substance use disorder managed care plan that covers inpatient and/or outpatient mental health services and outpatient substance use disorder services for PMHP-enrolled Medicaid members, [prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.]~~

R414-2A-3. [Client]Member Eligibility Requirements.

~~Inpatient hospital services are available to categorically and medically needy individuals, [who are under the care of a physician or other practitioner of the healing arts.]~~

R414-2A-4. Hospital Admission Requirements.

~~(1) An inpatient hospital must meet Medicare participation requirements.~~

~~([1]2) Each hospital [providing]that provides inpatient services must have a utilization review plan as described in 42 CFR 482.30.~~

~~(2) The attending physician or other practitioner of the healing arts must sign a physician acknowledgement statement that meets the requirements of 42 CFR 412.46.~~

~~(3) For psychiatric patients, the attending physician must certify and recertify the need for inpatient psychiatric services as described in 42 CFR 441.152. (3) Each hospital that accepts a Medicaid member for treatment is responsible to verify that the member receives all medically necessary services from Medicaid providers.~~

~~(4) Each hospital is financially responsible for any services a member receives from a non-Medicaid provider.~~

R414-2A-5. Prepaid Mental Health Plan.

~~Before admitting a Prepaid Mental Health Plan (PMHP) member for an inpatient psychiatric stay, a hospital must obtain prior authorization from the PMHP serving the member's county of residence. If the hospital is not contracted with the PMHP, the PMHP may choose to transfer the member to a contracted hospital. [A Medicaid client residing in a county for which a prepaid mental health contractor provides mental health services must obtain authorization for inpatient psychiatric services from the prepaid mental health contractor for the client's county of residence.]~~

R414-2A-6. Service Coverage.

~~(1) [Inpatient hospital services encompass all medically necessary and therapeutic medical services and supplies that the~~

~~physician or other practitioner of the healing arts orders that are appropriate for the diagnosis and treatment of a patient's illness. Inpatient hospital care is limited to medical treatment of symptoms that will lead to medical stabilization of the patient. This medical stabilization care is irrespective of any underlying psychiatric diagnosis.] Inpatient hospital services must be medically necessary and ordered by an appropriate Medicaid-enrolled provider for the diagnosis and treatment of a member's illness.~~

~~[(2) The Department does not pay for physician services rendered by a non-Medicaid provider.]~~

~~([3]2) Services performed for a [patient]member by the admitting hospital or by an entity wholly-owned or wholly-operated by the hospital within three days of patient admission, are considered inpatient services. This three-day window applies to diagnostic and non-diagnostic services that are clinically related to the reason for the [patient]member's inpatient admission regardless of whether the inpatient, [and] outpatient, or observation diagnoses are the same.~~

~~([4]3) Medical supplies, appliances, drugs, and equipment required for the care and treatment of a [client]member during an inpatient stay are reimbursed as part of payment under the Diagnosis Related Group (DRG).~~

~~([5]4) Services associated with pregnancy, labor, and vaginal or C-section delivery are reimbursed as inpatient services as part of payment under the DRG, even if the stay is less than 24 hours.~~

~~(5) Medicaid may pay at least one-day inpatient admission for:~~

~~(a) Admission for a normal delivery;~~

~~(b) Admitted and expired;~~

~~(c) Admitted and transferred to a distinct part of or to another acute care hospital.~~

~~(6) Outpatient hospital services during an inpatient episode are bundled to the DRG. [Services provided to an inpatient that could be provided on an outpatient basis are reimbursed as part of payment under the DRG.]~~

~~(7) [Inpatient hospital psychiatric services are available only to clients not residing in a county covered by a prepaid mental health plan.] Inpatient hospital psychiatric services are available to all Medicaid members. If the member is not enrolled in a PMHP, providers may bill the State directly on a fee-for-service basis. Otherwise, the provider must bill the member's PMHP.~~

R414-2A-7. Limitations.

~~Inpatient hospital care is limited to medical treatment of symptoms that lead to medical stabilization of the member. This medical stabilization care is irrespective of any underlying psychiatric diagnosis. [(1) Inpatient admissions for 24 hours or more solely for observation or diagnostic evaluation do not qualify for reimbursement under the DRG system.]~~

~~([2]1) Detoxification for a substance use disorder in a hospital is limited to medical detoxification for acute symptoms of withdrawal when the [patient]member is in danger of experiencing severe or life-threatening withdrawal. The Department does not cover any lesser level of detoxification in an inpatient hospital.~~

~~([3]2) Abortion procedures [must first be reviewed and preauthorized by the Department as meeting the requirements of Section 26-18-4 and 42 CFR 441.203.] require prior authorization. Refer to Rule R414-1B.~~

~~([4]3) Sterilization and hysterectomy procedures [must first be reviewed and preauthorized by the Department as meeting the~~

~~requirements of 42 CFR 441, Subpart F.]require prior authorization and must meet the requirements of 42 CFR 441, Subpart F.~~

~~(5)4 Organ transplant services are governed by Rule R414-10A[~~Transplant Services Standards~~].~~

~~(6)5 Take[~~-~~]-home supplies, dressings, non-rental durable medical equipment, and drugs are reimbursed as part of payment under the DRG.~~

~~(6) Sleep studies are available only in a sleep disorder center accredited by the American Academy of Sleep Medicine.~~

~~(7) Hyperbaric oxygen therapy is limited to service in a facility in which the hyperbaric unit is accredited by the Undersea and Hyperbaric Medical Society. Hyperbaric oxygen therapy is therapy that places the member in an enclosed pressure chamber for medical treatment.~~

~~(8) Medicaid does not cover inpatient services solely for pain management. Pain management is adjunct to other Medicaid services.~~

~~(8) Inpatient services solely for pain management do not qualify for reimbursement under the DRG system. Pain management is adjunct to other Medicaid services.~~

~~(9) Medicaid does not cover inpatient admissions for the treatment of eating disorders.~~

~~(10) Physician services provided by a physician who is paid by a hospital are inpatient services reimbursed as part of payment billed on a 1500 form. Payment for physician services provided by providers who are not paid by the hospital is governed by Rule R414-10.]~~

~~(11)9 Inpatient rehabilitation services [must first be reviewed and preauthorized]require prior authorization.~~

~~(10) Observation services are limited to cases where observation and evaluation is required to establish a diagnosis and determine the appropriateness of an inpatient admission or discharge. Observation is used to monitor the member's condition, complete diagnostic testing to establish a definitive diagnosis and formulate the treatment plan.~~

~~(a) Medicaid covers observation services with a physician's written order that outlines specific medically necessary reasons for the service, such as the member requires more evaluation to determine the severity of illness (e.g. laboratory, imaging, other diagnostic test) and an order to continue monitoring for clinical signs and symptoms to determine improving or declining health status.~~

~~(b) Outpatient procedures include uneventful recovery period.~~

~~(i) Observation is used to monitor complications of outpatient procedures beyond uneventful recovery period.~~

~~(c) Medicaid does not cover observation services for convenience of the hospital, member or family, or when awaiting transfer to another facility.~~

~~(d) When an ordered hospital inpatient admission improves to the point of discharge with a stay less than 24 hours, the admission is covered as inpatient when documentation supports the medical necessity.~~

~~(e) Inpatient admissions solely for observation or diagnostic evaluation do not qualify for reimbursement under the DRG system.~~

~~(11) Medicaid does not cover admission solely for the treatment of eating disorders.~~

~~(12) Medicaid does not cover non-physician psychosocial counseling outside of the DRG.~~

~~(13) An individual (undocumented immigrant) who does not meet United States residency requirements may only receive emergency services, including emergency labor and delivery, to treat an emergency medical condition.~~

~~(a) Medicaid does not cover prenatal and post-partum services for undocumented immigrants.~~

~~(b) Medicaid does not cover prescriptions for a member who is eligible to receive emergency services only.~~

R414-2A-8. Provider-Preventable Conditions.

~~(1) Medicaid does not pay for Provider Preventable Conditions (PPC).~~

~~(a) Medicaid utilizes the Medicaid Severity-Diagnosis Related Group (MS-DRG) to identify a PPC.~~

~~(b) For inpatient hospital claims, Medicaid does not cover PPCs in Medicare crossover patients.~~

~~(c) To qualify as a PPC, one of the Medicare-listed diagnoses must develop during hospitalization.~~

~~(i) When present on admission, these diagnoses are not considered to be a PPC for that hospitalization.~~

~~(ii) Providers are expected to identify Present on Admission (POA) status for all diagnoses on each claim according to correct coding standards.~~

~~(d) Providers must assure that all PPC-related diagnoses, services, and charges are noted as "non-covered charges" on the claim.~~

~~(i) The Department does not use non-covered charges in calculating the hospital reimbursement.~~

~~(e) The Department shall deny PPC-related claims that result in an outlier payment and medical records will be required.~~

~~(i) Providers will receive Remittance Advice (RA) that confirms the occurrence of a PPC outlier claim.~~

~~(ii) The Department requires providers to know which medical records and other required documents are needed.~~

~~(iii) Upon RA notification of a PPC, the provider shall submit the following documents within 30 days:~~

~~(A) "Outlier PPC Medical Record Documentation Submission Form";~~

~~(B) Complete medical records from the associated hospital stay;~~

~~(C) Itemized bill (tab de-limited text file or Excel spreadsheet), including a detailed listing of PPC-related charges as non-covered charges, with total charges matching the total charges submitted on the claim.~~

~~(f) The Department will review and, if appropriate, re-process the claim based upon the review of the required documents submitted within the 30-day period of RA notification.~~

~~(g) The Department shall deny review of the claim unless the required documentation is submitted within 30 days of RA notification.~~

~~(h) The Department requires providers to report PPCs in accordance with Section R414-1-28.~~

R414-2A-9. Utilization Control and Review Program for Hospital Services.

~~The Hospital Utilization Review Program is administered and operated in accordance with Title 63A, Chapter 13.~~

(1) The purpose of the hospital utilization review program is to ensure:

- (a) efficient and effective delivery of services;
- (b) services are appropriate and medically necessary;
- (c) service quality is maintained; and
- (d) the State satisfies federal requirements for a statewide surveillance and utilization control program.

(2) The Hospital Utilization Review Program shall conduct assessments and audits to ensure the appropriateness and medical necessity of the following:

(a) Admissions to a hospital or a designated distinct part unit within a hospital;

(b) Transfers from one acute care hospital to another acute care hospital, or to a distinct part of a rehabilitation unit or psychiatric unit in another acute care hospital (inter-facility transfer);

(c) Transfers from an acute care setting to a distinct part rehabilitation or psychiatric unit within the same facility (intra-facility transfer);

(d) Continued stays;

(e) Services, surgical services and diagnostic procedures;

(f) Principal diagnosis, principal surgical procedure or both, reflected on paid claims to ensure consistency with the attending physician's determination and documentation as found in the member's medical record;

(g) Determine whether co-morbidity, as found on the claim, is correct and consistent with the attending physician's determination and compatible with documentation found in the member's medical record; and

(h) Quality of care.

(3) The Hospital Utilization Review Program shall conduct assessments and audits to determine:

(a) Appropriate utilization;

(b) Compliance with state and federal Medicaid regulations;

(c) Whether documentation meets state and federal requirements for sufficiency, and whether it accurately describes the status of services provided to the member; and

(d) Whether procedures that require prior authorization have been approved before the provision of services, except in cases that meet the criteria listed in the Utah Medicaid Section I: General Information Provider Manual (Retroactive Authorization).

(4) The Hospital Utilization Review Program shall make determinations of medical necessity, appropriateness of care, and suitability of discharge planning in accordance with the following criteria and protocols:

(a) InterQual Criteria;

(b) Administrative rules or criteria developed by Medicaid for programs and services not otherwise addressed; and

(c) DRGs.

(5) Hospital Utilization Readmission Policy and Reviews.

(a) Whenever information available to the reviewer indicates the possibility of readmission to acute care within 30 days of the previous discharge, the staff administering and operating the Hospital Utilization Review Program may review any claim for:

(i) Readmission for the same or a similar diagnosis to the same hospital, or to a different hospital;

(ii) Appropriateness of inter-facility transfers; and

(iii) Appropriateness of intra-facility transfers.

(b) The Hospital Utilization Review Program shall review all suspected readmissions within 30 days of a previous discharge to ensure that Medicaid criteria have been met for severity of illness, intensity of service, and appropriate discharge planning and financial impact to the Department as noted in Subsection R414-2A-9(3).

(c) If a member is readmitted for the same or similar diagnosis within 30 days of discharge and, if after review as described in Subsection R414-2A-9(4)(b), program review staff determines that readmission does not meet the criteria in Subsection R414-2A-9(3)(b), then the payment shall be combined into a single DRG payment, unless it is cost effective to pay for two separate admissions. The first DRG (initial admission) shall be the DRG that is paid. This policy does not apply to cases related to pregnancy, neonatal jaundice, or chemotherapy.

(6) Definition, Policy Application.

(a) When applying policy, a similar diagnosis is defined as:

(i) Any diagnoses code with similar descriptors;

(ii) Any exchange or combination of principal and secondary diagnosis; and

(iii) Any other sets of principal diagnoses established to be similar by Utah Medicaid policy in written criteria and published to the hospitals prior to service dates.

(b) The evaluation criteria for utilization control are severity of illness, intensity of service, and cost effectiveness as noted in Subsection R414-2A-9(4)(b).

(7) Appropriate remedial action will be initiated for inappropriate readmissions when identified through the hospital utilization post-payment review process.

(8) Applicability to Outpatient Hospital Services.

(a) When a Medicaid member is readmitted to the hospital, or readmitted as an outpatient within 30 days of a previous discharge for the same or similar diagnosis, Medicaid will evaluate both claims to determine if they should be combined into a single payment or paid separately.

(9) Recovery of Funds.

(a) The Department shall recover payment when post-payment review finds that services are not medically necessary, not appropriate, or that quality of service is not suitable.

(b) The Department shall recover payment when it determines there is a violation of the 30-day re-admission policy.

(10) Hospital Utilization Review.

(a) Each month, the Hospital Utilization Review Program shall review at least 5 percent of a selected universe of claims adjudicated in the previous month. At least 2.5 percent of the claims shall be a random sample. Up to 2.5 percent may be a focused review on a specific service. A staff decision to focus on a specific service shall be made no later than the beginning of the sample cycle.

(b) The Department shall select the universe from paid inpatient hospital claims within the Data Warehouse. The universe from which the random sample is selected is defined as all inpatient hospital claims adjudicated before the beginning of the review cycle, except for:

(i) Claims showing, as a principal diagnosis, any International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM) delivery code in the ICD-10-CM Manual Chapter 15 -- Pregnancy, Childbirth, and the Puerperium, in

the range of O00 through O9A.53, and other ICD-10-CM codes or DRG or DRGs as specified by policy or administrative decision.

(ii) Claims that show \$0 payment by Medicaid;

(iii) Medicare crossover claims;

(iv) Claims with other codes or diagnoses determined by the review program staff to be inappropriate for review.

(c) The sample cycle shall begin on the first working day of each month.

(11) Utah State Hospital Utilization Review.

(a) The purpose of this utilization review is to ensure that Medicaid funds, as defined under 42 CFR 456, Subpart D, are expended appropriately and to ensure that services provided to Medicaid members at the Utah State Hospital (USH) are necessary and of high quality. Review program staff shall conduct oversight activities at USH.

(b) Oversight activities include quarterly clinical utilization reviews in which program staff review a sample of members who are under 21 years of age and are 65 years of age or older, and who were reviewed by USH utilization review staff during a previous quarter. These reviews are performed to:

(i) Evaluate the USH utilization process; and

(ii) Address the clinical topic selected for that quarter's review.

(c) Reviews of USH Quality Improvement and Quality Assurance programs are conducted to determine whether:

(i) The programs have been implemented in accordance with written hospital policy;

(ii) The programs are effective in meeting stated goals;

(iii) Improvements or modifications have been made to increase the effectiveness of program design.

(12) Applicability to Inpatient Psychiatric Care and Inpatient Rehabilitation Services.

(a) Provisions in the Hospital Utilization Review Program also apply to inpatient psychiatric care and inpatient rehabilitation services.

R414-2A-[8]10. [~~Coinsurance~~Cost Sharing.

[Each]A Medicaid [e]lient[member] is responsible for a co[insurance—]payment as established in the Utah [State—Medicaid]Medicaid State Plan and incorporated by reference in Rule R414-1.

R414-2A-[9]11. Reimbursement[Methodology].

Reimbursement for inpatient hospital services is in accordance with Attachment 4.19-B of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1. [~~(+) Payments for inpatient hospital services are paid on a prospectively determined amount for each qualifying patient discharge under a Diagnosis-Related Group (DRG) system. DRG weights are established to recognize the relative amount of resources consumed to treat a particular type of patient. The DRG classification scheme assigns each hospital patient to one of over 500 categories or DRGs based on the patient's diagnosis, age and sex, surgical procedures performed, complicating conditions, and discharge status. Each DRG is assigned a weighting factor which reflects the quantity and type of hospital services generally needed to treat a patient with that condition. A preset reimbursement is assigned to each DRG. The DRG system allows for outliers for those discharges that have significant variance from the norm.~~

~~———— (2) For purposes of reimbursement, the day of admission is counted as a full day and the day of discharge is not counted.~~

~~———— (3) When a patient receives SNF-level, ICF-level, or other sub-acute care in an acute-care hospital or in a hospital with swing-bed approval, payment is made at the swing-bed rate.~~

~~———— (4) If a patient is readmitted for the same or a similar diagnosis within 30 days of a discharge, please refer to Section R414-1-12.~~

~~———— (5) The Department pays for physician interpretation of laboratory services separately from the DRG payment. Laboratory technical services are included within the DRG for the inpatient admission.~~

~~———— (6) If an observation stay meets the intensity and severity for inpatient hospitalization, the patient becomes an inpatient and the observation services are reimbursed as part of payment under the DRG.]~~

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [July 1], 2017

Notice of Continuation: October 10, 2012

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-18-3.5

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-3A** Outpatient Hospital Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42180

FILED: 10/02/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to update and clarify Medicaid policy on coverage for outpatient hospital services.

SUMMARY OF THE RULE OR CHANGE: This amendment updates and removes definitions in the text to be consistent with current policy. It also clarifies requirements for member eligibility and program access, and clarifies coverage for Prepaid Mental Health Plan (PMHP) members. This change further clarifies policy for services and prior authorization and makes other technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no impact to the state budget because this change only clarifies Medicaid policy. It

neither affects service coverage to Medicaid members nor reimbursement to Medicaid providers.

◆ LOCAL GOVERNMENTS: There is no budget impact to local governments because they do not fund outpatient hospital services for Medicaid members.

◆ SMALL BUSINESSES: There is no impact to small businesses because this change only clarifies Medicaid policy. It neither affects service coverage to Medicaid members nor reimbursement to Medicaid providers.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers nor to Medicaid members because this change only clarifies Medicaid policy. It neither affects service coverage nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid member because this change only clarifies Medicaid policy. It neither affects service coverage nor provider reimbursement.

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:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO BOX 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-3A. Outpatient Hospital Services.

R414-3A-1. Introduction and Authority.

This rule defines the scope of outpatient hospital services available to Medicaid ~~[clients]~~members for the treatment of disorders

other than mental disease. This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.20.

R414-3A-2. Definitions.

~~[(1) "Allowed charges" mean actual charges submitted by the provider less any charges for non-covered services.~~

~~_____ (2) "CHEC" means Child Health Evaluation and Care and is the Utah specific term for the federally mandated program of Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) for children under the age of 21.~~

~~_____ (3) "Clinical Laboratory Improvements Act" (CLIA) is the Centers for Medicare and Medicaid Services (CMS) program that limits reimbursement for laboratory services based on the equipment and capability of the physician or laboratory to provide an appropriate, competent level of laboratory service.~~

~~_____ (4) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment.~~

~~_____ (5) "Other Practitioner of the Healing Arts" means a doctor of dental surgery or a podiatrist.~~

~~_____]([6]1) "Outpatient" is defined in 42 CFR 440.20.~~

~~_____ (2) "Outpatient hospital" is a facility that:~~

~~_____ (a) is in, or physically connected to, a hospital licensed by the Department as a general hospital, as defined by Subsection 26-21-2(11), and meets the standards set forth in Rule R432-100 and 42 CFR Part 482;~~

~~_____ (b) meets participation requirements in the Medicare program; and~~

~~_____ (c) has a Medicaid provider agreement with the Department.~~

~~_____ ([7]3) "Prepaid Mental Health Plan" (PMHP) means the [prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan]Medicaid mental and substance use disorder managed care plan that covers inpatient and outpatient mental health services, and outpatient substance use disorder services for PMHP-enrolled Medicaid members.~~

R414-3A-3. [Client]Member Eligibility Requirements.

Outpatient hospital services are available to categorically and medically needy individuals,~~[who are under the care of a physician or other practitioner of the healing arts.]~~

R414-3A-4. Program Access Requirements.

~~_____ (1) An outpatient hospital must:~~

~~_____ (a) Be licensed or formally-approved as a hospital by an officially designated authority for state-standard setting;~~

~~_____ (b) Meet participation requirements in Medicare as a hospital;~~

~~_____ (c) Be a hospital that accepts a Medicaid member for treatment and accepts responsibility to make sure the member receives all medically necessary services from Medicaid providers; and~~

~~_____ (d) Accept financial responsibility for any services a member receives from a non-Medicaid provider. [(1) The Department reimburses for outpatient hospital services and supplies only if they are:~~

~~_____ (a) furnished in a hospital;~~

~~_____ (b) provided by hospital personnel by or under the direction of a physician or dentist;~~

~~_____ (c) provided as evaluation and management of illness or injury under hospital medical staff supervision and according to the written orders of a physician or dentist.~~

~~_____ (2) All outpatient hospital services are subject to review by the Department.]~~

R414-3A-5. Prepaid Mental Health Plan.

A Medicaid member who resides in a county covered by the PMHP may only obtain outpatient mental health and substance use disorder services from an approved PMHP unless:

(1) The Medicaid member is eligible under the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Program and is in the care or custody of the State of Utah;

(2) Services are provided during a period of presumptive eligibility. When a member is presumptively eligible, all services are billed directly to the State on a fee-for-service basis. [A Medicaid client residing in a county for which a prepaid mental health contractor provides mental health services must obtain authorization for outpatient psychiatric services from the prepaid mental health contractor for the client's county of residence.]

R414-3A-6. Services.

~~(1) Services appropriate in the outpatient hospital setting [for adequate diagnosis and treatment of a client's illness are limited to less than 24 hours and] encompass medically necessary diagnostic, therapeutic, rehabilitative, or palliative medical services and supplies [ordered by a physician or other practitioner of the healing arts].~~

~~(2) Outpatient hospital services include:~~

~~(a) the service of nurses or other personnel necessary to complete the service and provide [patient]member care during the provision of service;~~

~~(b) the use of hospital facilities, equipment, and supplies;~~

~~(c) the technical portion of clinical laboratory and radiology services.~~

~~[(3) Laboratory services are limited to tests identified by the Centers for Medicare and Medicaid Services (CMS) where the individual laboratory is CLIA-certified to provide, bill and receive Medicaid payment.~~

~~_____ [(4)3] Cosmetic or reconstructive procedures are set forth in Section R414-1-29.~~

~~[(5) Abortion procedures are limited to procedures certified as medically necessary, cleared by review of the medical record, approved by division consultants, and determined to meet the requirements of Section 26-18-4 and 42 CFR 441.203.~~

~~_____ (6) Sterilization procedures are limited to those that meet the requirements of 42 CFR 441, Subpart F.~~

~~_____ (7) Nonphysician psychosocial counseling services are limited to evaluations and may be provided only through a prepaid mental health plan by a licensed clinical psychologist for:~~

~~_____ (a) mentally retarded persons;~~

~~_____ (b) cases identified through a CHEC/EPSDT screening; or~~

~~_____ (c) victims of sexual abuse.~~

~~_____ (8) Outpatient individualized observation of a mental health patient to prevent the patient from harming himself or others is not covered.~~

~~_____](9)4 Sleep studies are available only in a sleep disorder center accredited by the American Academy of Sleep Medicine.~~

~~[(10)5] Hyperbaric [O]xygen [F]therapy is limited to service in a facility in which the hyperbaric unit is accredited by the Undersea and Hyperbaric Medical Society. Hyperbaric oxygen therapy is therapy that places the member in an enclosed pressure chamber for medical treatment.~~

~~_____ (11) Take home supplies and durable medical equipment are not reimbursable.~~

~~_____ (12) Prescriptions are not a covered Medicaid service for a client who is eligible to receive emergency services only.]~~

R414-3A-7. Prior Authorization.

~~Prior authorization [must be obtained]is required on certain medical and surgical procedures in accordance with Section R414-1-14.~~

R414-3A-8. [Copayment Policy]Cost Sharing.

~~Each Medicaid [client]member is responsible for a copayment as established in the Utah Medicaid State Plan and incorporated by reference in Rule R414-1.~~

R414-3A-9. Reimbursement for Services.

~~Reimbursement for outpatient hospital services is in accordance with Attachment 4.19-B of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.~~

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [July 1], 2017

Notice of Continuation: October 10, 2012

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-2.3; 26-18-3(2); 26-18-4

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-27** Medicaid Certification of Nursing Care Facilities

NOTICE OF PROPOSED RULE

(Repeal and Reenact)

DAR FILE NO.: 42182

FILED: 10/02/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to comply with new provisions found in Section 26-18-503, which relate to the transfer of Medicaid-certified programs and the settling of outstanding amounts.

SUMMARY OF THE RULE OR CHANGE: In contrast to the old rule, the new rule includes definitions that apply to the

transfer of ownership of nursing care facility programs. It also includes provisions for penalties and interest for outstanding amounts the transferor owes Medicaid, and requires the transferor to void all previous claims for services. The new rule also includes transferee application, enrollment, and submission requirements upon the transferee becoming a Medicaid provider. The old rule included items found in Section 26-18-503.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3 and Section 26-18-503

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no impact to the state budget because the Legislature has already allocated funds to cover the cost of implementing these changes in accordance with state law.
- ◆ LOCAL GOVERNMENTS: There is no cost to local governments because they do not fund nursing care facility programs under Medicaid.
- ◆ SMALL BUSINESSES: There is no impact to small businesses because the Legislature has already allocated funds to cover the cost of implementing these changes in accordance with state law.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers or to Medicaid members because the Legislature has already allocated funds to cover the cost of implementing these changes in accordance with state law.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid member because the Legislature has already allocated funds to cover the cost of implementing these changes in accordance with 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 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:

HEALTH
HEALTH CARE FINANCING,
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or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO BOX 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

[R414-27. Medicaid Certification of Nursing Care Facilities.

R414-27-1. Introduction and Authority.

- _____ (1) This rule governs the certification of nursing care facilities to receive Medicaid payments for services to Medicaid-eligible individuals.
- _____ (2) This rule implements Title 26, Chapter 18, Part 5.
- _____ (3) Section 26-18-3 authorizes this rule.

R414-27-2. Medicaid Certification Requirements.

- _____ (1) The director of the Division of Health Care Financing (DHCF) within the Department of Health may authorize Medicaid certification for a nursing care facility that:
 - _____ (a) is in compliance with 42 CFR Part 483 or has a plan of correction approved by the Department to remedy areas of noncompliance;
 - _____ (b) is in compliance with the Health Care Facility Licensing and Inspection Act, Title 26, Chapter 21, and the rules applicable to nursing homes made pursuant to that act or has a plan of correction approved by the Department to remedy areas of noncompliance;
 - _____ (c) has not increased its certified bed capacity by more than 30 percent annually after March 31, 2004, except as authorized in Subsection 26-18-503(5);
 - _____ (d) is Medicare-certified by the Centers for Medicare and Medicaid Services to provide care for Medicare clients;
 - _____ (e) since March 18, 2008, has not increased its licensed bed capacity except in conjunction with an increase in certified bed capacity as authorized in Subsection 26-18-503(5) or for which the DHCF Director has approved the increase in the nursing care facility program's certified bed capacity expansion before October 15, 2007; and
 - _____ (f) since March 18, 2008, has not increased its certified bed capacity except as authorized in Subsection 26-18-503(5).
- _____ (2) The "independent analysis" referred to in Subsection 26-18-503(5)(b) must be performed by unrelated certified public accountants in accordance with generally accepted accounting principles.
- _____ (3) A nursing care facility is not eligible for Medicaid certification if it expands bed capacity without prior approval from the DHCF Director as authorized in this section, except as outlined in Section 26-18-505.

R414-27-3. Medicaid Certification Subsequent to Change of Ownership.

- _____ (1) The owner of a nursing care facility program may transfer ownership to another person. The transferred nursing care facility may become Medicaid-certified if:
 - _____ (a) the nursing care facility is in compliance with Section R414-27-2 at the time of transfer;

~~_____ (b) the transferee operates the nursing care facility at the same physical location as the previous Medicaid-certified program;~~

~~_____ (c) the transferee agrees to pay the Department's litigation costs if any third party asserts a right to operate the transferred Medicaid-certified nursing care facility;~~

~~_____ (d) the transferee certifies that bed capacity will not expand through a third party owner with a legitimate claim to operate the transferred Medicaid-certified nursing care facility;~~

~~_____ (e) the transferee applies for and takes all necessary steps to become Medicaid-certified within one year of the date the previously certified nursing care facility ceased to provide medical assistance to a Medicaid client;~~

~~_____ (2) If a third party is found, by final agency action of the Department after exhaustion of all administrative and judicial appeal rights, to be entitled to operate a certified program at the physical facility, the transferee shall voluntarily comply with Subsection 26-18-503(4)(b). The Department of Health may revoke Medicaid certification if the transferee does not comply with Subsection 26-18-503(4)(b).~~

~~_____ (3) the transferee that receives Medicaid certification after taking ownership under the provisions of Subsection R414-27-3(1) does not assume the Medicaid liabilities of the previous nursing care facility program if the transferee is not a third party owner in whole or in part of the previous nursing care facility program.~~

~~R414-27-4. Medicaid Certification Subsequent to Renovation or Construction of a New Physical Facility.~~

~~_____ A nursing care facility operating in a new or renovated facility is eligible for re-certification if the nursing care facility:~~

~~_____ (1) was certified at the time of renovation or new construction;~~

~~_____ (2) was in compliance with Sections R414-27-2 and R414-27-3 when it ceased providing care to Medicaid clients at the prior location or before beginning renovations;~~

~~_____ (3) is in the same county or within a five-mile radius of the original facility;~~

~~_____ (4) the construction is completed no later than three years after the date the nursing care facility ceased to operate in the original facility; and~~

~~_____ (5) notifies DHCF no later than 90 days after the date outlined in Subsection R414-27-4(1) of its intent to retain its Medicaid certification.]~~

~~R414-27. Medicaid Enrollment Process for Nursing Care Facilities.~~

~~R414-27-1. Introduction and Authority.~~

~~_____ (1) This rule governs the enrollment of nursing care facilities to receive Medicaid payments for services to Medicaid eligible individuals.~~

~~_____ (2) This rule outlines the duties of the transferor and transferee following a change of ownership.~~

~~_____ (3) This rule is authorized under Sections 26-18-3 and 26-18-5.~~

~~R414-27-2. Definitions.~~

~~_____ (1) "Change of Ownership" (CHOW) means the owner of a licensed and certified nursing care facility program (transferor) transfers ownership of that program to another entity (transferee).~~

~~_____ (2) "Transferor" is the entity or nursing care facility program transferring ownership to another entity.~~

~~_____ (3) "Transferee" is the entity receiving ownership of the nursing care facility program from another entity.~~

~~_____ (4) "Independent analysis" referred to in Subsection 26-18-503(5)(b) means an analysis performed by independent third-party certified public accountants in accordance with generally accepted accounting principles.~~

~~R414-27-3. Medicaid Certification Subsequent to CHOW.~~

~~_____ (1) The Division of Medicaid and Health Financing (DMHF) may not process an enrollment application for the transferee until the transferor has voided all claims for services on or after the effective date of the CHOW.~~

~~_____ (2) A transferor shall settle any outstanding amounts it owes to Medicaid within 30 days of Medicaid enrollment by the transferee. If the transferor fails to return any outstanding amounts as required in Subsection R414-27-3(2):~~

~~_____ (a) The transferor shall be subject to a penalty of the greater of \$50 or 5 percent of the outstanding amount;~~

~~_____ (b) Interest shall also be accrued at a rate of 12 percent annually on any outstanding amount and shall be accrued beginning on the 31st day following the effective date of the CHOW;~~

~~_____ (c) DMHF may waive the imposition of a penalty for good cause.~~

~~_____ (3) The transferee shall:~~

~~_____ (a) Once a provisional license is issued, submit the following to the DMHF Provider Enrollment team in a timely manner:~~

~~_____ (i) A provider enrollment application; and~~

~~_____ (ii) A copy of the provisional license.~~

~~_____ (b) Be enrolled in Medicaid as a new provider before submitting claims.~~

~~_____ (4) If the transferee seeks Medicare certification and the Medicare certification date is different than the issued provisional license or Medicaid enrollment effective begin date, then the Medicaid enrollment date shall be the later of the Medicare certification date or the provisional license date. If the Medicare certification date is later than the issued provisional license date, then the transferor may submit Medicaid claims up to, but not including, the Medicare certification date for the transferee in accordance with all other applicable regulations.~~

~~_____ (5) If the transferee seeks Medicare certification, the transferee may be enrolled in Medicaid before becoming Medicare-certified provided the transferee is an approved provider, in accordance with 42 CFR 455, Subpart E.~~

~~KEY: Medicaid~~

~~Date of Enactment or Last Substantive Amendment: [May 12, 2009]2017~~

~~Notice of Continuation: January 9, 2013~~

~~Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-18-503~~

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-514-2

Requirements for Additional Nursing Care Facility Programs or Additional Beds Within an Existing Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42183

FILED: 10/02/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify the authority under which Medicaid nursing facilities can meet certification requirements.

SUMMARY OF THE RULE OR CHANGE: This amendment updates a citation in the rule text to provide nursing facilities further clarification on certification requirements.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3 and Section 26-18-503

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no impact to the state budget because this change only clarifies a reference to program certification.
- ◆ LOCAL GOVERNMENTS: There is no cost to local governments because they do not fund nursing facilities under the Medicaid program.
- ◆ SMALL BUSINESSES: There is no impact to small businesses because this change only clarifies a reference to program certification.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to Medicaid providers or to Medicaid members because this change only clarifies a reference to program certification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid member because this change only clarifies a reference to program certification.

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:
HEALTH

HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO BOX 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-514. Requirements for Moratorium Exception.

R414-514-2. Requirements for Additional Nursing Care Facility Programs or Additional Beds Within an Existing Program.

(1) A Medicaid-certified nursing care facility program must meet the requirements of ~~[Rule R414-27]~~Section 26-18-503 to acquire additional nursing care facility programs~~[- and must meet the requirements of Subsection 26-18-503(5)]~~ or to acquire additional beds.

(2) Pursuant to Subsection 26-18-503(5), a nursing care facility program must provide all necessary information on the Utah Medicaid Nursing Facility Moratorium Exception Application. The Division of Medicaid and Health Financing (DMHF) shall return the application to the requestor if the application or supporting documentation is deficient.

(3) The notice date shall be the postmark date or other proof of delivery for the application mailed to DMHF.

(4) If DMHF receives an application for the Utah Medicaid Nursing Facility Moratorium Exception in a rural county, and a Medicaid-certified nursing care facility program does not meet the quality standards pursuant to Subsection 26-18-503(5)(d)(v), the certified program may provide additional information under Subsection 26-18-503(9)(a)(ii). Any additional information submitted to DMHF must be postmarked or have other proof of delivery information within 14 days of the original notice from DMHF. Electronic mail (email) does not meet the notification requirement.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~[July 1, 2017]~~

Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-18-503

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-515

Long Term Acute Care

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 42184

FILED: 10/02/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose is to implement by rule the Medicaid policy for long term acute care (LTAC).

SUMMARY OF THE RULE OR CHANGE: This new rule sets forth LTAC policy through definitions, requirements for eligibility and program access, and provisions for service coverage, prior authorization, and continued stay review.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because this change only implements by rule ongoing Medicaid policy for LTAC.
- ◆ **LOCAL GOVERNMENTS:** There is no budget impact to local governments because they do not fund or provide LTAC under the Medicaid program.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change only implements by rule ongoing Medicaid policy for LTAC.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers or to Medicaid members because this change only implements by rule ongoing Medicaid policy for LTAC.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid member because this change only implements by rule ongoing Medicaid policy for LTAC.

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:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG

288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov or mail at PO BOX 143102, Salt Lake City, UT 84114-3102

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 12/01/2017

AUTHORIZED BY: Joseph Miner, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-515. Long Term Acute Care.

R414-515-1. Introduction and Authority.

This rule defines the scope of inpatient long-term acute care hospital (LTAC) services that are available to Medicaid members for the treatment of disorders other than mental disease.

This rule is authorized by Subsection 1886(d)(1)(B)(iv)(I) of the Social Security Act and Sections 26-1-5, 26-18-2.1, 26-18-2.3, and 26-18-3.

R414-515-2. Definitions.

(1) "Admission" means the acceptance of a Medicaid member for LTAC care and treatment when the member meets established evidence-based criteria for severity of illness and intensity of service and the required service cannot be provided in a lesser level of care setting.

(2) "Comprehensive documentation" means applicable relevant information including a history and physical, operative reports, daily physician progress notes, vital signs, laboratory test results, medications administration records, respiratory therapy notes, wound care notes, nutrition notes, physical therapy notes, occupational therapy notes, speech therapy notes, and any other pertinent information the Division needs to make a decision regarding the LTAC request.

(3) "Continued stay review" means a periodic, supplemental, or interim review of clinical information for an LTAC member.

(4) "Episode of Care" means an LTAC stay from admission to discharge.

(5) "Inpatient" means an individual whose severity of illness and intensity of service meet the evidence-based criteria for an LTAC stay.

(6) "Intensity of Service" means measure of the number, technical complexity, or attendant risk of services provided.

(7) "Long-term acute care hospital" or "Long-term care hospital" means an inpatient transitional care hospital designed to treat members with multiple, serious medical conditions requiring intense, acute care as determined by a physician.

(8) "Retroactive review" means a review of clinical information for a patient who had previously been admitted to an LTAC, but never received a prior authorization for the initial or continued stay due to retroactive eligibility approval.

(9) "Severity of Illness" means the extent of organ system derangement or physiologic decompensation for a patient.

R414-515-3. Client Eligibility Requirements.

A patient must be eligible for Medicaid services.

R414-515-4. Program Access Requirements.

(1) A member must meet the severity of illness and intensity of service for LTAC level of care as determined through an evidence-based criteria review process.

(2) The evidence-based criteria subsets must be utilized correctly (e.g., the primary diagnosis cannot be used as a secondary diagnosis).

R414-515-5. Service Coverage.

(1) Add-on rates for tracheostomy and ventilator management may not be combined for members who are admitted to an LTAC.

(2) Only one unit per add-on (e.g., ventilator) per day is allowed.

(3) Only one physical evaluation, one occupational evaluation, and one speech therapy evaluation is allowed per episode of care unless it is medically necessary to receive additional evaluations.

(4) Dialysis and total parenteral nutrition services are ancillary services not covered in the LTAC rate. Providers who furnish these and any other ancillary services not included in the daily LTAC rate should submit claims for reimbursement to Medicaid directly.

(5) Prior authorization is not transferable from one LTAC to another.

(6) Prior authorization is required for preadmission, continued stay, and retroactive reviews.

(7) Each approved prior authorization is for a seven-day period.

(8) An LTAC provider must submit all current comprehensive documentation or the LTAC request will not be considered for coverage determination, and the Department will return the request as incomplete.

(9) Consideration of any LTAC coverage determination begins on the date in which the Department receives all current comprehensive documentation.

R414-515-6. Preadmission Review.

An LTAC provider shall submit prior authorization requests to the Department at least 24 hours before the expected admission.

R414-515-7. Continued Stay Review.

An LTAC provider shall submit prior authorization requests to the Department two days before the end of the approved period. The continued stay prior authorization request must include all pertinent medical record comprehensive documentation supporting the evidence-based LTAC continued stay review.

R414-515-8. Reimbursement Methodology.

Reimbursement for LTAC is in accordance with the Utah Medicaid State Plan.

KEY: Medicaid, long term acute care, LTAC

Date of Enactment or Last Substantive Amendment: 2017

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

**Insurance, Administration
R590-244
Individual and Agency Licensing
Requirements**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42175

FILED: 09/29/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being revised due to H.B. 42 passed during the 2017 General Session. The revisions make the rule consistent with recent changes in the Utah insurance statutes with regards to the requirement to notify licensees of terminated insurer appointments or agency designations. It also removes a requirement for motor club insurers.

SUMMARY OF THE RULE OR CHANGE: The changes require an insurer to notify an individual or agency licensee within 15 days of submitting a termination of appointment to the Department of Insurance, and for an agency to notify an individual licensee within 15 days of submitting a termination of designation to the Department. If the licensee was terminated for cause, the amendment requires insurers to provide the licensee a copy of the information that was sent to the Department; such information can be either mailed or emailed to the licensee's last known address or email address. It also removes a requirement that motor club insurers submit appointment information to the Commissioner as a fax or PDF, because such insurers may now file appointments through SIRCON or NIPR. Additionally, it removes a requirement that an agency submit a change of the designated licensed responsible individual to the Commissioner as a fax or PDF, because agencies may now file this change through SIRCON or NIPR.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-23a-104 and Section 31A-23a-108 and Section 31A-23a-110 and Section 31A-23a-111 and Section 31A-23a-115 and Section 31A-23a-302 and Section 31A-23b-102 and Section 31A-23b-203 and Section 31A-23b-205 and Section 31A-23b-207 and Section 31A-23b-208 and Section 31A-23b-209 and Section 31A-23b-401 and Section 31A-25-201 and Section 31A-25-208 and Section 31A-26-202

and Section 31A-26-207 and Section 31A-26-210 and Section 31A-26-213 and Section 31A-35-104 and Section 31A-35-301 and Section 31A-35-401 and Section 31A-35-406 and Subsection 31A-2-201(3) and Subsection 31A-23a-102(10) and Subsection 31A-23b-102(7)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no anticipated cost or savings to state budget because the rule change applies only to the relationship between an insurer or agency and its licensees.
- ◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local governments because the rule change applies only to the relationship between an insurer or agency and its licensees.
- ◆ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses because the rule change applies only to the relationship between an insurer or agency and its licensees.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to any other persons because the rule change applies only to the relationship between an insurer or agency and its licensees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: An insurer or agency may have a minimal compliance cost depending on how it chooses to send notice to its licensees: While an insurer could incur printing and mailing costs when notifying its licensees of a terminated appointment, the Department expects that email will be the preferred option for sending notices. The Department specifically requested that insurers submit input regarding fiscal impact as a result of the rule change, and no insurers expressed any concern.

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 will not result in a fiscal impact to businesses. While an insurer could incur printing and mailing costs when notifying its licensees of a terminated appointment, the department expects that email will be the preferred option for sending notice. The Department specifically requested that insurers submit input regarding fiscal impact as a result of the rule change, and no insurers expressed any concern.
 V. DEPARTMENT HEAD'S COMMENTS ON THE ANALYSIS: As part of the pre-filing due diligence process, the Department requested that insurers submit comments specifically regarding any fiscal impact this rule might have on their business. No insurers submitted comments expressing any concern. The Department expects that insurers will choose to send notice via email because it will be the more fiscally appropriate option.

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

INSURANCE
 ADMINISTRATION
 ROOM 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2017

AUTHORIZED BY: Steve Gooch, Information Specialist

R590. Insurance, Administration.

R590-244. Individual and Agency Licensing Requirements.

R590-244-1. Authority.

This rule is promulgated pursuant to:

(1) Subsection 31A-2-201(3) that authorizes the commissioner to adopt rules to implement the provisions of the Utah Insurance Code;

(2) Subsections 31A-23a-104(2), 31A-23a-110(1), 31A-25-201(1), 31A-26-202(1), 31A-23b-203(2), 31A-23b-208(1), 31A-35-104, 301(1) and 401(2) that authorize the commissioner to prescribe the forms and manner in which an initial or renewal individual or agency license application under Chapters 23a, 23b, 25, 26 and 35 is to be made to the commissioner;

(3) Subsections 31A-23a-111(10), 31A-23b-401(9), 31A-25-208(9), 31A-26-213(10), and 31A-35-406(1) that authorize the commissioner to adopt a rule prescribing license renewal and reinstatement requirements for individual and agency licensees under Chapters 23a, 23b, 25, 26, and 35;

(4) Subsections 31A-23a-108(1), 31A-23b-205(2) and (3), and 31A-26-207(1) and (5), that authorize the commissioner to adopt a rule prescribing how examination and training requirements may administered to licensees under Chapters 23a, 23b, and 26;

(5) Subsections 31A-23a-115(1) and (2) that authorize[s] the commissioner to adopt a rule prescribing reporting and notification requirements to be utilized by an insurer for the initial appointment or the termination of appointment of a person authorized to act on behalf of the insurer under Chapter 23a;

(6) Subsection 31A-23a-203.5(3) that authorizes the commissioner to adopt a rule prescribing the terms and conditions of any required legal liability insurance coverage to be maintained by or on behalf of a licensed resident individual producer;

(7) Subsection 31A-23b-207(1) that authorizes the commissioner to adopt a rule prescribing the amount of any surety bond required to be maintained by a licensed navigator to cover the

legal liability of a navigator as the result of an erroneous act or failure to act in the navigator's capacity as a navigator;

(8) Subsections 31A-23a-302(2) and (3), 31A-23b-209(3) and (4), and 31A-26-210~~(+)~~(2) and (3) that authorize the commissioner to adopt a rule prescribing reporting and notification requirements to be utilized by an agency for the initial designation or the termination of designation of a person authorized to act on behalf of the agency under Chapters 23a, 23b, and 26; and

(9) Subsections 31A-23a-102(10) and 31A-23b-102(7) that authorize the commissioner to adopt a rule to define the word "resident".

R590-244-2. Purpose and Scope.

(1) The purpose of this rule is to provide standards for:

(a) an individual or agency licensee for:

(i) obtaining, renewing or reinstating a license;

(ii) maintaining any legal liability coverage or surety bond requirements; and

(iii) making other miscellaneous license amendments;

(b) an insurer for the initial appointment or the termination of an appointment of an individual or agency licensee; and

(c) an agency for the initial designation or the termination of a designation of an individual licensee to the agency's license.

(2) Scope.

(a) This rule applies to all individuals and agencies licensed under Chapters 23a, 23b, 25, 26 and 35.

(b) This rule applies to all admitted insurers doing business in Utah.

R590-244-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Subsections 31A-1-301, 31A-23a-102, 31A-23b-102, 31A-26-102, and 31A-35-102 and the following:

(1) "Active license" means a license under which a licensee has been granted authority by the commissioner to engage in some activity that is part of or related to the insurance business.

(2) "Inactive license" means a formerly active license where a licensee is no longer authorized by the commissioner to engage in some activity that is part of or related to the insurance business.

(3) "Lapse" means the inactivation of an active license by expiration of the period for which the license was issued or by operation of law.

(4) "License application" means information submitted by a license applicant to provide information about the license applicant that is used by the commissioner to evaluate the applicant's qualifications and decide whether to:

(a) issue or decline to issue a license;

(b) add or decline to add an additional line of authority to an active license;

(c) renew or decline to renew an active license; or

(d) reinstate or decline to reinstate an inactive license.

(5) "Line of authority" means a line of insurance of a particular subject matter area within a license type for which the commissioner may grant authority to do business.

(6) "License type" means a category of license identifying a specific functional area of insurance activity for which the commissioner may grant authority to do business.

(7) "NIPR" means an electronic application software provided by the National Insurance Producer Registry (NIPR).

(8) "Reinstate" means the activation of an inactive license within 365 days of the inactivation date.

(9) "Renewal" means the continuation of an active license from one two-year licensing period to another, except that the licensing period for a bail bond agency is one year.

(10) "Resident," for the purpose of a resident insurance license in this state, means a person who claims this state as the person's home state in which the person maintains the principal:

(a) place of residence; or

(b) place of business, and

(c) is licensed to do insurance business.

(11) "SIRCON" means an electronic application software provided by Sircon Corporation or its acquiring parent company, Vertafore, Inc.

(12) "Termination for cause" means

(a) an insurer or an agency has ended its relationship with a licensee or has cancelled the licensee's authority to act on behalf of the insurer or agency for one of the reasons identified in 31A-23a-111(5); or

(b) a licensee has been found to have engaged in any of the activities identified in 31A-23a-111(5), 31A-23b-401(4), 31A-26-213(5), by a court, government body, or self-regulatory organization authorized by law.

R590-244-4. Requirement to Electronically Submit License Applications, Appointments, Designations, and License Amendments.

(1) Except as otherwise provided in this rule the following shall be submitted electronically to the department using SIRCON or NIPR:

(a) all individual and agency license applications under chapters 23a, 23b, 25, 26, and 35 as prescribed in R590-244-~~[6]~~, ~~[7]~~, ~~9~~ and ~~[8]~~10 for:

(i) a new license;

(ii) an additional license type or line of authority;

(iii) a license renewal; or

(iv) a license reinstatement;

(b) all appointments, termination of appointments, designations, and terminations of designations as prescribed in R590-244-~~[9]~~11 and ~~[10]~~12;

(c) all miscellaneous license amendments pertaining to individual and agency licenses under Chapters 23a, 23b, 25, 26 and 35 as prescribed in R590-244-~~[11]~~13;

(d) all documents related to reporting to the commissioner of criminal prosecution or administrative action taken against a licensee as required under Chapters 23a, 23b, 25, 26 and 35; and

(e) any additional documentation required in connection with an application, except as shown in (iv) below, including but not limited to:

(i) written explanation and documentation for positive responses to background questions on a license application;

(ii) evidence of meeting specific experience, bonding, or other requirements for certain license types or lines of authority; or

(iii) evidence of meeting continuing education requirements for a renewal or reinstatement application when there is a question regarding the number of course hours completed.

(iv) If an electronic attachment function for attaching a document required in connection with an application is not available in the attachment utility from SIRCON or NIPR, the document shall be submitted electronically via a facsimile or as a PDF attachment to an email, until such time that an electronic attachment function for submitting the document in connection with the application becomes available from SIRCON or NIPR.

(2) Attestation. Submission of an electronic application or other form under this Rule constitutes the applicant's or submitter's attestation under penalties of perjury that the information contained in the application or form is true and correct.

(3) Any submission subject to this rule that does not comply with this rule, including an application that remains incomplete for a period of 30 days following the initial submission, may be rejected as incomplete and returned to the submitter without being processed, with any paid fees forfeited to the State.

R590-244-5. Requirement of an Active License to Sell, Solicit, or Negotiate Insurance.

(1) A person must have the following to sell, solicit, or negotiate insurance:

(a) an active license matching the type and line of insurance being sold, solicited, or negotiated; and

(b) if the person is an agency, an appointment from an insurer; or

(c) if the person is an individual:

(i) an appointment from an insurer or a designation from an agency; and

(ii) if the individual is a resident producer, legal liability errors and omissions insurance coverage in an amount not less than \$250,000 per claim and \$500,000 annual aggregate limit, as applicable in accordance with Section 31A-23a-203.5.

(2) A licensee whose license is inactivated for any reason shall not sell, solicit, or negotiate insurance from the date the active license is inactivated until the date the inactive license is reactivated.

R590-244-6. Requirement of an Active License to Act as a Navigator.

(1) A person must have the following to act as a navigator:

(a)(i) an active navigator license issued under Chapter 31A-23b, or

(ii) an active producer license issued under Chapter 31A-23a with an accident and health line of authority; and

(b)(i) a surety bond in an amount not less than \$50,000 to cover the legal liability of the navigator as the result of an erroneous act or failure to act in the navigator's capacity as a navigator, as applicable in accordance with Section 31A-23b-207; or

(ii) legal liability errors and omissions insurance coverage in an amount not less than \$250,000 per claim and \$500,000 annual aggregate limit, as applicable in accordance with Section 31A-23b-207.

(2) A professional liability coverage plan is considered to be a form of errors and omissions insurance coverage.

(3) A navigator whose license is inactivated for any reason shall not act as a navigator from the date the active license is inactivated until the date the inactive license is reactivated.

(4) A navigator license includes the following lines of authority:

(a) navigator; and

(b) certified application counselor.

R590-244-7. New License Application.

(1) A resident or non-resident license application for a new license, or for the addition of an additional license type or line of authority, shall be submitted using either SIRCON or NIPR, except as stated in (2) and (3) below.

(2) An application for a navigator license shall be submitted using SIRCON, except as stated in (3) below.

(3) A non-resident license application for a license type or line of authority not offered in the person's home state shall be submitted to the commissioner via facsimile or as a PDF attachment to an email using a form available through the Department's website, until such time that an electronic application becomes available from SIRCON or NIPR.

R590-244-8. Examination and Training.

(1) Examination and training requirements may be administered by:

(a) the commissioner;

(b) a testing vendor approved and contracted by the commissioner; or

(c) navigator related examination and training administered through the United States Department of Health and Human Services.

(2) To act as a navigator in Utah, a person must successfully complete:

(a) the federal navigator training and certification program requirements as established by federal regulation under PPACA and administered through the United States Department of Health and Human Services, including any applicable training, examination, certification or recertification requirements under that program; and

(b) the state defined contribution arrangements and small employer health insurance exchange training required under Section 31A-23b-205.

(c) A person who has successfully completed both the federal and state navigator training and certification identified in (2)(a) and (b) above is considered to have successfully completed the required Utah training and examination requirements for a navigator license in accordance with Section 31A-23b-205.

(3) An applicant for the crop insurance license class who has satisfactorily completed a national crop adjuster program is exempt from an examination requirement under Section 31A-26-207.

R590-244-9. Renewal and Non-renewal of an Active License.

(1) An active license shall be renewed on or before the license expiration date by submitting a resident or non-resident license renewal application online via SIRCON or NIPR.

(2) A new individual license shall expire on the last day of the licensee's birth month following the two-year anniversary of the license issue date, unless renewed, except as shown in (4) below.

(3) A renewed individual license shall expire on the last day of the licensee's birth month every two years, unless renewed, except as shown in (4) below.

(4) An individual navigator license shall expire annually on the last day of the month from the most recent license issue or renewal date, unless renewed.

(5) An agency license shall expire on the last day of the month every two years from the most recent license issue or renewal date, unless renewed, except as shown in (6) below.

(6) A bail bond agency license shall expire annually on August 14th, unless renewed.

(7) Renewal Notice.

(a) Prior to the license expiration date, the commissioner may, as a courtesy, send a renewal notice to the licensee's business email address as shown on the records of the Department.

(b) A renewal notice sent by the commissioner to the business email address, as shown on the records of the department, shall be considered received by the licensee.

(c) A licensee who fails to properly submit to, and maintain with, the commissioner a valid business email address may be subject to administrative penalties.

(8) A license shall non-renew effective the license expiration date if it is not renewed on or before the expiration date, and:

(a) the non-renewed license shall be inactivated;

(b) all agency designations and insurer appointments shall be terminated; and

(c) a lapse license notice will be sent to the affected licensee.

(9) An active licensee who fails to renew a license shall not engage in the business of insurance during the period of time from the expiration date of the license until the date the inactive license is reinstated or a new license is issued.

R590-244-10. Reinstatement of Inactive License.

(1) An inactive license that has been inactive for a period of one year or less following the license expiration date can be reinstated as stated in (3) through (7) below.

(2) An inactive license that has not been reinstated within one year following its expiration date shall not be reinstated and the inactive licensee shall apply as a new license applicant.

(3) A reinstatement applicant shall:

(a) comply with all requirements for renewal of a license, including any applicable continuing education or examination requirements if the reinstatement applicant is an individual; and

(b) pay a reinstatement fee as shown in R590-102.

(4) A resident or non-resident license application for reinstatement of an inactive license shall be submitted using either SIRCON or NIPR, except as stated in (5) below.

(5) The following license applications for reinstatement of an inactive license must be submitted to the department via facsimile or as a PDF attachment to an email using a form available through the department's website, until such time that an electronic application becomes available from SIRCON or NIPR:

(a) a non-resident reinstatement application for a person whose license has been inactivated for failure to maintain an active license in the person's home state;

(b) a resident or non-resident reinstatement application for a person whose license has been voluntarily surrendered; and

(c) a resident or non-resident reinstatement application for a person whose license has been inactivated due to an incomplete renewal application, except as stated in (i) below.

(i) If a resident license has been inactivated due to a renewal application that was incomplete solely for failure to meet the

continuing education requirements, a resident reinstatement application must be submitted to the department:

(A) during the first 30 days after a license expiration date as a facsimile or as a PDF attachment to an email using a form available through the department's website; or

(B) 31 days to one year after a license expiration date through SIRCON or NIPR.

(7) A license that has been voluntarily surrendered:

(a) may be reinstated:

(i) during the license period in which the license was surrendered; and

(ii) no later than one year from the date the license was surrendered; and

(b) must comply with the reinstatement requirements stated in (3) above, except that no continuing education requirement will apply for an individual license applicant because the reinstatement is within the current license period.

(8) A reinstated license shall expire on the same date it would have expired had the license not become inactive.

(9) A person with a reinstated license must complete any required insurer contracts and appointments or agency designations before the reinstated licensee can resume doing business.

R590-244-11. Appointments and Termination of Appointments by Insurers.

(1) Initial Appointments.

(a) An insurer shall electronically appoint an individual or agency licensee with whom the insurer has a contract.

(b) Appointments are continuous until terminated by the insurer or canceled by the department.

(c) It is not necessary for an insurer to appoint an individual who is listed as a designee on an appointed agency's license.

(d) To appoint a person, an insurer shall:

(i) identify the date the appointment is to be effective; and

(ii) submit the electronic appointment to the commissioner no later than 15 days from the date the producer contract is executed or receipt of the first insurance application, using SIRCON or NIPR, ~~except as stated in (iii) below.~~

~~_____ (iii) A motor club insurer must submit the appointment to the commissioner via facsimile or as a PDF attachment to an email using a form available through the department's website, until such time that an electronic appointment becomes available from SIRCON or NIPR.]~~

(2) Termination of Appointment.

(a) An insurer shall electronically terminate the appointment of any previously appointed individual or agency no longer authorized to conduct business on behalf of the insurer in this state.

(b) To terminate a person's appointment an insurer shall:

(i) identify the date the termination of appointment is to be effective; and

(ii) submit the termination of appointment to the department no later than 30 days after the identified effective date of termination, using SIRCON or NIPR, ~~except as stated in (iii) below.~~

~~_____ (iii) A motor club insurer must submit the termination of appointment as a facsimile or as a PDF attachment to an email using a form available through the department's website, until such time that an electronic termination of appointment becomes available from SIRCON or NIPR.]~~

(c) Within 15 days after submitting a termination of appointment to the department, an insurer shall notify an individual or agency licensee of the terminated appointment and of the reason for termination by mail or email at the licensee's last known address or email address.

(3) Termination for Cause.

(a) In addition to electronically terminating the individual or agency licensee's appointment, an insurer that terminates an individual or agency licensee for cause must send the following information to the department via facsimile or as a PDF attachment to an email:

(~~(a)~~i) the insurer must state that the termination was for cause; and

(~~(b)~~ii) provide the specific circumstances causing the termination for cause.

(b) If a licensee is terminated for cause, the insurer shall provide a copy of the information that was sent to the department to the licensee at the licensee's last known address or email address.

R590-244-12. Designations and Termination of Designations by Agencies.

(1) Designations.

(a) An agency shall electronically designate a licensed individual to the agency license to do business on behalf of the agency in this state.

(b) Designations are continuous until terminated by the agency or canceled by the department.

(c) To designate an individual on its license, an agency shall:

(i) identify the date the designation is to be effective; and

(ii) submit the designation to the commissioner no later than 15 days after the identified effective date of designation using SIRCON or NIPR.

(2) Termination of designations.

(a) An agency shall electronically terminate the designation of any previously designated individual no longer authorized to conduct business on behalf of the agency in this state.

(b) To terminate an individual's designation an agency shall:

(i) identify the date the termination of designation is to be effective; and

(ii) submit the termination of designation to the department no later than 30 days after the identified effective date of termination using SIRCON or NIPR.

(c) Within 15 days after submitting a termination of designation to the department, an agency shall notify an individual licensee of the terminated designation and of the reason for termination by mail or email at the licensee's last known address or email address.

(3) Termination for Cause.

(a) In addition to electronically terminating the individual licensee's designation, an agency that terminates an individual licensee for cause must send the following information to the department via facsimile or as a PDF attachment to an email:

(~~(a)~~i) the agency must state that the termination was for cause; and

(~~(b)~~ii) provide the specific circumstances causing the termination for cause.

(b) If a licensee is terminated for cause, the agency shall provide a copy of the information that was sent to the department to the licensee at the licensee's last known address or email address.

R590-244-13. Miscellaneous License Amendments and Changes to an Agency's Employer Identification Number (EIN).

(1) All miscellaneous license amendments shall be submitted electronically.

(2) The following ~~four~~ five miscellaneous license amendments shall be submitted via SIRCON or NIPR:

(a) a change of residence, business, or mailing address within the same state;

(b) a change of email address;

(c) a change of telephone number; ~~(c)~~

(d) a change of an individual licensee's name; or

(e) a change of the licensed individual designated as the person responsible for the regulatory compliance of the agency.

(3) The following ~~six~~ five miscellaneous license amendments shall be submitted electronically via facsimile or as a PDF attachment to an email, except that a license amendment identified in (d), (e) and (f) shall be submitted via SIRCON or NIPR once the amendment becomes available electronically from SIRCON or NIPR:

(a) a voluntary surrender of a license or line or authority;

(b) a clearance letter request;

(c) a change of an agency name;

(d) a change of residence, business, or mailing address from one state to another state; or

(e) a change of position or title of an owner, partner, officer, or director of an agency; ~~(f)~~

~~(f) a change of the licensed individual designated as the person responsible for the regulatory compliance of the agency].~~

(4) A miscellaneous license amendment submitted in accordance with this section shall contain:

(a) the name and title of the individual submitting the amendment;

(b) the relationship to the licensee of the individual submitting the amendment; and

(c) the following attestation made by the individual submitting the amendment: "I hereby attest that all of the information submitted is true and correct, and that I am the individual licensee for whom the requested change is being submitted, or an authorized responsible representative of the individual or agency licensee for whom the requested change is being submitted."

(5) A change of Employer Identification Number (EIN):

(a) cannot be processed as a miscellaneous license amendment; and

(b) the entity must apply as a new license applicant.

R590-244-14. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-244-15. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule on the effective date of the rule.

R590-244-16. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance licensing requirements

Date of Enactment or Last Substantive Amendment: ~~January 12, 2015~~ **2017**

Notice of Continuation: June 16, 2014

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-102(10); 31A-23a-104; 31A-23a-108; 31A-23a-110; 31A-23a-111; 31A-23a-115; 31A-23a-302; 31A-23b-102; 31A-23b-102(7); 31A-23b-203; 31A-23b-205; 31A-23b-207; 31A-23b-208; 31A-23b-209; 31A-23b-401; 31A-25-201; 31A-25-208; 31A-26-202; 31A-26-207; 31A-26-210; 31A-26-213; 31A-35-104; 31A-35-301; 31A-35-401; 31A-35-406

Judicial Performance Evaluation
Commission, Administration
R597-2
Administration of the Commission

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42159

FILED: 09/27/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to establish administration procedures of the Commission. Section R597-2-5 is added to the rule to address data publicity of the Commission.

SUMMARY OF THE RULE OR CHANGE: Section R597-2-5 is added.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 78A-12-201 and Section 78A-12-202 and Section 78A-12-203 and Section 78A-12-204 and Section 78A-12-205

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The addition to the rule only addresses data publicity of the Commission.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local governments. The addition to the rule only addresses data publicity of the Commission.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. The addition to the rule only addresses data publicity of the Commission.
- ◆ **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. The addition to the rule only addresses data publicity of the Commission.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons. The addition to the rule only addresses data publicity of the Commission.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts that the addition to the rule may have on businesses. The addition to the rule only addresses data publicity of the Commission.

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

JUDICIAL PERFORMANCE EVALUATION
COMMISSION
ADMINISTRATION
ROOM B-330 SENATE BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jennifer Yim by phone at 801-538-1652, or by Internet E-mail at jjim@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2017

AUTHORIZED BY: John Ashton, Chair

R597. Judicial Performance Evaluation Commission, Administration.

R597-2. Administration of the Commission.

R597-2-1. Internal Operating Procedures.

(1) The commission may adopt procedures governing internal operations relating to judicial performance evaluation and meeting protocol, consistent with state statute and these rules.

(2) Proposed amendments to internal operating procedures shall be submitted in writing to all members of the commission in advance of the next regular meeting, at which time a majority of the commission is required for the adoption of the amendment. Amendments become effective immediately upon ratification.

R597-2-2. Disclosure, Recusal, and Disqualification.

(1) Disclosure.

(a) Commissioners shall make disclosures at the monthly commission meeting prior to the first scheduled meeting at which the retention evaluation reports for a given class of judges will be discussed or, in any event, no later than the beginning of the meeting at which a particular judge's evaluation is considered.

(b) Each commissioner shall disclose to the commission any professional or personal relationship or conflict of interest with a judge that may affect an unbiased evaluation of the judge.

(c) Relationships that may affect an unbiased evaluation of the judge include any contact or association that might influence a commissioner's ability to fairly and reasonably evaluate the performance of any judge or to assess that judge without bias or prejudice, including but not limited to:

(i) family relationships to a state, municipal, or county judge within the third degree (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(ii) any business relationship between the commissioner and the judge.

(iii) any personal litigation directly or indirectly involving the judge and the commissioner, the commissioner's family or the commissioner's business;

(d) A commissioner exhibits bias or prejudice when the commissioner is predisposed to decide a cause or an issue in a way that does not leave the commissioner's mind open to exercising the commissioner's duties impartially in a particular case.

(e) Disclosures made with respect to a judge subject to evaluation constitute a protected record pursuant to Subsection 78A-12-203(5)(e).

(2) Recusal.

(a) As used in this rule, recusal is a voluntary act of self-disqualification by a commissioner.

(b) Recusal encompasses exclusion both from participating in the commission's evaluation of judge and from voting on whether to recommend the judge for retention.

(c) After making a disclosure, a commissioner may voluntarily recuse if the commissioner believes the relationship with the judge will affect an unbiased evaluation of the judge.

(3) Disqualification.

(a) A commissioner may move to vote on the disqualification of another commissioner if:

(i) the other commissioner makes a disclosure and does not voluntarily recuse, and that commissioner's impartiality might reasonably be questioned; or

(ii) the other commissioner does not make a disclosure, but known circumstances suggest that the commissioner's impartiality might reasonably be questioned.

(b) A commissioner may not be disqualified from voting on whether to recommend that the voters retain a judge solely because the member appears before the judge as an attorney, a fact witness, or an expert, pursuant to Subsection 78A-12-203(5)(e)(i).

(c) A motion to disqualify must be seconded in order to proceed.

(d) During the discussion concerning possible disqualification, any commissioner may raise any facts concerning another commissioner's ability to fairly and reasonably evaluate the performance of any judge without bias or prejudice.

(e) A two-thirds vote of those present is required to disqualify any commissioner.

(f) Disqualification encompasses exclusion both from participating in the commission's evaluation of a judge and from voting on whether to recommend the judge for retention.

R597-2-3. Reporting Improper Attempts to Influence.

A commissioner shall report to the executive committee any form of communication that attempts to influence the

evaluation process by improper means, including but not limited to undue pressure, duress, or coercion.

R597-2-4. Confidentiality.

(1) The commission enacts this rule to avoid the risk of inconsistent statements by commissioners and to maintain the credibility of the commission and the integrity of its work product.

(2) Only the commission's designated spokesperson may publicly discuss the evaluation of any particular judge or justice.

(3) No commissioner may publicly advocate for or against the retention of any particular judge or justice.

(4) Notwithstanding other provisions of this subsection, commissioners may publicly discuss the evaluation process, including but not limited to discussion of respondent groups, survey instruments, and the operation of the commission.

R597-2-5. Data Publicity.

In response to requests for the commission's data set, the commission shall choose appropriate methods to protect respondent confidentiality. The commission may:

(1) Elect to collapse data elements,

(2) Elect to withhold data elements from release, and

(3) Take other reasonable measures as necessary.

KEY: internal operating procedures, reporting improper attempts to influence, conflicts of interest, confidentiality
Date of Enactment or Last Substantive Amendment: [July 1], 2017

Notice of Continuation: April 13, 2015

Authorizing, and Implemented or Interpreted Law: 78A-12-201 through 78A-12-206

Natural Resources, Wildlife Resources **R657-11**

Taking Furbearers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42148

FILED: 09/21/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted for taking public input and reviewing the Division of Wildlife Resources' (DWR) furbearer program.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule: 1) add a definition for "trapping device"; 2) require any person setting traps outside of 600 feet of a home or outbuilding occupied by humans or livestock to possess a valid Trap Registration License and to permanently mark those traps with the assigned number; and 3) set the Trapping Registration License fee as a one-time ten dollar fee (\$10).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amendments require an additional license and additional marked traps by those participating in trapping in Utah. Therefore, DWR has determined 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 the increase in revenue will be minimal.

◆ **LOCAL GOVERNMENTS:** None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment requires a one-time purchase of a Trap Registration License (\$10) for any small business owner wishing to trap protected and non-protected species outside of the 600 feet buffer zone around a home or outbuilding and will generate a cost impact to small businesses. It is impossible to determine at this time which small business would be trapping outside the buffer zone.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment requires a one-time purchase of a Trap Registration License (\$10) for any person wishing to trap protected and non-protected species outside of the 600 feet buffer zone around a home or outbuilding and will generate a cost impact to other persons. It is impossible to estimate the exact number of people wishing to trap outside the buffer zone.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment requires the one-time purchase of a Trap Registration License (\$10) for any person wishing to trap protected and non-protected wildlife outside of the 600 feet buffer zone around a home or outbuilding. Therefore, DWR has determined that there is additional compliance costs associated with the amendments.

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 result in a fiscal impact to businesses who wish to trap protected or non-protected wildlife outside of the 600 feet buffer zone. The business owner would be required to purchase a one-time Trap Registration License for ten dollars (\$10) and then permanently mark all of the traps with that number.

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 11/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2017

AUTHORIZED BY: Mike Fowlks, Deputy Director

R657. Natural Resources, Wildlife Resources.

R657-11. Taking Furbearers and Trapping.

R657-11-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking furbearers and trapping.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking furbearers.

R657-11-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Artificial cubby set" means any artificially manufactured container with an opening on one end that houses a trapping device.

(b) "Bait" means any lure containing animal parts larger than one cubic inch with the exception of white-bleached bones with no hide or flesh attached.

(c) "Cage trap" means any enclosure containing a one-way door triggered by a treadle or pan that prevents escape of an animal after the door closes.

(d) "Exposed bait" means bait which is visible from any angle, except when used in an artificial cubby set.

(e) "Foothold trap" means any underspring or jump trap, longspring trap or coil-spring trap with two smooth arms or jaws that come together when an animal steps on a pan in the center of the trap.

(f) "Fur dealer" means any individual engaged in, wholly or in part, the business of buying, selling, or trading skins or pelts of furbearers within Utah.

(g) "Fur dealer's agent" means any person who is employed by a resident or nonresident fur dealer as a buyer.

(h) "Good condition" means the carcass is fresh or frozen and securely wrapped to prevent decomposition so that the tissue remains suitable for analysis.

(i) "Green pelt" means the untanned hide or skin of any furbearer.

(j) "Owner" means the person who has been issued a trap registration number associated with one or more trapping devices.

(k) "Pursue" means to chase, tree, corner, or hold a furbearer at bay.

(l) "Scent" means any lure composed of material of less than one cubic inch that has a smell intended to attract animals.

(m) "Trapping device" means any apparatus used to remotely capture or kill an animal, including a cage trap, foothold trap, snare wire, or any other body gripping mechanism.

R657-11-3. License, Permit and Tag Requirements.

(1) A person who has a valid furbearer license may take furbearers during the established furbearer seasons published in the guidebook of the Wildlife Board for taking furbearers.

(2) A person who has a valid furbearer license and valid bobcat permits may take a bobcat during the established bobcat season published in the guidebook of the Wildlife Board for taking furbearers.

(3) A person who has a valid furbearer license and valid marten trapping permit may take marten during the established marten season published in the guidebook of the Wildlife Board for taking furbearers.

(4) A person who has a valid trap registration license may use a trapping device to take furbearers, coyotes, or raccoons, as authorized in the Wildlife Code, this rule and the guidebooks of the Wildlife Board.

(5) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing furbearers.

R657-11-4. Bobcat Permits.

(1) Bobcat permits can only be obtained and are only valid with a valid furbearer license.

(2)(a) A person may obtain up to the number of bobcat permits authorized each year by the Wildlife Board.

(b) Permit numbers shall be published in the guidebook of the Wildlife Board for taking furbearers.

(3) Bobcat permits will be available during the dates published in the guidebook of the Wildlife Board for taking furbearers and may be obtained by submitting an application through the division's Internet address.

(4) Bobcat permits are valid for the entire bobcat season.

R657-11-5. Tagging Bobcats.

(1) The pelt or unskinned carcass of any bobcat must be tagged in accordance with Section 23-20-30.

(2) The tag must remain with the pelt or unskinned carcass until a permanent tag has been affixed.

(3) Possession of an untagged green pelt or unskinned carcass is prima facie evidence of unlawful taking and possession.

(4) The lower jaw of each bobcat taken must be removed and tagged with the numbered jaw tag corresponding to the number of the temporary possession tag affixed to the hide.

R657-11-6. Marten Permits.

(1) A person may not trap marten or have marten in possession without having a valid furbearer license and a marten trapping permit in possession.

(2) Marten trapping permits are available free of charge from any division office.

R657-11-7. Permanent Possession Tags for Bobcat and Marten.

(1) A person may not:

(a) possess a green pelt or unskinned carcass from a bobcat or marten that does not have a permanent tag affixed after the second Friday in March;

(b) possess a green pelt or the unskinned carcass of a bobcat with an affixed temporary bobcat possession tag issued to another person, except as provided in Subsections (5) and (6); or

(c) buy, sell, trade, or barter a green pelt from a bobcat or marten that does not have a permanent tag affixed.

(2) Bobcat and marten pelts must be delivered to a division representative to have a permanent tag affixed and to surrender the lower jaw for each harvested bobcat.

(3) Bobcat and marten pelts may be delivered to the following division offices, by appointment only, during the dates published in the guidebook of the Wildlife Board for taking furbearers:

(a) Cedar City - Regional Office;

(b) Ogden - Regional Office;

(c) Price - Regional Office;

(d) Salt Lake City - Salt Lake Office;

(e) Springville - Regional Office; and

(f) Vernal - Regional Office.

(4) There is no fee for permanent tags.

(5) Bobcat and marten which have been legally taken may be transported from an individual's place of residence by an individual other than the furharvester to have the permanent tag affixed; bobcats must be tagged with a temporary possession tag and accompanied by a valid furbearer license belonging to the furharvester.

(6) Any individual transporting a bobcat or marten for another person must have written authorization stating the following:

(a) date of kill;

(b) location of kill;

(c) species and sex of animal being transported;

(d) origin and destination of such transportation;

(e) the name, address, signature and furbearer license number of the furharvester;

(f) the name of the individual transporting the bobcat or marten; and

(g) the furharvester's marten permit number if marten is being transported.

(7) Green pelts of bobcats and marten legally taken from outside the state may not be possessed, bought, sold, traded, or bartered in Utah unless a permanent tag has been affixed or the pelts are accompanied by a shipping permit issued by the wildlife agency of the state where the animal was taken.

(8)(a) Furharvesters taking marten are required to present the entire skinned carcass to the division in good condition when brought for permanent tagging.

R657-11-8. Trap Registration Numbers.

~~[(1) Each trapping device used to take furbearers must be permanently marked or tagged with the registered trap number of the owner.]~~ (1)(a) Except as provided in Subsection (1)(a)(ii), a person must possess a valid trap registration license before using any trapping device to take a furbearer, coyote, or raccoon.

(i) A trap registration license is required in addition to any other license, permit, or tag required by this rule to take a furbearer.

(ii) A trap registration license is not required for trapping a coyote, or raccoon when the trapping device is set within 600 feet of a building or structure occupied or utilized by humans or domestic livestock, provided the trapping device is set with the landowner's or lessee's permission.

(b) To obtain a trap registration license, a person must:

(i) provide the following information when requested by the division:

(A) full name;

(B) complete home address;

(C) email address;

(D) phone number;

(E) date of birth; and

(F) any other information requested by the division; and

(ii) pay a \$10 license fee.

(c) The division may deny issuing a trap registration license if the applicant:

(i) is subject to an administrative or judicial order suspending any hunting, trapping or fishing privilege;

(ii) has violated any provision in Title 23 of the Utah Code, or rules or guidebooks of the Wildlife Board; or

(iii) fails to pay the one-time \$10 license fee.

(d) The division may suspend a trap registration license, as provided in Sections 23-19-9, 23-25-5, and 23-25-6.

(e) The trap registration license must be carried on the person of the individual it is issued to while setting, checking or moving trapping devices.

(f) A trap registration license shall include a unique trap registration number printed on its face that is permanently assigned to the licensee.

(2)(a) Each trapping device used to take a furbearer, coyote, or raccoon must be permanently, legibly, and indelibly marked or tagged with the trap registration number of the owner.

(b) A trap registration number is not required on a trapping device set within 600

feet of a building or structure occupied or utilized by humans or domestic livestock, provided the trapping device is set:

(i) to capture a coyote or raccoon; and

(ii) with the landowner's or lessee's permission.

(2)3) No more than one trap registration number may be on a single trapping device[:

(3) Trap registration numbers must be legible].

(4) [Trap]Each individual is issued only one trap registration [numbers are permanent and may be obtained by mail or in person from any division office]number.

(5) [-Applicants must include their full name, including middle initial, and complete home address.]Except as provided in R657-11-9, a person may not take a furbearer, coyote, or raccoon with any trapping device marked with the trap registration number of another person.

(6) [A registration fee of \$10 must accompany the request. This fee is payable only once.]A person may not lend, transfer, sell, give, or assign a trap registration license or trap registration number to another person or entity.

(7) [Each individual is issued only one trap registration number

(8) -]Any person who has obtained a trap registration number must notify the division within 30 days of any:

(a) change in address; or[the]

(b) theft of [traps]trapping devices.

R657-11-9. [Traps]Trapping Devices.

(1) [All]Any foothold traps used to take a furbearer, coyote, or raccoon must have spacers on the jaws which leave an opening of at least 3/16 of an inch when the jaws are closed, except;

(a) rubber-padded jaw traps,

(b) traps with jaw spreads less than 4.25 inches, and

(c) traps that are completely submerged under water when set.

(2)(a) [All]Any cable devices (i.e. snares), used to take a furbearer, coyote, or raccoon, except those set in water or with a loop size less than 3 inches in diameter, must be equipped with a breakaway lock device that will release when any force greater than 300 lbs. is applied to the loop.

(b) Breakaway cable devices must be fastened to an immovable object solidly secured to the ground.

(c) The use of drags is prohibited.

(3) On the middle section of the Provo River, between Jordanelle Dam and Deer Creek Reservoir, the Green River, between Flaming Gorge Dam and the Utah Colorado state line; the Colorado River, between the Utah Colorado state line and Lake Powell; and the Escalante River, between Escalante and Lake Powell, trapping for a furbearer, coyote, or raccoon within [100]600 yards of either side of these rivers, including their tributaries from the confluences upstream 1/2 mile, is restricted to the following devices:

(a) Nonlethal-set foot hold traps with a jaw spread less than 5 1/8 inches, and nonlethal-set padded foot hold traps. Drowning sets with these traps are prohibited.

(b) Body-gripping, killing-type traps with body-gripping area less than 30 square inches[(i.e., 110 Conibear)].

(c) Nonlethal dry land cable devices equipped with a stop-lock device that prevents it from closing to less than a six-inch diameter.

(d) Size 330, body-gripping, killing-type traps[(i.e. Conibear)] modified by replacing the standard V-trigger assembly with one top side parallel trigger assembly, with the trigger placed within one inch of the side, or butted against the vertical turn in the Canadian bend.

(4) A person may not disturb or remove any trapping device, except:

(a) the owner of the trapping device;

(b) peace officers in the performance of their duties;

(c) the landowner where the [trap has been placed; or]trapping device is set;

(d) the owner of a domestic pet [that has been]is caught in the device; or.

(e) as provided in Subsection (6).

(5) A person may not kill or remove wildlife caught in any trapping device, except:

(a) the owner [who must possess a valid]of the trapping device who possesses the permit, license[or tag(s)], tag, or legal authorization required for the species that [has been]is captured;

(b) a peace officer in the performance of their duties;

(c) as provided in Subsection (6); or

(d) as provided in R657-11-[12.]11.

(6)(a) A person, other than the owner, may temporarily possess, disturb or remove a trapping device; or temporarily

possess, kill or remove wildlife caught in a trapping device provided:

(~~(a)~~i) the person possesses a valid trap registration license, furbearer license, ~~the~~ and appropriate permits or tags; and

(~~(b)~~ii) has obtained written authorization from the owner of the trapping device stating the following:

(~~(i)~~A) date written authorization was obtained;

(~~(ii)~~B) name and address of the owner;

(~~(iii)~~C) owner's trap registration number;

(~~(iv)~~D) the name of the individual being given authorization; and

(~~(v)~~E) signature of owner.

(b) Nothing in Subsection (6)(a) authorizes a person to use the owner's trap registration license, furbearer license, permit or tag.

(7) The owner of any trapping device providing written authorization to another person under Subsection (~~(5)~~6) shall be strictly liable for any violations of Title 23, this [guidebook]rule, or applicable guidebooks resulting from the use of the trapping device by the authorized person.

(8) The owner of any trapping device providing written authorization to another person under Subsection (~~(5)~~6) must keep a record of all persons obtaining written authorization and furnish a copy of the record upon request from a conservation officer.

(9)(a) A person may not set any [~~trap or~~] trapping device on posted private property without the landowner's or lessee's written permission.

(b) Wildlife officers should be informed as soon as possible of any illegally set [~~traps or~~] trapping devices.

(10) Peace officers in the performance of their duties may seize all [~~traps,~~] trapping devices[;] and wildlife used or held in violation of this rule.

(11) [~~A~~] Except as provided in Subsection (6), a person may not possess any trapping device that is not permanently marked or tagged with that person's [registered]trap registration number while [engaged in taking wildlife]setting, checking, or moving a trapping device targeting a furbearer, coyote, or raccoon.

(12) All [~~traps and~~]trapping devices used to take a furbearer, coyote, or raccoon must be checked and animals removed at least once every 48 hours, except;

(a) killing traps striking dorso-ventrally;

(b) drowning sets; and

(c) lethal cable devices that are set to capture on the neck, that have a nonrelaxing lock, without a stop, and are anchored to an immovable object; which must be checked every 96 hours.

(14) A person may not transport or possess live protected wildlife. Any animal found in a [~~trap or~~] trapping device must be killed or released immediately by the trapper.

(15) The trapping restrictions in Subsections (1), (2), and (3) do not apply to a trapping device set within 600 feet of a building or structure occupied or utilized by humans or domestic livestock, provided the trapping device is set:

(a) to capture a coyote or raccoon; and

(b) with the landowner's or lessee's permission.

R657-11-10. Use of Bait.

(1) A person may not use [~~any~~]protected wildlife or [~~their parts~~]its parts as bait or scent to take a furbearer, coyote, or raccoon, except for [~~white~~]the following:

(a) White-bleached bones of protected wildlife with no hide or flesh attached [~~, as bait or scent, however,~~] and

(b)(i) parts of legally taken furbearers; and

(ii) nonprotected wildlife [~~may be used as bait~~].

(2) [~~Traps or trapping~~]Trapping devices used to take furbearer, coyote, or raccoon:

(a) may not be set within 30 feet of any exposed bait[;];

(~~(3)~~b) [~~Traps~~]may not be placed near carcasses of protected wildlife provided the carcass has not been moved [~~or relocated~~]for the purpose of trapping [furbearers]and the [~~trap~~]trapping device is not located within 30 feet of the carcass.

(~~(4)~~3) White-bleached bones with no hide or flesh attached may be set within 30 feet of [~~traps~~]a trapping device.

(~~(5)~~4)(a) Bait used inside an artificial cubby set must be placed at least eight inches from the opening.

(b) Artificial cubby sets must be placed with the top of the opening even with or below the bottom of the bait so that the bait is not visible from above.

(c) A person using bait is responsible if it becomes exposed for any reason.

(5) The trapping restrictions in Subsections (2) and (4) do not apply to a trapping device set within 600 feet of a building or structure occupied or utilized by humans or domestic livestock, provided the trapping device is set:

(a) to capture a coyote, or raccoon; and

(b) with the landowner's or lessee's permission.

R657-11-11. Accidental Trapping.

(1)(a) Any[~~bear, bobcat, cougar, marten, otter, wolverine, any furbearer trapped out of season, or other~~] protected wildlife accidentally caught in a [~~trap~~]trapping device that is alive must be immediately released unharmed by a person authorized in R657-11-9(5) and (6).

(b) All incidents of accidental trapping of protected wildlife must be reported to the division within 48 hours.

(2)(a) Permission must be obtained from a division representative to remove from a trapping device the carcass of any [~~of these species from a trap~~]protected wildlife accidentally caught.

(~~(e)~~b) The carcass remains the property of the state and must be turned over to the division.[

(2) All incidents of accidental trapping of any of these animals must be reported to the division within 48 hours.]

(3) Black-footed ferret, lynx and wolf are protected species under the Endangered Species Act. Accidental trapping or capture of [~~these~~]any federally protected species must be immediately reported to both the U.S. Fish and Wildlife Service and the division[~~within 48 hours~~].

(4) A person that captures or kills an unauthorized species of protected wildlife in a trapping device is not criminally liable under state law for that take, provided the person:

(a) was not attempting to take the unauthorized species;

(b) possesses a valid trap registration license;

(c) possesses the licenses, permits and tags required to trap the targeted wildlife species; and

(d) otherwise complies with the provisions of the Wildlife Code, this rule, and guidebooks applicable to trapping the targeted wildlife species.

R657-11-12. Methods of Take and Shooting Hours.

(1) Furbearers, except bobcats and marten, may be taken by any means, excluding explosives and poisons, or as otherwise provided in Section 23-13-17.

(2) Bobcats may be taken only by shooting, trapping, or with the aid of dogs as provided in Section R657-11-26.

(3) Marten may be taken only with an elevated, covered set in which the maximum trap size shall not exceed 1 1/2 foothold or 160 Conibear.

(4) Taking furbearers by shooting or with the aid of dogs is restricted to one-half hour before sunrise to one-half hour after sunset, except as provided in Section 23-13-17.

(5) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

R657-11-13. Spotlighting.

(1) Except as provided in Subsection (3):

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is [~~prima facie evidence~~]probable cause of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

(3) The provisions of this section do not apply to the use of an artificial light when used by a trapper to illuminate his path and trap sites for the purpose of conducting the required trap checks, provided that:

(a) any artificial light must be carried by the trapper;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used; and

(c) while checking [~~traps~~]trapping devices with the use of an artificial light, the trapper may not occupy or operate any motor vehicle.

(4) Spotlighting may be used to hunt coyote, red fox, striped skunk, or raccoon where allowed by a county ordinance enacted pursuant to Section 23-13-17.

(5) The ordinance shall provide that:

(a) any artificial light used to spotlight coyote, red fox, striped skunk, or raccoon must be carried by the hunter;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used to spotlight the animal; and

(c) while hunting with the use of an artificial light, the hunter may not occupy or operate any motor vehicle.

(6) For purposes of the county ordinance, "motor vehicle" shall have the meaning as defined in Section 41-6-1.

(7) The ordinance may specify:

(a) the time of day and seasons when spotlighting is permitted;

(b) areas closed or open to spotlighting within the unincorporated area of the county;

(c) safety zones within which spotlighting is prohibited;

(d) the weapons permitted; and

(e) penalties for violation of the ordinance.

(8)(a) A county may restrict the number of hunters engaging in spotlighting by requiring a permit to spotlight and issuing a limited number of permits.

(b) A fee may be charged for a spotlighting permit.

(9) A county may require hunters to notify the county sheriff of the time and place they will be engaged in spotlighting.

(10) The requirement that a county ordinance must be enacted before a person may use spotlighting to hunt coyote, red fox, striped skunk, or raccoon does not apply to:

(a) a person or his agent who is lawfully acting to protect his crops or domestic animals from predation by those animals; or

(b) a wildlife service's agent acting in his official capacity under a memorandum of agreement with the division.

R657-11-14. Use of Dogs.

(1) Dogs may be used to take furbearers only from one-half hour before sunrise to one-half hour after sunset and only during the prescribed open seasons.

(2) The owner and handler of dogs used to take or pursue a furbearer must have a valid, current furbearer license in possession while engaged in taking furbearers.

(3) When dogs are used in the pursuit of furbearers, the licensed hunter intending to take the furbearer must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

R657-11-15. State Parks.

(1) Taking any wildlife is prohibited within the boundaries of all state park areas except those designated as open by the Division of Parks and Recreation in Section R651-614-4.

(2) Hunting with a rifle, handgun, or muzzleloader on park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns, crossbows, and archery equipment is prohibited within one quarter mile of the above stated areas.

R657-11-16. Transporting Furbearers.

(1)(a) A person who has obtained the appropriate license and permit may transport green pelts of furbearers. Additional restrictions apply for taking bobcat and marten as provided in Section R657-11-6.

(b) A registered Utah fur dealer or that person's agent may transport or ship green pelts of furbearers within Utah.

(2) A furbearer license is not required to transport red fox or striped skunk.

R657-11-17. Exporting Furbearers from Utah.

(1) A person may not export or ship the green pelt of any furbearer from Utah without first obtaining a valid shipping permit from a division representative.

(2) A furbearer license is not required to export red fox or striped skunk from Utah.

R657-11-18. Sales.

(1) A person with a valid furbearer license may sell, offer for sale, barter, or exchange only those species that person is licensed to take, and which were legally taken.

(2) Any person who has obtained a valid fur dealer or fur dealer's agent certificate of registration may engage in, wholly or in part, the business of buying, selling, or trading green pelts or parts of furbearers within Utah.

(3) Fur dealers or their agents and taxidermists must keep records of all transactions dealing with green pelts of furbearers.

(4) Records must state the following:

(a) the transaction date; and

(b) the name, address, license number, and tag number of each seller.

(5) A receipt containing the information specified in Subsection (4) must be issued whenever the ownership of a pelt changes.

(6)(a) A person may possess furbearers and tanned hides legally acquired without possessing a license, provided proof of legal ownership or possession can be furnished.

(b) A furbearer license is not required to sell or possess red fox or striped skunk or their parts.

R657-11-19. Wasting Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or ~~their~~its parts as provided in Section 23-20-8.

(2) The skinned carcass of a furbearer may be left in the field and does not constitute waste of wildlife.

R657-11-20. Depredation by Badger, Weasel, and Spotted Skunk.

(1) Badger, weasel, and spotted skunk may be taken anytime without a license when creating a nuisance or causing damage, provided the animal or its parts are not sold or traded.

(2) Red fox and striped skunk may be taken any time without a license.

R657-11-21. Depredation by Bobcat.

(1) Depredating bobcats may be taken at any time by duly appointed Wildlife Services agents, employed by Wildlife Services, while acting in the performance of their assigned duties and in accordance with procedures approved by the division.

(2) A livestock owner or his employee, on a regular payroll and not hired specifically to take furbearers, may take bobcats that are molesting livestock.

(3) Any bobcat taken by a livestock owner or his employee must be surrendered to the division within 72 hours.

R657-11-22. Depredation by Nuisance Beaver.

(1) Beaver doing damage or other nuisance behaviors may be taken or removed during open and closed seasons with either a valid furbearer license or a nuisance permit.

(2) A nuisance permit to remove beaver must first be obtained from a division office or conservation officer.

R657-11-23. Survey.

Each permittee who is contacted for a survey about their furbearer harvesting experience should participate in the survey regardless of success. Participation in the survey helps the division evaluate population trends, harvest success and collect other valuable information.

R657-11-24. ~~[Prohibited Species]~~Reserved.

~~[(1)(a) A person may not take black-footed ferret, fisher, lynx, otter, wolf, or wolverine.~~

~~(b) Accidental trapping or capture of any of these species must be reported to the division within 48 hours.]Reserved.~~

R657-11-25. Season Dates and Bag Limits.

Season dates, bag limits, and areas with special restrictions are published annually in the guidebook of the Wildlife Board for taking furbearers.

R657-11-26. Approval to Trap on State Waterfowl Management Areas.

(1)(a) Trapping wildlife, including nonprotected species, on state waterfowl management areas is prohibited unless specifically authorized by the division. Trapping is a property management tool used to protect waterfowl populations and infrastructure improvements found on the property.

(b) The authorization to trap on state waterfowl management areas shall be provided through a certificate of registration that is awarded to an individual or individuals through a competitive proposal solicitation process.

(c) On or before October 1 of each year, the division shall publicly notice which state waterfowl management areas are available for proposal by publishing the notice on its website and by publishing a notice in a newspaper of general circulation at least once a week for two consecutive weeks.

(d) The notification and advertising shall include:

(i) the deadline for applying for the certificate of registration;

(ii) the wildlife species authorized for trapping;

~~(iii) a general description of the trapping area authorized under the certificate of registration;~~

~~[(iii)iv] the desired form of compensation to the division, whether monetary, in-kind, or both;~~

~~[(iv)v] the division's management objectives for the state waterfowl management area; and~~

~~[(v)vi] any special considerations or limitations the division will require of the trapper or trappers while they are on the state waterfowl management area.~~

(2)(a) Applications must include the following:

(i) a nonrefundable application fee;

(ii) the name of the state waterfowl management area being applied for;

(iii) a description of the applicant's familiarity with the state waterfowl management area being applied for;

(iv) a list of the individuals who will conduct trapping activities under the certificate of registration;

(v) a description of each individual's experience trapping and their ability to utilize removal of targeted species to protect

waterfowl ~~and wildlife~~ populations and infrastructure found at state waterfowl management areas;

(vi) the projected number of animals, specifically muskrat, that may be removed via trapping;

(vii) how the proposal accomplishes the identified management objectives for the waterfowl management area;

(viii) how the proposal conforms with any special considerations or limitations identified by the division in its public notice; and

(viii) a bid amount to be paid to the Division in exchange for the authorization to trap on the state waterfowl management area.

(c) All individuals listed on the application who will conduct trapping activities under the certificate of registration must:

~~(i) possess a trap registration license;~~

~~(ii) use traps marked with the owner's trap registration number; and~~

~~(iii) meet all age[requirements], proof of hunter education and furharvester requirements, [and]including youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.~~

(d) The bid amount described in Subsection (vi) above may include non-monetary, in-kind contributions.

(3)(a) Late or incomplete applications may be rejected.

(b) A separate application must be submitted for each state waterfowl management area ~~[an individual]~~the applicant wishes to trap on.

(c) In the event that there is more than one application for a certain state waterfowl management area, the division will analyze each application and select a successful applicant or applicants whose proposal best accomplishes the division objectives identified in the public notice.

(4) The selected applicant will be issued a certificate of registration authorizing trapping activities on the state waterfowl management area for a period of up to two years.

(5) A certificate of registration issued pursuant to this Part may be revoked, suspended, or terminated consistent with the terms of Utah Code 23-19-9 and Utah Admin. Code R657-26.

R657-11-27. [Fees]Trapping Fees on State Waterfowl Management Areas.

(1) Upon verified payment of ~~[trapping]required~~ fees, ~~[permits]certificates of registration~~ will be mailed to successful applicants ~~[are]~~granted trapping ~~[rights for]privileges on state waterfowl~~ management areas.

(2) If a successful applicant fails to make full payment within 14 days of the results posting date, an alternate trapper will be selected.

(3) ~~[Permits]Certificates of registration~~ are not valid until signed by the superintendent in charge of the area to be trapped.

R657-11-28. Vehicle Travel on State Waterfowl Management Areas.

Vehicle travel is restricted to developed roads. However, written permission for other travel may be obtained from the waterfowl management area superintendent.

R657-11-29. Trapping Hours on State Waterfowl Management Areas.

On waterfowl management areas traps may be checked only between one-half hour before official sunrise to one-half hour after official sunset.

R657-11-30. [Responsibility of Trappers.]Trapper Responsibilities on State Waterfowl Management Areas.

(1) All trappers are directly responsible to the waterfowl management area superintendent.

(2) Violation of management or trapping rules, including failure to return a trapping permit within five days of cessation of trapping activities, or failure to properly trap an area, as determined and recommended by the superintendent, may be cause for cancellation of trapping privileges, existing and future, on all waterfowl management areas.

R657-11-31. [Closed Area]Reserved.

~~[Davis County - Trapping is allowed only on the dates published in the guidebook of the Wildlife Board for taking furbearers, on those lands administered by the state lying along the eastern shore of the Great Salt Lake, commonly known as the Layton-Kaysville marshes. In addition, there may be a portion of the above stated area that is closed to trapping. This area will be posted and marked.]Reserved.~~

R657-11-32. Wildlife Management Areas.

~~[(4)-]A person may not use motor vehicles on division-owned wildlife management areas closed to motor vehicle use without first obtaining written authorization from the appropriate division regional office.~~

~~(2) For purposes of coyote trapping, the division may, in its sole discretion, authorize limited motor vehicle access to its wildlife management areas closed to such use provided the motor vehicle access will not interfere with wildlife or wildlife habitat.]~~

KEY: wildlife, furbearers, game laws, wildlife law

Date of Enactment or Last substantive Amendment:

~~[November 7, 2016]2017~~

Notice of Continuation: July 13, 2015

Authorizing and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-13-17

Natural Resources, Wildlife Resources

R657-23

Utah Hunter Education Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42147

FILED: 09/21/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to: 1) clarify the process in rule for verifying hunter education and furharvester

education course completions; and 2) add definitions for Division approved furharvester education courses and Division of Wildlife Resources (DWR) approved hunter education courses.

SUMMARY OF THE RULE OR CHANGE: This rule is being amended to clarify the process for verifying approved education courses for both hunter education and furharvester education programs in rule. The process has already been in practice.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-19-11 and Section 23-19-12

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule is being amended to better align the rule with the current process of verifying hunter education and furharvester education courses. DWR has determined that this amendment does not create a cost or savings impact to the state budget or DWR's budget and can be implemented with the current budget and personnel.

◆ **LOCAL GOVERNMENTS:** None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This rule is aligning DWR's current practice with rule on the verifying of hunter education and furharvester education courses. Therefore, this amendment does not impose any additional requirements on small businesses nor create a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule is aligning the division's current practice with rule on the verifying of hunter education and furharvester education courses. Therefore, this amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule is aligning DWR's current practice with rule on the verifying of hunter education and furharvester education courses. Therefore, DWR determines that there are not any additional compliance costs associated with this amendment.

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 11/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2017

AUTHORIZED BY: Mike Fowlks, Deputy Director

R657. Natural Resources, Wildlife Resources.

R657-23. Utah Hunter Education [Program]and Furharvester Education Programs.

R657-23-1. Purpose and Authority.

Under authority of [~~Section~~Sections 23-19-11, 23-10-11.1, 23-19-11.5, 23-19-12, and 23-19-12.5 this rule provides the [~~process~~criteria and [~~requirements~~standards for:

~~(1) hunter education student and instructor training;~~
~~(2) recognizing other jurisdiction's hunter education courses as approved courses in Utah;~~

~~(1) hunter education instructor and student training; and~~
~~(2) presenting and obtaining proof of having successfully completed~~

~~(3) verifying an individual's completion of an approved hunter education course; and~~

~~(4) furharvester education student training.~~

R657-23-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

~~(a) "[Approved hunter education course" means any hunter education course that qualifies a person to receive a resident hunting license in the state, province, or country in which the hunter education course is offered.]Blue Card" means the certificate of completion issued by the division for having passed a division-approved hunter education course.~~

~~(b) "Authorized division representative" means a volunteer hunter education instructor who has been approved by the division to issue duplicate blue cards.~~

~~(c) "Blue Card" means the certificate of completion issued by the division for having passed a Utah hunter education course or an approved hunter education course.~~

~~(d) "Certificate of completion" means a card, certificate, or other document issued by the wildlife agency of a state, province, or country[, and signed by a hunter education instructor,] verifying successful completion of an approved hunter education or furharvester education course in that jurisdiction.~~

~~(c) "Division-approved furharvester education course" means any furharvester education course that:~~

~~(i) is offered through the division as an online education course, followed by successful completion of a mandatory field day exercise;~~

_____ (ii) is offered through the division as an instructor-led education course; or

_____ (iv) is offered by another state or country and completion of the course qualifies a person to receive a resident furbearer license or its equivalent in the state, province, or country in which the furharvester education course is offered.

_____ (d) "Division-approved hunter education course" means any hunter education course that:

_____ (i) is offered through the division as an online hunter education course, followed by successful completion of a mandatory field day exercise;

_____ (ii) is offered through the division as an instructor-led hunter education course;

_____ (iii) is offered by another state or country and meets International Hunter Education Association -- USA minimum standards; or

_____ (iv) is offered by another state or country and completion of the course qualifies a person to receive a resident hunting license in the state, province, or country in which the hunter education course is offered.

_____ (e) "[Hunter-]Education Registration Certificate" means a document purchased from the division that is valid for 365 days from date of purchase which is required to sign up for and graduate from [the]a hunter education or furharvester education course. [This document becomes a valid hunting license upon validation of course completion by a certified hunter education instructor.]

_____ (f) "Field day" means an instructor-[lead]led practical exercise [which may include instruction in and student demonstration in the safe use of firearms, hunter responsibility, a written exam, and a live fire exercise-]with a certified hunter education or furharvester education instructor as prescribed by this rule and the Utah Hunter Education Program administration.

_____ (g) "Trainer" means [a volunteer hunter education instructor or Division employee who has been]an individual or entity certified by the division to train hunter education instructors and furharvester education instructors.

_____ (h) "Instructor" means a volunteer [hunter education-] instructor or division employee who has been approved by the division to teach the hunter education program or furharvester education program to students.

_____ (i) "Online hunter education course" means a Division-approved hunter education course that is completed online prior to attending a field day.

_____ (j) "Student" means a person who is registered in a hunter education or furharvester education course being taught by a certified [hunter education-]instructor.[

_____ (k) "Instructor-lead hunter education course" means a hunter education course that meets the International Hunter Education Association -- USA minimum standards for hunter education and that is lead by an instructor and includes, a written exam and a live fire exercise.]

R657-23-3. Hunter Education Required.

(1)(a) To obtain a hunting license, any person born after December 31, 1965, must present proof of [having-~~passed~~]successfully completing a division -approved hunter education course.

(b) A person may take a hunter education course offered by the division as provided in Subsection (2), or (3).

(2) Completion of [a]an instructor-[lead]led hunter education course requires students to:

(a) purchase a hunter education registration certificate from a Division authorized licensed vendor[-];

(b) attend the instructor-[lead]led course;

(c) behave in a safe and responsible manner in class;

(d) obtain a passing score of at least 75% on a written exam; and

(e) participate in a live fire exercise demonstrating safe firearms handling.

(3) Completion of the online hunter education course requires students to:

(a) purchase a hunter education registration certificate from a Division authorized licensed vendor.

(b) pre-register for the field day[~~by contacting the instructor by mail, e-mail or telephone~~];

(c) successfully complete [a ~~division approved~~]the online hunter education course and provide documentation of completion to the hunter education instructor prior to participating in a field day;

(d) participate in a field day;

_____ (e) behave in a safe and responsible manner while attending the field day;

_____ ([e]f) obtain a passing score of at least 75% on a written exam; and

_____ ([f]g) participate in a live fire exercise demonstrating safe firearms handling.

_____ (4)(a) The division will issue a Blue Card to each individual who successfully completes [the]a division-approved hunter education course.

_____ (5) The Hunter Education Registration Certificate becomes a valid hunting license upon validation of course completion by a certified hunter education instructor.

_____ (6) A member of the United States Armed Forces on active duty, reserve duty, or having veteran status, or a member of the Utah National Guard is exempt from the live fire exercise required in Subsections 2 and 3 above if they can provide their active or reserve status Military identification card or valid documentation of veteran status to the hunter education instructor prior to the live fire exercise.

_____ ([6]7) The division shall accept other states, provinces, and countries criteria and qualifications for their respective courses; which;

_____ (a) meet or exceed the International Hunter Education Association-USA hunter education standards; or

_____ (b) completion of the course qualifies a person to receive a resident hunting license in the state, province, or country in which the hunter education course is offered.

R657-23-4. [Documents Accepted as Proof of]Verifying Completion of [a]an Approved Hunter Education Course.

(1) [The division and division approved license agents shall accept proof of completion of an approved hunter education course from other states, provinces, and countries whose criteria and qualifications for their respective courses, meet or exceed the International Hunter Education Association-USA hunter education standards in accordance with Section 23-19-11.]At the time of applying for a license or permit, the applicant shall:

~~_____ (a) have a valid hunter education number recorded on the division's customer database;~~

~~_____ (b) provide the division with a Certificate of Completion indicating the hunter education number and state or country of issuance; or~~

~~_____ (c) certify via a sworn statement that the applicant has completed a division-approved hunter education course.~~

~~(2)(a) Any person who has completed an] The division may research an individual's hunter education records in order to verify completion of a division-]approved hunter education course[in another state, province, or country and becomes a Utah resident must obtain a transfer Blue Card prior to purchasing a resident hunting license].~~

~~[(b) The person must present proof of completion of an approved hunter education course to a division office as required under Subsection (1).~~

~~_____ (3)(a) If an applicant for a nonresident hunting license is not able to present a hunting license with the hunter education number noted on it or a certificate of completion as provided in Subsection (1), the division may contact another state, province, or country to verify the completion of a hunter education course so that a nonresident hunting license may be issued.~~

~~_____ (4)(a) If an applicant for a resident or nonresident hunting license has completed a hunter education course in Utah but is not able to present a hunting license with the hunter education number noted on it, the division may research the division's](3) The division may require those individuals satisfying the hunter education [records to verify that the applicant has completed the]requirement by completing the sworn statement to obtain a Blue Card after verification that they have completed a division-]approved]hunter education course.~~

~~[-_____ (b) Upon issuance of the hunting license, the division shall indicate the applicant's hunter education number on the face of the hunting license.]~~

~~([5]4)(a) If a Blue Card is lost or destroyed, a person may apply by mail or in person at a division office to obtain a duplicate Blue Card. The person must complete an affidavit and request a [record's]records search.~~

~~(b) Upon verification of completion of the hunter education course, the division may issue the person a duplicate Blue Card.~~

~~[(6) The division requires any person whose records cannot be found or who cannot be verified as having completed a hunter education course to take the complete course as required under Section R657-23-3.~~

~~_____ (7)(5) For the purpose of issuing a hunting license, the division may, upon request, provide verification to another state's wildlife agency that a resident or former resident of Utah has met the Utah hunter education requirements.~~

~~[(8)6] The division may charge a fee for the services provided in Subsections (2), (3), [(4)], and ([5]4).~~

~~_____ (7)(a) A license or permit that is obtained by an individual who is unable to verify completion of a division-approved hunter education course is invalid.~~

~~_____ (b) Any person whose records cannot be found or who cannot be verified as having completed a hunter education course must take a division-approved hunter education course in order to obtain a hunting license or permit.~~

R657-23-5. Hunter Education Instructor Training.

(1) A person must be 21 years of age or older to become a certified hunter education instructor.

(2) Completion of a hunter education instructor course requires a person to:

(a) Complete the Division's instructor training course.

(b) Pass a criminal background check assessing suitability to work with children under the age of 18 years and to serve as an instructor;

(c) Attend a training course conducted by a trainer;

(d) Obtain a passing score of at least 75% on a written exam; and

(e) Participate in a live fire exercise or a range safety training course.

(3) The division shall issue a hunter education instructor card to each individual who successfully completes the hunter education instructor course.

R657-23-6. Furharvester Education.

~~_____ (1)(a) To obtain a resident furbearer license, any person born after December 31, 1984, must present proof of successfully completing a division-approved furharvester education course.~~

~~_____ (b) A person may take a furharvester education course offered by the division as provided in Subsection (3), or (4).~~

~~_____ (2) At the time of applying for a furbearer license or permit, the applicant shall:~~

~~_____ (a) have a valid furharvester education number recorded on the division's customer database;~~

~~_____ (b) provide the division with a Certificate of Completion indicating the furharvester education number and state or country of issuance; or~~

~~_____ (c) certify via a sworn statement that the applicant has completed a division-approved furharvester education course.~~

~~_____ (3) Completion of an instructor-led furharvester education course requires students to:~~

~~_____ (a) purchase a furharvester education registration certificate from a Division authorized licensed vendor;~~

~~_____ (b) attend the instructor-led course;~~

~~_____ (c) behave in a safe and responsible manner in class;~~

~~_____ (d) obtain a passing score of at least 75% on a written exam; and~~

~~_____ (e) participate in a furharvester field day.~~

~~_____ (4) Completion of the online furharvester education course requires students to:~~

~~_____ (a) purchase a furharvester education registration certificate from a Division authorized licensed vendor;~~

~~_____ (b) pre-register for the field day;~~

~~_____ (c) successfully complete the online furharvester education course and provide documentation of completion to the furharvester education instructor prior to participating in a field day;~~

~~_____ (d) participate in a furharvester field day;~~

~~_____ (e) behave in a safe and responsible manner while attending the field day; and~~

~~_____ (f) obtain a passing score of at least 75% on a written exam.~~

~~_____ (5) The division will issue a certificate of completion each individual who successfully completes a division-approved furharvester education course.~~

KEY: wildlife, game laws, hunter education

Date of Enactment or Last Substantive Amendment: ~~July 11, 2016~~ 2017

Notice of Continuation: December 5, 2012

Authorizing, and Implemented or Interpreted Law: 23-19-11

Tax Commission, Property Tax
R884-24P-53
2017 Valuation Guides for Valuation of
Land Subject to the Farmland
Assessment Act Pursuant to Utah Code
Ann. Section 59-2-515

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 42165

FILED: 09/28/2017

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment annually updates the agricultural productive values to be applied by county assessors to land qualifying for valuation and assessment under the Farmland Assessment Act (FAA). The values are recommended to the Commission by the State Farmland Evaluation Advisory Committee, which meets under the authority of Section 59-2-514.

SUMMARY OF THE RULE OR CHANGE: Section 59-2-515 authorizes the State Tax Commission to promulgate rules regarding the Property Tax Act, Part 5, Farmland Assessment Act. Section 59-2-514 authorizes the State Tax Commission to receive valuation recommendations from the State Farmland Advisory Committee for implementation as outlined in Section R884-24P-53. The rule sets the acreage value rates for 418 separate class-county combinations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-2-515

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The amount of savings or cost to the state government is undetermined. The state receives tax revenue for assessing and collecting and for the Education Fund based on increased or decreased real and personal property valuation, including property assessed under the FAA. Property valuation (taxable value) changes have been recommended by class and by county. This year it is proposed that 108 rates increase slightly, 251 decrease slightly, and 59 have no change. No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA in the coming

year. However, it is estimated that the overall change is minimal due to this amendment.

◆ **LOCAL GOVERNMENTS:** The amount of savings or cost to local governments is undetermined. Local governmental entities receive tax revenue based on increased or decreased property valuation, including property assessed under FAA. Property valuation changes have been recommended by class and by county. This year it is proposed that 108 rates increase slightly, 251 decrease slightly, and 59 have no change. No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA in the coming year. However, it is estimated that the overall change is minimal due to this amendment. County assessors' offices statewide will be required to input the new value indicators into their computer systems to be applied against the acreage for individual properties. This input process is easily accomplished on an annual basis and represents no significant cost in time or money to the assessors' offices.

◆ **SMALL BUSINESSES:** Each small business with property eligible for assessment under FAA may see a change in value, depending on property class and situs county. The effect on the property owner will depend on the mix of property types and situs. No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA in the coming year. In addition, the cost will be further altered by changes to local property tax rates. However, it is estimated that the overall change due to this amendment is minimal.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Each property owner with property eligible for assessment under FAA may see a change in value, depending on property class and situs county. The effect on the property owner will depend on the mix of property types and situs. No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA in the coming year. In addition, the cost will be further altered by changes to local property tax rates. However, it is estimated that the overall change due to this amendment is minimal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Each property owner with property eligible for assessment under FAA may see a change in value, depending on property class and situs county. The effect on the property owner will depend on the mix of property types and situs. No total cost or savings can be calculated without an exhaustive study of farmland acreage in each county by class and a listing of property newly qualifying or no longer qualifying for FAA in the coming year. In addition, the cost will be further altered by changes to local property tax rates. However, it is estimated that the overall change due to this amendment is minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes may affect property values that may result in a change of property tax amounts due.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 TAX COMMISSION
 PROPERTY TAX
 210 N 1950 W
 SALT LAKE CITY, UT 84134
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2017

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2017

AUTHORIZED BY: Rebecca Rockwell, Commissioner

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-53. [2017]2018 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property qualifying for agricultural use assessment pursuant to Section 59-2-503 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
 Irrigated I

1) Box Elder	[799]758
2) Cache	[688]654
3) Carbon	[525]501
4) Davis	[853]804
5) Emery	[498]476

6) Iron	[793]759
7) Kane	[417]398
8) Millard	[788]753
9) Salt Lake	[711]680
10) Utah	[749]715
11) Washington	[649]620
12) Weber	[803]769

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
 Irrigated II

1) Box Elder	[702]666
2) Cache	[587]558
3) Carbon	[418]399
4) Davis	[751]708
5) Duchesne	[486]465
6) Emery	[401]383
7) Grand	[383]367
8) Iron	[695]665
9) Juab	[444]424
10) Kane	[320]306
11) Millard	[691]661
12) Salt Lake	[611]584
13) Sanpete	[535]511
14) Sevier	[562]538
15) Summit	[459]438
16) Tooele	[447]426
17) Utah	[648]618
18) Wasatch	[485]463
19) Washington	[553]528
20) Weber	[704]674

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
 Irrigated III

1) Beaver	[557]532
2) Box Elder	[552]524
3) Cache	[445]423
4) Carbon	[277]265
5) Davis	[603]569
6) Duchesne	[341]326
7) Emery	[252]241
8) Garfield	[210]201
9) Grand	[242]232
10) Iron	[552]528
11) Juab	[299]285
12) Kane	[177]169
13) Millard	[547]523
14) Morgan	[384]366
15) Piute	[332]317
16) Rich	[177]169
17) Salt Lake	[465]445
18) San Juan	[173]163
19) Sanpete	[392]375
20) Sevier	[418]400
21) Summit	[313]299
22) Tooele	[299]285
23) Uintah	[370]353
24) Utah	[497]474
25) Wasatch	[337]322
26) Washington	[406]388
27) Wayne	[328]313
28) Weber	[560]536

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1) Beaver	[458] <u>438</u>
2) Box Elder	[456] <u>433</u>
3) Cache	[345] <u>328</u>
4) Carbon	[178] <u>170</u>
5) Daggett	[188] <u>180</u>
6) Davis	[504] <u>475</u>
7) Duchesne	[239] <u>229</u>
8) Emery	[156] <u>149</u>
9) Garfield	[113] <u>108</u>
10) Grand	[146] <u>140</u>
11) Iron	[451] <u>432</u>
12) Juab	[198] <u>189</u>
13) Kane	[89] <u>76</u>
14) Millard	[445] <u>425</u>
15) Morgan	[285] <u>271</u>
16) Piute	[232] <u>222</u>
17) Rich	[82] <u>78</u>
18) Salt Lake	[369] <u>344</u>
19) San Juan	[79] <u>74</u>
20) Sanpete	[295] <u>282</u>
21) Sevier	[329] <u>307</u>
22) Summit	[216] <u>206</u>
23) Tooele	[204] <u>194</u>
24) Uintah	[273] <u>261</u>
25) Utah	[399] <u>381</u>
26) Wasatch	[249] <u>229</u>
27) Washington	[306] <u>292</u>
28) Wayne	[231] <u>220</u>
29) Weber	[457] <u>438</u>

TABLE 6
Meadow IV

1) Beaver	[235] <u>225</u>
2) Box Elder	[255] <u>242</u>
3) Cache	[264] <u>251</u>
4) Carbon	[131] <u>125</u>
5) Daggett	[156] <u>149</u>
6) Davis	[268] <u>253</u>
7) Duchesne	[166] <u>159</u>
8) Emery	[138] <u>132</u>
9) Garfield	[104] <u>99</u>
10) Grand	[133] <u>127</u>
11) Iron	[261] <u>250</u>
12) Juab	[152] <u>145</u>
13) Kane	[109] <u>104</u>
14) Millard	[193] <u>185</u>
15) Morgan	[196] <u>187</u>
16) Piute	[190] <u>181</u>
17) Rich	[105] <u>100</u>
18) Salt Lake	[228] <u>218</u>
19) Sanpete	[193] <u>185</u>
20) Sevier	[199] <u>191</u>
21) Summit	[202] <u>193</u>
22) Tooele	[186] <u>177</u>
23) Uintah	[207] <u>198</u>
24) Utah	[251] <u>239</u>
25) Wasatch	[208] <u>199</u>
26) Washington	[227] <u>217</u>
27) Wayne	[172] <u>164</u>
28) Weber	[300] <u>287</u>

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1) Beaver	[614] <u>620</u>
2) Box Elder	[665] <u>671</u>
3) Cache	[614] <u>620</u>
4) Carbon	[614] <u>620</u>
5) Davis	[679] <u>676</u>
6) Duchesne	[614] <u>620</u>
7) Emery	[614] <u>620</u>
8) Garfield	[614] <u>620</u>
9) Grand	[614] <u>620</u>
10) Iron	[614] <u>620</u>
11) Juab	[614] <u>620</u>
12) Kane	[614] <u>620</u>
13) Millard	[614] <u>620</u>
14) Morgan	[614] <u>620</u>
15) Piute	[614] <u>620</u>
16) Salt Lake	[614] <u>620</u>
17) San Juan	[614] <u>620</u>
18) Sanpete	[614] <u>620</u>
19) Sevier	[614] <u>620</u>
20) Summit	[614] <u>620</u>
21) Tooele	[614] <u>620</u>
22) Uintah	[614] <u>620</u>
23) Utah	[675] <u>681</u>
24) Wasatch	[614] <u>620</u>
25) Washington	[726] <u>733</u>
26) Wayne	[614] <u>620</u>
27) Weber	[679] <u>676</u>

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1) Beaver	[51] <u>49</u>
2) Box Elder	[93] <u>88</u>
3) Cache	[118] <u>112</u>
4) Carbon	[49] <u>47</u>
5) Davis	[52] <u>49</u>
6) Duchesne	[54] <u>52</u>
7) Garfield	[48] <u>46</u>
8) Grand	[49] <u>47</u>
9) Iron	[49] <u>47</u>
10) Juab	[51] <u>49</u>
11) Kane	[48] <u>46</u>
12) Millard	[47] <u>45</u>
13) Morgan	[64] <u>61</u>
14) Rich	[48] <u>46</u>
15) Salt Lake	[54] <u>52</u>
16) San Juan	[53] <u>50</u>
17) Sanpete	[54] <u>52</u>
18) Summit	[48] <u>46</u>
19) Tooele	[52] <u>50</u>
20) Uintah	[54] <u>52</u>
21) Utah	[59] <u>48</u>
22) Wasatch	[48] <u>46</u>
23) Washington	[48] <u>46</u>
24) Weber	[78] <u>75</u>

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1) Beaver	[15] 14
2) Box Elder	[59] 56
3) Cache	[83] 79
4) Carbon	[15] 14
5) Davis	[16] 15
6) Duchesne	[19] 18
7) Garfield	[15] 14
8) Grand	[15] 14
9) Iron	[15] 14
10) Juab	[16] 15
11) Kane	[15] 14
12) Millard	[14] 13
13) Morgan	[28] 26
14) Rich	[15] 14
15) Salt Lake	15
16) San Juan	[17] 16
17) Sanpete	[19] 18
18) Summit	[15] 14
19) Tooele	14
20) Uintah	[19] 18
21) Utah	[16] 15
22) Wasatch	[15] 14
23) Washington	[14] 13
24) Weber	[45] 42

TABLE 10
GR II

1) Beaver	[22] 21
2) Box Elder	[23] 22
3) Cache	[23] 21
4) Carbon	[15] 14
5) Daggett	[14] 13
6) Davis	[19] 18
7) Duchesne	[22] 18
8) Emery	[21] 20
9) Garfield	[23] 22
10) Grand	[22] 21
11) Iron	[22] 21
12) Juab	[19] 18
13) Kane	[24] 23
14) Millard	[24] 23
15) Morgan	[21] 20
16) Piute	[26] 25
17) Rich	[20] 19
18) Salt Lake	[22] 20
19) San Juan	[24] 23
20) Sanpete	[18] 17
21) Sevier	[18] 17
22) Summit	[20] 19
23) Tooele	[20] 19
24) Uintah	[29] 27
25) Utah	[23] 22
26) Wasatch	[17] 16
27) Washington	[21] 20
28) Wayne	[29] 27
29) Weber	[20] 19

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1) Beaver	[79] 67
2) Box Elder	[75] 71
3) Cache	[79] 67
4) Carbon	[52] 50
5) Daggett	[52] 50
6) Davis	[61] 58
7) Duchesne	[69] 66
8) Emery	[72] 68
9) Garfield	[76] 73
10) Grand	[78] 74
11) Iron	[74] 71
12) Juab	[65] 62
13) Kane	[75] 72
14) Millard	[76] 73
15) Morgan	[67] 64
16) Piute	[91] 86
17) Rich	[65] 62
18) Salt Lake	[79] 67
19) San Juan	[75] 71
20) Sanpete	[63] 60
21) Sevier	[64] 62
22) Summit	[72] 69
23) Tooele	[71] 68
24) Uintah	[80] 77
25) Utah	[66] 63
26) Wasatch	[53] 50
27) Washington	[65] 62
28) Wayne	[89] 84
29) Weber	[79] 67

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values listed below:

TABLE 11
GR III

1) Beaver	[16] 15
2) Box Elder	[17] 16
3) Cache	[15] 14
4) Carbon	[13] 12
5) Daggett	11
6) Davis	[13] 12
7) Duchesne	13
8) Emery	[14] 13
9) Garfield	[16] 15
10) Grand	[15] 14
11) Iron	[15] 14
12) Juab	13
13) Kane	[15] 14
14) Millard	[16] 15
15) Morgan	[13] 12
16) Piute	[18] 17
17) Rich	[13] 12
18) Salt Lake	[15] 14
19) San Juan	[17] 16
20) Sanpete	13
21) Sevier	13
22) Summit	[14] 13
23) Tooele	13
24) Uintah	[19] 18
25) Utah	[14] 13
26) Wasatch	12
27) Washington	[13] 12
28) Wayne	[18] 17
29) Weber	[14] 13

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1) Beaver	[6]5
2) Box Elder	5
3) Cache	5
4) Carbon	5
5) Daggett	5
6) Davis	5
7) Duchesne	5
8) Emery	[6]5
9) Garfield	5
10) Grand	[6]5
11) Iron	[6]5
12) Juab	5
13) Kane	5
14) Millard	5
15) Morgan	[6]5
16) Piute	[6]5
17) Rich	5
18) Salt Lake	5
19) San Juan	5
20) Sanpete	5
21) Sevier	5
22) Summit	5
23) Tooele	5
24) Uintah	[6]5
25) Utah	5
26) Wasatch	5
27) Washington	5
28) Wayne	5
29) Weber	[6]5

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

Nonproductive Land	
1) All Counties	5

KEY: taxation, personal property, property tax, appraisals
Date of Enactment or Last Substantive Amendment:
~~2016~~**2017**
Notice of Continuation: January 3, 2012
Authorizing, and Implemented or Interpreted Law: Art XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365; 59-2-1703

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <https://rules.utah.gov/>. 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.

Environmental Quality, Water Quality **R317-2** Standards of Quality for Waters of the State

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 42157
FILED: 09/26/2017

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 19-5-104(3)(b) authorizes the Utah Water Quality Board (Board) to adopt, modify, or repeal standards of quality of the waters of the state and classify those waters according to their reasonable uses. Subsection 19-5-104(1) authorizes the Board to make rules which implement or effectuate the powers and duties of the Board.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This rule was amended three times since the last five-year review. The limited comments which were received during those rulemaking actions addressed technical issues and were generally of a noncontroversial nature. Comments received during hearings and the public comment period for the rule changes have been addressed through preparation of responsiveness summaries by Division of Water Quality staff and have been presented to the Board for their consideration during the rulemaking process.

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 classifies waters of the state according to their beneficial uses and sets numerical standards of quality for those waters. The existence of the rule is central to implementation of water quality protection programs under the Utah Water Quality Act. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
WATER QUALITY
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

AUTHORIZED BY: Erica Gaddis, Director

EFFECTIVE: 09/26/2017

Financial Institutions, Administration **R331-17** Publication and Disclosure of Acquisition of Control, Merger, or Consolidation Applications to the Department of Financial Institutions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 42149
 FILED: 09/22/2017

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 7-1-301(5) authorizes the Commissioner to grant applications of approval for new institutions, branches, relocations, mergers, consolidations, changes of control, and other applications. Section 7-1-703 places restrictions on acquisition of institutions and holding companies. Section 7-1-704 states that an institution subject to the jurisdiction of the Department of Financial Institutions (Department) may maintain an office in this state or engage in activities of a financial institution in this state only if it is authorized to do so by the department. Section 7-1-705 lists the criteria necessary to file an application with the Department, as well as what is required for approval and grounds for disapproval.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule applies to all applicants to the Department for change of control, acquisition of, merger, or consolidation with any financial institution chartered by the state. Therefore, this rule should be continued.

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

FINANCIAL INSTITUTIONS
 ADMINISTRATION
 ROOM 201
 324 S STATE ST
 SALT LAKE CITY, UT 84111-2393
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/22/2017

Financial Institutions, Administration
R331-23
 Lending Limits for Banks, Industrial
 Loan Corporations

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 42163
 FILED: 09/28/2017

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 7-1-301 confers rulemaking powers and duties to the Commissioner with respect to institutions, persons, or businesses subject to the jurisdiction of the Department of Financial Institutions. Section 7-3-19 authorizes limitations on loans and extensions of credit. Section 7-8-20 lists limitations on loans to one borrower, the exceptions, and the rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is intended to prevent one person from borrowing an unduly large amount of a given bank's or industrial loan corporation's funds, thereby exposing the bank's or industrial loan corporation's depositors, creditors, and stockholders to excessive risk. Therefore, this rule should be continued.

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

FINANCIAL INSTITUTIONS
 ADMINISTRATION
 ROOM 201
 324 S STATE ST
 SALT LAKE CITY, UT 84111-2393
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/28/2017

**Financial Institutions, Banks
R333-12**

**Investment by State-Chartered Banks
in Real Property Other Than Bank
Premises**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 42150
FILED: 09/22/2017

**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 7-1-301 authorizes rulemaking authority to the Commissioner. Section 7-3-18 permits a bank to purchase, hold, and convey real estate, other than bank premises, only for those purposes and in a manner prescribed by the Commissioner by regulation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule authorizes state-chartered banks with sufficient capital to invest in real property, other than bank premises, as prescribed by the Commissioner by regulation. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FINANCIAL INSTITUTIONS
BANKS
ROOM 201
324 S STATE ST
SALT LAKE CITY, UT 84111-2393
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/22/2017

**Financial Institutions, Consumer Credit
R335-1**

**Rule Prohibiting Negative Amortizing
Wrap Loans**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 42141
FILED: 09/20/2017

**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 70C-8-102(1)(e) authorizes the Department of Financial Institutions to adopt, amend, and repeal rules to supplement, interpret, or carry out the provisions of this title. This rule applies to all extensions of credit subject to Title 70C, Utah Consumer Credit Code, which furthers consumer understanding of credit transactions, prohibits certain unfair practices, and avoids duplication of laws and regulations pertaining to consumer credit between state and federal authorities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No supporting or opposing written comments have been received by the agency concerning 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 purpose for this rule is to prohibit wrap loans that will not fully service all obligations wrapped by the loan. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FINANCIAL INSTITUTIONS
CONSUMER CREDIT
ROOM 201
324 S STATE ST
SALT LAKE CITY, UT 84111-2393
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/20/2017

**Financial Institutions, Consumer Credit
R335-2
Rule Prescribing Allowable Terms and
Disclosure Requirements for Variable
and Adjustable Interest Rates in
Consumer Credit Contracts**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 42142
FILED: 09/20/2017

**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 70C-8-102(1)(e) authorizes the Department of Financial Institutions to adopt, amend, and repeal rules to supplement, interpret, or carry out the provisions of this title. This rule applies to all extensions of credit subject to Title 70C, Utah Consumer Credit Code, which furthers consumer understanding of credit transactions, prohibits certain unfair practices, and avoids duplication of laws and regulations pertaining to consumer credit between state and federal authorities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No supporting or opposing written comments have been received by the agency concerning 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 purpose for this rule is to distinguish variable or adjustable interest rates from other kinds of rate formulas or provisions, to specify what must be included in rate formulas represented to be variable or adjustable and to specify certain disclosure requirements under state and federal law applicable to variable or adjustable rate and other formulas. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FINANCIAL INSTITUTIONS
CONSUMER CREDIT
ROOM 201
324 S STATE ST
SALT LAKE CITY, UT 84111-2393
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/20/2017

**Financial Institutions, Consumer Credit
R335-4
Notice Concerning Refund of Unearned
Credit Insurance Premiums Upon
Prepayment of a Consumer Debt**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 42143
FILED: 09/20/2017

**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 70C-8-102(1)(e) authorizes the Department of Financial Institutions to adopt, amend, and repeal rules to supplement, interpret, or carry out the provisions of this title. This rule applies to all extensions of credit subject to Title 70C, Utah Consumer Credit Code, which furthers consumer understanding of credit transactions, prohibits certain unfair practices, and avoids duplication of laws and regulations pertaining to consumer credit between state and federal authorities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No supporting or opposing written comments have been received by the agency concerning 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 purpose for this rule is to require all consumer creditors, including assignees or other successors in interest, to notify a borrower when a debtor may be entitled to a separate refund of unearned credit insurance premiums. Therefore, this rule should be continued.

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

ROOM 201
324 S STATE ST
SALT LAKE CITY, UT 84111-2393
or at the Office of Administrative Rules.

ROOM 201
324 S STATE ST
SALT LAKE CITY, UT 84111-2393
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/20/2017

EFFECTIVE: 09/28/2017

**Financial Institutions, Credit Unions
R337-7**

**Discount Securities Brokerage Service
by State-Chartered Credit Unions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 42160
FILED: 09/28/2017

**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 7-1-301(3) authorizes the Commissioner with powers, duties, and responsibilities of all institutions subject to the jurisdiction of the Department of Financial Institutions and he may authorize the activities state-chartered depository institutions may engage in as if they were chartered under the laws of the United States.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule allows securities activities limited to "discount brokerage" services by state-chartered credit unions, similar to the discount brokerage services allowed state-chartered banks and industrial loan corporations. Therefore, this rule should be continued.

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

**Financial Institutions, Credit Unions
R337-8**

**Accounts for Parties Other Than
Individual Members in State-Chartered
Credit Unions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 42161
FILED: 09/28/2017

**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 7-1-301(3) authorizes the Commissioner with powers, duties, and responsibilities of all institutions subject to the jurisdiction of the Department of Financial Institutions and he may authorize the activities state-chartered depository institutions may engage in as if they were chartered under the laws of the United States.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule allows state-chartered credit unions to maintain accounts in the name of businesses or entities other than individual members to the same extent as credit unions chartered under the laws of the United States. Therefore, this rule should be continued.

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

CREDIT UNIONS
ROOM 201
324 S STATE ST
SALT LAKE CITY, UT 84111-2393
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/28/2017

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,
DURING REGULAR BUSINESS HOURS, AT:
FINANCIAL INSTITUTIONS
CREDIT UNIONS
ROOM 201
324 S STATE ST
SALT LAKE CITY, UT 84111-2393
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/28/2017

**Financial Institutions, Credit Unions
R337-9**

**Schedule for Retention or Destruction
of Records of Credit Unions Under the
Jurisdiction of the Department of
Financial Institutions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 42162
FILED: 09/28/2017

**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 7-1-301(7) authorizes the Commissioner to classify all records kept by institutions subject to the jurisdiction of the Department of Financial Institutions and to prescribe the period for which each class of records is retained. The purpose of the rule is to require the maintenance of appropriate types of records which have a high degree of usefulness and to prescribe the period for which records of each class are retained.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule establishes a schedule for the retention of records of credit unions. Therefore, this rule should be continued.

**Financial Institutions, Industrial Loan
Corporations
R339-4**

**Authority for Industrial Loan
Corporations to Issue Subordinated
Capital Notes or Debentures**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 42151
FILED: 09/22/2017

**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 7-1-301(8) authorizes the Commissioner to establish reasonable classes of financial institutions and types of investments for the deposits and other funds, as well as eligible obligations, reserves, and other accounts to be included in the computation of capital. Subsection 7-1-301(13) authorizes the Commissioner to regulate the issuance, advertising, offer for sale, and sale of a security.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: This rule construes, applies, and elaborates on Rule R331-5 as it applies to industrial loan corporations in the issuance of subordinated capital notes or debentures. Therefore, this rule should be continued.

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

FINANCIAL INSTITUTIONS
INDUSTRIAL LOAN CORPORATIONS
ROOM 201
324 S STATE ST
SALT LAKE CITY, UT 84111-2393
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/22/2017

**Financial Institutions, Industrial Loan
Corporations
R339-6**

**Rule Clarifying Industrial Loan
Corporation Investments**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 42152
FILED: 09/22/2017

**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 7-1-301(8) authorizes the Commissioner to establish reasonable classes of financial institutions and types of investments for the deposits and other funds. Section 7-8-13 allows industrial loan corporations to purchase, hold, and convey real estate, other than the premises used in the conduct of its business. Section 7-8-14 lists the types of investments in property industrial loan corporations may invest in including real property and any interest in real property, stock, bonds, debentures, etc.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule defines acceptable investments for the funds of an industrial loan corporation and defines and clarifies investments in real estate. Therefore, this rule should be continued.

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

FINANCIAL INSTITUTIONS
INDUSTRIAL LOAN CORPORATIONS
ROOM 201
324 S STATE ST
SALT LAKE CITY, UT 84111-2393
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pallred@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/22/2017

**Financial Institutions, Industrial Loan
Corporations
R339-11**

**Discount Securities Brokerage Service
by Industrial Loan Corporations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 42164
FILED: 09/28/2017

**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 7-1-301(3) authorizes the Commissioner with the power, duties, and responsibilities of all institutions subject to the jurisdiction of the Department of Financial Institutions, and he may authorize the activities state-chartered depository institutions may engage in as if they were chartered under the laws of the United States.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No supporting or opposing written comments have been received by the agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule allows securities activities limited to "discount brokerage" services by industrial loan corporations, similar to the discount brokerage services allowed state-chartered banks and credit unions. Therefore, this rule should be continued.

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

FINANCIAL INSTITUTIONS
INDUSTRIAL LOAN CORPORATIONS
ROOM 201
324 S STATE ST
SALT LAKE CITY, UT 84111-2393
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Paul Allred by phone at 801-538-8854, by FAX at 801-538-8894, or by Internet E-mail at pfallred@utah.gov

AUTHORIZED BY: Edward Leary, Commissioner

EFFECTIVE: 09/28/2017

**Governor, Economic Development,
Consumer Health Services**

R358-1

**Electronic Standards for Transmitting
Information through the Health
Insurance Exchange**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 42168
FILED: 09/29/2017

**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 63N-11-107 requires that the consumer health office adopt administrative rules that establish uniform electronic standards for insurers, employers, brokers, consumers, and vendors to use when transmitting or receiving information, uniform applications, waivers of coverage, or payments to, or from, the Health Insurance Exchange more commonly known as Avenue H.

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 has not been any written comments provided in the last five years 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 legislature has chosen to gradually unwind Avenue H with a complete shutdown of the program by 06/30/2018. This rule needs to remain in place until that time because Avenue H needs the standards for electronic sharing of information in place until the program is closed out. Therefore, this rule should be continued.

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

GOVERNOR
ECONOMIC DEVELOPMENT,
CONSUMER HEALTH SERVICES
60 E SOUTH TEMPLE 3RD FLR
SALT LAKE CITY, UT 84111
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jeffrey Van Hulten by phone at 801-538-8694, by FAX at 801-538-8888, or by Internet E-mail at jeffreyvan@utah.gov

AUTHORIZED BY: Val Hale, Executive Director

EFFECTIVE: 09/29/2017

**Health, Health Care Financing,
Coverage and Reimbursement Policy**

R414-509

**Medicaid Autism Waiver Open
Enrollment Process**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 42176
FILED: 10/02/2017

**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 authorized by Section 26-18-407, which sets forth provisions to implement the Medicaid Autism Waiver Program. In addition, 42 CFR 440.225 authorizes optional waiver services.

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 of Health 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 sets forth open enrollment procedures for the Medicaid Autism Waiver Program.

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: 10/02/2017

Health, Center for Health Data, Health
Care Statistics
R428-13
Health Data Authority. Audit and
Reporting of Health Plan Performance
Measures

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 42140
FILED: 09/19/2017

**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 Subsection 26-33a-104(1) to "direct a statewide effort to collect, analyze, and distribute health care data to facilitate the promotion and accessibility of quality and cost-effective health care and also to facilitate interaction among those with concern for health care issues".

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Office of Health Care Statistics has not received any written comments since the last five-year review of the rule from interested persons supporting or opposing the rule. Only general inquiries have been made and responded to by the Office. On 09/12/2017, the Health Data Committee voted to extend Rule R428-13.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes a performance measurement data collection and reporting system for health carriers licensed in the state of Utah. The data is needed to promote informed consumer choice in health carrier selection and measure the quality of care provided by Utah health carriers. The broad uses of the data and reports are justifications for continuation of the rule.

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

HEALTH
CENTER FOR HEALTH DATA,
HEALTH CARE STATISTICS
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov
♦ Norman Thurston by phone at 801-538-7052, by FAX at 801-237-0787, or by Internet E-mail at nthurston@utah.gov

AUTHORIZED BY: Joseph Miner, MD, Executive Director

EFFECTIVE: 09/19/2017

Insurance, Administration
R590-131
Accident and Health Coordination of
Benefits Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 42174
FILED: 09/29/2017

**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 Insurance Commissioner to write rules to implement the provisions of the Insurance Code, Title 31A. Section 31A-22-619 authorizes the Insurance Commissioner to adopt rules concerning the coordination of benefits between accident and health insurance policies. The rule establishes a uniform order of benefit determination under which plans pay coordination of benefit claims, reduce duplication of benefits, and provide greater efficiency in the processing of claims when a person is covered under more than one plan.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department of Insurance has received written comments regarding this rule during the last five years. The Department is drafting changes that will be filed to address the comments 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 brings consistency and order when considering which health policy covers a claim when there is more than one health carrier covering the same individual or group. It eliminates lawsuits and expedites the payment of health claims. 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

AUTHORIZED BY: Steve Gooch, Information Specialist

EFFECTIVE: 09/29/2017

Natural Resources, Water Resources
R653-3
 Selecting Private Consultants

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 42169
 FILED: 09/29/2017

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 73-10-4 grants the Board of Water Resources the right to authorize studies, investigations, and plans for the full development of the water and power resources of the state. This rule is adopted to hire Professional Engineering and Surveying services in compliance with Section 58-22-102 (Occupations and Professions, Professional Engineers Licensing Act) for investigative, design, and construction engineering services for said water projects.

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 construction of water development and conservation projects remains critical to the future growth, health, and welfare of the citizens of the state of Utah. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 WATER RESOURCES
 ROOM 310
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Barbara Allen by phone at 801-538-72352, by FAX at 801-538-7279, or by Internet E-mail at barbaraallen@utah.gov

AUTHORIZED BY: Eric Millis, Director

EFFECTIVE: 09/29/2017

Natural Resources, Water Resources
R653-4
 Investigation Account

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 42170
 FILED: 09/29/2017

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 Water Resources Investigation Account was established by the Legislature in 1953 and is authorized under Section 73-10-8.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This funding account is necessary for the Board of Water Resources to fulfill its directive to develop the waters of the state of Utah under Section 73-10-4. Therefore, this rule should be continued.

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

NATURAL RESOURCES
 WATER RESOURCES
 ROOM 310
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Barbara Allen by phone at 801-538-72352, by FAX at 801-538-7279, or by Internet E-mail at barbaraallen@utah.gov

AUTHORIZED BY: Eric Millis, Director

EFFECTIVE: 09/29/2017

**Natural Resources, Water Resources
 R653-5
 Cloud Seeding**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 42171
 FILED: 09/29/2017

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 73, Chapter 15, authorizes the state of Utah to exclusively conduct cloud seeding

research, evaluation, and implementation of cloud seeding projects in the state through the Division of Water Resources.

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 is necessary to allow personnel to legally conduct cloud seeding research and implement cloud seeding projects to augment snow pack and precipitation throughout the state. Therefore, this rule should be continued.

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

NATURAL RESOURCES
 WATER RESOURCES
 ROOM 310
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Barbara Allen by phone at 801-538-72352, by FAX at 801-538-7279, or by Internet E-mail at barbaraallen@utah.gov

AUTHORIZED BY: Eric Millis, Director

EFFECTIVE: 09/29/2017

**Natural Resources, Wildlife Resources
 R657-13
 Taking Fish and Crayfish**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 42166
 FILED: 09/28/2017

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 23-14-8 and 23-14-19 the Wildlife Board is authorized to provide standards and procedures for taking fish and crayfish.

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 R657-13 were received since October 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 R657-13 provides the procedures, standards, and requirements for taking fish and crayfish in the state of Utah. The provisions adopted in this rule are effective. Continuation of this rule is necessary for the continued success of allowing the anglers of Utah to take fish and to protect the resource.

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: 09/28/2017

Natural Resources, Wildlife Resources
R657-52
 Commercial Harvesting of Brine Shrimp
 and Brine Shrimp Eggs

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 42146
 FILED: 09/21/2017

**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 R657-52 were received since 10/01/2012 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 R657-52 provides the procedures, standards, and requirements for commercially harvesting brine shrimp and brine shrimp eggs. The provisions adopted in this rule are effective. Continuation of this rule is necessary for continued success in protecting, conserving, and managing the brine shrimp resource.

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: 09/21/2017

Pardons (Board of), Administration
R671-313
 Commutation Hearings (Non-Death
 Penalty Cases)

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 42167
 FILED: 09/28/2017

**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: In Utah, the authority to commute a sentence rests with the Board of Pardons and Parole (Board), see Subsection 63G-3-201(3), Sections 77-27-1 et seq., 77-27-9, and 77-27-5, and the Utah Constitution Art VII, Sec 12. Therefore, the Board must enact rules about how a commutation petition is filed and how the Board conducts commutation 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 written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides the framework of how the Board executes its authority to commute sentences. The rule is necessary to inform individuals how to petition for a commutation and how the Board will proceed when a petition is received. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 PARDONS (BOARD OF)
 ADMINISTRATION
 ROOM 300
 448 E 6400 S
 SALT LAKE CITY, UT 84107-8530
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Greg Johnson by phone at 801-261-6454, by FAX at 801-261-6481, or by Internet E-mail at gregjohnson@utah.gov

AUTHORIZED BY: Angela Micklos, Chair

EFFECTIVE: 09/28/2017

Regents (Board of), Administration
R765-134
 Informal Adjudicative Procedures
 Under the Utah Administrative
 Procedures Act

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 42172
 FILED: 09/29/2017

**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 63G-4-202 of the Administrative Procedures Act allows agencies to designate adjudicative proceedings as informal by administrative rule. Rule R765-134 is the Board of Regents rule designating its hearings as informal.

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 Board of Regents desires to continue designating its administrative hearings as informal adjudicatory processes. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 REGENTS (BOARD OF)
 ADMINISTRATION
 BOARD OF REGENTS BUILDING, THE GATEWAY
 60 SOUTH 400 WEST
 SALT LAKE CITY, UT 84101-1284
 or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Geoff Landward by phone at 801-321-7136, or by Internet E-mail at glandward@ushe.edu

AUTHORIZED BY: Dave Buhler, Commissioner of Higher Education

EFFECTIVE: 09/29/2017

Regents (Board of), Administration
R765-993
 Records Access and Management

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 42173
 FILED: 09/29/2017

**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 2, provides policy related to State Board of Regents and Office of the Commissioner records access and management matters pursuant to the Government Records Access and Management Act (GRAMA). The rule designates records officers, their duties, and certain records classification procedures.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: 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 Board of Regents is still obligated to meet GRAMA requirements. This rule continues to serve the Board's needs for regulatory compliance. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY

60 SOUTH 400 WEST
SALT LAKE CITY, UT 84101-1284
or at the Office of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Geoff Landward by phone at 801-321-7136, or by Internet
E-mail at glandward@ushe.edu

AUTHORIZED BY: Dave Buhler, Commissioner of Higher
Education

EFFECTIVE: 09/29/2017

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file a **NOTICE OF FIVE-YEAR REVIEW EXTENSION (EXTENSION)** with the Office of Administrative Rules. The **EXTENSION** permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed **EXTENSIONS** for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

EXTENSIONS are governed by Subsection 63G-3-305(6).

Technology Services, Administration **R895-12** Telecommunications Services and Requirements

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 42144

FILED: 09/20/2017

EXTENSION REASON AND NEW DEADLINE: The Department of Technology Services is still working to review the current rule and needs more time. The new deadline is 01/29/2018.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Stephanie Weteling by phone at 801-538-3284, by FAX at 801-538-3622, or by Internet E-mail at stephanie@utah.gov

AUTHORIZED BY: Michael Hussey, Executive Director and CIO

EFFECTIVE: 09/20/2017

End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Office of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

Education

Administration

No. 41971 (AMD): R277-110. Legislative Supplemental

Salary Adjustment

Published: 08/15/2017

Effective: 09/21/2017

No. 41956 (REP): R277-112. Prohibiting Discrimination in the Public Schools

Published: 08/15/2017

Effective: 09/21/2017

No. 41972 (AMD): R277-401. Child Abuse-Neglect

Reporting by Education Personnel

Published: 08/15/2017

Effective: 09/21/2017

No. 41973 (AMD): R277-407. School Fees

Published: 08/15/2017

Effective: 09/21/2017

No. 41974 (AMD): R277-433. Disposal of Textbooks in the Public Schools

Published: 08/15/2017

Effective: 09/21/2017

No. 41975 (AMD): R277-445. Classifying Small Schools as Necessarily Existent

Published: 08/15/2017

Effective: 09/21/2017

No. 41976 (AMD): R277-489. Early Intervention Program

Published: 08/15/2017

Effective: 09/21/2017

No. 41977 (NEW): R277-496. K-3 Reading Software Licenses

Published: 08/15/2017

Effective: 09/21/2017

No. 41979 (AMD): R277-515. Utah Educator Professional Standards

Published: 08/15/2017

Effective: 09/21/2017

No. 41983 (AMD): R277-516. Background Check Policies and Required Reports of Arrests for Licensed Educators, Volunteers, Non-licensed Employees, and Charter School Governing Board Members

Published: 08/15/2017

Effective: 09/21/2017

No. 41980 (AMD): R277-608. Prohibition of Corporal Punishment in Utah's Public Schools

Published: 08/15/2017

Effective: 09/21/2017

No. 41981 (AMD): R277-800. Utah Schools for the Deaf and the Blind

Published: 08/15/2017

Effective: 09/21/2017

No. 41982 (AMD): R277-801. Services for Students with Sensory Impairments

Published: 08/15/2017

Effective: 09/21/2017

No. 41978 (NEW): R277-925. Effective Teachers in High Poverty Schools Incentive Program

Published: 08/15/2017

Effective: 09/21/2017

NOTICES OF RULE EFFECTIVE DATES

Governor

Economic Development

No. 41986 (AMD): R357-11. Technology Commercialization and Innovation Program (TCIP)

Published: 08/15/2017

Effective: 09/26/2017

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 41916 (AMD): R414-60-7. Reimbursement

Published: 08/01/2017

Effective: 10/01/2017

No. 41914 (AMD): R414-100-4. Cost Sharing Provisions

Published: 08/01/2017

Effective: 09/27/2017

No. 41915 (AMD): R414-200-4. Cost Sharing

Published: 08/01/2017

Effective: 09/27/2017

Disease Control and Prevention, Laboratory Services

No. 41568 (REP): R438-12. Rule for Law Enforcement

Blood Draws

Published: 06/01/2017

Effective: 09/28/2017

Human Services

Recovery Services

No. 41929 (NEW): R527-36. Collection of Child Support After a Termination of Parental Rights or Adoption

Published: 08/15/2017

Effective: 09/26/2017

Juvenile Justice Services

No. 41963 (AMD): R547-13. Guidelines for Admission to

Secure Youth Detention Facilities

Published: 08/15/2017

Effective: 09/26/2017

Labor Commission

Boiler and Elevator Safety

No. 41951 (AMD): R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels

Published: 08/15/2017

Effective: 09/21/2017

No. 41950 (AMD): R616-3-4. Inspector Qualification

Published: 08/15/2017

Effective: 09/21/2017

No. 41949 (AMD): R616-3-14. Remodeled Elevators

Published: 08/15/2017

Effective: 09/21/2017

Natural Resources

Oil, Gas and Mining; Oil and Gas

No. 41868 (AMD): R649-2-9. Refusal to Agree

Published: 07/15/2017

Effective: 09/21/2017

Parks and Recreation

No. 41952 (AMD): R651-412-4. Curriculum Standards

Published: 08/15/2017

Effective: 09/21/2017

Water Rights

No. 41590 (REP): R655-2. Procedure for Administrative Proceedings Before the Division of Water Rights Commenced Prior to January 1, 1988

Published: 06/01/2017

Effective: 09/22/2017

Pardons (Board Of)

Administration

No. 41615 (AMD): R671-202. Notification of Hearings

Published: 06/01/2017

Effective: 09/20/2017

Workforce Services

Employment Development

No. 41985 (AMD): R986-700. Child Care Assistance

Published: 08/15/2017

Effective: 09/21/2017

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 October 02, 2017. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Office of Administrative Rules (801-538-3003).

A copy of the **RULES INDEX** is available for public inspection at the Office of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Office's web site (<https://rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>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	2017-13/229
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
R23-3	Planning, Programming, Request for Capital Development Projects and Operation and Maintenance Reporting for State Owned Facilities	41578	AMD	07/12/2017	2017-11/6
R23-3-4	Authorization of Programs	41666	NSC	07/19/2017	Not Printed
R23-4	Suspension/Debarment	42065	5YR	09/07/2017	2017-19/115
R23-5	Contingency Funds	42066	5YR	09/07/2017	2017-19/115
R23-6	Value Engineering and Life Cycle Costing of State Owned Facilities Rules and Regulations	42067	5YR	09/07/2017	2017-19/116
R23-9	Cooperation with Local Government Planning	42068	5YR	09/07/2017	2017-19/116
R23-10	Naming of State Buildings	42069	5YR	09/07/2017	2017-19/117
R23-10	Naming of State Buildings	42084	NSC	09/20/2017	Not Printed
R23-12	Building Code Appeals Process	42064	5YR	09/07/2017	2017-19/118
R23-12	Building Code Appeals Process	42105	NSC	09/29/2017	Not Printed
R23-14	Management of Roofs on State Buildings	42070	5YR	09/07/2017	2017-19/118
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
R23-21	Division of Facilities Construction and Management Lease Procedures	42071	5YR	09/07/2017	2017-19/119
R23-24	Capital Projects Utilizing Non-appropriated Funds	42072	5YR	09/07/2017	2017-19/119
R23-24	Capital Projects Utilizing Non-appropriated Funds	42083	NSC	09/29/2017	Not Printed
R23-30	State Facility Energy Efficiency Fund	40946	AMD	01/20/2017	2016-23/11
<u>Finance</u>					
R25-5	Payment of Per Diem to Boards	41796	NSC	06/29/2017	Not Printed
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
R25-7	Travel-Related Reimbursements for State Employees	41797	EMR	07/01/2017	2017-13/221
R25-7	Travel-Related Reimbursements for State Employees	41798	AMD	08/07/2017	2017-13/8
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
R27-7	Safety and Loss Prevention of State Vehicles	41609	AMD	07/11/2017	2017-11/11
<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>					
R33-1	Utah Procurement Rule, General Procurement Provisions	41534	AMD	06/21/2017	2017-10/4
R33-4	Supplemental Procurement Procedures	41535	AMD	06/21/2017	2017-10/7
R33-4-101b	Vendors with Exclusive Authorization to Bid	41292	NSC	03/06/2017	Not Printed
R33-5	Other Standard Procurement Processes	41536	AMD	06/21/2017	2017-10/10
R33-5	Other Standard Procurement Processes	41665	NSC	06/26/2017	Not Printed
R33-6	Bidding	41539	AMD	06/21/2017	2017-10/15
R33-7	Request for Proposals	41540	AMD	06/21/2017	2017-10/18
R33-8	Exceptions to Standard Procurement Process	41544	AMD	06/21/2017	2017-10/27
R33-8-102	Adding Additional Funds to a Contract	41023	AMD	02/02/2017	2016-24/4
R33-9	Cancellations, Rejections, and Debarment	41545	AMD	06/21/2017	2017-10/31
R33-11	Form of Bonds	41546	AMD	06/21/2017	2017-10/35
R33-12	Terms and Conditions, Contracts, Change Orders and Costs	41547	AMD	06/21/2017	2017-10/37
R33-13	General Construction Provisions	41548	AMD	06/21/2017	2017-10/43
R33-15	Procurement of Design Profession Services	41549	AMD	06/21/2017	2017-10/47
R33-16	Protests	40898	AMD	01/20/2017	2016-22/10
R33-16	Protests	41550	AMD	06/21/2017	2017-10/48
R33-17	Procurement Appeals Board	41551	AMD	06/21/2017	2017-10/51
R33-18	Appeals to Court and Court Proceedings	41552	AMD	06/21/2017	2017-10/54
R33-19-101	Encouraged to Obtain Legal Advice From Legal Counsel	41553	AMD	06/21/2017	2017-10/55
R33-21-201e	Division May Charge Administrative Fees on State Cooperative Contracts - Prohibition Against Other Procurement Units Charging Fees on State Contracts	41554	AMD	06/21/2017	2017-10/56
R33-25	Executive Branch Insurance Procurement	41555	AMD	06/21/2017	2017-10/57
<u>Records Committee</u>					
R35-1-2	Procedures for Appeal Hearings	41478	AMD	06/22/2017	2017-9/2
R35-2-2	Declining Requests for Hearings	41479	AMD	06/22/2017	2017-9/4
<u>Risk Management</u>					
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

RULES INDEX

AGRICULTURE AND FOOD

Administration

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R986-200	Family Employment Program	41596	NSC	05/23/2017	Not Printed
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ABBREVIATIONS

AMD = Amendment (Proposed Rule)
CPR = Change in Proposed Rule

LNR = Legislative Nonreauthorization
NEW = New Rule (Proposed Rule)

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EMR = 120-Day (Emergency) Rule
 EXD = Expired Rule
 EXP = Expedited Rule
 EXT = Five-Year Review Extension
 GEX = Governor's Extension

NSC = Nonsubstantive Rule Change
 R&R = Repeal and Reenact (Proposed Rule)
 REP = Repeal (Proposed Rule)
 5YR = Five-Year Notice of Review and
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	41460	R251-305	AMD	08/15/2017	2017-9/14
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Agriculture and Food, Animal Industry	41162	R58-18	5YR	01/12/2017	2017-3/81	
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Human Services, Recovery Services	41170	R527-250	AMD	04/14/2017	2017-3/34	
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Public Safety, Driver License	42005	R708-47	5YR	08/07/2017	2017-17/214	
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Health, Family Health and Preparedness, Emergency Medical Services	41332	R426-5	AMD	04/26/2017	2017-6/7	
	41617	R426-8	AMD	07/10/2017	2017-11/159	
	41029	R426-9	AMD	02/01/2017	2016-24/30	
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	41023	R33-8-102	AMD	02/02/2017	2016-24/4	
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Education, Administration	41788	R277-609-4	AMD	08/07/2017	2017-13/65	
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	41219	R307-341	5YR	01/27/2017	2017-4/67	
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	41530	R477-6	5YR	04/27/2017	2017-10/170	
	41503	R477-6	AMD	07/01/2017	2017-10/108	
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Human Resource Management, Administration	41281	R477-10	EXT	02/02/2017	2017-5/77	
	41537	R477-10	5YR	04/27/2017	2017-10/172	
	41507	R477-10	AMD	07/01/2017	2017-10/125	
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	41537	R477-10	5YR	04/27/2017	2017-10/172	
	41507	R477-10	AMD	07/01/2017	2017-10/125	
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Workforce Services, Unemployment Insurance	41519	R994-402	EXD	04/27/2017	2017-10/180	
	41525	R994-402	NEW	06/21/2017	2017-10/159	
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Workforce Services, Unemployment Insurance	41103	R994-405-2	AMD	03/01/2017	2017-1/97	

<u>employee's rights</u>					
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Workforce Services, Unemployment Insurance	41103	R994-405-2	AMD	03/01/2017	2017-1/97
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	41528	R477-4	5YR	04/27/2017	2017-10/169
	41502	R477-4	AMD	07/01/2017	2017-10/103
	41274	R477-5	EXT	02/02/2017	2017-5/76
	41529	R477-5	5YR	04/27/2017	2017-10/169
	41504	R477-5	AMD	07/01/2017	2017-10/106
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	41857	R982-403	5YR	06/28/2017	2017-14/71
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	41858	R982-404	5YR	06/28/2017	2017-14/72
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	41370	R70-530	NSC	04/05/2017	Not Printed
	41157	R70-560	5YR	01/12/2017	2017-3/85
	42030	R70-960	NSC	09/05/2017	Not Printed
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	41922	R590-148	5YR	07/12/2017	2017-15/32
	41729	R590-149	5YR	06/05/2017	2017-13/244
	41996	R590-166-3	NSC	08/29/2017	Not Printed
	40955	R590-173	AMD	01/10/2017	2016-23/83
	41730	R590-173	5YR	06/05/2017	2017-13/245
	41440	R590-203	5YR	04/04/2017	2017-9/50
	42035	R590-216	5YR	08/18/2017	2017-18/62
	41322	R590-248-4	AMD	04/07/2017	2017-5/55
	40953	R590-273	NEW	04/07/2017	2016-23/94
	40953	R590-273	CPR	04/07/2017	2017-5/58
	41867	R590-274	NEW	08/23/2017	2017-14/20
	42038	R590-275	EMR	08/24/2017	2017-18/45

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	40954	R590-70	R&R	01/10/2017	2016-23/77
	41439	R590-85	5YR	04/04/2017	2017-9/48
	41135	R590-95	5YR	01/09/2017	2017-3/95
	42034	R590-96	5YR	08/18/2017	2017-18/62
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	42174	R590-131	5YR	09/29/2017	Not Printed
	41138	R590-143	5YR	01/09/2017	2017-3/97
	41296	R590-206	AMD	07/11/2017	2017-5/42
	41296	R590-206	CPR	07/11/2017	2017-11/192
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	41625	R597-3-5	AMD	07/10/2017	2017-11/170
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	41624	R597-3-3	AMD	07/10/2017	2017-11/168
	41625	R597-3-5	AMD	07/10/2017	2017-11/170
	41026	R597-3-8	AMD	02/17/2017	2016-24/35
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	42139	R414-3A	5YR	09/15/2017	2017-19/130
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	41125	R414-10A	5YR	01/06/2017	2017-3/94
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	41689	R414-310	5YR	05/22/2017	2017-12/36
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	41561	R414-514	NEW	07/01/2017	2017-10/94
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	41392	R746-430	5YR	03/27/2017	2017-8/83
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	41467	R58-11	NSC	05/15/2017	Not Printed
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	41596	R986-200	NSC	05/23/2017	Not Printed	
	41597	R986-300-305	NSC	05/23/2017	Not Printed	
	41598	R986-400-401	NSC	05/23/2017	Not Printed	
	41599	R986-600	NSC	05/23/2017	Not Printed	
	41600	R986-900	NSC	05/23/2017	Not Printed	
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	41568	R438-12	REP	09/28/2017	2017-11/161	
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